

VIDEO AS EVIDENCE FIELD GUIDE



ACTIVISTS | LAWYERS
SUPPORTING | SUPPORTING
LAWYERS | ACTIVISTS



vae.witness.org

TABLE OF CONTENTS

ABOUT THIS GUIDE	5
ALL ABOUT THE LAW: WHERE VIDEO AND LAW INTERSECT	7
The Role of Video Beyond the Courtroom	7
• Part I: Human Rights Justice and Accountability Processes	8
• Field Note: Video's Role in Human Rights Advocacy, <i>Endorois Welfare Council v. State of Kenya</i>	10
• Part II: Who Does What?	14
Stages of the Criminal Justice Process and Standards of Proof	18
• Field Note: The Role of Video in the Criminal Justice Process: From the DRC to the ICC	23
Anatomy of a Crime	29
• Field Note: Using Video to Help Prove One Element of "How" a Crime Was Committed, <i>International Criminal Tribunal for the Former Yugoslavia v. Tolimir</i>	36
All About Evidence	39
• Field Note: Call It Like It Is, <i>Ghouta v. Bhopal - Part I</i>	40
• Part I: Sources of Evidence	42
• Part II: Purposes of Evidence	46
• Field Note: Video is Only One Piece of the Puzzle, <i>Ghouta v. Bhopal - Part II</i>	49
• Part III: Characteristics of Legal Evidence	52
BASIC PRACTICES	57
Basic Practices: Capturing, Storing and Sharing Video Evidence	57
• Part I: Get Ready to Film	59
• Part II: Press Record	63
• Part III: Safeguard Your Footage	66
• Part IV: Share Your Video	69
• Part V: Learn More	75
FILMING FOR EVIDENCE	76
Collection Planning	76
Filming Secure Scenes	89
• Field Note: Filming Long After a Crime, <i>ICTY v. Dokmanović</i>	99
Adding Essential Information	102
Proving Responsibility: Filming Linkage and Notice Evidence	111
• Part I: The Law – The Different Ways a Person can Participate in a Crime	115
• Field Note: Illustrating "How" a Perpetrator Can Commit a Crime, <i>ICTR v. Ruggiu, Nahimana and Barayagwiza</i>	117
• Part II: Command and Superior Responsibility	119
• Field Note: An Effective and Knowledgeable Commander, <i>Constitutional Court of Guatemala v. Rios Montt</i>	122
• Field Note: A Knowledgeable Commander, <i>ICC v. Bemba - Part I</i>	125
• Field Note: Bemba's Failure to Act, <i>ICC v. Bemba - Part II</i>	128
• Part III: How Can Video Help Prove Responsibility?	131

FILMING FOR EVIDENCE, CONTINUED

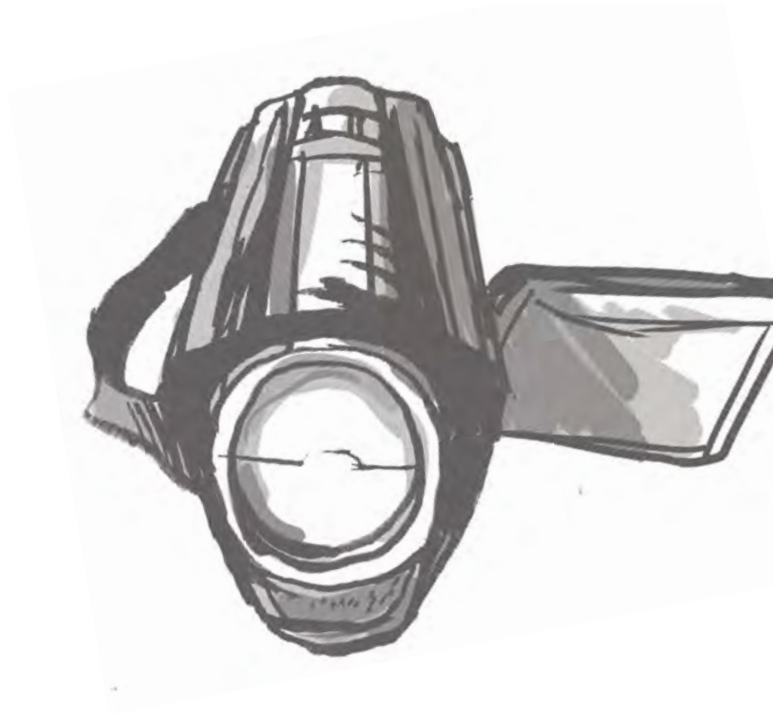
Testimony: Filming Preliminary Interviews	137
• Part I: Preliminary Field Interviews v. Comprehensive Interviews	140
• Part II: Choose Your Recording Method	143
• Part III: Principles and Practical Tips for Filming Preliminary Interviews	148
• Part IV: Conducting Preliminary Interviews: Before, During and After	150
• Part V: More About Informed Consent	159
Tech Tools for Transferring Files	166

SHARING AND USING EYEWITNESS VIDEO IN REPORTING AND ADVOCACY 172

Verification of Eyewitness Video	172
Ethical Guidelines: Using Eyewitness Videos in Human Rights Reporting & Advocacy	177
• Part I: Responsibility to Individuals Filmed	179
• Field Note: Witnesses Film Homophobic Attack	184
• Part II: Responsibility to Video Creators	187
• Field Note: Two Different Descriptions of a Video and Lack of Credit Leave Viewers Confused	193
• Part II: Responsibility to the Audience	194
• Field Note: A Montage of Clips Out of Context Reduces Footage to “Violence Wallpaper”	195

MINI GUIDES TO TAKE TO THE FIELD 201

- Basic Practices 1, 2, 3, 4, 5
- Collection Planning
- Filming Secure Scenes
- Adding Essential Information
- Proving Responsibility: Filming Linkage and Notice Evidence
- Testimony: Filming Preliminary Interviews 1, 2, 3, 4, 5
- Ethical Guidelines Checklist



ACKNOWLEDGEMENTS

SO MANY THANKS!

On behalf of WITNESS, I would like to personally thank the following organizations and individuals. Without your support and assistance, the drafting and development of this Field Guide would not have been possible:

Article 19, Bertha Foundation, Clifford Chance US LLP, Co-counsel to Endorois Welfare Council, Commission of International Justice & Accountability, Conectas, Docudays UA, Ford Foundation, Foreign & Commonwealth Office – Syria Conflict Pool, eyeWitness to Atrocities, Human Rights Center at UC Berkeley School of Law, Human Rights Law Network, Humanity United, John D. and Catherine T. MacArthur Foundation, International Institute for Criminal Investigations, Oak Foundation, Open Society Foundations, Open Society Justice Initiative, Swedish International Development Cooperation Agency, Syrian Institute for Justice, Nermina Z. Arnaud, Clive Baldwin, Wendy Betts, Alison Cole, Saeed Eido, Leslie Funk, K. Alexa Koenig, Abdulkader Mandou, Cynthia Morel, Cynthia Tai, Beth Van Schaack, Allison Sherrier, Laurence Waucampt, Alex Whiting, and Jackie Zammuto.

Endless appreciation!

Kelly Matheson

WITNESS

Senior Attorney and Program Manager, Video as Evidence Program

WITNESS encourages the use of this Field Guide pursuant to this Creative Commons license. All or any part of the material may be duplicated, modified, translated, or tailored to support your work to protect human rights. We just ask that you provide proper acknowledgement and do not use the materials for commercial purposes. Also, if you can, let us know how you modified the materials. We would love to help share any new versions you create with others! Send us an email at feedback@witness.org.



This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).
Version 1.0, 2016

Written by: Kelly Matheson

Contributions from: Jackie Zammuto, Madeleine Bair, and Morgan Hargrave

Design and Illustrations by: Jonathon Roy and Annah Syta

ABOUT THIS GUIDE

TAKEAWAYS



- Video footage captured by citizens and activists can do more than expose injustice. It can also serve as evidence in the criminal and civil justice processes.
- In many situations, citizens and on-the-ground human rights activists and advocates are better positioned to collect evidence of human rights abuse than professional investigators because investigators almost always arrive after-the-fact when evidence has deteriorated or is gone.

Video captured by citizens and on-the-ground human rights activists can be instrumental in drawing attention to human rights abuse. But many filmmakers want their videos to do more. They have the underlying expectation that footage exposing abuse can help bring about justice. And it can.

It can because in many situations, citizens and on-the-ground human rights activists are better positioned to collect evidence of human rights abuse than professional investigators because investigators almost always arrive after-the-fact when evidence has deteriorated or is gone. However, the quality of citizen video and other content rarely passes the higher bar needed to function as evidence in a court of law.

This Guide provides basic and advanced practices activists can use to increase the likelihood that their footage can serve as evidence in the criminal and civil justice processes. This *Field Guide* serves as a reference manual for citizen witnesses and human rights activists as they seek to use video not only to document abuses, but also for the ambitious end goal of bringing perpetrators to justice and freeing the falsely accused.

WHY A FIELD GUIDE?

The goal of the *Field Guide* is to provide methods for filmmakers to use so that their videos can be as valuable as possible in exposing abuse and bringing about justice. This resource will help ensure that more cameras in more hands can lead to more exposure and greater justice.

Activists producing footage that they hope will be used not only by journalists but also by investigators and court rooms must consider these fundamental questions: Is it clear where and when the video was filmed? Can this video be verified? Has it been tampered with or edited? Is the footage relevant to a human rights crime? Can the video's chain of custody be proved? Would its helpfulness in securing justice outweigh its potential to undermine justice?

These are some of the issues we explore throughout the guide while providing practical guidance on addressing them.

ABOUT

WHO'S IT FOR?

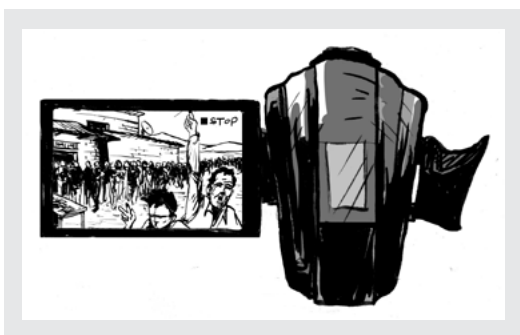
The Guide's primary audience is people working in the field who are or will potentially film human rights abuses. These may be citizen journalists, activists, community reporters, and human rights investigators. If you are already filming abuses, the Guide can help enhance the evidentiary value of your videos. And if you are already investigating human rights abuses by traditional means, this Guide can help to strategically incorporate video into your human rights investigation so that it enhances your evidence collection.



WHAT'S INSIDE?

The guide covers:

- **The Law: Where Video and Law Intersect** – Basic legal principles and processes.
- **Filming for Evidence** – Practices for capturing video with enhanced evidentiary value.
- **Sharing and Using Eyewitness Video in Reporting and Advocacy** – Guidance on verifying and curating eyewitness video in a safe and ethical way.



FOR MORE
INFORMATION

vae.witness.org

THE ROLE OF VIDEO BEYOND THE COURTROOM



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record”.

INTRODUCTION

This *Field Guide* sets forth guidelines, techniques, practices and ideas to help you collect and document video to the highest possible standard — what is also called a “trial-ready” standard. This ensures investigators, analysts, lawyers, and judges can rely on the video when making decisions about a person’s innocence or guilt in a criminal investigation or about remedies in a civil case. In many cases, this guidance can be essential to making your video easier to verify and trust; however, you should not worry if you cannot implement all of it. Every frontline documenter faces challenges in the field that sometimes make it impossible to film, organize, manage, protect, and share footage to a trial-ready standard. Realistically, only a fraction of the video captured by frontline documenters will ever meet these trial-ready standards and be presented inside of a courtroom.

This being the case, in this section we will highlight the other human rights justice and accountability processes where video can still have profound value in protecting human rights without meeting this trial-ready standard.

GOAL

The goal of this section is to briefly outline the primary human rights justice and accountability processes — beyond the courtroom — where video documentation can be used to protect human rights.

PART I Human Rights Justice and Accountability Processes

PART II who does what?

PART I

HUMAN RIGHTS JUSTICE & ACCOUNTABILITY PROCESSES

Governments and non-governmental organizations (NGOs) utilize a number of processes to pursue justice. Here are five important processes we can use to seek truth and accountability.

1) Human Rights Monitoring & Fact-finding

Monitoring is a broad term that means the close observation of a situation (e.g. conflicts, detention centers, refugee camps) or specific events (e.g. elections, trials, demonstrations) over an extended period of time. Activities include the purposeful collection and verification of information. Advocates then draw conclusions of fact based on the information and immediately use their findings to determine what action should be taken to remedy human rights problems. The product of monitoring and fact-finding is usually a report that includes an assessment about the situation and recommended steps for action.

2) Human Rights Advocacy

Human rights advocacy is a set of organized actions taken by members of the public and civil society organizations that pressure and persuade state authorities, international financial institutions, and other powerful actors to influence and change public policies, social attitudes, and laws.

3) Media Advocacy

Media advocacy is the strategic use of local, regional, national, or international media to bring attention to social issues and, in turn, influence and change public policies, social attitudes, and laws.

4) Transitional Justice

Transitional justice is a set of measures implemented by countries after a conflict in order to move societies from war to peace, address violations, rebuild community trust, and implement laws that are rooted in human rights. The transitional justice measures typically used are:

- **Truth and Reconciliation Commissions.** These entities are established to investigate a past history of human rights violations in a particular country, including violations by the military, other government forces or armed opposition forces. These commissions are tasked with discovering and revealing past wrongdoings in the hope of resolving any residual conflict.
- **Institutional Reform.** The rebuilding of government after a conflict. It is the process of reviewing and restructuring state institutions (such as police forces, militaries, and courts) so that they respect human rights and preserve the rule of law and are accountable to their constituents after a conflict ends.
- **Reparations.** Simply put, reparations are compensation for an abuse or injury. More specifically, they are measures taken by states to recognize systematic violations of human rights and provide some form of support for victims. Reparations can be symbolic or material. They can be in the form of public apology for past violations or can be financial compensation for injuries, psychosocial support, educational funds, micro-finance, etc.

5) Criminal Justice and Accountability

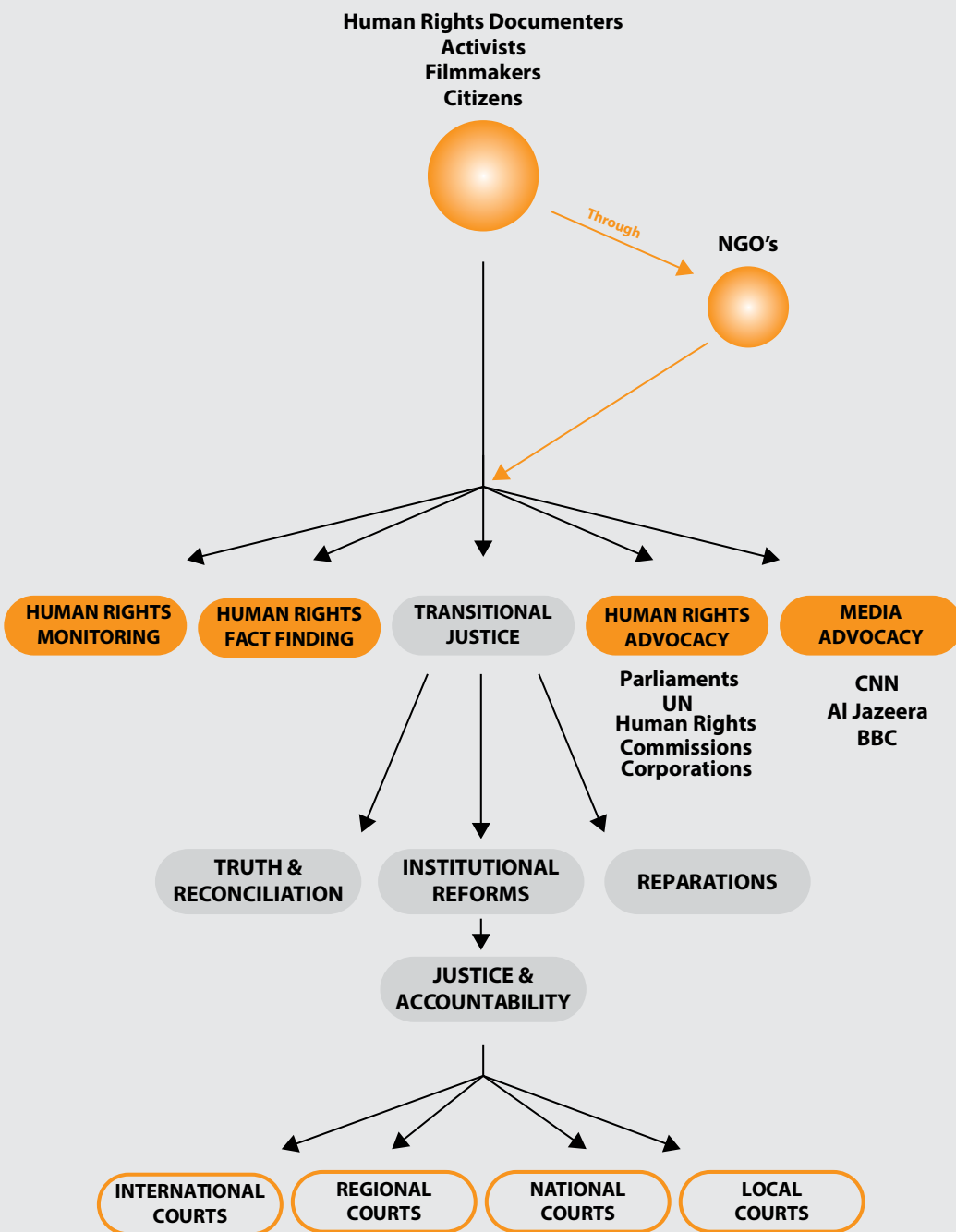
This refers to the process of holding perpetrators accountable for the crimes they committed. It through this process that crimes are investigated, evidence gathered, arrests made, charges brought, defenses raised, trials conducted, sentences rendered, and punishment carried out.

FOR MORE INFORMATION

To read more in-depth reports about human rights monitoring and transitional justice, see the “Additional Resources” listed at the end of this section.

JUSTICE & ACCOUNTABILITY PROCESSES

HUMAN RIGHTS DOCUMENTATION



FIELD NOTE

THE ROLE OF VIDEO IN HUMAN RIGHTS ADVOCACY ENDOROIS WELFARE COUNCIL V. STATE OF KENYA

Basics

Tribunal: African Commission on Human and Peoples' Rights (ACHPR)

Who and What: The Government of Kenya stood accused of violating the following rights of the Endorois, an indigenous group in Kenya:

- property
- natural resources
- development
- culture
- health
- freedom of religion

Backstory

The Endorois are a community of approximately 60,000 nomadic pastoralists who, for centuries, lived in the Lake Bogoria region of Kenya's Central Rift Valley. Throughout time, the Endorois led a sustainable lifestyle inextricably linked to their land. In addition to securing subsistence and livelihood from their land, they saw it as sacred. The Endorois served as trustees of this land for future generations. Their relationship with the land was, and is, essential to their traditional way of life and, ultimately, their survival as indigenous people.

In 1973, the Endorois were forcibly evicted from their land by the Kenyan government to make room for a development project, the Lake Bogoria Game Reserve. The Endorois community was removed from their land and denied access to their homes, their traditional grazing lands, their spiritual sites, and sites where they collected traditional medicine. The Endorois alleged that exclusion from their land resulted in violations of the rights set forth in the African Charter on Human and Peoples' Rights, including the right to property, natural resources, development, culture, health, and freedom of religion.

The Endorois initially brought their case to the High Court of Kenya. After the Kenyan court threw the case out in 2002, the Endorois were then able to bring their claim to the African Commission on Human and Peoples' Rights (ACHPR). In 2003, they asked the ACHPR for the return of their land and financial compensation from the Kenyan government for their losses. The legal term for this is "restitution."



VIDEOS PRODUCED IN SUPPORT OF THE ENDOROIS

Video #1: Evidentiary Submission to the ACHRP

The Center for Minority Rights Development (CEMIRIDE), Endorois Welfare Council (EWC), Minority Rights Group International (MRG), and WITNESS co-produced a nine-minute video, which was submitted to the ACHPR as evidence.

The Endorois and their lawyers made the decision to produce and submit an evidentiary video because:

- Video provided context for the Commissioners. The ACHPR met in Gambia. Gambia is nearly 8,000 kilometers away from the Endorois' traditional lands. Video allowed the Commissioners to see the lands the Endorois traditionally occupied, the lands where they were resettled, some of their cultural practices, and the challenges they faced after being forcibly evicted from their traditional lands.
- Video helped frame the core arguments in an efficient and accessible manner. The Commissioners at the ACHRP volunteer their time to do this job and it comes with a massive caseload. The nine-minute video allowed them to walk away from the hearing remembering the issues at the heart of the case.
- Video corroborated the Endorois' claims that their rights had been violated by showing exactly how the poor living conditions they were forced into breached the African Charter of Human and Peoples' Rights.
- Video protected the human rights principles of agency, participation, and access to justice. In many circumstances, the lawyers do all the talking at hearings on behalf of their clients. The video allowed Endorois voices' and testimony to be heard by the Commissioners.

Video #2: Advocacy Video

Since the evidentiary submission to the ACHPR was confidential until the Commission made a final decision, CEMIRIDE, MRG, and WITNESS co-produced a second 16-minute video, *Rightful Place*, in 2007. This video was used to direct attention to the eviction of the Endorois both in Kenya and internationally. The target audiences for this complementary advocacy film were:



- the Kenyan Ministries of Justice and Constitutional Affairs, Planning and National Development, Lands, Home Affairs, and Tourism and Wildlife;
- local county governments (specifically Baringo and Koibatek);
- Kenyan agencies including the Commission on Human Rights, the Tourism Trust Fund, the National Environment and Management Authority, and the Kenya Wildlife Service;
- UN Working Groups on Minorities and Indigenous Peoples;
- national and international NGOs focused on land rights and the protection of Indigenous peoples;
- national and international media; and
- the Endorois.

SHOWN IN THIS VIDEO

ACHPR Evidentiary Submission

This video shows the lands the Endorois traditionally occupied and the cultural practices that distinguish them as indigenous peoples. These images, along with testimony from the Endorois, are juxtaposed with quotes from the African Charter on Human and Peoples' Rights to show how the Charter has been violated. Specifically, the video shows how their rights to property, natural resources, development, culture, health, and religion have been violated. Watch the video: bit.ly/EvidentiarySubmission_CEMIRIDE

SHOWN IN THIS VIDEO

Rightful Place shares the personal stories of members of the Endorois community to illustrate the impact of the forced eviction on the community and their struggle to reclaim their traditional lands. Watch the film: bit.ly/RightfulPlace

IMPACT OF THE VIDEOS

On the ACHPR's Decision

In 2009, the ACHPR issued a groundbreaking decision finding the government of Kenya guilty of violating the rights of the Endorois community by evicting them from their lands in 1970 to make way for a wildlife reserve. Specifically, the ACHPR found that the:

- Endorois were an indigenous people, and
- eviction violated their rights to property, natural resources, development, culture, health, and religion.

The Commission then ordered Kenya to restore the Endorois to their historic land and compensate them for damages caused by the wrongful eviction.

In the ruling on this case, the Commissioners relied on video evidence to find that:

- the Endorois are a distinct indigenous people which entitles them to rights as a community in addition to individual rights;
- access to clean drinking water was severely undermined as a result of the eviction from their ancestral land; and
- their traditional means of subsistence – grazing animals – was limited due to lack of access to the green pastures of their traditional land.

ACHPR decisions do not become law until the African Union (AU) adopts the decision. They did so on February 2, 2010, resulting in a landmark victory for indigenous peoples throughout Africa and a high point in the forty years of struggle led by the Endorois community.

Advocacy Impact

To reach the target audiences, *Rightful Place* was screened at international events such as the UN Forum on Indigenous Peoples and at locations in Kenya's capitol city of Nairobi, as well as in locations near the Endorois' ancestral lands in the Rift Valley Province.

The full campaign, supported by the films, generated significant debate about indigenous rights and land rights during the drafting stage of Kenya's most recent constitution. As a result of these debates, Kenya's 2010 constitution better protects indigenous peoples and their land rights. Regionally, indigenous groups in Tanzania, such as the Maasai, successfully leveraged the Commission's decision to secure further protections.

Additionally, the Endorois community felt empowered by the creation of the videos. The filming helped motivate the community to stay united and continue the decades-long fight, because they felt that finally someone from outside of was listening and willing to help. Also, the many hours of recorded interviews now serve as a valuable oral history for the Endorois people and will be shared for generations to come.

A CONTRASTING EXAMPLE

To counter the Endorois' arguments, the Kenyan government decided to submit their own video. But unlike the Endorois' submission, the government's video was long and roughly edited. The Commissioners did not want to watch several hours of videos, so they watched only a part of the government's film.

The screening resulted in a moment in court that every lawyer looks forward to in his or her career. The video submitted by the Kenyan government included an interview with a member of the Endorois community. As the Endorois Chief was speaking in Kiswahili on camera, English subtitles appeared below. One of the subtitles quoted the Chief as saying that all the Endorois had been fully compensated by the Kenyan government. One of the African Commissioners spoke Kiswahili. As he listened, he noticed that the Kiswahili audio did not match the written English subtitles, so he asked the government to rewind and play a section of the video again. Upon listening for a second time, the Commission discovered that the Chief had actually said the opposite: the Endorois were not fully compensated.

The Kenyan government's credibility was gone!

TAKE HOME POINTS

First, in addition to using video in the criminal justice process, it is important to consider how it can also be used for human rights monitoring and advocacy, in the media, to secure reparations, and in truth and reconciliation processes. In this case, the Endorois successfully used video at the ACHPR, and in front of key target audiences that could make policy changes.

Second, video captured for justice processes must be relevant and reliable. However, it only needs to meet the highest standard when it's being introduced in a court of law, such as the Endorois' Evidentiary Submission to the ACHPR. Even if the video does not meet a "trial-ready" standard, it can still be valuable for protecting human rights, as we saw with the use of *Rightful Place*.

Third, the same footage can be edited to serve different purposes. In this case, the footage was used as evidence in front of the ACHPR and then re-edited for advocacy directed toward government decision makers, media outlets, and grassroots-awareness-raising efforts. It also serves as an important historical record for the tribe.

Fourth, it's important to think strategically about how, when, and where to share footage. The nine-minute video submission to the ACHPR was embargoed. In other words, it could not be shared publicly until the ACHPR's decision was final. Sometimes you will be unable to share eye-opening footage because of process restrictions.

Fifth, never, ever compromise your credibility, because once it's lost, it is very difficult (if not impossible) to get back.

Sixth, be thoughtful about the length of your video. The Commissioners happily watched a nine-minute video but did not watch the hours of video submitted by the government.

FOR MORE INFORMATION

To learn more about "relevance", "reliability" and what makes video "trial-ready", see "All About Evidence": bit.ly/WITNESS_Video_Evidence

PART II

WHO DOES WHAT?

LAWYERS SUPPORTING ACTIVISTS, ACTIVISTS SUPPORTING LAWYERS

It is always beneficial for human rights activists to work alongside human rights lawyers, because lawyers can advise which footage can best support the monitoring and advocacy efforts. However, there are several situations wherein it is mandatory that human rights activists and frontline defenders work with lawyers — for example, when you:

- are working to build a case that you plan to take to court;
- accidentally find yourself involved in a legal proceeding because you were a witness to a crime or are falsely accused of a crime; or
- have captured footage of a wrongdoing that a lawyer would like to use in an investigation and possibly in court.

In other words, citizens, activists, filmmakers, journalists, NGOs, and others do not need a lawyer to share video with the UN bodies, commissions of inquiry, human rights commissions, war crimes offices, parliaments, truth commissions, village councils, financial institutions, media outlets, etc. But if you want your video to be used inside the courtroom, you will have to work with investigators, analysts, and lawyers. Below we will review who does what.

Job Descriptions

Frontline Documenter (e.g. bystanders, media activists, human rights documenters): Collects evidence (either accidentally or intentionally) at the location while the violation is in progress or in the aftermath of the violation. Protects the evidence until it can be shared with the appropriate parties.

Since frontline documenters are most often the first on the scene, they are critical because:

- Investigators are rarely on location when a human rights violation is in the process of being committed and therefore are not able to capture evidence, including video;
- When investigators do arrive at the location of the violation — sometimes hours, days, or even years later — the evidence is likely to have deteriorated or be gone; and
- Sometimes crimes are not thoroughly investigated by police. Even if a crime is investigated and there is sufficient evidence to bring an alleged perpetrator to trial, a lawyer may not bring the case for political reasons. In these situations, while accountability will never be secured, video captured by frontline documenters ensures the truth is exposed.

Human Rights Non-Governmental Organization (NGO): NGOs play a variety of roles. In this context, they often facilitate the transfer of information from frontline documenters to decision-makers and media outlets. Specifically, NGOs monitor, investigate, and document human rights situations. They can also compile information, provide analysis, and make broad calls for action. NGOs also support frontline documenters by receiving the information collected in the field, preserving it, and analyzing it in the context of all the other information collected, and then taking it to a broader audience, often as part of a larger advocacy strategy or campaign.

Investigator: Collects evidence to solve crimes and then sifts through that evidence, making an initial decision about what is valuable and what is not. Reports findings and conclusions to the analyst.

Analyst: Evaluates the evidence collected by the investigator to determine whether it is relevant and whether or not it would be admissible in court. Reviews the opposition's evidence to determine whether there is any way to exclude it from being used at trial. Reports findings and conclusions about the evidence to the lawyer.

Lawyer: Evaluates all the evidence to establish the facts of the case and determine how best to bring a case against an alleged perpetrator or defend a person who has been accused of a crime. Develops the legal strategy and arguments. Asks the court for permission to submit evidence and then presents the evidence to judges and juries.

Judge: Decides whether evidence meets legal standards and, in turn, whether the evidence will be admitted into court. Hears cases, listens to witness testimony, reviews all the evidence submitted during a trial, poses procedural decisions, and delivers the final decision on the guilt or innocence of defendants when a jury is not present. When a jury is present, the judge instructs the jury on what to consider when deciding whether the defendant is guilty or innocent.

Jury: Responsible for deciding — based only on the facts of the case — whether a person is guilty or innocent of the crime with which he or she has been charged. This decision can be based only on the evidence introduced in court and the directions of the judge.

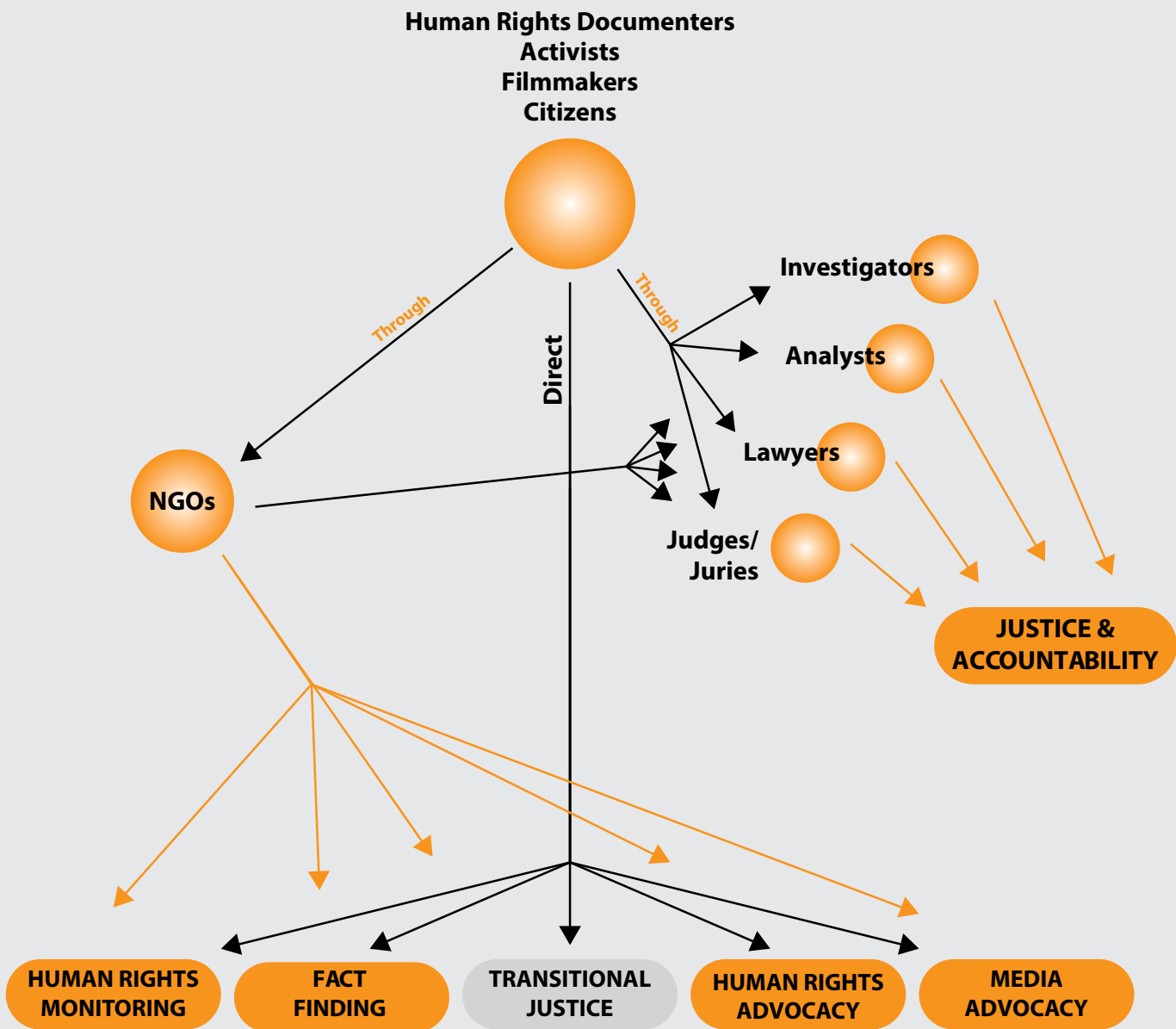
FROM AN EXPERT ILLUSTRATING THE VALUE OF FRONTLINE DEFENDERS

In Brazil, if a police officer is accused of shooting someone without cause, there is only a 0.8% chance that the state prosecutor's office will investigate violent confrontation cases involving the police. Often, the officer's false version of events becomes the official story — unless there is a video. Priscila Neri, Senior Program Manager at WITNESS, reflects on the situation in Brazil:

“[It’s] fascinating to look back ... and realize how important video had been to break this engrained pattern of impunity. Against all odds, the existence of a [bystander-shot] video often served as a real hope—sometimes the only hope—for truth and accountability in cases of violence perpetrated by police. Video provided undeniable evidence, dismantled false narratives, and helped ramp up the pressure on the processes, institutions, and authorities responsible for ensuring justice ... It’s as if the existence of a video is the best way to ensure the word of a police officer does not prevail over the silence of a dead victim.”

Stories similar to this are echoed across the globe and illustrate the invaluable role frontline documenters play in collecting information that can be used to protect human rights — whether it's outside or inside a courtroom. Read more from Neri on the issue: bit.ly/PoliceAbuse_Brazil.

WHO DOES WHAT?



ADDITIONAL RESOURCES

HURIDOCS - “What is Monitoring?” by Manuel Guzman and Bert Verstappen.

http://www.mediafire.com/view/vg0ozrt8i1tndt0/OHCHR_Training_Manual_on_HR_Monitoring.pdf

Norwegian Center for Human Rights, University of Oslo - “Manual on Human Rights Monitoring: An Introduction for Human Rights Field Officers” by Marit Møehlum.

http://www.mediafire.com/view/45cpn4p3z6pixnz/HURIDOCS_What_is_Monitoring.pdf

Office of the High Commissioner for Human Rights - “Training Manual on Human Rights Monitoring.”

http://www.mediafire.com/view/vg0ozrt8i1tndt0/OHCHR_Training_Manual_on_HR_Monitoring.pdf

Institute for Democracy & Conflict Resolution - “Transitional Justice: Key Concepts, Processes and Challenges” by Clara Sandoval Villalba.

http://www.mediafire.com/view/wbe5255mzdb8o6s/IDCR_Transitional_Justice_Concepts_Processes_Challenges.pdf

African Commission on Human and Peoples’ Rights - Decision on Endorois Welfare Council v. The State of Kenya.

http://www.mediafire.com/view/15rygmz3ik6vn2w/EWC_v_Kenya_ACHPR_Decision.pdf

Minority Rights Group International - “Landmark ruling provides major victory to Kenya’s indigenous Endorois” by Lucy Claridge.

http://www.mediafire.com/view/syre1c3lcbwhggp/Briefing_EWC_v_Kenya.pdf

WITNESS - “Dispatches from Brazil: If killed by police, guilty by default ... unless there’s video” by Priscila Neri.

<https://blog.witness.org/2015/09/dispatch-from-brazil-if-killed-by-police-guilty-by-default-unless-theres-video/>

WITNESS - Video Advocacy Curriculum.

<https://library.witness.org/product-category/curriculum/>

Another good resource is the Crimes of War Education Project at:

www.crimesofwar.org/category/a-z-guide/

Special Thanks

Special thanks to Clive Baldwin and Cynthia Morel for their insight on the Field Note, *EWC v. The State of Kenya*.

STAGES OF THE CRIMINAL JUSTICE PROCESS & STANDARDS OF PROOF



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record.”

INTRODUCTION

In this section, we explore video’s role in the criminal justice process by outlining the stages of the process and describing various standards of proof. Criminal justice and accountability are about holding perpetrators responsible for the crimes they committed and ensuring that those who are innocent are not wrongfully convicted. Criminal justice refers to the process by which crimes are investigated, evidence gathered, arrests made, charges brought, defenses raised, trials conducted, sentences rendered, and punishment imposed. We will also review a case from the Democratic Republic of Congo to see how video was woven into an investigation and trial that eventually brought a warlord to justice.

GOAL

After reading this section, frontline documenters should have a sense of how NGOs, criminal investigators, analysts, and lawyers can successfully use the videos they capture in the field throughout the criminal justice process.

THE CRIMINAL JUSTICE PROCESS

IN SUMMARY

Thanks to all the crime shows on television, the various stages of the criminal justice process and the accompanying standards of proof are known to many of us. While the names of the stages and standards vary depending on the particular country and court, generally speaking the stages and standards are as follows.

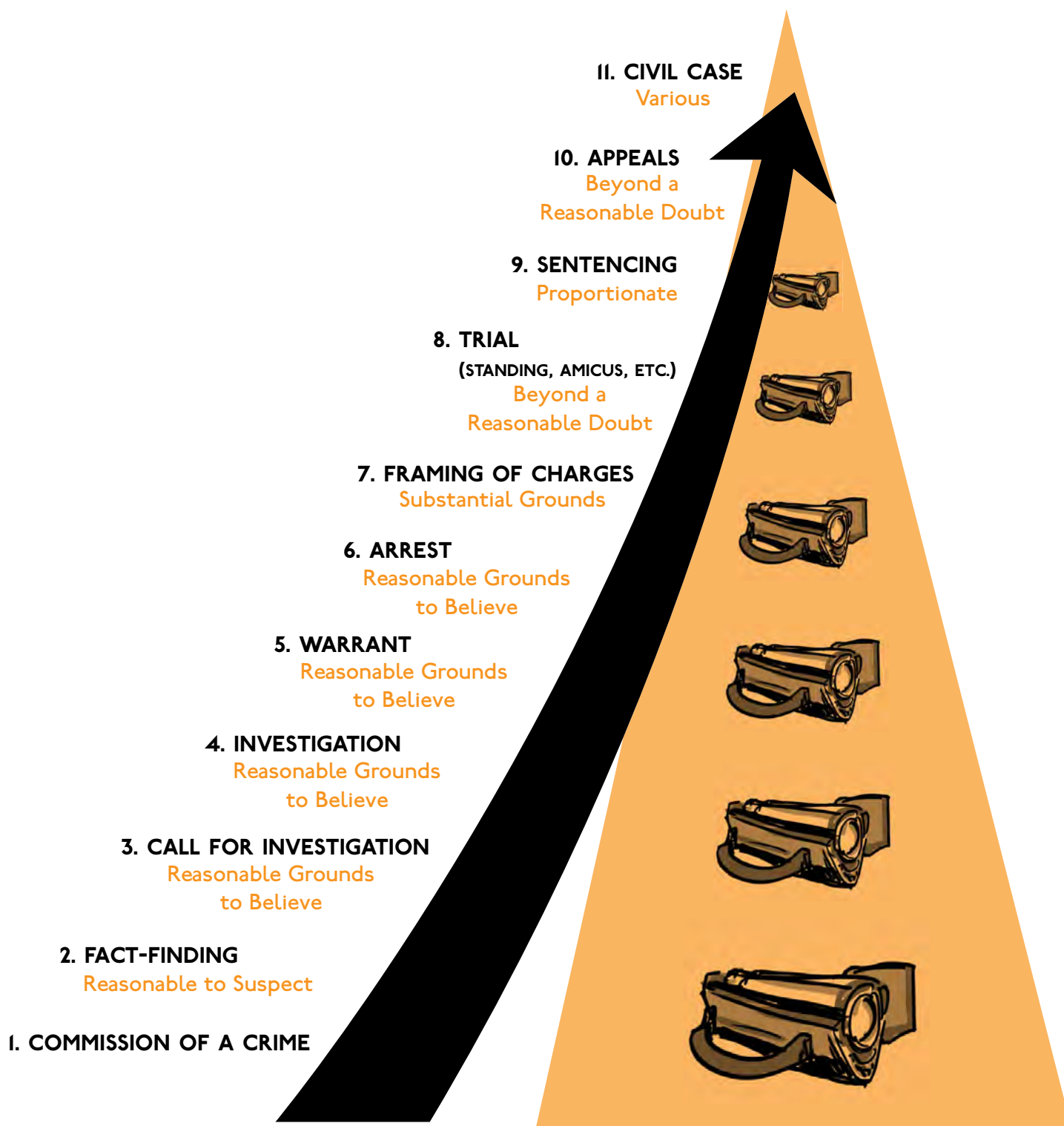
STAGE	STANDARD	ABOUT
Commission of a crime	Physical act and mental state	To have violated criminal law, the perpetrator must have committed a harmful act, usually with intent to commit harm.
Fact-finding	Reasonable grounds to suspect a crime was committed	When international crimes are committed, the first teams on the ground after frontline documenters will be charged with fact-finding. The fact-finders will be authorized to assess a situation if it is suspected that a crime was committed within the jurisdiction of the investigating body. Their job is to collect detailed information that institutions such as the UN Security Council or Commissions of Inquiry need to make decisions about peace and security. This information also helps investigators determine if there are reasonable grounds to launch a full investigation.
Call for an investigation	Reasonable grounds to believe a crime was committed	In both national and international contexts, investigators and lawyers will examine the initial evidence collected and decide if there is enough evidence to believe that a crime was committed. If so, they will launch an official investigation.
Investigation	Reasonable grounds to believe a crime was committed	An investigation is the continued systematic collection, preservation, and analysis of evidence to uncover the truth about the commission of a crime, including who committed the crime (or crimes) and how.
Warrant for arrest	Reasonable grounds to believe that the particular person committed the crime	Once lawyers, working with the investigators, have enough evidence against a particular person, they will ask a judge for a “warrant for arrest,” an official document that gives them authority to take the suspect into custody.
Arrest	Reasonable grounds to believe that the particular person committed the crime	Physically taking and keeping a person in lawful custody, in accordance with the warrant.
Initial appearance	Reasonable grounds to believe that the particular person committed the crime	This is the first time the suspect goes in front of a judge. The judge notifies the suspect of the charges against him or her, advises the suspect of his or her rights, sets bail, or dismisses the case for lack of evidence.

STAGE	STANDARD	ABOUT
Confirmation of charges / preliminary hearing or grand jury	Substantial grounds to believe the person in custody committed the crime	The goal of this day (or days) in court is to ensure that innocent persons are not wrongly put on trial. Here the prosecutor summarizes the evidence he or she has against the suspect so the judge can determine whether there is enough evidence to charge the suspect with the crimes he or she is accused of. If there is enough evidence, an indictment is filed. An indictment is simply a list of the crimes the suspect is accused of committing. If there is not enough evidence, the suspect is released from custody.
Trial	Beyond a reasonable doubt	Here the prosecution and the defense present evidence (witnesses, documents, videos, photos, expert reports, etc.) so that the judge or jury can make a decision about the guilt or innocence of the accused.
Sentencing	In proportion to the crime	<p>If an accused person is found guilty, then he or she appears at a sentencing hearing. The prosecutor often asks the judge to order the maximum sentence. The lawyer for the defendant typically asks for the minimum sentence.</p> <p>In proportion to the crime means that the penalty should reflect the crime. For example, a defendant should not get a life sentence for stealing one candy bar.</p> <p>When determining whether and how long to imprison someone, judges consider factors such as the seriousness and scale of the crime, the number of victims, the strength of the evidence presented in court, the circumstances of the person convicted, and the impact of the crime on the victims' lives.</p>
Appeal	Beyond a reasonable doubt	If the defendant feels he or she was wrongly convicted because his or her rights were violated during the criminal justice process, evidence was wrongly considered, or other errors were made, he or she can ask a higher court to reconsider the lower court's decision and set them free.
Civil suits	Varies depending on issue, but generally reasonable or substantial grounds to believe	If a person is wrongly prosecuted, they can bring a case against the government that wrongly charged them and took them to trial, asking for monetary damages.

WATCH THE JUSTICE PROCESS

Though real courtroom work is not nearly as dramatic as we see on television, if you would like to see what happens inside a courtroom at the different stages of the process, the International Criminal Court records and uploads many of its hearings onto its YouTube Channel: www.youtube.com/user/IntlCriminalCourt

STAGES OF THE CRIMINAL JUSTICE PROCESS



ROLE OF VIDEO

ESCALATING STANDARD OF PROOF

The presumption of innocence is a principle acknowledged in all major legal systems, because societies have decided it is preferable to see a guilty person walk free than to imprison someone who is innocent. For that reason, courts have developed a sliding scale when it comes to standards of proof: the greater the consequences to personal liberty, the higher the standard.

For example, if the police suspect you have committed a crime, they can arrest you and temporarily take you into custody. This, obviously, impacts your immediate personal liberties. But because this is only short-term, the standard of proof is relatively low. On the other hand, if you are taken to trial and found guilty, you may face a much longer sentence, and, for that reason, the standard of proof is much more rigorous at trial (beyond a reasonable doubt) than at the arrest stage (reasonable ground to believe).

WHY DOES THIS MATTER?

This matters to frontline documenters because this sliding scale also applies to evidence. At the investigation stage, an investigator can rely on a video if they have reasonable grounds to believe the video is authentic and not faked or manipulated. If a lawyer wants to use that same video in trial, they must prove to the court that the video is wholly trustworthy and in fact shows what it purports to show.

Since investigators, analysts, and lawyers often rely upon information and assistance from frontline documenters, it is important that the information you gather — including video documentation — meets at least the lowest standard of proof, so it can be used at the initial stages of the criminal justice process.

For example, if you have a video of a mass grave, an investigator must have *reasonable grounds* to believe that it is in fact a real mass grave and not a fictional clip from a Hollywood film. To use that same clip in court, the lawyer must be sure, *beyond a reasonable doubt*, that the clip is in fact of a real mass grave.

KEY POINT

As highlighted in the section “The Role of Video Beyond the Courtroom,” the video you collect *does not have to meet the highest standard to be valuable*. It is often impossible for frontline documenters to collect trial-ready footage. However, if it is possible and practical to collect evidence to the highest standard, then why not do so? If you can, this will make it easier for everyone involved, from journalists and investigators to lawyers and decision-makers, to rely upon your content. The easier you make it for them to use the video you collect, the better your chances that they will not only see it, but that they will use it, even if not as evidence in court.

To illustrate how video activists, human rights organizations, and lawyers have used video at different stages of the advocacy and criminal justice processes, below is a story about the warlord Thomas Lubanga Dyilo from the Democratic Republic of Congo (DRC).

FOR MORE INFORMATION

Find techniques for capturing and preserving footage to a trial-ready standard in “Filming Secure Scenes,” “Adding Essential Information,” and “The Activists’ Guide to Archiving Video” at library.witness.org

FIELD NOTE

THE ROLE OF VIDEO IN THE CRIMINAL JUSTICE PROCESS: FROM THE DRC TO THE ICC THE PROSECUTOR V. LUBANGA

Basics

Tribunal: International Criminal Court (ICC)

Who: Thomas Lubanga Dyilo

What Crimes: Enlisting, conscripting, and using child soldiers under the age of 15 actively in hostilities

How: Co-perpetration

Backstory

Between 1994 and 2003, the Democratic Republic of Congo (DRC) was embroiled in a complex conflict fueled by foreign armies and local militias. This war led to the loss of some five million lives. Thomas Lubanga Dyilo served as one of the many militia leaders. He was the president of the Union of Congolese Patriots (UPC), a militia group that claimed to represent the interests of the Hema ethnic group in the Ituri region of northeastern DRC. The Hema have been implicated in many serious abuses including ethnic massacres, torture, rape, and the use of child soldiers.

Specifically, the military wing of the UPC, under Lubanga's leadership, was known to recruit young people, regardless of age, in schools and in villages. Some of these recruitment efforts were coercive, including abductions. This meant that children under 15 years old were recruited – in violation of international law – whether or not this was specifically intended. The children were sent to training camps where they were beaten, whipped, imprisoned, and inadequately fed. Young female recruits were raped. The children were encouraged to smoke cannabis and drink alcohol and were frequently intoxicated.

The ICC initially charged Lubanga with thirty-three crimes. After the evidence was analyzed, the strongest body of admissible evidence allowed the ICC to charge Lubanga for the war crimes of conscripting, enlisting, and using child soldiers under the age of 15 actively in hostilities.

DEFINED

Chain-of-custody: Chain-of-custody simply means that the ICC needed to know how the video got from the military training camps, where it was filmed, to AJEDI-Ka and then to the ICC. More simply put, whose hands did the footage pass through on its way to the ICC?

Co-perpetrator: The ICC defines a co-perpetrator as a person who makes an essential contribution to a common plan to commit a crime. This essential contribution can be made when the plan is being conceived, when preparations to commit the crime are being made, or when the crime is being executed.

VIDEO'S ROLE AT THE DIFFERENT STAGES OF THE CRIMINAL JUSTICE PROCESS

1: Video's Role in INITIATING AN INVESTIGATION

In 2003, the DRC-based organization, AJEDI-Ka, alongside other courageous NGOs, started capturing video documentation of the use of child soldiers to complement their other forms of evidence collection. AJEDI-Ka took this risk in hopes that, someday, the military leaders responsible for using child soldiers would be held criminally liable.

As part of AJEDI-Ka's work towards this goal, they partnered with WITNESS to produce two films to contextualize the human rights crime, *A Duty to Protect*¹ (14 min.) and *On the Frontlines*² (15 min.).

After the films were completed, AJEDI-Ka met with the DRC investigations team at the Office of the Prosecutor (OTP) for the ICC. AJEDI-Ka screened the two films to provide the OTP with the broad factual context on the use of child soldiers in hopes that the OTP would ramp up its investigations into the use of child soldiers in war. The Prosecutor requested all the original, unedited footage from AJEDI-Ka and asked AJEDI-Ka to provide chain-of-custody information.

The result: The provision and presentation of this video footage, in part, gave the ICC's Office of the Prosecutor the information it needed to initiate an in-depth investigation into the enlistment, conscription, and use of child soldiers in eastern DRC.

2: Video's Role at the CONFIRMATION OF CHARGES HEARING

Over the next three years, the ICC's OTP collected evidence – including video evidence – against Lubanga. When they had sufficient admissible legal evidence, they issued an **arrest warrant** charging Lubanga for the war crimes of enlisting, conscripting, and using child soldiers actively in hostilities.

Once arrested, Lubanga appeared at his **confirmation of charges hearing**. At this hearing, the ICC Prosecutor told the judges he intended to show twelve video clips that would prove there were **substantial grounds to believe** that Lubanga enlisted, conscripted, and used child soldiers and, therefore, he should stand **trial** for the alleged crimes. Lubanga's lawyers asked the judges to exclude these clips. They argued that the clips should not be admitted as evidence and not seen by the judges because:

- the authenticity of the clips had not been proven,
- the chain-of-custody of the clips had not been provided, and
- some of the clips included discussions in Swahili and Kingwana (local languages) and Lubanga's lawyers did not trust the prosecutor's translations.

The result: After two days of arguing, the judges decided to view the twelve videos. In the end, the judges gave special consideration to the video of Lubanga visiting the camps in determining that there was in fact **substantial ground to believe** that Lubanga used child soldiers in his militia. Then, based on all the evidence, the judges ordered Lubanga to stand trial.

SHOWN IN THESE VIDEOS

These films tell the story of how child soldiers were used in the DRC's civil war. The films include footage of child training in military camps and compelling testimony from demobilized child soldiers recounting the horrifying memories of life as soldiers. The videos are not legal evidence.

3: Video's Role at TRIAL

Every crime is broken down into what are called the “elements of the crime.” For example, to secure a conviction for the larger war crime of “enlisting, conscripting, or using child soldiers actively in hostilities,” one of the seventeen elements the ICC Prosecutor needed to prove is that some of Lubanga’s soldiers were under the age of 15 .

In many places across the globe, it’s easy to prove age. Documents such as birth certificates, baptism records, school registrations, diplomas, driver’s licenses, and voter ID cards are all key sources of evidence for proving age. Medical experts can determine an approximate age by reviewing x-rays of bones and teeth; another option would be to ask family or community members how old a child is.

In this case, documents, medical exams, and witnesses were not viable sources of evidence to prove age, because:

- **Documents** were either non-existent or extremely difficult to access.
- **Medical exams** could not pinpoint the age of children in the DRC because models for determining age are based on healthy, well-fed European and American populations; the malnourished child soldiers from sub-Saharan Africa met neither criteria.
- **Witnesses** could not always speak safely with investigators and sometimes could not tell the truth even when they wanted to because their personal well-being would be at risk if they spoke out against a militia.

Instead, the Prosecutor relied, in part, on a series of video clips to show that some of Lubanga’s recruits were clearly under the age of 15. The clips showed children visibly under the age of 15

- at training camps where Lubanga is encouraging young recruits;
- serving as bodyguards in a number of situations, including being part of the presidential convoy when moving locations, during negotiation meetings, and outside of Lubanga’s residence and his office;
- present at rallies, political speeches, and assemblies where Lubanga addresses audiences that include young people. He discusses the work that remains to be done, the need to be trained, and the need to take up arms, and thanks audiences for the support they have given; and
- present at a “grading ceremony” that includes the parents of the soldiers that are receiving their military grades.

A sample of the footage from the opening argument can be [watched here](#).³

The defense argued that it is impossible to reliably distinguish between a 12- or 13-year-old and a 15 - or 16-year-old on the basis of video alone. The trial judges agreed that it is often difficult to determine the age of a person from a video and in turn relied on the video evidence only in cases where the video “clearly” showed that a child was under the age of 15.

The result: On March 14, 2012, Lubanga was found guilty of enlisting, conscripting, and using child soldiers actively in hostilities and was sentenced to fourteen years in prison.

FOR MORE INFORMATION

To learn more about elements of a crime, see “Anatomy of a Crime” or “Collection Planning” at vae.witness.org

SHOWN IN THIS CLIP

This clip takes us inside the courtroom at the ICC where the Prosecutor, Luis Moreno Ocampo, is making his opening statement in the trial against Thomas Lubanga Dyilo. During his opening statement he shows multiple raw video clips of what he states are children at the isolated training camps and serving as Lubanga’s bodyguards.



Video shown during the opening statement, ICC v. Lubanga

4: Video's Role in the APPEAL

In May of 2014, the ICC's Appeals Chamber heard Lubanga's case. An overarching focus of the two-day hearing was whether the first judges to hear the case – the trial judges – could reasonably conclude that the children in the video excerpts were under the age of 15 .

Lubanga argued that the trial judges could not rely on the video excerpts showing the physical appearance of soldiers to conclude – beyond a reasonable doubt – that the persons seen in the video excerpts were under the age of 15 years.

The prosecution stressed that trial judges have the ability – and duty – to evaluate the strength of the videos and reach reasonable conclusions as to the age of the persons depicted. The prosecution also emphasized that the trial judges were very cautious and conservative in their consideration of the video evidence.

Specifically, the trial judges stated on the record that there are indeed limitations to determining age on the basis of physical appearance as seen in video excerpts. And indeed, the trial judges were not convinced that all the individuals said to be under 15 years old were, in fact, under 15. In light of this limitation, the judges were cautious and allowed for a wide margin of error when reviewing the videos and reaching conclusions about age based on appearance. In the end, they were convinced that certain individuals depicted in the body of video evidence were “clearly” under the age of 15 years.

The Appeals Court concluded, among other findings, that the trial judges were “fully entitled to evaluate the videos and reach a reasonable conclusion as to the age of the person depicted on them.”

The result: On December 1, 2014, Lubanga's conviction was upheld.



TAKE HOME POINTS

First, the videos captured by activists may never find their way into a courtroom. But this does not diminish the value of video to support the pursuit of accountability. As the investigation and trial against Lubanga illustrate, video is useful at different stages, from supporting the call for an investigation to serving as evidence in the courtroom. In this case, video was used from the beginning to the end of the process.

Second, the video you film must be relevant and reliable. However, in the earlier stages of the criminal justice process, the burden is lower — your video does not have to meet the same high standards necessary to be introduced as evidence at a trial — so don't worry if the video you collect does not meet the standard for being "trial-ready." It can still be valuable.

Third, video evidence serves different purposes at trial. In the example above, we see how video served as key prima facie evidence, proving that some of the Lubanga's forces were under the age of 15.

FOR MORE INFORMATION

To learn more about the purposes video can serve, see "All About Evidence." vae.witness.org

ADDITIONAL RESOURCES

ICC v. Lubanga

Decision on the Confirmation of Charges, January 29, 2007.

http://www.mediafire.com/view/3h89ym762ozdduc/2007_1_29_ICC_v_Lubanga_Decision_on_Confirmation_of_Charges.pdf

Judgment, March 24, 2012.

http://www.mediafire.com/view/6t3eaaavg05c1zf/2012_3_14_ICC_v_Lubanga_Judgment.pdf

Judgment on Appeal, December 1, 2014.

http://www.mediafire.com/view/j4mdg7s4bqg591r/2014_12_1_ICC_v_Lubanga_Appeal_Decision.pdf

END NOTES

¹ *A Duty to Protect*: <http://bit.ly/1Od3Dyp>

² *On the Frontlines*: <http://bit.ly/22e3Cyl>

³ *Prosecution v. Lubanga* - Opening argument: <http://bit.ly/1RX7Fe3>

ANATOMY OF A CRIME



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record.”

INTRODUCTION

If you are using video for human rights documentation, justice, and accountability, it’s good to have a basic understanding of what lawyers need to prove to hold a person, state, or institution accountable for committing human rights violations. The goal of this section is to help you understand the structure of a crime so you can make informed decisions about where to point your camera so you collect more relevant information and, in turn, enhance the usefulness and evidentiary value of your footage.



KEY DEFINITIONS

Base Crime: An act or omission that constitutes an offense and is punishable by law. Some examples would include murder, torture, rape, pillaging, slavery, denial of a fair trial, attacking protected objects, violation of fair wage laws, illegal evictions, election fraud, etc.

International Crime: For a base crime to become an international crime, lawyers also have to prove the context in which the crime was committed. There are three recognized international crimes. They are:

War Crimes: These are base crimes (e.g., murder, torture, rape, pillaging, slavery, denial of a fair trial, attacking protected objects) that are committed in wartime.

Crimes Against Humanity: These are base crimes (e.g., murder, torture, rape, pillaging, slavery, denial of a fair trial, attacking protected objects) that are widespread or systematic and committed against civilians. They can be committed in either wartime or peacetime.

Genocide: The intent to destroy all or part of a group of people based on their nationality, ethnicity, race, or religion by killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to destroy a group, prevention of births, or forcibly transferring children from the group.

CATEGORIES OF ELEMENTS OF A CRIME

When a lawyer wants to prove their case, they need to prove two parts: i) that the underlying physical act occurred; and ii) the perpetrator had the required intent to commit the crime.

The “Physical Act” is sometimes called the “Material Element” or “Actus Reus.” It means the specific action(s) a person must take towards the commission of a crime. A person’s intent or “Mental State” is referred to as the “Mental Elements” or “Mens Rea.” It is simply what the person is thinking when they were committing the crime—did they intend to commit the crime or was it an accident?

Elements of a Crime: Every crime can be broken down into specific elements (or parts) that need to be proved. To secure a conviction, a lawyer must prove each element one by one. For example, to prove a defendant is guilty of the crime of “attacking protected objects,” a lawyer has to prove:

- The defendant directed an attack.
- The target of the attack was a building(s) dedicated to religion, education, art, science, charity, or was a historic monument and/or served as a hospital.
- The target of the attack was not a military target.
- The defendant knew that such a building(s) were dedicated to religion, education, art, science, charity, or was a historical, monument and/or served as a hospital.

Mode of Liability or Form of Participation: These are legal terms for “how” someone participated in the commission of a crime—or in other words, what their role was in the commission of the crime (e.g., individual perpetration, joint perpetration, conspiracy, aiding and abetting, instigating, ordering, command responsibility, etc.).

FOR MORE INFORMATION

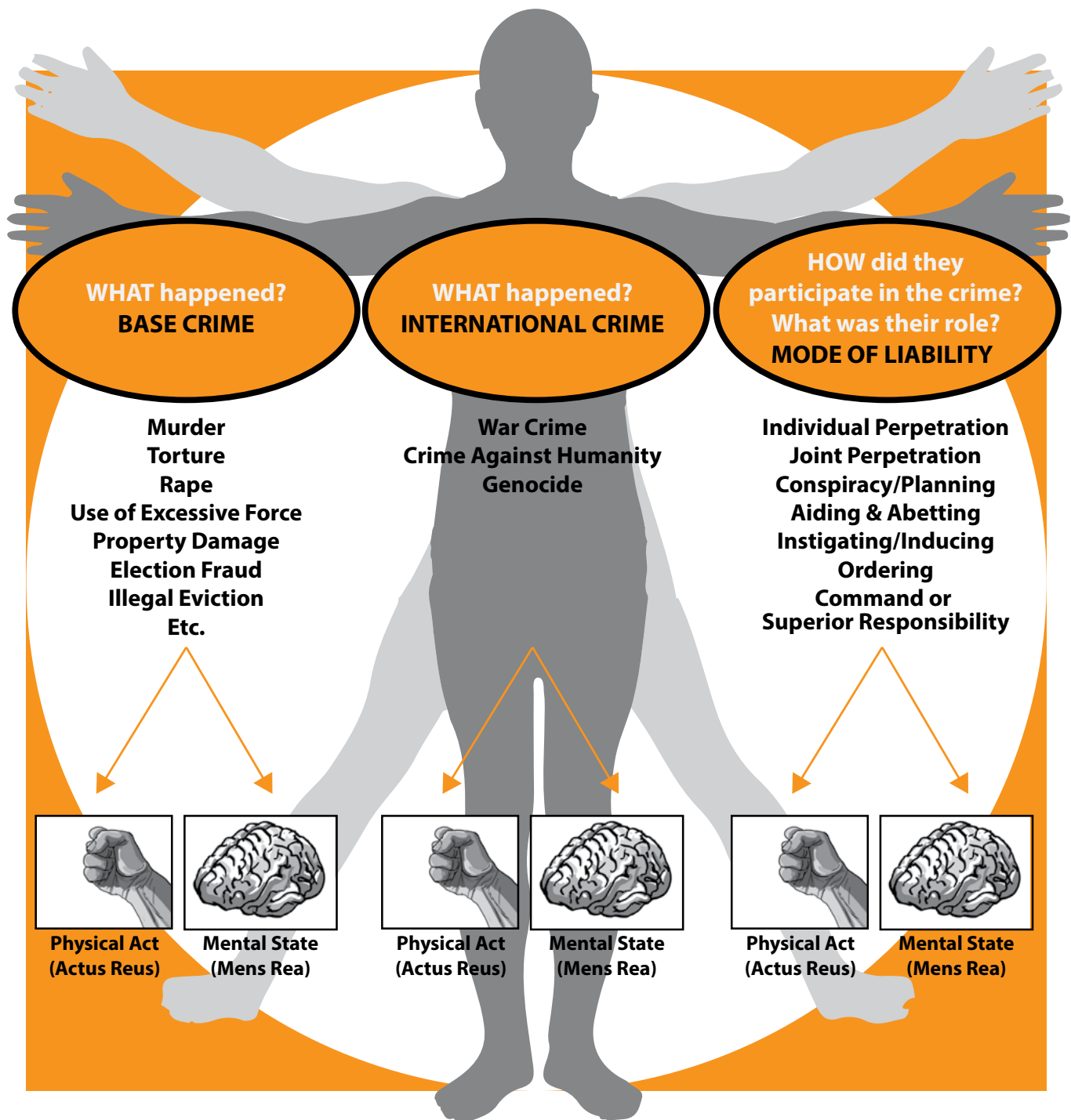
To learn about “Modes of Liability,” see “Proving Responsibility: Filming Linkage and Notice Evidence” at vae.witness.org.

ANATOMY OF A CRIME

Who did it?

ONCE YOU HAVE A SUSPECT, THEN PROVE...

LAW



THE LAW: DISSECTING A CRIME

If you hope to use video to hold perpetrators accountable for human rights crimes or free someone who is falsely accused, it's important to understand the basic structure of a crime.

All over the world, to hold someone accountable for the commission of a crime, a lawyer must prove:

- what “crime” was committed—murder, torture, rape, property damage, hate speech, etc.;
- who did it—the identity of the perpetrator; and
- how the perpetrator participated in the commission of the crime. The legal terms for this are “mode of liability” (MOL) or “form of participation.”

In a conflict or mass-atrocity situation, a lawyer may also need to prove that the crime is not only a domestic crime but an international crime (and thus, considered even more serious) by proving the crime is:

- a war crime,
- a crime against humanity, or
- genocide.

Every crime and MOL is broken down into very specific elements that consist of “physical acts” and “mental state.”

- “Physical acts” are the specific action(s) a person must take towards the commission of a crime to be held accountable for the crime. This is also referred to as “material elements” or “Actus Reus” in some parts of the world.

Examples: The perpetrator “inflicted pain,” “killed,” “forcibly transferred,” “caused,” “deprived,” “seriously endangered,” “failed to act to protect,” etc.

- “Mental state” is the person’s state of mind when they were committing the crime. It is their intent. This is also referred to as “mental elements” or “Mens Rea”.

Examples: The perpetrator “knew,” “was aware,” “intended,” “meant to,” etc.

To secure a conviction, a lawyer must prove every element of the crime, one by one, with certainty. If there are twenty elements and the lawyer proves only nineteen, then the accused must not be found not guilty.



FOR MORE INFORMATION

To learn about “Modes of Liability” or “How” a person can participate in the commission of a crime see “Proving Responsibility: Filming Linkage and Notice Evidence” at vae.witness.org.

ELEMENTS OF A CRIME: EXAMPLE MATRIX

It's important to know that there is no reason to memorize all the elements of a crime. It's more important that you understand the principle that every base crime, international crime, and mode of liability can be broken down into elements. Each element must be proved by a prosecutor to secure a conviction.

This example outlines the elements of "Torture" (base crime) as a "Crime Against Humanity" (international crime), committed by "Command Responsibility" (mode of liability). There are 18 elements that must be proved in this example.



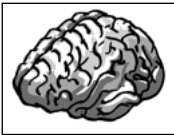

PHYSICAL ACTIONS also known as Material Elements of the Crime and Actus Reus		
WHAT: Elements of the Base crime TORTURE	WHAT: Elements of the Int'l crime CRIMES AGAINST HUMANITY	HOW: Elements of the Mode of Liability COMMAND RESPONSIBILITY
<ol style="list-style-type: none"> The accused inflicted severe physical or mental pain or suffering upon one or more persons. The person or persons were in the custody or under the control of the perpetrator(s). The pain and suffering did not arise from lawful sanctions. 	<p>The conduct was committed as part of:</p> <ol style="list-style-type: none"> an attack that was widespread or systemic and perpetrated against civilians. 	<ol style="list-style-type: none"> The accused was a military commander or a person effectively acting as a commander of the forces that committed the crime. The forces that committed the crime were under the effective command control or effective authority of the accused. The crime was committed by such forces as a result of the failure of the accused to exercise control properly over his/her forces. The military commander or de facto authority failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
MENTAL STATE also known as Mental Elements of the Crime and Mens Rea		
<p>The accused:</p> <ol style="list-style-type: none"> Meant to inflict severe physical or mental pain or suffering. Was aware severe physical or mental pain would be caused in the ordinary course of the events. Was aware that the persons were under his/her custody or control. 	<p>The accused knew that the conduct was part of or intended the conduct to be:</p> <ol style="list-style-type: none"> an attack that was widespread or systemic and perpetrated against civilians. 	<ol style="list-style-type: none"> The military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes.

WHY DOES THIS MATTER?

The reason it's important to understand the structure of a crime is simple: different images can help prove different elements. Understanding the structure will help you determine where to point your camera and ensure you don't miss the opportunity to capture a variety of footage that will provide a clearer picture of what happened.

Let's see how this works by looking at four of the elements above and considering how different video clips can help prove different elements.



FOUR OF THE 18 ELEMENTS WE NEED TO PROVE	VIDEO CLIPS THAT COULD HELP PROVE THE ELEMENT
<p>The accused inflicted severe physical or mental pain or suffering upon one or more persons.</p> 	<p>Footage of:</p> <ul style="list-style-type: none"> the actual commission of the torture the instrument/s used to implement the torture the sound (audio) of the victims' cries medium and close-up shots of the injuries endured medium and close-up shots of these injuries three months later, six months later Etc.
<p>The conduct committed was widespread or systematic.</p> 	<p>Footage of:</p> <ul style="list-style-type: none"> the same military unit committing torture in different locations the same military unit committing torture on different dates testimony of victims in different locations sharing what happened, when, where, and by whom Etc.
<p>The accused was aware that such persons were under his/her custody or control.</p> 	<p>Footage of:</p> <ul style="list-style-type: none"> a wide shot of the location any restraints placed on the victim (handcuffs, gags, etc.) weapons and whether they are being used to control the victim the number of people surrounding the victim guards placed around a perimeter the perpetrators discussing the implementation of the torture any identifying information that helps investigators understand who the perpetrator(s) and victim(s) are Etc.
<p>The accused was a military commander or a person effectively acting as a commander of the forces that committed the crime.</p> 	<p>Footage of the accused commander:</p> <ul style="list-style-type: none"> giving orders to his troops and the troops promptly obeying giving commands over a satellite phone, cell phone, or radio getting updates from the field via radio, cell phone, etc. giving public speeches to the troops he controls being honored by his troops at public events Etc.

KEY POINT

The table on the previous page illustrates the key point here, which is worth repeating:

Different images can help prove different elements of a crime.

On the frontlines, documenters tend to turn their camera toward the human rights violation as it is taking place. This footage is definitely valuable. But proving the actual violation is only part of what a lawyer needs to prove to secure a conviction. Understanding how a crime is structured will help you think about where else you should point your camera so your images can help prove different elements of the crime.

ELEMENTS OF A CRIME: ANOTHER EXAMPLE

Here's a simpler example. This chart shows the elements for the base crime of "murder" committed by "individual perpetration." This chart doesn't include a column for "international crime" because it's one person killing another outside of war or a mass atrocity situation. To prove murder when it's not a war crime, a crime against humanity, or genocide, we only need to prove four elements. Much easier.

	WHAT: Base Crime MURDER	HOW: Mode of Liability INDIVIDUAL PERPETRATION
PHYSICAL ACTION (Actus Reus)	1. The accused killed one or more persons	4. The accused committed the crime as an individual (as opposed to ordering the killing, providing aid, inciting the murder, etc.)
MENTAL STATE (Mens Rea)	2. The accused meant to engage in the killing of one or more persons. 3. The accused meant to cause death or was aware that death was a likely consequence of his or her actions.	The accused meant to engage in the killing of one or more persons. The accused meant to cause death or was aware that death was a likely consequence of his or her actions.

TEST YOUR SKILLS

Make a list of video clips that could help prove the four elements you need to prove to hold someone accountable for murder by individual perpetration. Consider video's strengths and limitations while making your list.

Now let's look at a story from the field to see how video can help prove an element of how a crime was committed.

FIELD NOTE

USING VIDEO TO HELP PROVE ONE ELEMENT OF “HOW”

A CRIME WAS COMMITTED

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA V. TOLIMIR

Basics

Tribunal: International Criminal Tribunal for the Former Yugoslavia (ICTY)

What Crimes: Genocide, Conspiracy to commit genocide, Extermination, Murder, Persecutions, Forcible transfer, Deportation

Who: Zdravko Tolimir, Assistant Commander for Intelligence and Security of the Bosnian Serb Army, reporting directly to General Ratko Mladić

How: Joint Criminal Enterprise. He and other Main Staff with the Army of the Republika Srpska mapped out, agreed to, and implemented a plan to forcibly remove Bosnian Muslims from areas that the UN had declared “safe areas” for civilians and to execute Muslim men and boys.

Backstory

Beginning in 1991, the six republics of Yugoslavia—Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia—began unraveling in a succession of increasingly tumultuous wars that continued until 2001. The International Criminal Tribunal for the Former Yugoslavia (ICTY) was created to prosecute perpetrators of war crimes, crimes against humanity, and genocide committed by all sides in the Yugoslav wars. One of the incidents the ICTY investigated and brought to trial was the forced evictions and massacre at Srebrenica.



In July 1995, over 8,000 men and boys were massacred and between 25,000–30,000 women, girls, and elderly were forcibly moved from their homes around the town of Srebrenica in eastern Bosnia and Herzegovina. The UN described this mass murder as the worst crime on European soil since World War II.

General Ratko Mladić and the Main Staff of the Bosnian Serb Army of Republika Srpska (VRS) stood accused of perpetrating the crimes at Srebrenica. Commander Zdravko Tolimir was part of this staff and one of Mladić’s most trusted allies.

To successfully prosecute Commander Tolimir for the massacres and evictions at Srebrenica, the prosecution had, in part, to prove that Tolimir was a member of the inner command circle that knowingly designed and assisted in carrying out a plan to eradicate the Bosnian Muslims. This element can be difficult for prosecutors to prove. As luck would have it, however, they were given help by a series of mundane video clips of speeches and meetings, one of which was filmed by a partygoer who unwittingly captured key evidence.

DEFINED

In non-legal terms, “joint criminal enterprise” refers to two or more people committing a crime by planning, organizing, or directing the perpetration of the crime, even if they do not directly participate in the crime’s execution.

At a New Year's Eve party with senior leaders of the VRS, Commander Tolimir's boss, General Mladić, gave a speech that was recorded on camera. Here are several quotes from his speech:



Ladies, dear guests, colleagues, officers and generals. General Gvero asked me to say a few words.

It was long ago, in 1992, a difficult year, when it was difficult to look at this area even on a map. Fortunately, there are witnesses. One of them is my wife, and several associates and comrades-in-arms....[B]ut I am saddened that the most important among them, General Tolimir and his wife are not with us tonight. As you know he is on assignment fighting the Serbian people in Vienna, battling the dragons of the world.

The most important decisions were made by a group of five people. This was the inner core of the Main Staff, which, in addition to myself, included General Milovanovic as my right hand man, Generals Đukic, Gvero, and General Tolimir. This was the inner core.

From Bokganica, General Tolimir and Kucic fired on Ribic....

I also want to thank the rest of my assistants and associates, General Đukic, General Gvero, General Tolimir.

Video's Role

The importance of this speech as a source of evidence should be clear. Mladić clearly listed, by name, the main decision makers and thanked them for their assistance. Tolimir was one member of his staff whom he thanked personally. This helped prove that Tolimir was member of the inner core and participated in the decision making. In finding Tolimir guilty, the three-judge panel clearly stated that they relied, in part, on this videotaped speech to conclude that Tolimir was indeed a member of the inner circle of the command, or the collegium, making “the most important decisions.”

Outcome

On December 2012, Commander Tolimir was found guilty of genocide, conspiracy to commit genocide, extermination, murder, persecutions, and forcible transfer. He was sentenced to life in prison. Tolimir died while in detention on February 8, 2016.

KEY POINT

This short clip does not show a crime in progress nor does it include any footage of the defendant, Commander Tolimir. The clip has little to no news value, whereas a clip showing Mladić and Tolimir participating in the execution of civilians would most certainly be shown on international news platforms. A video clip of a suspected war criminal giving a speech thanking his friends and colleagues isn't something that captures the world's attention.

But, when we talk about bringing high-level commanders to justice — especially those who sit many steps away from the actual commission of the crimes — lawyers must prove many different elements, both to establish that the underlying crime was committed, and that there's enough of a connection between the commander and the underlying crime that the commander should be held responsible for its occurrence. While this mundane footage seems unremarkable to most people, it can be invaluable in a courtroom. In this case, the innocuous footage of a New Year's Eve speech helped to prove that Tolimir actively participated in the military decision-making process. This, in turn, helped put Tolimir behind bars.

SHOWN IN THIS CLIP

To watch this two-minute clip, go to bit.ly/VaE_Tolimir. The clip shows General Mladić speaking into a microphone at the New Year's Eve party. He is addressing other members of the military and invited guests. The transcript of the key parts of this speech are to the left.

ADDITIONAL RESOURCES

Case Information Sheet, Zdravko Tolimir by the International Criminal Tribunal for the Former Yugoslavia.
http://www.mediafire.com/view/atyhluxar7c9g09/ICTY_Case_Info_Sheet_Tolimir.pdf.

Judgment in Prosecutor v. Tolimir by the International Criminal Tribunal for the Former Yugoslavia.
http://www.mediafire.com/view/x7xpuhqotpau3sc/2012_12_12_Trial_Court_Judgement_ICTY_Tolimir.pdf.

ALL ABOUT EVIDENCE



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record.”

INTRODUCTION

“Evidence is the most important part of an investigation. Unless an investigator is able to discover and document evidence, he or she cannot discover the truth...”

- Dermot Groome, Trial Attorney and Professor, Dickinson School of Law, Pennsylvania State University

The goal of collecting evidence is to accurately recreate the story of what happened during an incident where human rights are violated, so that you, along with investigators, lawyers, judges, and, ultimately, the world, can bring perpetrators to justice, free the wrongly accused or secure solutions to economic, social and cultural rights violations. Sometimes, the factually correct version of the story may not be the story we hoped to tell. As human rights advocates, we must be prepared to discover the truth, even if we find that the truth is not aligned with what we initially believed happened.

GOAL

The goal of this section is to provide you with a basic understanding of the definition, sources, purposes, and characteristics of legal evidence so that you can better evaluate whether your video has the potential to effectively serve as evidence.

To do this, we begin with a Field Note that illustrates why it is important to view the footage you collect with an objective eye. The remainder of the section is divided into the following parts:

PART I **definition, categories, and sources of Evidence**

PART II **Purposes of Evidence**

PART III **characteristics of Legal Evidence**

FIELD NOTE

GHOUTA TO BHOPAL

LAW

PART I: CALL IT LIKE IT IS

A group of human rights defenders who were well informed about the alleged chemical weapons attacks on the suburbs of Ghouta, Syria, on August 21, 2013, were asked to watch video clips of the aftermath of the chemical weapons attack and compare those clips to the aftermath of an industrial disaster that occurred on December 3, 1984, in Bhopal, India, when a cloud of toxic gas escaped from Union Carbide's pesticide plant, killing thousands. The viewers were, for the most part, unfamiliar with the incident in India prior to watching the video.

WARNING: This clip contains graphic footage that may not be appropriate for all viewers:
http://bit.ly/Ghouta_Bhopal

SHOWN IN THE VIDEO

This 2.5 minute video combines footage from Ghouta and Bhopal. It first shows victims from Ghouta suffering from constricted breathing and involuntary muscle spasms, frothing at the mouth, seeping fluid from their noses and eyes, and dying. It then shows people from Bhopal suffering very similar symptoms. Watch the video: [GRAPHIC CONTENT] bit.ly/Ghouta_Bhopal



GHOUTA, SYRIA



BHOPAL, INDIA

The human rights defenders were then asked, “What does this video footage offer proof of?” In short, they answered that the video footage was proof of chemical weapons attacks in Syria and likely some sort of poisoning in India. They were right about India, but wrong about Syria.

While the answer regarding Syria was wrong, it is understandable. The human rights defenders knew additional details about the incident in Syria from the expansive media coverage of the alleged chemical weapons attacks and, in turn, made assumptions about what the video proved.

Upon discussion, however, they agreed that the videos themselves did not prove a chemical weapon attack at all. The video clips only indicate that hundreds of people in Ghouta and Bhopal suffered from some sort of massive airborne poisoning that seemed to affect everyone – from the very young to the very old. The images do not prove that a poisoning happened. The images also do not tell us how the probable poisonings happened, why they happened, or who might be responsible. While the videos don’t provide the answers to these critical questions, they do offer up invaluable leads for determining what happened in both situations.

TAKE HOME POINT

When it comes to analyzing video as evidence, we must set aside our outside knowledge and assumptions and think critically about what a video clip actually indicates and proves.

PART I

DEFINITION, CATEGORIES, AND SOURCES OF EVIDENCE

EVIDENCE DEFINED

Broadly, evidence is *anything* that can provide information about an incident being investigated. Evidence may come from many sources, as we will soon see. However, *legal evidence* is defined as “information that is admissible in court” or “trial-ready evidence.” This means that a piece of information meets a set of standards for admissibility, which we will discuss below, in Part III.

CATEGORIES OF EVIDENCE

Evidence used in criminal cases falls into two categories:

Category 1

Crime-based evidence is relevant and reliable information about what happened — what crime was committed against whom, when, and where. Crime-based video evidence might include footage of, for example, a person being assaulted, property destruction, victim injuries, a mass grave, troops confiscating humanitarian aid, etc.

Category 2

Linkage evidence is relevant and reliable information that helps prove responsibility for the crime. In other words, it helps prove who committed the crime and how they did it (e.g. individual perpetration, conspiracy, aiding and abetting, or command responsibility). This could include footage of military vehicles, uniforms, patches on uniforms, weapons, military offices, perpetrators training their forces, speeches where the suspect admits she or he was in command of the forces who perpetrated the crime, etc.



FOR MORE INFORMATION

International criminal tribunals prosecute the persons most responsible for crimes. These suspects are often situated far away from where the crimes occurred. Linkage evidence serves to connect the remote perpetrator to crimes on the ground. To learn more, see: “Proving Responsibility: Filming Linkage and Notice Evidence” vae.witness.org

SOURCES OF EVIDENCE

Evidence comes from six primary sources:

PHYSICAL

Objects that can provide information about the events.

Examples: Missile casings, rubber bullets, bruises on a victim's body, tear-gas canisters, traces of blood at a crime scene, tire marks in the mud or samples from oil washed up on shore after a pipeline spill.



TESTIMONY

Written or verbal statements given by victims or those who know them, witnesses, suspects, experts, investigators, etc. Statements can be recorded on paper, with an audio recorder, or on-camera. The decision to interview a witness on camera is complicated. To learn more see "Testimony: Filming Preliminary Interviews" at vae.witness.org.

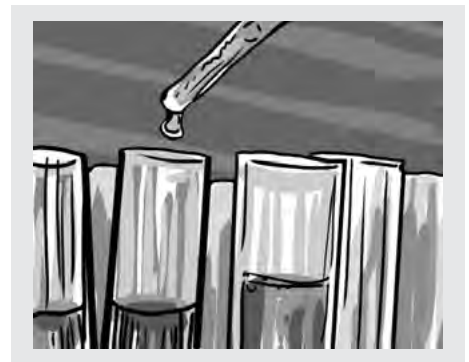
Examples: An interview with the shop owner who was running a store when it was robbed, a declaration from the husband of the woman who was sexually assaulted, or a statement from an investigator detailing his or her findings at the crime scene.



FORENSIC OR TECHNICAL ANALYSIS

Forensics and technical analysis are almost always a combination of physical evidence and testimonial evidence, as the analysis is typically presented in a report from an expert who has based his or her conclusions on physical evidence.

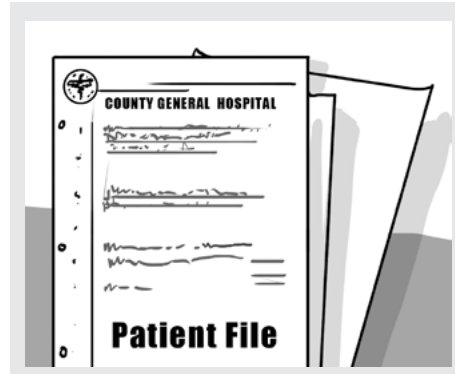
Examples: Reports on the toxicity level of the water in a local village after an alleged poisoning, the number of homes burned based on satellite imagery and videos, the type of weapon used based on the impact zone, whether there were traces of chemical weapons on a missile casing, the estimated amount of oil spilled, the estimated number of refugees, etc.



DOCUMENTS

Paper or digital records.

Examples: A written and signed order from a military commander, reports from troops in the field, medical records, phone logs, bank statements, etc.



OPEN SOURCE

Information collected from public platforms.

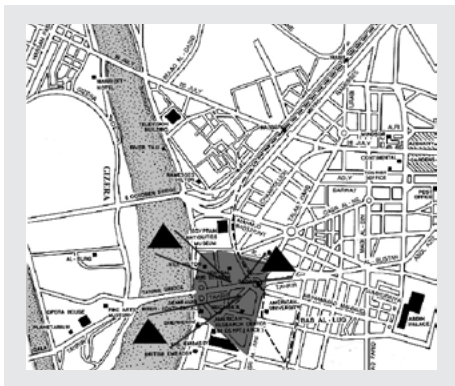
Examples: Newspaper articles, television news broadcasts, reports from human rights organizations, social media posts, including posts to Facebook, Twitter, YouTube, etc.



IMAGERY

Anything visual that provides information to investigators.

Examples: A video of live ammunition being used at protests, a photo of an eviction notice, a detailed map of a mass grave, etc.

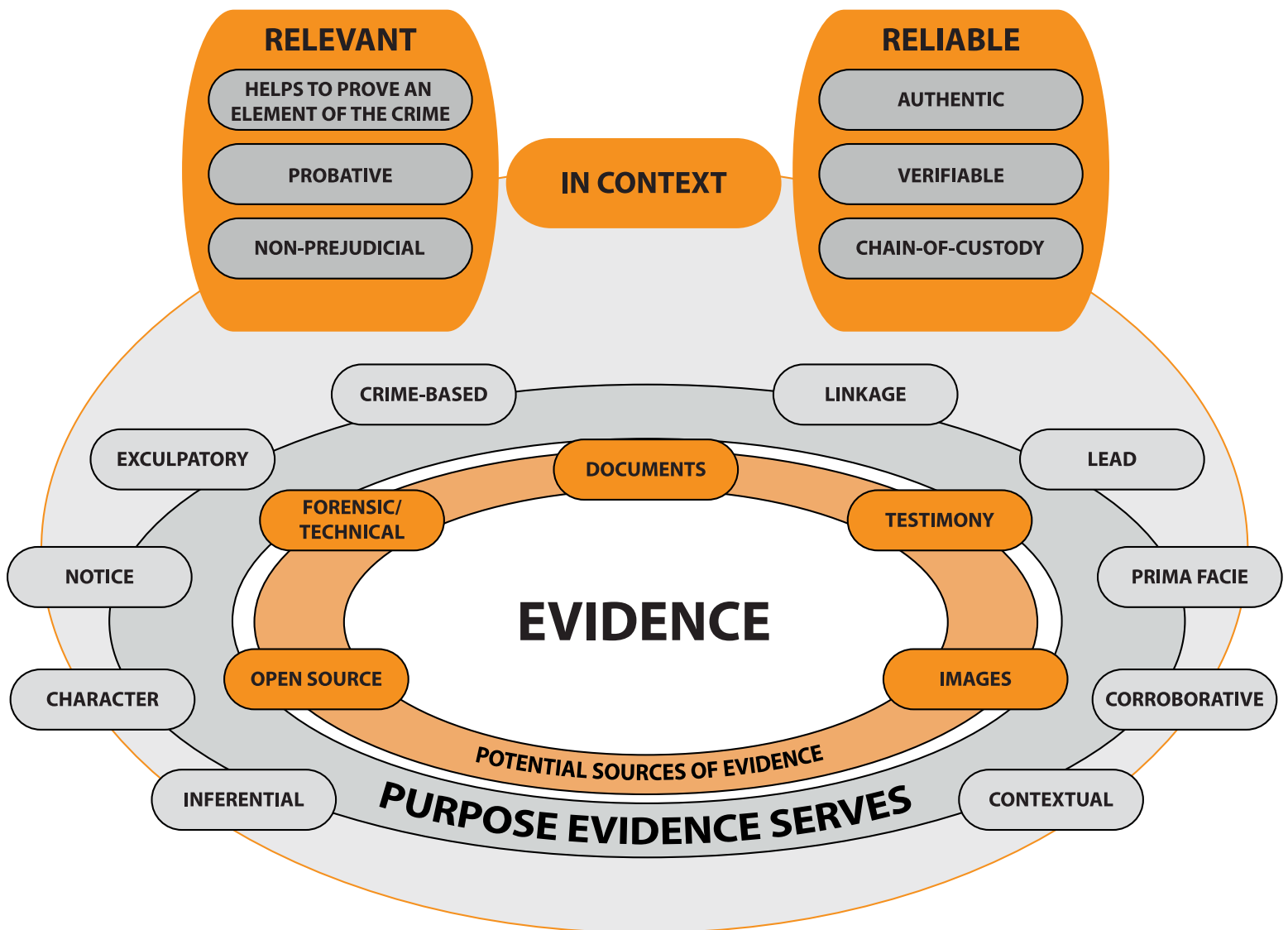


FROM AN EXPERT

“Next to DNA, the democratization of gathering of evidence by means of the universal camera ... the cell phone ... is an enormous development in terms of the potential for real justice..”

—Larry Krasner, Defense Attorney, Pennsylvania, USA

ALL ABOUT EVIDENCE



PART II

PURPOSES OF EVIDENCE

Just as video can come from a number of sources, it can also serve a number of purposes in your pursuit of the full and honest story. Additionally, keep in mind that the same video can serve several different purposes.

Here is a short list of the different ways video can support your work to secure accountability, followed by a Field Note that illustrates this. For a frontline documenter, what's most important is to understand the principle that video serves different purposes — this will help you know where to point your camera to capture more useful images. Don't worry about knowing each purpose in detail.

LEAD EVIDENCE

Initial information that points to a crime and allows us to make an educated guess about what may have happened. The information alone, however, is not sufficient to determine whether a crime actually happened. It must be further researched to determine whether an investigation should be launched.

Examples: Footage depicting the destruction of civilian schools, injuries and casualties from causes we do not see in the video, tanks driving down a street and firing in what is believed to be residential areas, air strikes, etc.



PRIMA FACIE EVIDENCE

Information that allows a key fact to be established or presumed true unless it is disproved.

Examples: Footage of torture being administered, video of a military commander bragging that he has effective command over his troops; an image of a child soldier who cannot possibly be older than 15.



CORROBORATIVE EVIDENCE

Information that supports or verifies already existing evidence; also known as back-up information.

Examples: Footage of injuries corroborating a medical exam, video of children training for war that supports military records documenting age, or footage of a hospital destroyed by airstrikes, backing up a witness statement detailing the shelling.



LAW

CONTEXTUAL EVIDENCE

Sometimes context must be proved. For instance, a perpetrator cannot be convicted of murder as a war crime unless it is proven that the murder(s) happened in the context of an armed conflict. Absent this context, it is not a war crime, it is simply murder. In other cases, contextual evidence is not required, but can play an important role in illustrating what happened. This contextual evidence allows a judge or a jury to better understand the atmosphere, geographic location, or political climate in which the events occurred.



Examples: Footage of life in the town before the conflict, of students going to school before and after an airstrike, of a hospital before it was taken over by military personnel, including the antennas and satellite dishes that went up; footage of the water supply before and after it was poisoned, of the physical impacts of climate change on a community, of a lack of basic needs in households, of military convoys, or of speeches by military officials in the lead up to a conflict.

INFERENTIAL EVIDENCE

Information that allows us to make an educated guess as to the intent of the perpetrator which must be further corroborated.

Examples: A video of a body with severe trauma caused by beating likely points to the intent to administer severe pain. Images of a mass grave of victims shot execution style, with hands bound, points to an intent to kill.



NOTICE EVIDENCE

Information that proves a military commander or civilian leader received information which ensured they knew – or should have known – that the people they had authority over were committing crimes.

Examples: Videos depicting torture that are broadcast on the television news, video reports that document crimes and are widely distributed by NGOs, videotaped public statements by defectors.



CHARACTER EVIDENCE

Information that attests to an individual's moral standing, general nature, traits, characteristics, and reputation in the community.

Examples: Videos showing the accused committing other crimes he or she is not on trial for, taking care of his or her family or the doing volunteer work in his or her community.



EXCULPATORY EVIDENCE

Information that helps prove a defendant is innocent or did not intend to commit a crime.

Examples: Security camera footage showing someone else committing the crime; footage with a verified time and date stamp showing the suspect in a different location at the time the crime was committed.



To illustrate the different purposes video can serve and how it works alongside other sources of evidence, let's look at how the UN Mission to Investigate Allegations of the Use of Chemical Weapons in Syria pieced together different sources of evidence to confirm, by clear and convincing evidence, that chemical weapons were used against civilians in Ghouta.

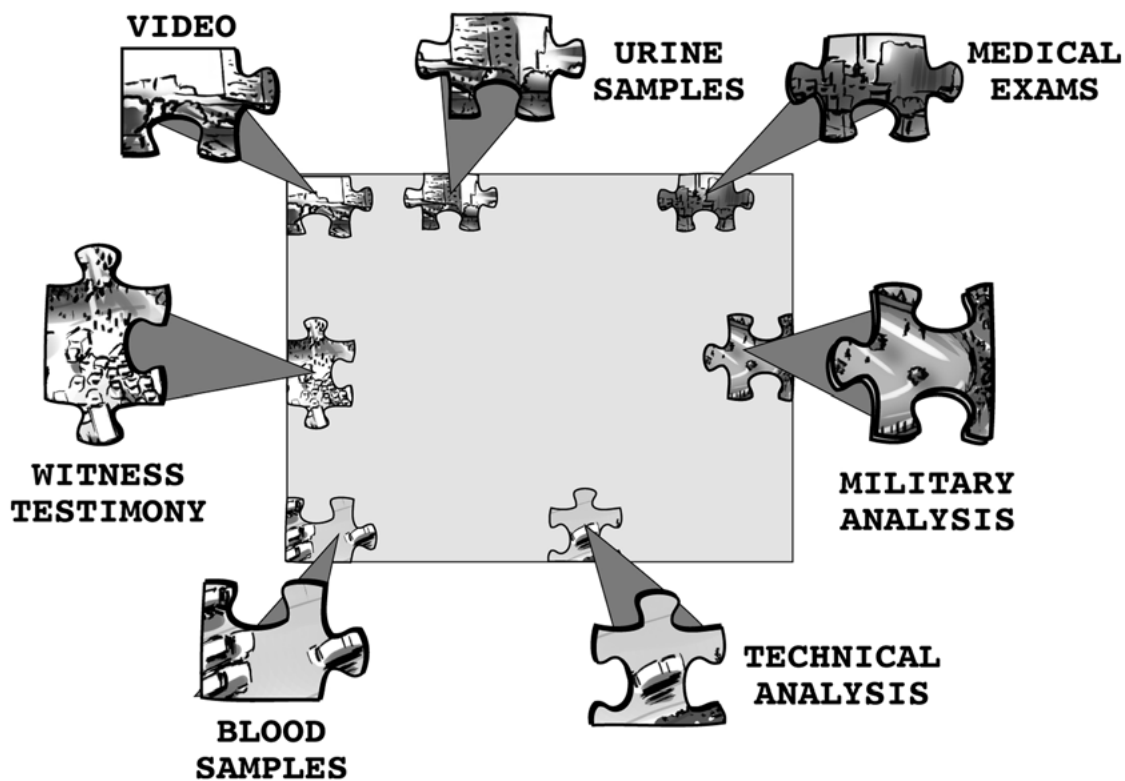
FIELD NOTE

GHOUTA TO BHOPAL: VIDEO'S ROLE IN THE INVESTIGATIVE PROCESS

PART II: VIDEO IS ONLY ONE PIECE OF EVIDENTIARY PUZZLE

As we saw in Part I of the Ghouta Field Note, while the videos from Ghouta, Syria, and Bhopal, India, did not prove a crime had been committed, the videos alerted the global community that something was very wrong. In both of these cases, videos served as what is referred to as **lead evidence**. The world learned that a crime may have been committed when it witnessed, through multiple videos,¹ a large number of people suffering from symptoms of apparent poisoning – constricted breathing and involuntary muscle spasms, frothing at the mouth, fluid seeping from their noses and eyes, and death. For Ghouta, the videos compelled the UN to send in a team of investigators to determine what happened.

Once on site, the UN investigators collected and tested blood and urine samples from victims. The samples tested positive for Sarin gas. These samples provided definitive evidence of exposure to Sarin. Lawyers refer to this as **prima facie evidence**, as it establishes a key fact – exposure to the gas. It still does not, however, establish whether the poisoning was purposeful or not.



To strengthen the conclusion that civilians were exposed to a nerve agent, the videos were considered alongside clinical medical examinations showing typical symptoms of exposure to a nerve agent, as well as testimony from survivors, nurses, and doctors, detailing the symptoms they saw and experienced after the shelling. The videos, medical exams, and witness testimony are referred to as **corroborative evidence**, because they back up the results of the blood and urine tests. Together, these sources of evidence confirm exposure to Sarin gas, but again, the evidence does not yet establish whether the poisoning was purposeful nor provide any insight into the source of the gas.

The UN investigators also completed a site visit to what was believed to be the impact zone of the rockets carrying the poison. Technical and military analysis of the impact zone, combined with subsequent laboratory tests, confirmed that the rockets and rocket fragments contained Sarin gas. This analysis of the impact zone and the weapons provided what is called **inferential evidence** because the results allowed investigators to infer that the attack was purposeful, since it would be unlikely for surface-to-surface missiles loaded with Sarin gas to launch themselves.

Witness testimony confirming that shelling took place immediately before the victims started showing symptoms of poisoning further **corroborates** the conclusion that surface-to-surface rockets were used to deliver the gas.

The next step is to prove responsibility by uncovering evidence that links the perpetrator to the crime. This is called **linkage evidence**. Without linking the crime to a person, we cannot secure accountability. In this case, initial investigations suggested that the type of rockets and launchers used in the attacks on Ghouta were weapon systems known and documented to be in the possession of, and used only by, Syrian government armed forces. If proven, this fact will likely serve as **linkage evidence** connecting the attack to the Syrian regime. For criminal accountability, it will be necessary to go a step further and identify particular individuals who ordered, carried out, assisted, or tolerated the attack.

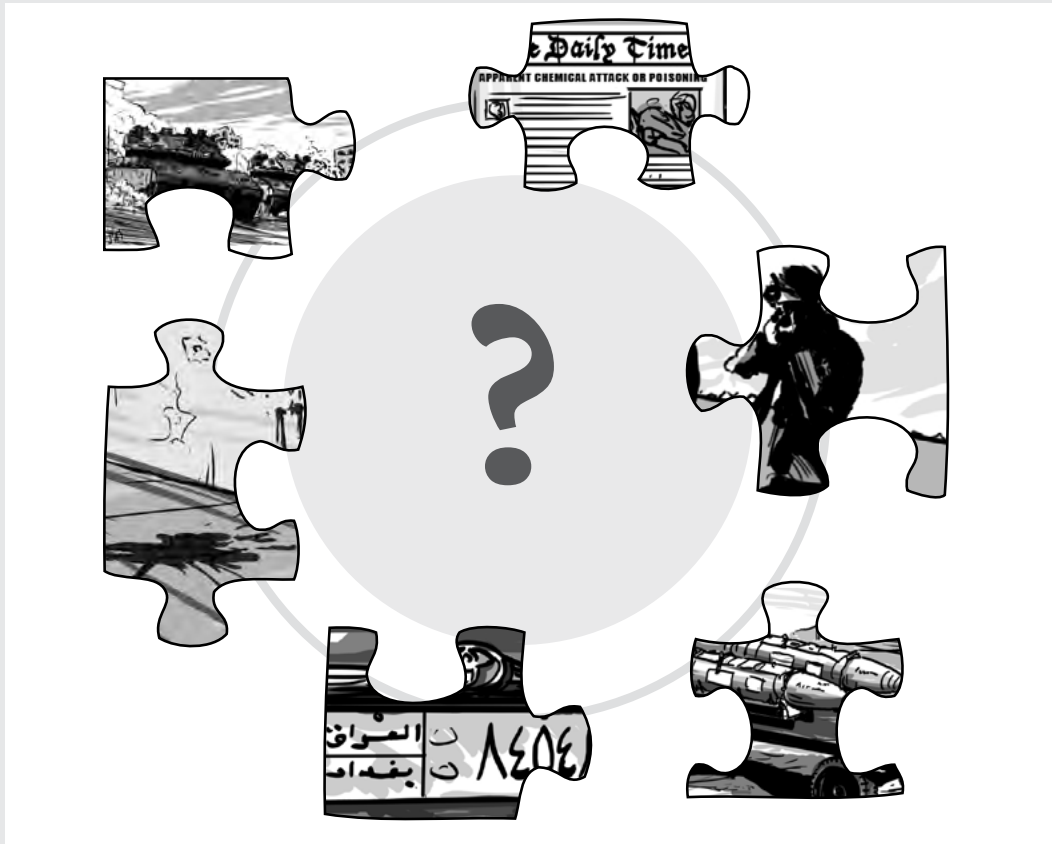
TAKE HOME POINTS

First, investigators, analysts, and lawyers prove their cases by piecing together different sources of evidence for different purposes, allowing them to tell the full story of what happened. In this case, the UN investigators were able to conclude, on the basis of clear and convincing evidence, that chemical weapons were used against civilians. They began with the videos and then used witness testimony, medical exams, medical lab results, weapons analysis, and technical assessments to confirm that the attack was purposeful.

Second, as a frontline documenter, remember that footage documenting the commission of crimes is valuable. But your efforts to capture linkage and notice evidence will likely prove to be of greater importance for long-term justice and accountability. With only 7.5 hours on the ground, combined with follow-up analysis, the UN investigation team was able to prove a crime — a chemical weapons attack against civilians — was committed, by clear and convincing evidence. This was the easy part. Proving who did it and how is much harder, and at the time of writing still had not been accomplished.

FROM AN EXPERT

Investigation has sometimes been likened to assembling a jigsaw puzzle and each piece of evidence to an individual piece of the puzzle. However, unlike the puzzle assembler, the investigator cannot look on the cover of the box to see what the completed puzzle will look like. The investigator must carefully collect the “pieces” of the puzzle from a variety of sources and then assemble them with logic and common sense in order to see that entire picture. Although a partial picture may develop as more and more pieces are added, it is not until the final piece is placed that the investigator can clearly see the entire truth.



This analogy also demonstrates the relationship between evidence and speculation. Assume that the person assembling the puzzle, like the investigator, does not know what the completed puzzle will look like. It is impossible for that person to look at any one piece and know what the entire picture is. If that person only has ten percent of the puzzle's pieces and assembles them as best he or she can, it is probably still impossible to accurately guess what the picture looks like. The person may speculate, but with ninety percent of the puzzle missing, it is very likely that he or she will be wrong. The more pieces the assembler finds, the less he or she will have to speculate about the picture. Similarly, in an investigation, the investigator must gather all the evidence and assemble it with common sense before a clear picture of what happened is revealed. While an incorrect guess about what a puzzle will look like is of no consequence, the gravity of a human rights investigation requires that an investigator never speculate or guess about the ultimate facts of a case. The investigator must carefully and methodically gather as much evidence as possible in hopes that it will be sufficient to determine, without speculation, what happened.

Excerpt from *The Handbook of Human Rights Investigations* by Dermot Groome

PART III

CHARACTERISTICS OF LEGAL EVIDENCE

To turn information into legal, trial-ready evidence that a court can trust and use in coming to a decision, the information must have two key characteristics: it must be reliable and relevant. This reliable and relevant evidence is then put in context. Context is simply about how you weave the evidence together to tell the story about what happened to whom, when, and where, as well as who should be held accountable.

RELIABILITY

For anyone to rely on your footage — the media, human rights commissioners, decision-makers, and courts — your footage must be trustworthy. For instance, reporters need to be sure that what they are showing is real, but they can choose to show footage with the caveat that “This footage has not been independently verified.” A lawyer cannot. When a lawyer submits video evidence to court, he or she must be absolutely sure the video shows what the lawyer says it shows.

Here are three key qualities that will enhance the reliability of your footage, and which can generally be achieved by following the basic filming practices below:

1) VERIFIABLE

Verification is the process of confirming that the video is what it claims to be and was taken at a specific time, date, and location. This helps the media, human rights advocates, investigators, analysts, and lawyers trust the substance of the video and use it to piece together the full story. It also strengthens the video’s chance of being used as evidence in the courtroom. The verification process applies to both the footage itself and the metadata, because both can be faked or manipulated.

Defined: Metadata

A video file has two levels of content: the images we see and embedded data that we do not. This embedded data is called “metadata.” Loosely defined, metadata is data about data. Practically speaking, metadata is information about the time, date, location, model of camera used, etc. that is automatically stored with the footage. Think of it as “behind the scenes” information. For more about metadata, see “How to Capture Metadata and Documentation” at: archiveguide.witness.org/create/what-metadata-capture.

For More Information

To learn how to film so that your footage is easily verifiable by investigators, analysts, lawyers, and potentially courts, see “Basic Practices,” “Filming Secure Scenes,” and “Adding Essential Information” at vae.witness.org.

2) AUTHENTIC

Authentic means that the original video file is free of any sort of manipulation, including changes of filename, additions, deletions, editing, or corruption, and that it was properly saved and passed along in its original format to investigators.

3) PROVEN CHAIN-OF-CUSTODY

Proven chain-of-custody means that each possession has been carefully documented as the footage makes its way from the street where it was filmed to investigators, then to lawyers, and then to the courtroom. A proven chain-of-custody helps to establish that there was no opportunity for corruption or manipulation from unknown sources.

KEY POINT

Reliability is all about techniques and it comes down to:

- using basic filming techniques that will allow your footage to be easily verified,
- keeping your original file, and
- documenting how the footage (ideally the original file) moved from capture to courtroom.

The rules of evidence vary from country to country and from court to court, so it is impossible to provide hard and fast rules about how reliable a piece of video must be to be admitted in court. The bottom line, however, is this: a video clip must be verified. It must be what you say it is. It cannot be faked or manipulated. Having the original file and being able to prove the chain-of-custody — while not absolutely mandatory in every jurisdiction — will make the verification process much easier and increase the reliability of the video. In turn, everyone — from the media to human rights commissions, to investigators, lawyers, and judges — can place more trust in it.

Relevance is about what content you decide to put inside the frame. Evidence is relevant if it helps to prove or disprove a fact that is in question in an investigation or at trial. It does not need to make the fact certain, but it must at least increase or decrease the likelihood of some fact. Here are two key qualities that will enhance the relevance of your footage:

1) HELPS TO PROVE AN ELEMENT OF AN ALLEGED CRIME

As discussed in the sections “Anatomy of a Crime” and “Collection Planning,” every crime is broken down into “elements.” A video clip is relevant if it helps to prove one of these elements. If it does not, it is likely irrelevant and will not be admitted in court. Here is a simple example:

If the International Criminal Court has charged a militia leader with the recruitment of child soldiers but not with torture, footage of children at military training camps will be relevant. Footage of adult soldiers torturing civilians – while criminal and horrific – will not likely be relevant and, in turn, will not be admitted into evidence.

There are exceptions to this. In short, there are times when evidence may clearly prove an element of a crime but will not be admitted because it is duplicative or confusing. For instance:

- If a series of photos of a mass grave have already been admitted and considered by the judge, a video may not be admitted because it provides the same information.
- A short, shaky, video that includes continuous movement with many pans and zooms may not be admitted, even though it shows that an elementary school was hit by an illegal barrel bomb, because it is impossible for a viewer to make sense of the footage.

2) IS NOT PREJUDICIAL

Even if evidence proves an element of the crime, a judge may still exclude evidence from the courtroom if the evidence is prejudicial. Evidence is prejudicial if it provokes emotional bias or misleads or unfairly sways a judge or jury. Consider the following examples of videos that may not be admitted as evidence.

- A video of an altercation with police that includes audio of inflammatory comments directed at the officers, such as, “Hey man, why are you being such an ***? Leave that man alone, ***; he isn’t doing anything. Get off of him you ***, **** cops. *** cops are all criminals.” This may not be admitted because the audio is profane and full of unsupported opinions that evoke emotion.
- A 25-year-old man is charged with assault but has no prior arrests and no recent history of violence. A video of him at age 15 starting a fight during a hockey match ten years earlier would likely not be admitted.

FOR MORE INFORMATION

To learn more about how to capture relevant footage that proves elements of a crime, see “Collection Planning” at vae.witness.org

TAKE HOME POINT

The bottom line is this — a video can be used in court if it is reliable and relevant. The more reliable and relevant it is, the more the judge or jury can trust it. Use filming techniques along with good content management practices to strengthen the reliability of your footage. To maximize the relevance of your footage, learn more about how to document elements of a crime, as this will help you decide what information to put in the camera's frame.

ADDITIONAL RESOURCES

The Handbook of Human Rights Investigation by Dermot Groome. Available online through various booksellers.

Reference Book to the Field Guide for Civil Society Investigation and Documentation of Gross Human Rights Violations by the Public International Law and Policy Group

<http://publicinternationallawandpolicygroup.org/wp-content/uploads/2015/11/Reference-Book-to-Field-Guide-on-CSO-Investigations-Selected-Sample.pdf>

United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August 2013

http://www.mediafire.com/view/9b68gh9tkwcp4cj/UN_Report_2013_08_Chemical_Weapons_Investigation.pdf

END NOTES

¹ “On the Human Rights Channel, A Year of Citizen Video from Syria”

<https://blog.witness.org/2013/09/on-the-human-rights-channel-a-year-of-citizen-video-from-syria/>

BASIC PRACTICES

CAPTURING, STORING & SHARING VIDEO EVIDENCE



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record”.

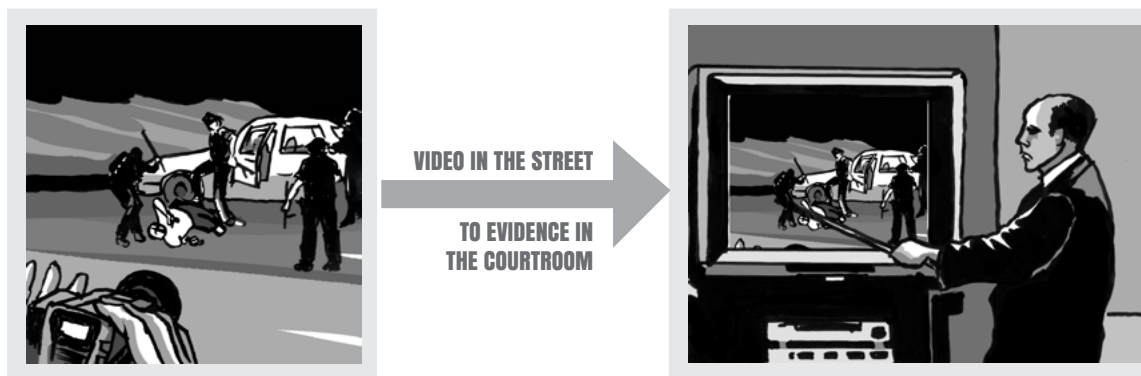
Do your best to implement the guidance below, but understand that nothing stated in this guide is absolute and you should modify the practices to fit your needs. When possible, seek support from local experts. Even if you cannot fully implement this guidance, your footage may still provide valuable information that could lead human rights organizations and advocates to answers and, in turn, to the protection of our basic human rights.

INTRODUCTION

Video captured by eyewitnesses and on-the-ground human rights activists can be instrumental in drawing attention to human rights violations and support calls for policy change. But videographers often want their footage to do more. They hope that footage exposing abuse can help bring about justice in courts of law. And it can.

In many situations, eyewitnesses and on-the-ground human rights activists are better positioned to collect evidence of human rights abuse than professional investigators. This is because investigators often arrive after-the-fact when the violence has stopped and the evidence has deteriorated or is gone.

However, while citizen video often provides useful clues about what took place and who might be responsible, the quality seldom passes the higher bar needed to be used as evidence in a court of law. The good news is this: with slight modifications, the footage citizens and activists often risk their lives to capture can serve as evidence in criminal and civil justice processes.



GOAL

The goal here is to introduce basic practices which will help ensure that your video can be used to support the process of bringing perpetrators to justice and freeing the wrongly accused.

These practices are primarily for eyewitnesses and activists who:

- Find themselves in a situation where they can and choose to record human rights violations as they happen, or in their immediate aftermath; and
- Want to share limited amounts of footage with investigators and lawyers who could use it in an investigation. If you have collected a large number of video files that you need to organize and manage, you should also review WITNESS' *Activists' Guide to Archiving Video* to learn more about the longer-term preservation of your footage.

We hope that after reviewing the basic practices here, you will want to learn more advanced practices. To do so, visit vae.witness.org



PART ONE: GET READY TO FILM

STEP 1

Determine Your Role

If you are an **Intentional Documenter** and plan to be in a situation where you expect to film human rights violations:

- **Know your rights before you press record.** Rights vary from country-to-country and from city-to-city. Find out as much as possible about what you can and cannot legally film.
- **Protect your contacts.** If you plan to be in a situation where your filming device could be confiscated, then delete or encrypt names of contacts, call logs, text messages, photographs, videos and audio files in advance. Consider using a different device that does not have personal information on it.
- **Learn more.** The more you know about filming techniques, safe-guarding, organizing, managing and sharing your footage, the easier it will be to film safely, effectively and ethically.

If you are an **Accidental Documenter**:

If you unexpectedly became an eyewitness and captured valuable human rights footage that you are wondering what to do with, skip to PART 3: SAFEGUARD YOUR FOOTAGE on page 10.

FOR MORE INFORMATION

If you keep sensitive media or contacts on your computer, learn more about protecting your files here: securityinabox.org/chapter-4

If you're already using PGP for your email, you can also use it to encrypt your files; try GPGTools for Mac or Gpg4win for Windows.

STEP 2

Security Assessment

Safety comes first. If it's too unsafe to film, don't film, even if you intentionally planned to document human rights violations or accidentally found yourself in the wrong place at the right time. The answer to whether or not it's safe will rarely be black and white. It will be a judgment call that only you can make. If you decide to film, try to follow the basic practices outlined below, or determine how to modify them to the situation you're filming in.

PHYSICAL SECURITY



DIGITAL SECURITY



FOR MORE INFORMATION

See the "Assessing and Responding to Risks" guide from the Committee to Protect Journalists bit.ly/CPJ_AssessRisks

STEP 3**Determine Which Images to Film**

To hold someone accountable for a crime, lawyers must prove:

- **What** crime was committed;
- **Who** committed the crime;
- **How** the perpetrator committed the crime (i.e. whether it was with their own hands, if they planned it, ordered the crime, etc.).

Citizens and activists are often well situated to capture footage of a crime being committed, but it is much more difficult to document who committed the crime and how they did it. Investigators and lawyers spend the majority of their time trying to prove the latter, so while footage documenting the commission of crimes is valuable, capturing the “Who” and “How” is also important for long-term justice and accountability. This is especially true in situations where there are mass atrocities and systemic human rights violations.



Documenting the “What”

Video documenting the execution or the aftermath of a crime is called “crime-based evidence.” Here are several examples of footage that could serve as crime-based evidence.

Video footage of:

- Military forces torturing a civilian and of the injuries endured after the torture stopped;
- Bulldozers unlawfully destroying homes and the damage caused after the bulldozers have left the scene;
- Police placing a suspect in an illegal chokehold and images of the person after he died from the hold;
- Airstrikes on hospitals and their subsequent destruction after the strikes have ended;
- Children in military camps being trained for warfare;
- Drill rigs illegally placed on indigenous lands drilling for oil.

Capturing the “What” is somewhat instinctual. You see something that is wrong, point the camera toward it and press record. This, in part, is why there is a flood of crime-based video. Capturing evidence of the “Who” and “How” is much less intuitive and harder to do. Let’s take a look at techniques that can help you.



Documenting the “Who” and “How”

Video footage that includes clues about the “Who” and “How” is often referred to as “linkage evidence” because the evidence “links” the perpetrator to the crime. While it may be impossible to use video to determine exactly who committed a crime and how they did it, video can provide important clues that investigators and lawyers can piece together with other sources of evidence – such as documents or witness testimony – to figure out who should be held accountable even if the perpetrator is far away from the scene of the crime.

Sometimes documenting the “Who” and “How” is easy to capture with video. For example, you might be able to film:

- The face of a soldier as he repeatedly beats a civilian;
- The face of the bulldozer operator as he destroys homes;
- The badge number and name plate of the officer who is holding a suspect in an illegal chokehold that led to death.

FOR MORE INFORMATION

See “Filming Linkage Evidence” at
[bit.ly/
 WITNESSLibrary
 VaE](https://bit.ly/WITNESSLibraryVaE)

Sometimes however, it’s much harder. Here are a few of the challenges:

- Video can’t show us the identity of the pilot who is flying the plane that is dropping the bombs, or the identity of the person who directed the pilot to target hospitals;
- We may see the child soldiers in the training camps but may not see their trainers or commanders;
- We don’t know who ordered the drill rigs to be placed illegally on indigenous lands because we only see the rigs.

Linkage evidence is crucial. As a citizen witness or human rights activist on the ground, you are uniquely placed to gather linkage evidence. Though filming linkage evidence isn’t hard, understanding how to capture it is more complicated than capturing crime-based footage.

WHAT: Possible Crime-Based Evidence	WHO & HOW: Possible Linkage Evidence
<ul style="list-style-type: none"> • Torture in progress • Fatalities • Injuries • Persons being beaten by officials • Damage to civilian property • Damage to cultural objects • Children bearing arms or participating in military activities • Hate speeches 	<ul style="list-style-type: none"> • Police formations at a protest and/or troop movements • Badge numbers and uniforms • Passports or other official identification documents • License plates of official vehicles • Military equipment (including serial numbers) • Speeches • Checkpoints • The exterior of occupied facilities • The layout of facilities once occupied and then abandoned • Communications equipment – satellites dishes, radios, etc. • Video of documents that can’t be taken because of security risks so the contents are filmed instead

FOR MORE INFORMATION

See “Developing a Collection Plan” to learn how to strategically capture higher value footage at bit.ly/WITNESSLibrary
 [VaE](#)



PART TWO: PRESS “RECORD”

STEP 1

Record Date, Time & Location

- Ensure your camera or cell phone is set to the correct date, time and GPS location so the digital metadata is recorded.
- Record your voice saying the date, time and location.
- If you need to film anonymously, write the time, date and location on a piece of paper and hold it up in front of the camera for 10 seconds. You can also film anything that shows the date, time and location, such as a clock, the front page of a newspaper, a street sign, landmarks or geographic features.

about metadata

There is no single legal definition of metadata. Loosely defined, metadata is simply "data about data". For our purposes here, we are defining digital metadata as information about a file created by an electronic device that is automatically stored and is often not visible to the user. Another way to think about is as the digital footprint that is left behind. This invisible footprint includes such information as date, time, location, what device was used and even a record of changes made to the file.

why it's important

Metadata can make your video easier for researchers, reporters or investigators to verify that your video footage was filmed when and where you say it was. For more information see "How to Capture Metadata and Documentation" at: archiveguide.witness.org/create/what-metadata-capture.

STEP 2

Document “Who”

Use the camera microphone or a pen and paper to record the names and contact information for the:

- Person filming;
- People being filmed, and;
- Other people on scene who may have information about the events that took place.

WHEN?



WHERE?



WHO?



STEP 3

Film Strategically and Logically

Your goal when filming is to enable those who are not present to visualize the events that took place. While filming, ask yourself, “If I give this footage to someone not familiar with the location, could they summarize what happened and draw an accurate map of the scene based only on the information in my video?”

You want to be able to answer, “Yes!”

Be conscious and purposeful about what you film. Activists often capture the “What” but not always the “Who” and “How”. Consider filling out a “Collection Planning” form to help you strategically determine what footage you will need to capture to give viewers a clear sense of the events that took place.

Since every situation is different, there are no absolute rules, but below are the key, basic filming techniques that will help ensure your video is understandable and informative.

For more
information

See “Developing a
Collection Plan” at:
bit.ly/WITNESSLibrary_VaE



WIDE



MEDIUM



CLOSE UP

FROM ABOVE



HORIZON WITH SUN OR MOON



LANDMARK



- It is best to film the entire location continuously. However, if the incident is too large, complex or dangerous to do so you can start and stop the recording. In this case, try recording each new clip by pointing the camera at the same location you were filming when you stopped. In other words, overlap the shots.
- Include the following shots:
 - A very slow 360-degree pan to provide context and show what is happening behind the scene.
 - Wide establishing shots to provide an easily understandable layout of the crime scene and to assist in verifying time, date and location.
 - Medium shots to establish the location of the evidence in the crime scene and the relationship of one piece of evidence to another.
 - Close-up shots to show key details and identify people at the scene.
- If possible, film the shots listed above from multiple sides of the incident scene.
- Hold all your shots for 10 seconds or more. Move the camera slowly when you change your position or when you zoom in or out. Avoid fast or jerky movements. When possible, use a tripod, monopod or even surface to stabilize the camera.

STEP 4

Written Documentation

If you were unable to add basic information to the video recording itself, then you should create a separate document that summarizes the key information about your footage. Be sure to do this while the details are fresh in your mind. Even though this can be time consuming, providing thorough written documentation can significantly increase the chances that your video will be used as evidence. The summary information, often referred to as a “Camera Report”, can be handwritten or done on a computer and saved in a folder with the video. Always include:

- Date and time you wrote the summary;
- Date, time and location of the filming;
- Names and contact information for the:
 - Person filming;
 - People being filmed;
 - Other people on scene who may have information about the events that took place.
- A short, factual summary of what is shown in the video. Leave out unsupported opinions, misinformation and exaggerations;
- Any safety information or security restrictions.

**For more
information**

Learn more about
Camera Reports at:
[bit.ly/WITNESS
Library_VaE](https://bit.ly/WITNESS_Library_VaE)

KEY POINT

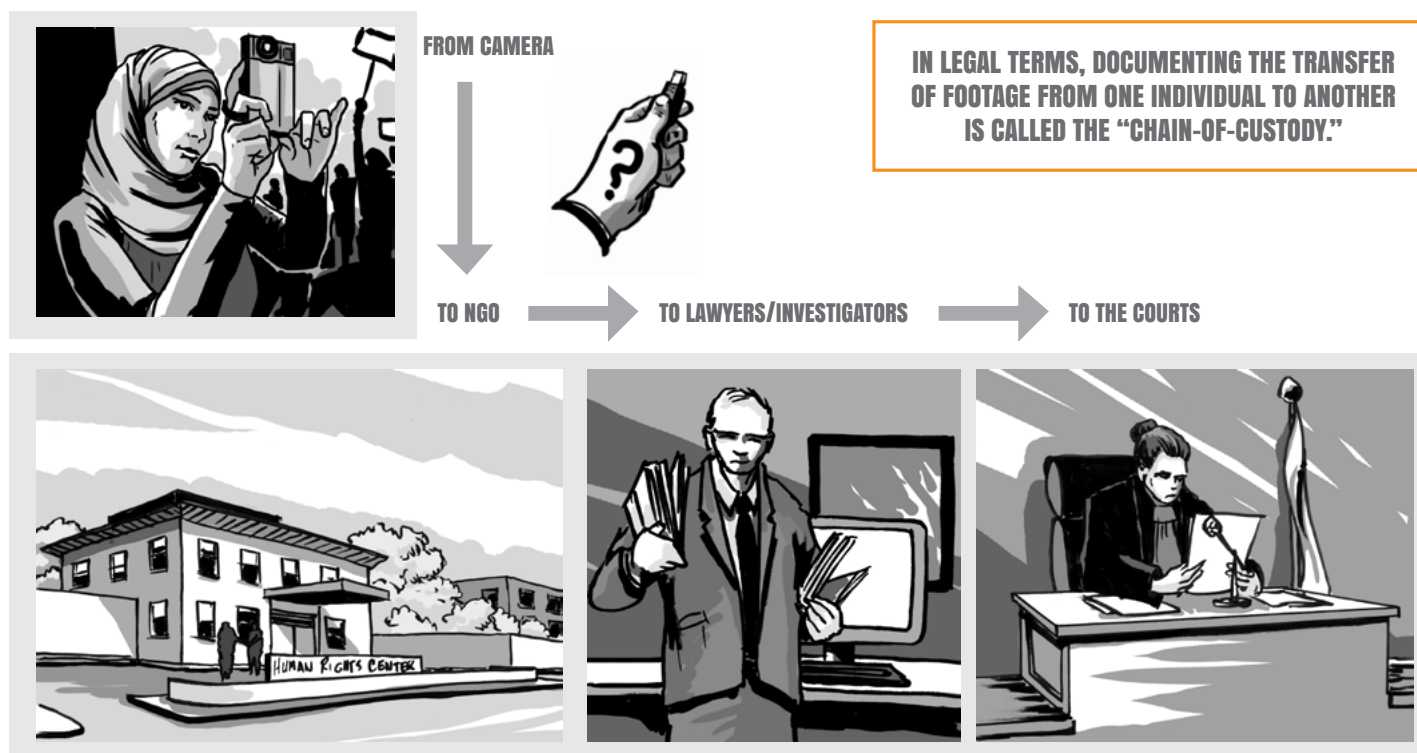
WRITTEN DOCUMENTATION MATTERS! Even if you include basic information in the video recording, a separate written summary can be helpful. This additional documentation will make your video stand out among the thousands of videos captured and shared every day by citizens and activists, and it will help human rights researchers and investigators as they review the content and determine whether or not your footage will help them. In short, the easier you make it for the reviewers, the more likely they are to watch your video.

PART THREE: SAFEGUARD YOUR FOOTAGE

The steps below are for eyewitnesses and human rights activists that have small amounts of footage that need to be protected for a short period of time, until the videos can be handed over to an appropriate person or organization for longer-term safekeeping or until an investigation is launched. If you or your organization has a larger body of footage that you need to organize, manage or safeguard for the foreseeable future, see WITNESS' [*Activists' Guide to Archiving Video*](#).

WHY? Protecting your video is essential if you want it to be used as a part of the judicial process. It's essential because to use a video in court, an attorney must always prove that the video file was not edited or manipulated. In some cases, the attorney will also need to show how the video got from the videographer to an investigator, then to a lawyer, then to a court. In legal terms this is called the "Chain-of-Custody".

If your video is not properly protected, the trustworthiness of your footage can be called into question. The basic steps below will help you protect the integrity of your original file by preventing it from being edited or digitally manipulated, getting lost due to equipment failure or being taken into the hands of someone who could destroy or misuse it.



STEP 1

Protect Your Media in the Field

Come up with a plan to keep your memory cards safe from physical damage and from those who might confiscate your footage. While in the field, consider practices such as:

- Swapping out the used card with a blank card and hiding the used one;
- Creating an immediate backup to a drive that you carry with you;
- Uploading the footage immediately to a secure server;
- Storing memory cards in sturdy, dust-free card cases when not in use.

STEP 2

Protect Your Media in Your Home or Office

Come up with a plan to keep your footage safe after you return from the field. Consider practices such as:

- Setting the write-protection lock on your memory card before transferring your media;
- Saving the original file by transferring it from your card to a hard drive without processing the video in any way. Do not run it through special software or change the file format, file name or file structure;
- Backing up the original file at least once and twice if possible. Once copied, don't alter the original file in any way;
- Keeping backup copies on separate devices and in a separate physical location from your primary copy;
- Keeping storage media secure by limiting physical and digital access to only those who need it.

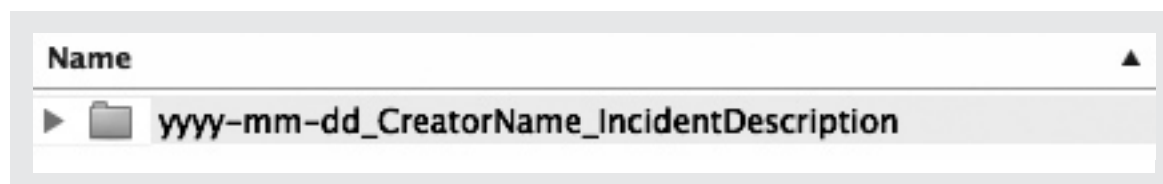
**For more
information**

See *Keeping Files Intact (and Proving It!)* at archiveguide.witness.org/transfer/keeping-files-intact

STEP 3

Organize Your Videos

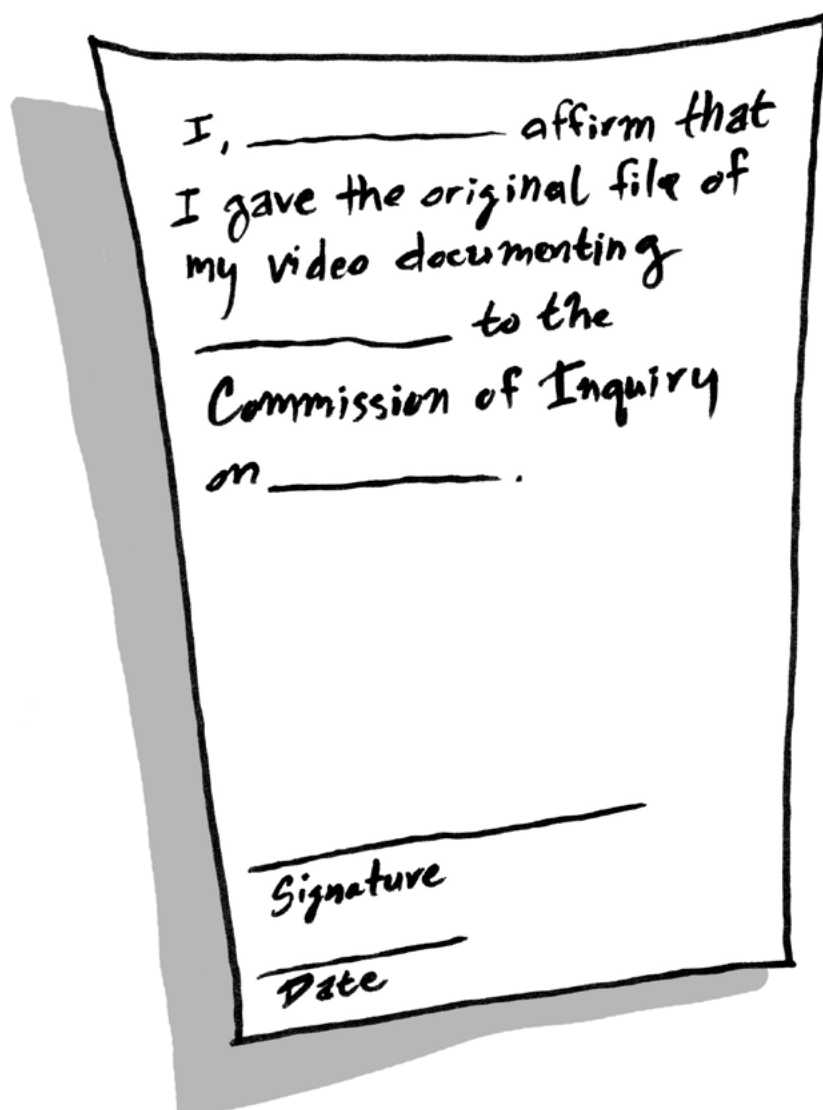
If you would like to organize videos offloaded from your camera, organize them in folders by date and creator. Again, do not alter the format, filenames or directory structure of the original video. Name your folders in a standardized way so that you can easily sort and identify them. For example, yyyy-mm-dd_CreatorName_IncidentDescription.



STEP 4

Track Your Videos

Use a spreadsheet or database to keep track of where you store the footage and who you share it with. In order for your video to be used as part of an investigation, you will need to give it to trusted human rights researchers or investigators. When you give the footage to another person or organization, they may ask you to sign a form that documents the hand off of the footage. In legal terms, the form documents the “chain-of-custody”. The information requested will vary, but you will most likely need to verify that you recorded the video and that you have not altered the video file.

SET
PRIORITIES

All courts require that lawyers prove that the video shows what the lawyer says it shows. Only some courts require that a lawyer prove the chain-of-custody. If you must prioritize, focus on the protection of the file's integrity over keeping close track of the path of the video. However, it's best if you can do both.

PART FOUR: SHARE YOUR VIDEO

KEY DISCUSSION POINTS

IS IT SAFE TO SHARE YOUR VIDEOS AND WITH WHOM?

DECISION #1: IS IT SAFE TO SHARE YOUR FOOTAGE?

Assessing safety risks should happen both before and after filming a human rights incident. After filming, review the footage to determine whether or not anyone depicted in the video could be endangered if certain people saw the video. Would you (or the videographer if it was someone else) be at risk if it were known that you filmed the situation? Would you be at risk if your involvement in distributing the video were revealed? Again, this will be a judgment call that only you can make.

DECISION #2: SHARE PUBLICLY OR PRIVATELY? If there are risks involved in sharing the video, consider only sharing it privately with trusted individuals or organizations such as allied human rights organizations, investigators or attorneys. If there are no foreseeable risks and you want to make the footage accessible to as many people as possible, follow the tips below to share video effectively on an online video-hosting platform such as YouTube.

SHARING PUBLICLY

GOALS

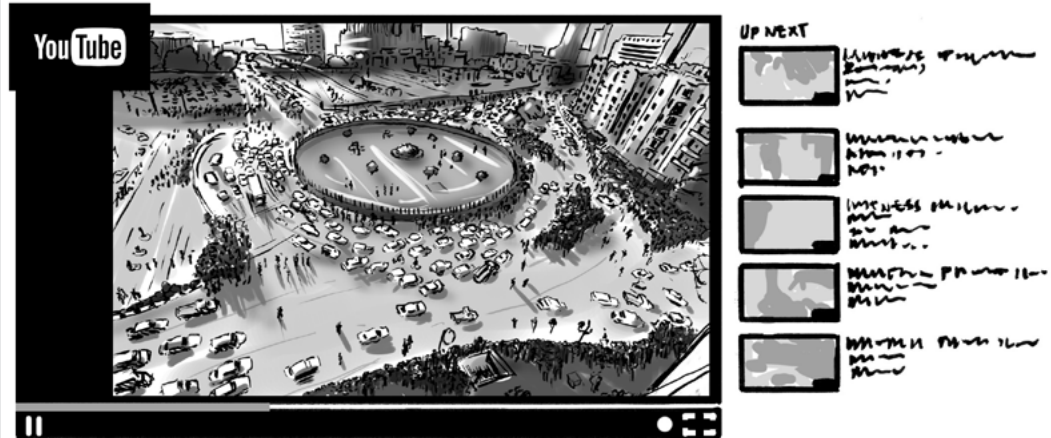
If you decide it's safe – and strategic – to share the video clips online, follow these basic practices so that:

- A journalist, researcher or investigator is able to search, find, understand and verify your videos; and
- The online platform you are using understands that the video contains informative human rights content and will be less likely to take down the video.

STEP 1

Title

When uploading a video to an online platform, include a short title that includes the date, specific location, city, country and a few key, descriptive words about the video's content.



**GRAPHIC HUMAN RIGHTS IMAGERY:
DEADLY CLASHES BETWEEN PROTESTERS AND AUTHORITIES
CAIRO, EGYPT, JAN 11, 2015**



s' Channel

Subscribe 20

85,003

+ Add to Share ... More

80 9

Uploaded on Jan 25, 2011

Thousands of Egyptians gather in Tahrir Square in Cairo, Egypt to protest against President Hosny Mubarak's regime. Footage taken on Tuesday the 25th of January 2011.

SHOW MORE

STEP 2

Description

Add a factual description that repeats the time, date, specific location, city and country and includes a factual summary of what is shown in the video. Add context that will help viewers understand the video, such as what happened immediately before or after the recording. Leave out unsupported opinions, misinformation and exaggerations. If safe, include the name and contact information of the videographer or the videographer's organization.

KEY POINTS

INDICATE THAT THE VIDEO INCLUDES HUMAN RIGHT IMAGERY

If the footage is graphic then include, “Graphic Human Rights Imagery” in the video’s title. This will:

- Alert viewers that the video may be violent or disturbing, and
- Alert the online platform that the video clip may contain valuable human rights footage. Without this warning, YouTube and other platforms may remove the video for violating their community guidelines that prohibit users from posting shocking, sensational or disrespectful content that has no public value.

STEP 3

Tag

Again, repeat the date, time, specific location, city and country then add words that describe the content. For example words like: “human rights”, “eviction”, “arrest”, “excessive force”, “shelling”, “protest”, “speech”, “child soldiers”, “checkpoint”, “uniforms”, “oil spill”, “torture” or “refugee”. The tags must be unbiased and factual.

KEY POINTS

ACCURACY IS ESSENTIAL

If you want your videos to be used for evidence, do not add false dates, locations or tags to increase the number of times your video comes up in searches or for any other reason.

**For more
information**

See the YouTube blog titled “Context Is King: Share Your Story” at: <http://bit.ly/ContextIsKing>

STEP 4

Keep the Original File

Video sites such as YouTube are great for sharing videos, but should not be used as a place to save the original copy of a video because:

- Videos uploaded to platforms like YouTube are optimized for web streaming, meaning the original video is compressed and stripped of valuable information – the metadata – embedded in the file;
- You cannot retrieve your original file from sites like YouTube once it has been uploaded it because only the copy that was optimized for web streaming will be available; and
- YouTube and sites like it can take your footage down without your permission.

SHARING WITH TRUSTED INDIVIDUALS AND ORGANIZATIONS

STEP 1

Learn

Sharing video footage and information with human rights organizations, investigators, law enforcement officers and courts triggers rights and responsibilities. These rights and responsibilities vary depending upon who you share the information with. Before giving footage to an intermediary for safekeeping, make sure to choose an intermediary that:

- You trust;
- Has the skills, resources and infrastructure to keep your video secure, intact and reliable; and
- Will respect (and even put in writing) the specific use of the footage, especially if it poses security risks for you, the people on camera or the community in which you filmed in.

For more information

Learn how to select an archive to share your footage with at archiveguide.witness.org/preserve/working-archive

STEP 2

Decide How to Provide the Original File

Provide your trusted allies with the original video that is in no way altered. If the person or organization you are sharing footage with is located nearby and accessible, the most secure way to share your video is to go in person (or send a trusted ally) and transfer the video from your computer or hard drive onto theirs.

Often times this is not the case and the only practical way to get the footage to your ally is to transfer it online. If you are in a high-risk situation where uploading a file could be dangerous, there are fairly secure options to transfer footage (see the tips below on “Using Technology to Safe-Guard Your Videos”). New methods for transferring footage are being developed all the time, so it’s best to discuss the security risks with your ally before selecting a service.

For more information

For information about secure digital transfer options available see bit.ly/WITNESSBlog_Tech

STEP 3

Provide Supplementary Information

Whenever possible, also provide a printed or electronic summary of:

- Time, date and specific location the video was captured at;
- A concise factual summary of what is shown in the video;
- The names and contact information for the videographer, persons filmed and others who may have valuable information about the incident and are willing to speak to an NGO or an investigator; and
- Any security information letting your allies know what information is confidential and what can be shared with others.

OPTIONAL

Consider Using Technology to Safe-Guard Your Videos

While it's not mandatory to use technology tools to enhance the evidentiary value of your video, helpful new tools are being developed all the time. These tools, combined with your hands-on field skills, can strengthen the trustworthiness of your video.

Here are a few options to explore:

Capture: Film and add context to your video in the field

- Storymaker: Android app with training and templates to help you safely and effectively capture video on the go - storymaker.cc
- InformaCam: Android app for creating secure and verified video via embedded metadata to ensure the footage captured has enhanced evidentiary value - guardianproject.info/informa
- eyeWitness: Android camera app that records and embeds metadata to facilitate authentication of footage and its use by courts - eyewitnessproject.org
- Taggly: App for Apple and Android devices that will imprint your media with a metadata watermark - tagg.ly
- Anker Astro: Line of external batteries that keep your devices running in the field - goo.gl/pyYsDM

Store: Keep your media safe and organized

- Seagate Wireless Plus: Portable hard drive that's battery powered and Wifi enabled, giving you extra storage on the go - goo.gl/IXwOsZ
- SyncMe: Android app that automatically syncs your files. Pair it with Seagate to continually back up your media in the field - goo.gl/kf3sqY
- Adobe Bridge: Media browsing tool that helps you organize your video, add tags, and view and edit metadata - creative.adobe.com/products/bridge
- Activists' Guide to Archiving Video: WITNESS guide that outlines tools and best practices for storing and cataloging your videos - archiveguide.witness.org
-

Share: Make sure your media is safe and private when you share with others

- Bittorrent Sync: Direct transfer from one device to another is a good option for secure sharing in low bandwidth contexts - getsync.com
- SpiderOak: Easy-to-use cloud storage with end-to-end encryption that helps make file sharing more secure - spideroak.com
- BoxCryptor: Free service that encrypts your files before you upload them to Dropbox or other cloud service sites - boxcryptor.com

The list is constantly changing and growing. Learn about the newest tools at blog.witness.org/tag/technology/.

A BIT ABOUT CURATION

If you come across a video online and feel it would be valuable to share the video more broadly by including it in a report, article, playlist, etc., then it's essential to:

- **Verify the video's content.** Many videos are staged, edited, or shared with false descriptions so as to incite hatred or violence, or undermine credible footage.
- **Evaluate the security risks of sharing the video.** The person who uploaded the video may or may not have assessed safety concerns or may not have intended for the video to be shared widely. If the video has the potential of putting individuals at risk, use a video editor or the YouTube face blur function to protect the anonymity of those individuals: bit.ly/YouTubeFaceBlur.
- **Provide background information.** Sharing a link to the original uploaded video will help investigators trust its authenticity and maintain any metadata embedded in the video. If, however, you decide to save a copy of the video and re-upload a new version online, include a link to the original in the description area. This will enable human rights researchers or investigators to contact the original uploader of the video. If you don't include a link to the original upload, add any information you do have about the video that is safe to share, and an explanation of why you believe the video to be authentic.
- **Follow Basic Practices.** Follow the guidance above on adding a title, description and tags.
- **State your intentions.** Provide a concise statement in the description summarizing why you believe it's important to share the video more broadly.
- **Retain a copy.** Online videos may be removed by their uploader or the online hosting platforms. If the video potentially contains valuable documentation, download it and retain an archived copy, plus a backup.

For more information

Learn more about
the verification and
curation
of human rights
video at [hrc.witness.
org/resources](https://hrc.witness.org/resources)

PART FIVE: LEARN MORE

Now that you know the basic practices for enhancing the evidentiary value of your video, we hope you will be interested in learning more advanced practices for:

- Preparing to collect video as evidence;
- Filming so your video has evidentiary value;
- Protecting, managing and organizing your videos;
- Sharing your videos;
- Verifying the videos filmed by others; and
- Using tech tools to enhance the evidentiary value of the video at every stage of the process.

For more information on these topics, visit bit.ly/WITNESSLibrary_VaE or vae.witness.org.

DEVELOPING A COLLECTION PLAN FOR GATHERING VIDEO EVIDENCE



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record”.

Do your best to implement the guidance below, but understand that nothing stated in this guide is absolute and you should modify the practices to fit your needs. When possible, seek support from local experts. Even if you cannot fully implement this guidance, your footage may still provide valuable information that could lead human rights organizations and advocates to answers and, in turn, to the protection of our basic human rights.

INTRODUCTION

A Collection Plan is essentially a list that is created by investigators, lawyers, and in some cases human rights activists, to detail:

- *The Elements of a Crime or Defense*, which are the specific things that a lawyer has to prove to:
 - i) find a defendant guilty; or
 - ii) free someone who has been falsely accused of a crime.
- Any type of evidence (i.e. video, photos, medical records, testimony) the lawyer has already collected to prove each element, or in other words, the “Completed” List; and
- Any type of evidence the lawyer still needs to collect to prove each element, or in other words, the “To Do” List.

FOR MORE INFORMATION

Elements of a Crime are briefly defined below, but you can also learn more in “All About the Law”
[bit.ly/
WITNESSLibrary
VaE](https://bit.ly/WITNESSLibraryVaE)

Who Is This For?

Collection planning is an advanced practice for human rights activists who intentionally seek to capture video footage for human rights documentation and use as potential evidence for long-term justice and accountability. Collection planning isn't for an eyewitness who unexpectedly documents a human rights violation.

While it's not mandatory, it's ideal for activists to undertake the collection planning process in collaboration with local lawyers that they trust and want to work with moving forward. If you are able to work in a team, collection planning builds a stronger bridge between activists, non-governmental organizations, investigators and lawyers. Collection planning will strengthen and streamline this collaboration by:

- Helping investigators and lawyers to better advise activists on the ground about what footage the activists should collect if they would like their video to be useful to the judicial process.
- Helping activists to better understand what they should spend their time and effort on filming so it's more likely the footage will be useful.

Most importantly, regardless of whether you have a legal partner or not, if you find this planning process outlined here too cumbersome, no worries - just keep in mind the Take Home Points on page 3 and when you have more time or need to implement the process more fully, the steps are here for you.

Working Together Can Strengthen Your Case



Plan



Capture



Submit to Court



Present

GOAL

The end goal is to ensure the footage you collect supports justice and accountability instead of being irrelevant or duplicative. Because justice systems differ around the world, it is important to keep in mind that a Collection Plan doesn't guarantee that your video will be used as evidence, but it can significantly strengthen the chances.

FOR QUICK REFERENCE

Filming or working in the field? Take the "Collection Planning Mini Guide" with you for fast access to key points: bit.ly/WITNESSLibraryVaE

TAKE HOME POINTS

Definition

A Collection Plan helps investigators and lawyers communicate their needs to frontline activists so the footage activists collect can better support a legal case. It is an advanced practice for activists who intentionally seek to capture video documentation to use as potential evidence for long-term justice and accountability.

A Collection Plan consists of three lists:

LIST 1: “Elements of a Crime” you seek to prove;

LIST 2: Evidence you have already collected to prove those elements;

LIST 3: Evidence you still need to collect.

Why Plan?

There are a number of worthy reasons. Planning will help you:

- Assess what footage will support the case you are trying to prove or the story you are trying to tell.
- Determine whether or not it’s worth risking your personal safety and the safety of others to capture footage.
- Ensure your filming efforts are targeted so you won’t miss opportunities or duplicate efforts.
- Communicate with your allies so everyone on your team understands what is needed and why.
- Enhance your documentation and, in turn, strengthen your case.

Steps to Create a Plan

STEP 1: ASK WHY? Determine why it is worth the time, resources and risks to collect this footage.

STEP 2: INCLUDE BASIC DETAILS. Write down basic information about the situation or violations you seek to document, such as a summary of the incident, names, dates, locations, etc. Download a blank Collection Plan form at bit.ly/WITNESSLibrary_VaE.

STEP 3: FIND THE ELEMENTS OF THE CRIME. List the elements of a crime you need to prove by working with a lawyer, researching the elements online, at a library or making an educated guess.

STEP 4: DETERMINE WHAT YOU HAVE AND WHAT YOU NEED. Write down two lists, “Completed” and “To Do”, for all the evidence you:

- Have already collected to prove each individual element of the crime;
- Still need to collect to prove each individual element of the crime. Highlight the video images you need.

STEP 5: REVIEW THE PLAN. If possible, go over the plan with the people you are filming with and those who you intend to give the footage to and then, go film!

WHY PLAN?

If you aren't a lawyer or an investigator, you might be wondering why you should learn about collection planning and why, as an activist, you too may want to use this tool? There are a number of worthy reasons.

REASON 1 Strategy

Citizens and human rights defenders may find themselves in spontaneous situations, where they have to act immediately and there is no time to plan what footage would be most valuable. However, there are a number of other situations when planning is possible, for example, in advance of a planned protest or to show widespread human rights abuses. Collection planning can help you strategically assess what footage or images will support the case you are trying to prove or the story you are trying to tell. Keep in mind that the more complicated the case or the story, the more need there is to create and implement a Collection Plan that lays out a clear roadmap to build a case.



FILMING

REASON 2 Security

Filming for human rights is dangerous. Those who do it take great personal risks. Planning will help you determine whether or not it's worth risking your personal safety and the safety of others to capture footage.

REASON 3 Efficiency

It takes time and money to collect video footage, so before you begin filming or requesting footage from others, it is important to consider why you need the video evidence and how it will be used. There are many good reasons to film, but the collection planning process will help ensure your filming efforts are targeted, efficient and useful. Planning also helps ensure you won't:

- Miss opportunities to collect revealing footage that you need; and
- Duplicate efforts by collecting the same footage that others have already filmed.

REASON 4 Enhance communications, Education & Trust

Activists often wonder why the footage they risk their lives to collect is not as useful as it could be to lawyers. Lawyers often wonder why activists aren't capturing footage that is more helpful to their cases. The Collection Plan serves as a tool that activists, lawyers or non-governmental organizations can use to communicate with each other. It shows activists what lawyers need and why they need it. In turn, it builds trust so the next time a lawyer asks an activist to film something that appears to be random – a communications tower, a public speech, the broken lock on the entrance to the hospital – the activist will have a better understanding of why the lawyer is making this request.

REASON 5 Strengthen cases

A good plan will undoubtedly strengthen your documentation and, in turn, enhance your case and your credibility.

KEY DEFINITIONS

Defined: Elements of a Crime

Every crime is broken down into very specific elements that need to be proved. To secure a conviction, a lawyer must prove every individual element, one-by-one. If there are five elements of a crime and the lawyer only proves four, then the defendant should go free. For example, to prove a defendant is guilty of a robbery a lawyer must demonstrate that:

1. Property was taken or carried away;
2. The defendant committed the taking;
3. The property does not belong to the defendant;
4. The property was taken using force or fear;
5. The defendant intends to permanently deprive the owner of his/her property.

Defined: Relevance

In order to be considered evidence, a video has to be “relevant”. This simply means that the evidence has to help prove one of the elements of the crime. Another way to think about relevance is this – when you are creating a plan, ask yourself what information could help an investigator, a lawyer or judge understand what happened? If it helps with understanding, it’s likely relevant.

A Straight Forward Example

If the defendant is on trial for robbery, the surveillance footage from the store showing the defendant taking products off the shelf and hiding them in a bag is relevant because it goes to proving elements of the crime – the defendant took property that was not theirs. If you also have video footage of the defendant exceeding the speed limit, in a school zone, five years prior to the robbery incident, this video is totally unrelated to the robbery charge, and thus not relevant. It’s as simple as that.

FOR MORE INFORMATION

See Elements of a Crime & Relevance in “All About the Law” at: bit.ly/WITNESSLibraryVaE

A SAMPLE COLLECTION PLAN

Now that we know what a Collection Plan is and why you it's worth the time to create one, take a moment to review this simple example of a plan. Note: This example is intended to provide ideas about what type of evidence to collect. It is not comprehensive Collection Plan.

CRIME: Torture * The elements are based on International Criminal Law		
The Element of the Crime we need to prove	COMPLETED: List of evidence already collected	TO DO: List of evidence still needed to collect
<input type="checkbox"/> The perpetrator inflicted severe physical or mental pain or suffering upon one or more people.	<input checked="" type="checkbox"/> A video filmed by the perpetrators showing five men repeatedly beating a man dressed in civilian clothes with a lash. <input checked="" type="checkbox"/> Detailed testimony from the victim about the pain he experienced during the beating and after. <input checked="" type="checkbox"/> A series of 20 photos of his injuries taken approximately two hours after the beating	<input type="checkbox"/> A second series of photos showing the injuries two weeks later. <input type="checkbox"/> Medical records from the hospital that examined the victim. <input type="checkbox"/> Testimony from the medical personnel that examined the victim. <input type="checkbox"/> Testimony from a whistle blower who used to work at the detention center and saw beatings like this one regularly.
<input type="checkbox"/> The person or people were in the custody or under the control of the perpetrators.	<input checked="" type="checkbox"/> A video filmed by the perpetrators showing five men repeatedly beating a man dressed in civilian clothes. His hands appear to be bound behind his back. His feet are tied with a rope to a rifle. He is lying on his back with his feet in the air. It appears that he is also blindfolded. The location is not clear from the video. <input checked="" type="checkbox"/> Detailed testimony from the victim about the location, number of guards protecting the location and his captivity.	<input type="checkbox"/> Photos of the detention center eight months after the torture of our victim took place once the detention center had been abandoned. <input type="checkbox"/> Testimony from a whistle blower who used to work at the detention center about its location, number of guards, etc. to corroborate the victim's testimony.
<input type="checkbox"/> Such pain and suffering did not arise from lawful sanctions.	Etc.	Etc.
<input type="checkbox"/> The perpetrator meant to engage in the infliction of severe physical or mental pain or suffering	Etc.	Etc.

CREATING A PLAN

Below are the steps to get started creating your own Collection Plan.

STEP 1

Ask Why?

Determine why it is worth the time, resources and risks to collect this footage. For example:

- ✓ What are the security risks in filming, collecting and storing the video?
- ✓ Why is this content valuable?
- ✓ Will it raise awareness or shed light on a situation?
- ✓ Will it spark an investigation?
- ✓ Will it support an investigation or the call for the arrest of a perpetrator?
- ✓ Will it help prove an element of a crime?
- ✓ Is it possible to gather information that is relevant to the case and/or could help an investigator, analyst, lawyer or judge better understand the story?

There are many good reasons to collect video information. This step ensures you know why it is worth it. If you decide it is, then move on to the steps below.

KEY DECISION POINT

To Write Up Your Plan or Not?

While it's not mandatory to write your plan down, a written plan can be essential if you are working with others or if you're working on a complex case. If you do want to write your plan down, we've provided a blank Collection Plan form at the end of this section.

STEP 2

Include Basic Details

Whether you are writing your plan down or not, it is important to consider and/or document the information listed below. Consider using the Collection Plan form included at the end of this section to fill in the following basic information:

- ✓ A summary of the incident or expected incident you seek to document;
- ✓ Date the plan is drafted;
- ✓ Name of people involved;
- ✓ Contact information for people involved;
- ✓ Pertinent comments and notes;
- ✓ Purposed filming location(s);
- ✓ Notes on security procedures.

STEP 3

Find the Elements of the Crime You Seek To Prove

option 1

The next step is to figure out what you need to prove. The best option would be to work with a lawyer or a legal collective that you would like to collaborate with to ensure you have the right information. If this option is not available, there are a number of ways to figure out the elements of the crime you are trying to prove even if you don't have a law degree.

- **World Intellectual Property Organization (WIPO)**¹ – On the site, search for “Penal Code [NAME OF COUNTRY]”. Ideally your country's laws will be right there for instant download in PDF format.
- **Google** – Try searching “Penal Code [NAME OF COUNTRY]” or “Criminal Code [NAME OF COUNTRY]” and you will likely find the PDF.
- **International Criminal Court (ICC)** – For International Criminal Law, visit **the elements of a crime page**² on the ICC website and chose a language to download a PDF of the elements of a crime.

Once you have the PDF of your country's penal code, use the “find” function to search the document for the crime you are interested in learning about (i.e. “murder”, “homicide”, “torture”, “rape”, “assault”, “discrimination”, etc.). From there, make your bullet pointed list of what you need to prove and add it to your Collection Plan.

collaborate
with a
lawyer



Use on-line
resources



option 2

If you don't have access to the internet or it's too dangerous to be online, another option would be to visit a local library or university. A librarian should be able to help you find the Penal Code and if you go to a law library, he or she should also be able to help you find the specific elements of the crimes you plan to document.

Use a Library



option 3

If the options above don't work, use your common sense. Recognizing crimes is instinctual. We all know a violation when we see it. So once you know what crimes you seek to document, sit down, pretend you are a judge and write down the specific details you would want the lawyers to prove if you were that judge.

KEY POINT

AN EDUCATED GUESS WILL ENHANCE THE VALUE OF YOUR FOOTAGE

In the lead up to – or during a human rights situation – neither activists nor attorneys will know exactly what crimes might be committed but you can make an educated guess. If a protest is planned, there could be excessive use of force or arbitrary arrests made by police forces. If you are in a mass atrocity situation, you are likely to witness crimes such as murder, torture and property destruction. If you are in a refugee camp, there is a high probability of sexual violence. While you cannot know exactly what violations you will be documenting, your educated guess will help you plan accordingly.

STEP 4 Fill in the “Completed” and “To Do” lists So You Understand What You Need

Now that you know what you need to prove, write down what you have already collected that will help a lawyer prove that element and then move on to your “To Do” list.

Since every crime and situation is different there are no absolute rules. Sometimes the same video clip can be used to prove multiple elements of a crime. For other elements, you will need completely different images. Regardless, when making your “To Do” list of images, it’s good to be as specific as possible by describing the footage you need using the six basic angles that are generally needed (360, overview, wide, medium, close-up and extreme close up). See the sample “To Do” list on the next page.



STEP 5 Review the Plan

Finally, if you are working with others, go over the plan with the people you are filming with and those who you intend to give the footage to. A review will ensure your team has a comprehensive understanding of the shot descriptions, locations and potential challenges. Now, it’s time to film!

SAMPLE COLLECTION PLAN: VIDEO “TO DO” LIST

In this example, you can see how the list of images changes with every element. So, think carefully about how to use video to tell as much of the full and honest story as possible, understanding that video has limitations on what it can and cannot document.

CRIME: <i>Excessive Police Force by an Officer on Scene</i> <i>*The elements are based on Brazilian Law --- three of the eight elements of this crime are listed here.</i>	
<i>The Element of the Crime we need to prove</i>	<i>TO DO: List of images that could help prove this element if possible to capture safely.</i>
<input type="checkbox"/> <i>The suspect was acting within the scope of his/her employment as an employee of a civil or military service.</i>	<input type="checkbox"/> <i>Medium shot of the suspect in full uniform.</i> <input type="checkbox"/> <i>Close-up shot of the suspect's badge number, nameplate and face and anything that shows rank.</i> <input type="checkbox"/> <i>Wide shot of the vehicle the suspect was driving.</i> <input type="checkbox"/> <i>Close-up of the license plate and any identifying marks on the vehicle the suspect was driving/riding in.</i> <input type="checkbox"/> <i>Close-up video or photos of any documentation showing the suspect was on duty that day --- timecards, signed and dated reports, etc.</i> <input type="checkbox"/> <i>A variety of shots placing the suspect at the scene of the crime.</i> <input type="checkbox"/> <i>A variety of shots of the suspect giving orders on scene.</i>
<input type="checkbox"/> <i>The suspect acted arbitrarily.</i>	<input type="checkbox"/> <i>Images taken before the use of excessive force to demonstrate that it was unprovoked.</i> <input type="checkbox"/> <i>A variety of shots showing whether the victim was armed or not.</i> <input type="checkbox"/> <i>Continuous footage of the arrest so a lawyer can evaluate whether: - the officer followed arrest protocols or not; and - if the victim was resisting arrest or not.</i>
<input type="checkbox"/> <i>The suspect intended to undermine the physical safety of the victim.</i>	<input type="checkbox"/> <i>Continuous footage of force being used by the suspect against the victim.</i> <input type="checkbox"/> <i>Images that allow for identification of the weapon being used.</i> <input type="checkbox"/> <i>Images showing the severity of the injuries to illustrate disproportionality.</i> <input type="checkbox"/> <i>Any images showing the violation of prescribed protocols. For example: <input type="checkbox"/> <i>Images showing the use of live ammunition versus rubber bullets;</i> <input type="checkbox"/> <i>Close-up shots of the bullet cases including the headstamp on the casing as the stamp is the most important part;</i> <input type="checkbox"/> <i>Wide and medium shots showing the number of rounds fired;</i> <input type="checkbox"/> <i>If official protocols call for officers to aim and shoot below the waist, capture images that show the height of the shot fired as compared to the ground.</i> </i> <input type="checkbox"/> <i>Any audio of the suspect giving orders or making statement that would go to show intent to violate prescribed protocols.</i>

FILMING

FOR MORE
INFORMATION

See “Basic Practices
“and
“Filming Secure
Scenes” at:
[bit.ly/
WITNESSLibrary_
VaE](https://bit.ly/WITNESSLibrary_VaE)

ADDITIONAL KEY PRINCIPLES

- Don't just focus on the documenting the crime, focus also on documenting who committed the crime and how they did it.
- Think logically about what you need.
- Be creative and have an open mind.
- Prioritize quality over quantity.
- Once you begin your collection efforts, keep careful records of where and when you gather the materials and protect it from being tampered with by others so that your footage can be verified.
- Remember, as long as a plan is put together thoughtfully, there is no right or wrong way to create or implement a Collection Plan.

Special Thanks to CIJA for Helping

Special thanks to the Commission for International Justice and Accountability for their insights on this section.

NEXT STEP CRIME-BASED V. LINKAGE EVIDENCE

If the Collection Planning process is helpful to your work, you will want to read "[Filming Linkage Evidence](#)". This is important because to hold someone accountable for a crime, lawyers must prove:

- What crime was committed?
- Who did it?
- How the perpetrator committed the crime?

The video footage you collect that documents the crime itself is called "crime-based evidence". The video footage you collect that documents who did it and how they did it is called "linkage evidence".

Citizens and human rights activists are often skilled at capturing footage of the crime that is being committed but it is much more difficult to document who committed the crime and how they did it. Yet, investigators and lawyers spend the majority of their time working to prove the "Who" and the "How". So while footage of the commission of crimes is valuable, capturing the "Who" and "How" is important for long-term justice and accountability, especially in situations where there are mass atrocities and systemic human rights violations. As a citizen witness or human rights activists on the ground, you are uniquely placed to gather linkage evidence so learning about this matters.

¹World Intellectual Property Organization: <http://www.wipo.int/portal/en/>

²International Criminal Court: <http://bit.ly/1GOAk19>

COLLECTION PLANNING FORM

Here's a blank Collection Plan Form you can either print out and use or modify to meet your needs.

Step 1: Make a list of the crimes you will likely document.

Step 2: Determine what elements of a crime you seek to prove.

Step 3: Make a list of the images you believe can help you prove the elements of the crimes you listed.

COLLECTION PLAN: For Video Evidence

PURPOSE For Collecting Video Footage:

SUMMARY OF SITUATION:

DATE PLAN DRAFTED:

NAME: Person who created this Plan/Request for Footage:

CONTACT INFORMATION:

NAME: Videographer

CONTACT INFORMATION:

PROPOSED LOCATION:

COMMENTS / NOTES:

ADDITIONAL NOTES ON SHOTS:

- ☐ Overview
- ☐ 360-degree pan
- ☐ Wide
- ☐ Medium
- ☐ Close-Ups
- ☐ Extreme Close-Ups

LIST OF CRIMES THAT COULD BE DOCUMENTED (i.e. murder, torture, excessive force):

NARRATION DIRECTION: For example, include time, date, specific location, videographer's name and contact information.

FILMING

COLLECTION PLANNING FORM CONTINUED

<i>ELEMENTS LIST: What you need to prove or think you need to prove?</i>	<i>COMPLETED: List of images already collected that help prove this element of the crime. Be specific.</i>	<i>TO DO: List of images that could help prove this element of the crime. Be specific.</i>

FILMING

AFTER: FILMING SECURE SCENES



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record”.

Do your best to implement the guidance below, but understand that nothing stated in this guide is absolute and you should modify the practices to fit your needs. When possible, seek support from local experts. Even if you cannot fully implement this guidance, your footage may still provide valuable information that could lead human rights organizations and advocates to answers and, in turn, to the protection of our basic human rights.

FILMING

INTRODUCTION

In the field, we often focus our filming efforts on capturing the crime as it happens - capturing the police using excessive force during an arrest, bulldozers leveling homes or oil as it pours out of a crashed tanker. While footage showing the actual commission of an alleged crime may very well be valuable, it is also often valuable to have documentation of the before and after. Here we discuss how to film in the aftermath of a human rights violation.

Why film after?

Video filmed in the aftermath of an event - after the bullets have stopped flying, when the bombing has ended and the bulldozers are gone - tends to be useful for several reasons. It can be:

- Used to easily illustrate an overview or layout of the crime scene allowing judges and juries to more readily understand what took place.
- Valuable to show how other types of evidence were collected. For instance, it can be used to document the exhumation of a mass grave.
- Used to verify that evidence has not been planted or falsified.

Goal of filming the aftermath

Enable others - investigators, analysts, lawyers and possibly judges - to visualize the scene, as the videographer first sees it. When well done, the video footage of a human rights incident scene should give viewers a sense of being there.

Filming a secure scene

Here are the broad steps to the “Spiral Approach” to filming a secure crime scene. Often, the steps cannot be followed as outlined because a space is too small, you can only film from one precise point versus being able to walk around the scene, a wall is blocking your path or any number of other reasons. So while you will have to modify the steps below to fit your situation and ensure you are filming safely, these basic principles apply:

- As possible, capture narration and visuals that verify the time, date and location of the scene.
- As possible film from every corner or side of the scene.
- As possible, capture overview, wide, medium and close-up shots of the scene.

TEST YOUR SKILLS

After reviewing the method here, practice by filming a mock crime scene. Then give your footage to someone unfamiliar with the location. Ask them to hand draw a map of the scene you filmed. If the map is accurate, your videography skills are solid. If not, try again!

TAKE HOME POINTS

STEP 1

Ensure the scene is safe for filming

STEP 2

Make a filming plan

STEP 3

Add preliminary information

STEP 4

Film an overview shot and the horizon

STEP 5

Film in a slow 360-degree circle in a 15-second interval from your start point

STEP 6

Film 10-second wide shots from the four-corners or sides of the crime scene

STEP 7

Film 10-second medium shots from the four-corners or sides of the crime scene

STEP 8

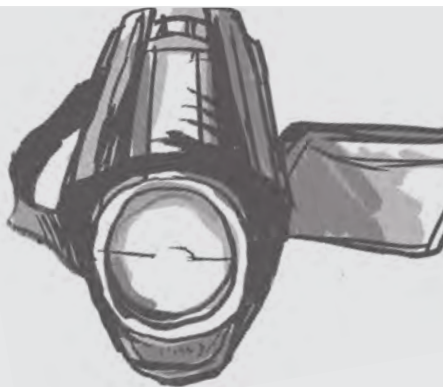
Film 10-second close up shots of key evidence in a spiral pattern

STEP 9

Complete a Camera Report

STEP 10

Supplement the video with maps, still photos, drawings, etc. as appropriate



TEN STEPS: IN DETAIL

Before you leave for the scene, check that your equipment is in proper working order and then follow these steps.

STEP 1

Ensure the scene is safe for filming

Your safety and the safety of the community come first. Be on the lookout for potential physical hazards. For instance, do not move bodies if there is any possibility that the person handling the body is not adequately protected against the transmission of illness, do not enter a collapsed building that is unstable, etc. Also, consider whether the act of filming will put your safety, or the safety of the community, at risk if someone sees.

STEP 2

Make a filming plan

Identify the videographer then, if you are working with a professional investigator, the investigator and videographer should walk through the crime scene and plan how to film it. In most human right situations, an investigator is not present and the videographer must make the plan on his or her own.

STEP 3

Add preliminary information to your video recording using either a piece of paper or narration

If safe, begin your recording with either a written 'slate' containing the below information or speak the information into the camera microphone.

- Videographer Name / Contact Information
- Time
- Date
- Specific location, including the GPS location if available

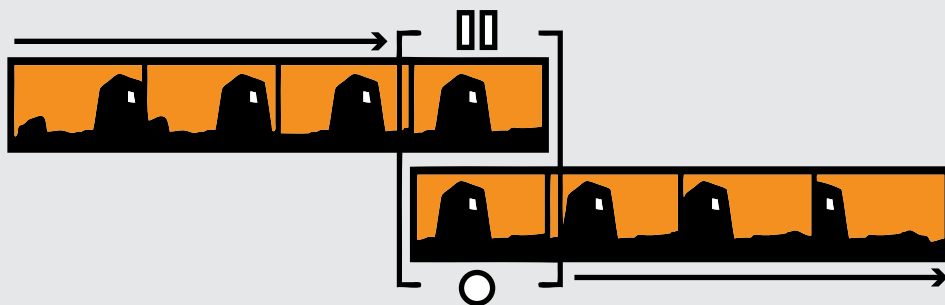


FOR MORE INFORMATION

See Adding Essential Information to Video and Techniques for Filming Anonymously

KEY POINT: ONE SHOT OR PAUSES?

You are now ready to begin recording. When filming for evidence, it is best to film continuously. However, if the crime scene is large, complex or dangerous, it will be difficult to document the scene in only one shot. If you need to, you can start and stop the recording but, if possible, begin the new clip by pointing the camera at the same location you were filming when you pressed stop and then hit record. In other words, overlap the shots. This will help the shots blend together and keep the viewer oriented.



FILMING

STEP 4

Film overview footage and the horizon to help verify the date and location

If possible, capture the following shots:

- A shot from above the crime scene.
- A shot of the sky, which should ideally capture the weather and the angle of the sun or moon to the horizon.
- Any landmarks such as a mountain, river, street sign, church, etc.

Hold these shots for 10 seconds.

From above



Horizon with sun or moon



Landmark



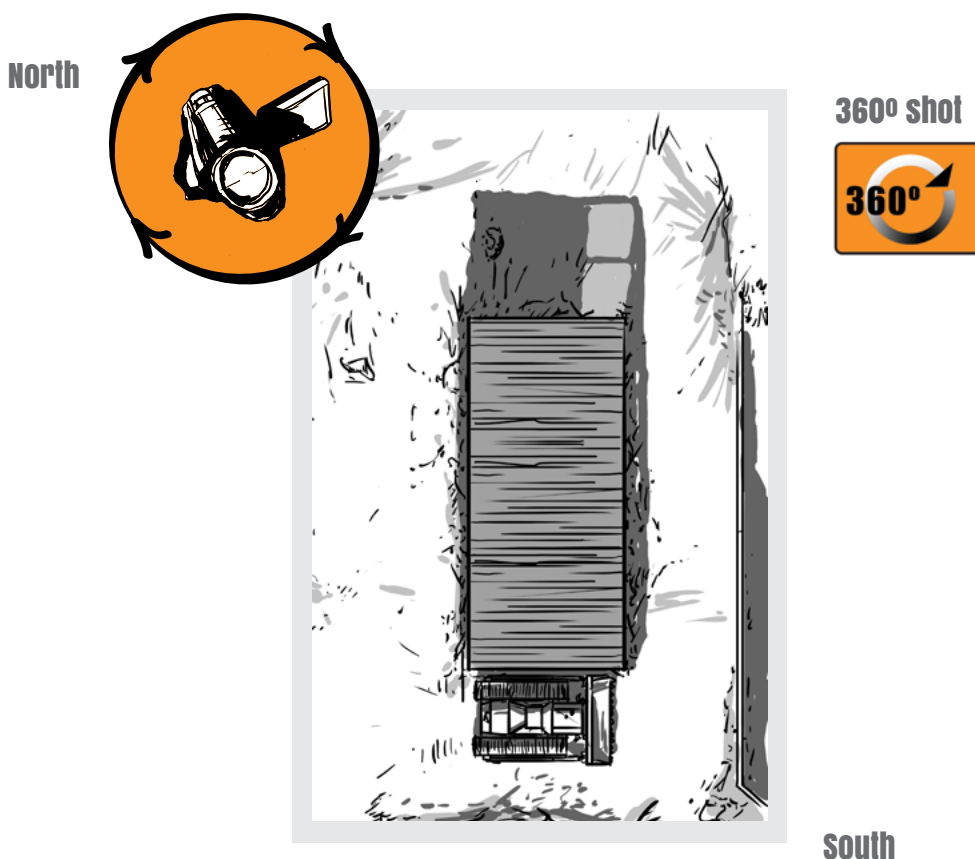
KEY POINT: BE CREATIVE

Other ideas: If you have pen and paper you could draw an arrow, add the word “north”, lay it on the ground pointing north and film it. You could also add a shot of the front cover of a newspaper or the date and time on your cell phone screen. The key point here is that there are many ways to include visuals that show where you are at, when. Be creative.

STEP 5

Film a slow 360-degree shot from the point where you begin filming in a 15-second interval

- Pick a starting point at one corner or side of the crime scene. If possible, pick a starting location that is a cardinal direction (north, south, east or west) as this is a good practice to get into and helps with re-creation of scenes later.
- If it is safe to include your voice, state your starting location on camera (north corner, south side, east bank, west corner, northeast of the square, etc.).
- While continuing to record, slowly - aim for 15 seconds or more - turn completely around in a circle from the spot where you are standing, recording a 360-degree view of the scene.



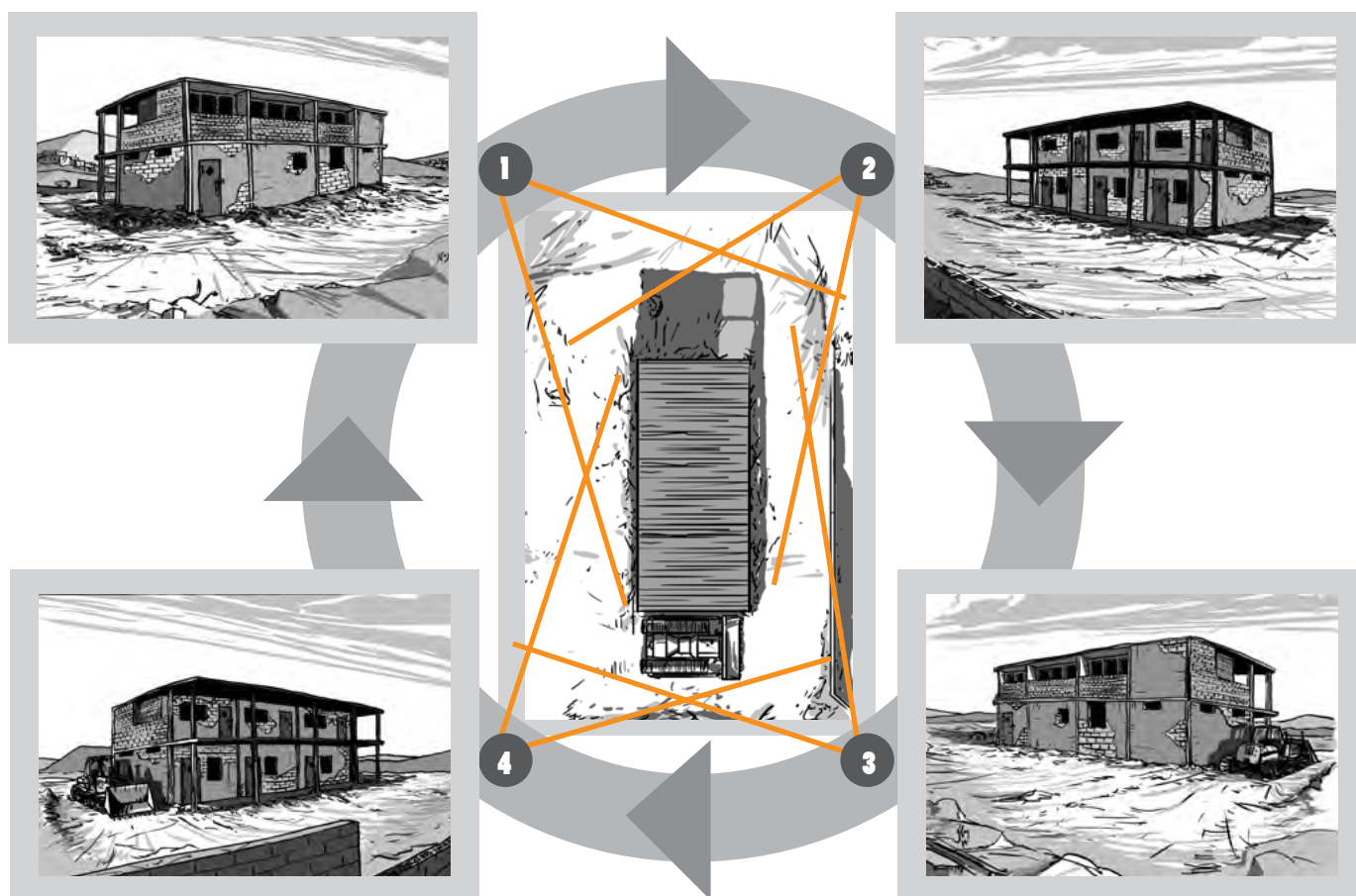
STEP 6

Film 10-second wide shots from the four-corners or sides of the crime scene

The objective of capturing wide shots is to provide an easily understandable layout of the crime scene.

- From the start position, hold your first wide shot for 10 seconds. Then, while still recording, move slowly clockwise, stopping at each corner or side of the scene, to hold a wide shot for 10 seconds until you have completed the circle.
- Keep the video recording as you move to STEP 7.

Wide shot



STEP 7

Film 10-second medium shots from the four corners or sides of the crime scene

The objective of capturing medium shots is to establish the location of evidence in the crime scene and the relationship of one piece of evidence to another.

- From your original start location, move in closer to the center of the scene.
- Hold your first medium shot for 10 seconds. Then, while still recording, move slowly clockwise, stopping at each corner or side of the scene, to hold a medium shot for 10 seconds until you have completed the circle.
- Keep the video recording as you move to STEP 8.

FILMING

Medium shot



1



2



3



4

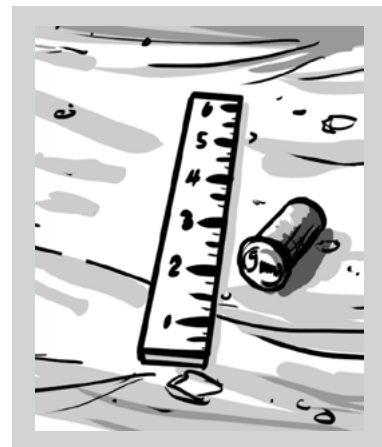


STEP 8

Film 10-second close up shots of key evidence in a spiral pattern

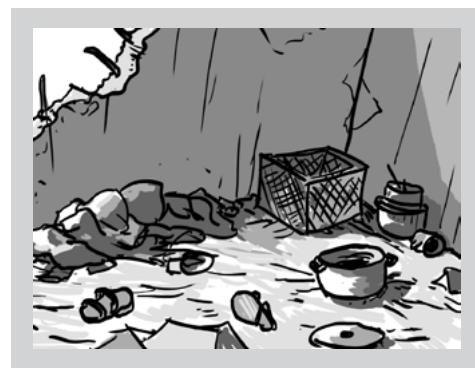
The objective of capturing close-up footage is to be able to see details in the scene.

- From your original start location, moving clockwise and in a spiral, focus in on the first piece of evidence. Hold a focused close-up shot for 10 seconds.
- If possible take a 10-second shot of the same piece of evidence with something that shows scale. For instance, lay a cell phone beside the evidence you want to capture so analysts can determine its size.
- Then, as you continue moving clockwise and in the spiral pattern, take a close-up shot of any details you believe may be significant, held for 10 seconds both with and without something that shows scale.



FILMING

close-up shot



STEP 9

complete a camera Report

A Camera Report allows investigators and analysts to quickly determine if the footage may be relevant to their investigation and helps to authenticate, verify and preserve the chain-of-custody for the footage. Filling out these reports takes time that you likely don't have. However, a Camera Report greatly enhances the evidentiary potential of your footage. The Camera Report should be completed by the videographer and should include a note if anything in the scene was moved.

**FOR MORE
INFORMATION**

See [Completing a Camera Report](#)

STEP 10

Supplement the video with maps, still photos, drawings, etc. as appropriate

If appropriate, complement the video footage with other documentation. For instance, if you use a hand-drawn or topographic map to explain the scene, include a close up of the map and have the videographer sign and date the map and store it with the footage. If you complement the footage with a hand-drawn sketch, the hand-drawn sketch should: be the overhead view, note rough scale, note magnetic north, be signed and dated by the preparer, a photocopy made and the original saved as evidence. Also, consider taking still photos. Still photos are valuable because they are generally higher resolution and, in turn, able to capture more detail. Additionally, still photos are easier to organize and access.

ADDITIONAL GUIDELINES

Videos need to accurately and honestly show the incident scene. To be accurate:

- Never reconstruct a scene - show it as you found it.
- Be careful not to destroy evidence while filming.
- Be as concise as possible. Though the length of the video will depend on the complexity of the scene, be purposeful about what you film.
- Ensure all camera movement, including pans, zooms and tilts are slow, smooth and deliberate.
- Use the proper exposure.
- Have a maximum depth of field.
- The video should be free from distortion.
- The video should be in sharp focus.
- Whenever possible, use a tripod.

It's often not possible for activists who are on the ground and new to filming to implement these additional guidelines. That's okay. Don't let your technical skills stop you from capturing footage if it's safe to do so and you think the footage will support your work to protect human rights. Simply do your best within the confines of safety, security and understanding.

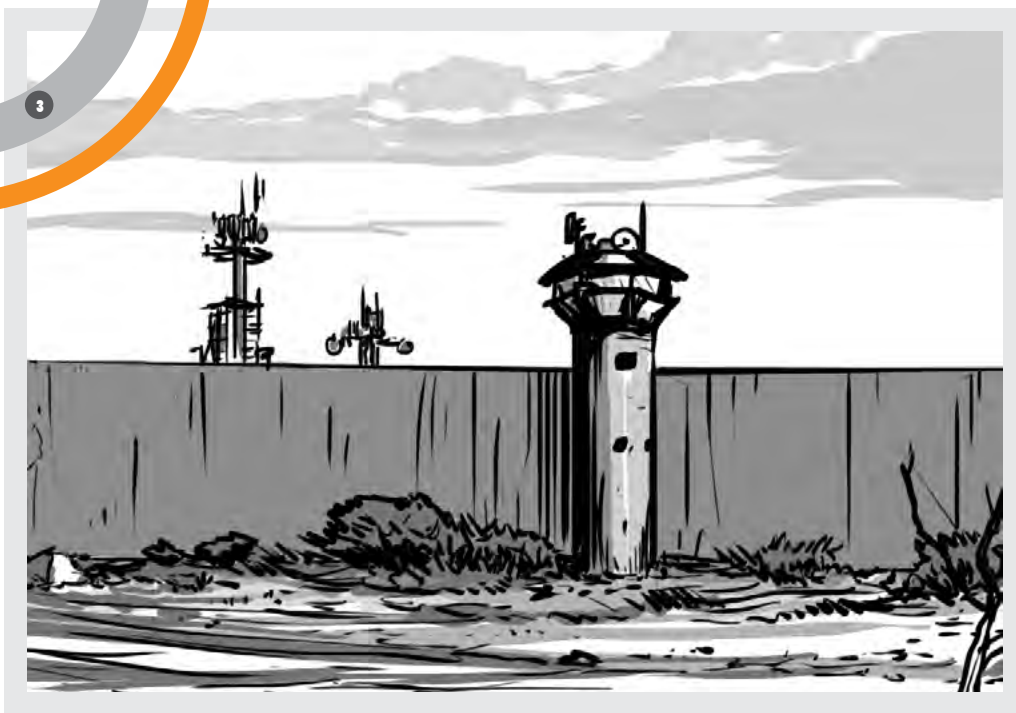
NOW BREAK THE RULES

Videographers frequently find themselves in situations where it is impossible to fully implement the best practices outlined above. Remembering that your goal is to ensure that those who are not on the ground with you can draw an accurate map of the scene by watching the video, consider how you would adapt this filming technique if you were:

- At the wall in Gaza and are only able to film 180-degrees instead of 360-degrees.
- On a rooftop overlooking a protest in the streets of Brazil and it's too dangerous to move from the spot you are in so you can only film from the one location.
- At a make-shift detention center abandoned by the Syrian regime where the regime was holding and allegedly torturing prisoners.



When 360° isn't possible...



FROM THE FIELD

FILMING LONG AFTER A CRIME:

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY) V. DOKMANOVIĆ

Backstory

In November of 1991, Serbian soldiers moved over 200 individuals from a hospital in the town of Vukovar, Croatia to a prison camp on a farm called Ovčara. Here, the soldiers beat their prisoners for several hours and then shot and killed them. Slavko Dokmanović was the President of the Vukovar Municipality at the time. He was charged by the International Criminal Tribunal for the Former Yugoslavia for: i) his personal participation in the actual beatings and killings; and ii) aiding and abetting in the beating and willful killing of these 200 plus individuals.



Ovčara Farm



Slavko Dokmanović

Dokmanović pleaded not guilty, alleging that he could not have committed these crimes because he was nowhere near the farm at the time of the massacre. To prove it, his defense attorney introduced a video of Dokmanović and his colleagues traveling in a car along rural roads with a time and date stamp that matched the time and date of the killings. He argued that this video proved he wasn't at the farm when the killings occurred. In other words, Dokmanović gave the court an alibi video.

Disproving the Alibi Video

The prosecution didn't believe him - nor did they trust the video - so they deployed a crime-scene investigator named Vladimir Dzuro to travel to Vukovar. With camera in hand, Dzuro hopped in a vehicle and retraced the route Dokmanović claimed he took on the afternoon of Nov. 21, 1991. A clip from the investigator's video can be viewed at: bit.ly/VaE_Dokmanovic.



Still from the video recorded by investigator Vladimir Dzuro.

FILMING

SHOWN IN THE VIDEO

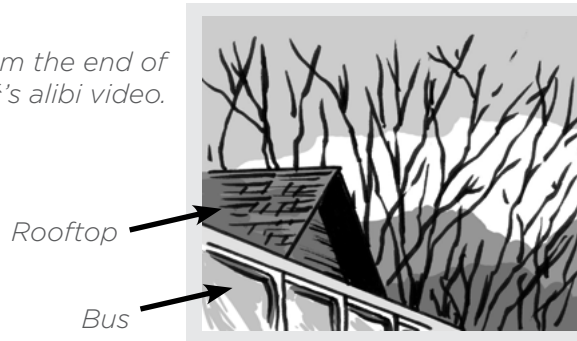
In case you are unable to watch this 1-minute clip, it is a good example of how a professional crime-scene videographer films. While the vehicle is stopped, he begins filming a very slow 180-degree pan. He then holds the camera steady while filming a wide shot driving along the route.

When Dzuro got back from the field, he and his team watched the clips side-by-side and compared Dokmanović's alibi video with the one filmed by Dzuro. They did not match up. When comparing the footage, the prosecution discovered that Dokmanović's video did not show him going from Point A to Point B, as was claimed, but rather it showed him going from Point A to Point A. Essentially, the investigator figured out that Dokmanović must have made a U-turn.

How did they determine this? The key was in the trees. At the very end of Dokmanović's alibi tape all that can be seen on the recording are buses, part of a roof of a house and the top of a tree. The prosecutor then brought in Professor Paul Tabbash, an expert in dendrology, or, in other words, a tree scientist.

Interestingly, trees are just like fingerprints - no two trees have the same branch patterns. Using the pattern of branches, Tabbash was able to establish that the walnut tree at the end of the investigator's video clip did not match the tree at the end of Dokmanović's video. In non-legal terms this is called a "smoking gun" moment.

Screen grab from the end of Dokmanović's alibi video.



The Result

While all of this did not prove that Dokmanović was at the farm when the killing happened, it undermined Dokmanović's credibility and his alibi. Once the prosecution succeeded in proving that Dokmanović lied about his alibi, the judges found it difficult, if not impossible, to trust other statements he made under oath.

Dokmanović took his own life nine days before his verdict was to be handed down. While a verdict was never issued, the family members of the men who were summarily killed that day on the farm know a piece of the truth thanks to a prosecutor, a tree scientist and a crime-scene videographer who went out and filmed the road and the trees on a sunny day long-after the massacre occurred.

TAKE HOME POINTS

We can learn a number of lessons from this story.

First, never compromise your credibility because once it's lost, it's very difficult (if not impossible) to get back.

Second, video alone did not prove Dokmanović falsified his alibi tape. Video combined with the technical analysis provided by an expert proved the lie.

Third, verifying that a video shows what one side purports it shows is vital.

Fourth, while filming the crime in progress is certainly valuable, filming in the aftermath of a crime can be just as critical.

ADDITIONAL RESOURCES

- Crime Scene and Evidence Photographer's a Guide by Steven Staggs which can be ordered at staggsublishing.com/CSEPG.html
- Section 20: DRAFT Recommendations and Guidelines for Crime Scene/Critical Incident Videography by the Scientific Working Group on Imaging Technology (SWGIT), available at crime-scene-investigator.net/swgit-section20.pdf

ADDING ESSENTIAL INFORMATION TO VIDEO



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record”.

Do your best to implement the guidance below, but understand that nothing stated in this guide is absolute and you should modify the practices to fit your needs. When possible, seek support from local experts. Even if you cannot fully implement this guidance, your footage may still provide valuable information that could lead human rights organizations and advocates to answers and, in turn, to the protection of our basic human rights.

FILMING

INTRODUCTION

To be evidence, investigators, analysts and lawyers must be able to prove:

- When: The date and time of the filming
- Where: The location
- What: That the content in the video is, in fact, what it says it is

and if safe,

- Who: The person that captured the footage on camera

Adding this information to a video will make it much easier for reviewers that were not at the scene of the human rights incident to verify the content. Easier verification means there is a better chance that the video will be useful to secure justice. By adapting the steps and script below to fit your situation and security limitations, you can enhance the evidentiary value of video you take the time and risk to collect.

KEY DECISION POINT: SAFETY

Filming for human rights can be dangerous. Your safety, and the safety of the individuals and communities you are working to protect, is always more important than capturing footage. Before you film, be sure to carefully consider:

- Whether filming is an appropriate documentation tool or not?
- If so, ask yourself whether it's safe to disclose your identity and the identity of others on scene or whether you should film anonymously and hide the identities on those you film?

If you decide it's safe to film, disclose your identity and the identities of other individuals on scene, then here are some ideas on how you can add essential information to your video using narration or a written camera slate.

FOR MORE INFORMATION

If safety and security requires that you film anonymously, see [Techniques for Filming Anonymously](#).

TAKE HOME POINTS

FOUR STEPS: IN SHORT

If you have determined it is safe to include essential information then, use the camera microphone or a piece of paper to add the following information:

STEP 1

Who, When, and Where: Introductory Information

Begin by recording your name, contact information, date, time, location and the names and contact information of other individuals that may have information about the incident.

STEP 2

How: Orient Your Viewers by Describing How You Will Film

While filming, clearly state how you are filming the scene – from north to south, from above the scene, etc.

STEP 3

(optional)

What: Factually Describe what the Video Documents

If appropriate for your situation, add a concise and factual description of the human rights content the viewer sees to the recording.

STEP 4

Wrap Up Filming

End by stating the time you completed filming.

- Adapt as necessary to fit your situation.
- Provide only factual information.
- Leave out unsupported opinions.
- If you need to film anonymously, see Techniques for Filming Anonymously.



FILMING

FOUR STEPS: A DETAILED SCRIPT

If it is safe to record your voice and provide contact information, adapt the script below to fit your security situation.

STEP 1

Who, When, and Where: Add introductory information

Begin with:

WHO?

My name is _____ [full name]. I go by _____ [any aliases].
I can be contacted via _____ [organization if you have one and full contact information].

WHEN & WHERE?

This video footage was filmed on
_____ [day] _____ [month] _____ [year]
at _____ [time][am or pm]
at _____ [specific location]
in _____ [city] _____ [state/province] _____ [country].

Who?



When?



Where?



WHO ELSE?

Other people who are here on scene with me and who may have relevant information about the incident are:

_____ [full name] _____ [full contact information]
_____ [full name] _____ [full contact information]

Plus others ...

STEP 2

HOW: Orient Your Viewers by Describing *HOW* You Will Film

While filming add:

I will film _____ [describe how you will film the scene before or while you are filming]

Examples:

“I am beginning filming ...

... in the northeast corner of the square and will then move clockwise around the scene.”

... along the west bank of the river and then walk along the south along the river bank.”

... at the main entrance to the hospital located on the south side of the building along Main Street.”

FILMING

KEY DECISION POINT

Next, you will need to decide whether or not you are going to describe what the viewer sees in the video while filming or not. There is no right answer. Here are two scenarios - of many - to consider:

SCENARIO 1: You are a working along side a team of lawyers as a legal observer documenting a protest. After the protest is over, you bring your footage along with a written report documenting what you saw to the lawyers for safe- keeping and for their review. In this situation, it's generally best to speak a little as possible adding only who, when, where and how you are filming.

SCENARIO 2: You are filming in a mass atrocity situation. There is no functioning legal system. There is no safe place to bring your video. And there are thousands of people capturing thousands of videos of the human rights violations that occur every day. In this situation, it's generally best to add factual information about what the viewer is seeing so that investigators and analysts who are far away from the incident scene, sifting through the hours upon hours of video, can more quickly identify video footage that might be helpful in the justice process.

TAKE HOME POINT: Whether you only add the who, when, where and how or provide additional factual descriptions of the content while filming will depend on the situation.

STEP 3

(optional)

WHAT: Factually Describe what the video Documents

If you decided to describe the content in the video, add the following to the beginning of your video, as applicable:

If filming in ANTICIPATION of a human rights incident add this:

The video footage captured here documents _____ [describe the footage we are about to see].

Examples:

“The video footage captured here documents ...

... all the schools in Homs, Syria in anticipation of airstrikes.”

... streets where a protest is expected to take place tomorrow.”

... the community of Largo do Tanque before the forced evictions began.”

... the Alabama coast near prior to the oil from the spill reaching it.”

FILMING

School Before



School After



If filming DURING and/or AFTER a human rights incident add this:

The video footage captured here documents an alleged _____ [describe the possible violation and the footage we will see].

Examples

“The video footage captured here documents the alleged ...

... use of excessive police force.”

... burning of a village by the militia.”

... detentions at military checkpoints.”

... unsanitary conditions at the refugee camp.”

STEP 3

continued

If, after considering all the pros and cons of filming an **INTERVIEW** for legal evidentiary purposes, you decide that video is the best option to record testimony then modify this.

I am about to interview _____ [full name] about _____ [factual description of the incident you are about to discuss with the witness].

I am speaking to _____ [full name so long as safety and security allows] because he/she _____ [describe the witness' role asking, Was he/she injured in the incident? Does he/she know someone who was injured or killed? Does he/she have relevant medical expertise? Relevant military expertise? Was it his/her property that was impacted?]

Examples:

"The interviewee sustained injuries when he was pulled out of the car by the military police at a checkpoint."

"The child killed in the attack was the interviewee's son."

"The interviewee is a medical doctor that specializes in documenting sexual violence. She examined ten of the victims."

"The interviewee previously served with the U.S. military and did two tours of duty in the Middle East."

"One of the homes bulldozed was owned by the interviewee."

FILMING

FOR MORE INFORMATION

See Interviewing for Legal Evidentiary Purposes

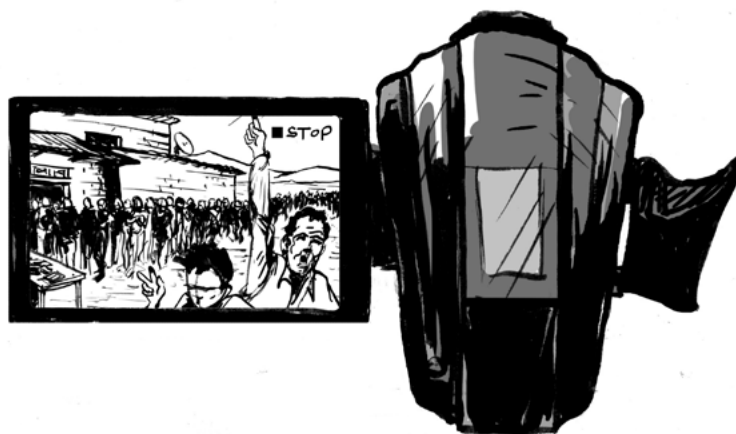


STEP 4

wrap up filming

End with:

I completed filming at _____ [time].



KEY POINT: INCLUDE ONLY FACTS. LEAVE OUT UNSUPPORTED OPINIONS.

If you decide to include key factual information that will assist the viewer in understanding the footage (see above) then, approximations and educated guesses are okay and can be helpful but do not include firm conclusions, unsupported opinions, exaggerations or misinformation.

It is hard to set opinions aside when documenting human rights incidents because the situations you are documenting are heartbreaking but try. Try because unsupported opinions can sometimes make a video “prejudicial”. And if a video is prejudicial, it may not be allowed in court as evidence.

On December 27, 2008, there was an explosion outside of an elementary school in eastern Kabul, Afghanistan. The account below has been adapted from a news article about the bombing for illustrative purposes only.

DO

- This footage documents an alleged attack near an army post and primary school located in eastern Kabul. According to witnesses, tribal elders were meeting at the post.
- The alleged bombing took place around 3 pm on December 27, 2008. Witnesses told us that the children were gathered in their classrooms to receive end-of-year certificates when the explosion happened.
- According to witnesses, the blast was detonated by a suicide bomber.
- I do not know the exact count but it looks like approximately 10-15 children were killed. The young victims look to be between the ages of 8-10 years old. This makes sense since the blast impacted an elementary school. It also looks like another 50 or so people were injured.
- I am now going to film close up shots of text books and shoes at the blast site..

Don't

- This is footage of one of our schools. As you can see, it has been violently bombed in an act of terrorism by our enemies who seek to kill innocent children.
- Our enemies attacked just as the children were receiving their end-of-year certificates.
- Our enemies committed this horrific attack using a bomb detonated by a suicide bomber to directly target children.
- So many are children are dead. So many have been violently injured in this inhumane attack. It is one of the deadliest strikes in months.
- As you can see from this video, the children's text books and shoes are covering the ground, bloodied by this brutality and blatant disregard for human life.

FOR MORE INFORMATION

To learn more about “prejudicial” see All About Evidence but in short, if a video is deemed prejudicial, it's simply means the video is thought to be biased and will not be considered by a court of law.

HERE'S AN EXAMPLE

My name is Morgan Wells. I work for the organization EVIDENCE and can be contacted at morgan@xxxxx.com or +1 111.222.3333. This video footage was captured on January 25, 2015 beginning at 10:08 am at 800 Wall St., New York, NY, USA.

Other people who are here on scene with me and who may have relevant information about the likely arrest at the corner of Wall Street and Pearl Street in New York are:

- John Smith, 800 Wall Street, 5th Floor, New York, NY, USA, john@xxxxx.com , +1 111.222.3333; and
- Jane Williams, 800 Wall Street, 5th Floor, New York, NY, USA, jane@xxxxx.com , +1 111.222.3333

The footage is captured from a 5th floor window located on the southeast corner of the building. I am filming from the window looking down onto the scene on the street at the corner of Wall St. and Pearl St. This was the only vantage point from which I was able to film.

OPTIONAL: The video captured here documents an alleged use of excessive force by the New York Police Department against an African American man who appears to be in his early 20s. No protests were taking place at the time and I do not know what sparked the incident.

I completed filming this incident at 10:30 am.



TEST YOUR SKILLS

After reviewing the guidance here, practice by creating a mock crime scene. Then, using the camera microphone, record yourself as you document the scene. Turn the page to find out what to pay attention to when you review the footage?

A SLATE TO ADAPT

If you would prefer not to record your voice for safety and security reasons, then consider whether you could create a 'slate' that you can fill out and hold up in front of the camera when you first begin filming. If safe, here's an example to either print out and use or to modify.

Incident	Date/Time
Specific Location (with GPS Coordinate if Available)	
ONLY WRITE DOWN AND RECORD INFORMATION THAT YOU CAN SAFELY INCLUDE	
Videographer Name & Contact Information	
Investigator Name & Contact Information	
Comments including names and contact information of others who may have information about this incident	

FILMING

TEST YOUR SKILLS

Once you completed the exercise on the previous page, play the footage back paying special attention to whether you included only objective information or unsupported opinions. If you only included factual information, yours skills are solid. If you included unsupported opinions try again!

If you don't have a piece of paper, get creative by filming anything that has a reliable date on it such as:

- The front page of a newspaper
- Your cell phone screen
- Your watch

Then film visuals that will verify your location such as:

- A street sign
- A landmark
- The skyline if it has identifiable features such as mountains

PROVING RESPONSIBILITY: FILMING LINKAGE & NOTICE EVIDENCE



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record”.

Do your best to implement the guidance below, but understand that nothing stated in this guide is absolute and you should modify the practices to fit your needs. When possible, seek support from local experts. Even if you cannot fully implement this guidance, your footage may still provide valuable information that could lead human rights organizations and advocates to answers and, in turn, to the protection of our basic human rights.

FILMING

INTRODUCTION

Video can be a powerful tool for documenting human rights crimes as they happen – images of civilians being tortured, a home being illegally bulldozed, forced labor conditions or chemicals being illegally dumped into a once clean river. However, if you are documenting for long-term justice and accountability, there is much more to capture in addition to the crimes.

Video of the actual violation is important to successfully hold a perpetrator accountable. This shows:

- **What** human rights crime was committed (e.g. murder, torture, rape, trafficking, excessive force, property damage, if the crime was widespread, if the crime took place during armed conflict).

But lawyers must also prove:

- **Who** committed the crime; and
- **How** the perpetrator committed the crime (e.g. whether it was with their own hands, if they planned it, ordered the crime).

If you are living in a place where mass atrocities or daily human rights violations are endured, “Filming Linkage and Notice Evidence” is perhaps the most important part of the *Video as Evidence Field Guide* to review. While footage documenting criminal acts is valuable, your efforts to capture linkage and notice evidence will likely prove to be of greater importance for long-term justice and accountability.

FROM AN EXPERT

“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

GOAL

The goal of this section is to provide information to help ensure that you can use a camera to document “Who” committed the crime and “How” they did it, in addition to documenting the crime itself. The long-term goal is to ensure that the video you collect could help investigators more easily link perpetrators — especially those who are not physically present at the scene of the incident — to the crime itself, so they can eventually be brought to trial.

We have broken this section down into three parts:

PART I The Law - The Different Ways A Person Can Participate In A Crime

PART II command and superior Responsibility

PART III How can video Help Prove Responsibility?

If you already know about the law or want to jump straight into the video aspect of proving responsibility, skip ahead to Part III for ideas for how to film linkage and notice evidence.

KEY POINT

This section is not meant to be a definitive guide on law. Instead, it simplifies complex legal principles to help you determine where to point your camera. The goal is not to turn eyewitnesses into human rights investigators or lawyers, but rather to help frontline documenters capture footage that is more useful to professional investigators and lawyers in their quest to prove responsibility for crimes. If you are interested in learning more about the law, see the list of additional resources at the end of this section.

KEY DEFINITIONS

Crime-based evidence is relevant and reliable information about “What” happened. In other words, “What” crime was committed?

Linkage evidence is relevant and reliable information that helps prove responsibility for the crime. In other words, it helps prove “Who” committed the crime and “How” they did it (e.g. individual perpetration, conspiracy, aiding and abetting, command responsibility).

Mode of liability or Form of participation are fancy legal terms for “How” someone committed the crime.

Notice evidence is relevant and reliable information that shows that 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.

Remote commander tends to be a high-level military, paramilitary or civilian commander who does not go into the field and instead controls people from a location that is a safe distance away from the frontlines.

FILMING

LEARN MORE

Read more about relevance and reliability in “All About Evidence”: bit.ly/WITNESSLibrary_VaE.



A NOTE ABOUT THE INTERNATIONAL JUSTICE SYSTEM

In conflict situations there may be thousands of perpetrators committing an incalculable number of crimes. Unfortunately, the international criminal justice system does not have the human or financial resources to prosecute every individual perpetrator for every crime in situations such as these.

In light of the practical limitations, the principle goal of the international criminal justice system is not to punish every individual perpetrator, but instead to try and punish the highest-level perpetrators. These perpetrators will not likely be the ones on the frontlines pulling the trigger or carrying out the torture with their own hands. They will be the high-level perpetrators who remain secure in their command headquarters or private homes, far away from the bloodshed, while planning and ordering crimes, or commanding the troops who are committing the crimes. The hope is that holding high-level leaders accountable for widespread, systemic crimes, war crimes and genocide will:

- Put an end to impunity for the highest-level perpetrators;
- Contribute to the prevention of such crimes in the future; and
- Symbolize a new way forward on a path where the rule of law honors and enforces basic human rights.

To put these high-level perpetrators behind bars and achieve these grander hopes, linkage and notice evidence are essential.

It is also important to note that in addition to international tribunals, we rely on the national courts and truth and reconciliation commissions to bring more perpetrators to justice – including those who committed crimes with their own hands. That said, we must recognize that even with international courts working alongside national courts and truth and reconciliation commissions holding perpetrators accountable, many will still, unfortunately, walk free.

PART I

THE LAW: HOW CAN A PERSON PARTICIPATE IN THE COMMISSION OF A CRIME?

If you are reading about how to prove responsibility for crimes you will likely see the phrases, “mode of liability” or “form of participation”. These phrases are just the legal way of asking, “How did a perpetrator participate in the commission of a crime?” Or, “What was their role in the crime?” Below is a summary of “How” perpetrators can commit crimes.

LEGAL WORDS FOR “HOW”	NON-LEGAL DEFINITION	EXAMPLES
Individual perpetration	A person commits the crime with their own hands.	A perpetrator who pulls the trigger of a gun and summarily executes a civilian.
Co-perpetration, Conspiracy or Joint criminal enterprise	Two or more people commit a crime by planning, organizing or directing it, even if they do not directly participate in the execution of the crime.	A group of military officers all taking part in the physical torture of a prisoner. OR Five people sitting around a table agreeing to rob a bank and planning how to do so.
Aiding and abetting	An individual helps the person who commits the crime with their own hands in a way that substantially contributes to the commission of the crime.	A person who provides items such as vehicles to get the perpetrators to the crime scene, weapons to commit the crime, or money to finance the planning and commission of the crime.
Instigation or Incitement	Prompting, urging, encouraging or inducing someone to commit a crime.	A leader that gives a speech at a rally encouraging listeners to pick up weapons and kill their neighbors.
Ordering	When someone in a position of authority instructs another person to commit a crime.	A leader’s written instructions to their troops ordering troops to torture and execute anyone suspected of being an enemy.
Command or Superior responsibility	When a person in a position of authority knew, or should have known, that the people they had authority over were committing crimes and then failed to stop those persons.	A military commander who knows the troops he controls are torturing and killing civilians and does nothing to stop them.

ABOUT THE LEGAL TERMS DIFFERENT WORDS. SAME MEANING.

Burglary, robbery, theft, breaking and entering, stealing, and larceny, all generally mean the same thing depending on the law that applies where you live. On a practical level, however, all those words really mean that someone, for example, broke into your home and took — or tried to take — your stuff. Same act. Different words.

Just as different courts have different words for the same crime, different courts have different words for ways in which a person can participate in a crime. Above is a list of the non-legal terms for “How” a person can commit a crime. If you decide to become an expert in this area, you will want to learn the technical legal terms used by the courts you work with, and the many nuances that go along with the words. Until then, the terms above are what you will need to know.



Individual perpetration



Incitement



Ordering

HOW?



Aiding and abetting



Conspiracy, Co-perpetration,
Joint criminal enterprise



Command or superior responsibility

FIELD NOTE

ILLUSTRATING HOW A PERPETRATOR CAN COMMIT A CRIME INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA V. RUGGIU, NAHIMANA AND BARAYAGWIZA



RTLM founder, Ferndinand Nahimana

FILMING

Basics

Tribunal: International Criminal Tribunal for Rwanda (ICTR)

What Crimes: Genocide

Who: Georges Ruggiu, Presenter on Radio Télévision Libre des Mille Collines (RTLM), Ferdinand Nahimana, Co-founder of RTLM, Jean-Bosco Barayagwiza, Co-founder of RTLM

How: Incitement

Backstory

Founded in 1993 and owned by family members and friends of the then President of Rwanda, Juvénal Habyarimana, Radio Télévision Libre des Mille Collines (RTLM) was known for having the best disc jockeys in Rwanda. Its popular mix of African music, news programming, and political analysis made it one of Rwanda's most popular radio stations.

On April 6, 1994, President Habyarimana's plane was downed by a missile. President Habyarimana was a Hutu, the ethnic majority in Rwanda, and the attack caused the already high tensions between the Hutu and Tutsi ethnic groups to boil over. Government-aligned Hutus used the attack to incite a violent campaign of ethnic cleansing against the Tutsi minority. In particular, this incident triggered RTLM journalists to encourage fellow Hutus to kill their Tutsi neighbors. Over the airwaves, RTLM journalists made the following calls – and many more – to their listeners:

"You have to kill [the Tutsis], they are cockroaches..."

"All those who are listening to us, arise so that we can all fight for our Rwanda...Fight with the weapons you have at your disposal, those of you who have arrows, with arrows, those of you who have spears with spears...Take your traditional tools...we must all fight [the Tutsis]; we must finish with them, exterminate them, sweep them from the whole country... There must be no refuge for them, none at all."

"I do not know whether God will help us exterminate [the Tutsis]...but we must rise up to exterminate this race of bad people...They must be exterminated because there is no other way."

"You have to work harder, the graves are not full."

By July of 1994, up to 1,000,000 Rwandans — mostly Tutsis — had been executed. In 1995 the International Criminal Tribunal for Rwanda (ICTR) was established to prosecute those responsible for genocide and other serious violations of international law. RTLM's executives and journalists were among the many individuals investigated and prosecuted for their role in the crimes.

Clearly, the audiotapes did not capture evidence of the actual killings, otherwise known as “crime-based evidence”. Instead the audiotapes pointed to “Who” should be held accountable for the crime of genocide, and “How” they participated in the crime — incitement in this case — so the lawyers could prove responsibility.

The outcome:

- Georges Ruggiu, RTLM Presenter, was prosecuted and plead guilty to the crime of genocide by incitement. He was sentenced to 12 years in prison.
- Ferdinand Nahimana and Jean-Bosco Barayagwiza, co-founders of RTLM, were prosecuted and convicted for the crime of genocide by incitement. Nahimana received a 30-year sentence and Barayagwiza received 35 years.

TAKE HOME POINTS

First, there are six general ways in which a person can commit a crime — incitement is only one of them. While footage showing the commission of crime itself is certainly valuable, you also need to prove the “How”. Don't forget about this.

Second, prosecutors in this example used audio — not video. Below are some ideas on how you could use video to show how someone committed a crime by incitement.

Video clips of perpetrators calling upon others around them to take violent and illegal actions in settings such as:

- public speeches
- broadcast interviews
- sermons to congregations
- billboards
- signs carried by protestors at rallies
- protestors chants at rallies

CONSIDER YOUR SITUATION

Review the list above of “How” an individual can commit a crime and then write down various ways you think perpetrators are committing crimes in your situation. Then, write down how you could use videos to show the “How”.

PART II

FOCUS ON COMMAND AND SUPERIOR RESPONSIBILITY

“Command and superior responsibility” is the principle that leaders, both military and civilian, can be responsible for the crimes committed by their forces if they were aware of the crimes and failed to prevent them.

In the previous section we described the many ways perpetrators could be involved in committing a crime. Now we are going to focus on “command and superior responsibility”, one of the six general modes of liability (MOL). We are going to focus on this MOL because it is often the role that high-level, remote commanders play in committing crimes where widespread and systemic human rights violations are happening. It’s important to understand so that you can capture video footage that could help prove it!

Once you have proved which crimes were committed, a remote commander can be held responsible if there is enough evidence to link the commander to the crimes on the ground. Below we will explore the three elements that lawyers must prove in order to hold the commander accountable.

ELEMENT 1

Had effective command and control over his or her people.

ELEMENT 2

knew or should have known his or her people were committing crimes.

ELEMENT 3

failed to take action to stop the commission of those crimes.

KEY DEFINITIONS

Command and superior responsibility are basically the same thing with one key difference. Command responsibility applies to military leaders. Superior responsibility applies to civilian leaders. Here we will use the term remote commander to refer to military, paramilitary and civilian commanders.

A remote commander tends to be a high-level military, paramilitary or civilian commander who does not go into the field and instead controls people from a location that is a safe distance away from the frontlines.

ELEMENT 1**Prove They Had Effective Command And Control Over Their People****KEY PRINCIPLE**

To be held accountable for crimes via command or superior responsibility, a remote commander must have what is called “effective command and control over the people that committed the crimes”. In other words, the commander must have the actual power to make and execute decisions. It’s not enough that a commander have power granted by a legal document or constitution. He or she actually has to be in charge of the troops who committed the crimes. Let’s look at two examples and a Field Note to understand what effective command control means.

EXAMPLE: Effective Command in England

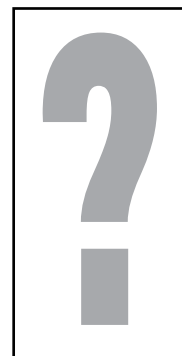
question: Which of the below is the effective commander of the British Armed Forces in 2015?

A: The Queen of England

B: Prime Minister Cameron

C: Chief of Defence Staff Sir Houghton

D: Other



Answer: According to England’s constitution, the Queen of England is the Commander-in-Chief of the UK’s Armed Forces. However, in practice, the British government has authority over the military and commands the Armed Forces through the Ministry of Defence. So, if you answered B or C, you have a good understanding of the principle behind *effective command*!

In other words, the Queen has command power only on paper, not in practice. The Prime Minister and Commander-in-Chief have effective command. Since the Queen only has power-on-paper and not power-in-fact, she can’t be held accountable for the actions of the UK’s armed forces (unless, of course, things change in England!). The Prime Minister and Commander-in-Chief on the other hand, can be held accountable.

EXAMPLE: Islamic State of Iraq and Syria (ISIS)

Now let's look at a contrasting example. In 2014, ISIS claimed an Islamic State stretching from northwestern Syria to northeastern Iraq. However, the international community does not officially recognize the declared Islamic State, nor does it recognize any formal powers of ISIS's leadership. Instead, the world largely considers the leaders of ISIS to be terrorists wanted for war crimes and crimes against humanity.

While little is publicly known about ISIS' command structure, as of 2015 a man named Abu Bakr al-Baghdadi was thought to wield absolute power over ISIS forces on the ground. This actual power is enough that someday – despite the lack of official papers giving al-Baghdadi “official” authority – al-Baghdadi could be held accountable for a litany of crimes.

**TAKE HOME POINTS**

For a remote commander to be held accountable for the actions of others, a lawyer must prove that this person was actually in charge and had effective command and control over them. This is logical. Here is an everyday example:

If you are a teacher and have a classroom of seven-year olds, you are accountable to the school, the children and the parents for what happens in your classroom. You are not accountable for what happens in the classroom of 10-years olds taught by another teacher located down the hall. Just like you should not be held responsible for something you have no control over, a remote commander cannot be held responsible for the actions of troops he or she does not have control over.

TEST YOUR SKILLS

If applicable in your situation, consider how you could use video to prove “effective command and control”. Make a list.

FIELD NOTE

AN EFFECTIVE AND KNOWLEDGEABLE COMMANDER CONSTITUTIONAL COURT OF GUATEMALA V. MONTT

Basics

Tribunal: Constitutional Court of Guatemala

What Crimes: Genocide, Crimes Against Humanity including murder, torture, sexual violence and forced displacement

Who: Jose Efraín Ríos Montt, President of Guatemala, 1982-1983

How: Command Responsibility (and Ordering)

Backstory

In 1982, a young filmmaker named Pamela Yates went to Guatemala to make a movie about the ongoing genocide of Guatemala's indigenous people. While there, she was given the rare opportunity to sit down and interview then President Ríos Montt. Part of his interview appeared in her award-winning film titled *When the Mountains Tremble*.²

Twenty-five years later, one of the attorneys investigating President Montt learned about the interview and asked Yates if she still had the full, uncut interview. Yates went to her storage unit in New Jersey where she embarked on what she described as an archeological dig through 25-year-old outtakes of 16mm film and ¼-inch audiotape.



Proving Command Responsibility

In order for prosecutors to secure a guilty conviction, they needed to prove that President Montt had:

- Effective command and control over the forces that implemented what is now referred to as Guatemala's "scorched-earth" military policy;
- Knowledge about the activities of his forces; and
- Failed to stop his forces from committing crimes.

Keeping this in mind, read the transcript below from a one-minute clip of the film, *Granito: How to Nail a Dictator*.³ This film is Yates' follow up project about the unexpected role that her footage from 1982 played in the genocide case against President Efraín Ríos Montt.

FILMING

SHOWN IN
THIS VIDEO

Watch this one-minute clip from *Granito: How to Nail a Dictator* at vimeo.com/35763021.

If you don't have time or access to watch the clip, it shows filmmaker Pamela Yates standing with one of the prosecuting attorneys, watching and discussing the rediscovered footage of Yates's interview with President Ríos Montt on June 2, 1982.

Transcript of Clip:

Yates: *What would you say to the charges that the army is massacring peasants in the highlands?*

President Montt: *I would say I believe in freedom of thought.*

Yates: *Is there repression by the army?*

President Montt: *There is no repression by the army. Our strength is in our ability to make command decisions. That's the most important thing. The army is ready and able to act, because if I can't control the army, what am I doing here?*

In this clip, President Montt admits everything the lawyers need to prove. That is, he had “effective” command and “knowledge” (to be discussed next!). After watching Yates’ interview with President Montt, the prosecuting attorney explains how Montt’s statements demonstrate that, “[H]e controls the entire army. He gives orders and everybody follows. That he knows exactly at all times what the army is doing. And that if he’s not able to control the army, what kind of commander is he?”

The legal term for this type of evidence is “prima facie” evidence, because it is direct proof of two of the three elements of command responsibility: i) effective command; and ii) knowledge. The lawyers still had to prove the third element, failure to act, and corroborate his interview with other evidence. In non-legal terms this is “smoking gun” evidence. At trial, this video clip served a key piece of evidence assisting the prosecution in proving President Montt had effective command and control over his military forces and he knew what they were up to.

TAKE HOME POINTS

We can learn a number of lessons from this story.

First, preserve valuable footage as it can be useful years — if not decades — later.

Second, while footage of the commission of crimes is certainly valuable, footage that helps us figure out “Who” committed the crime and “How” they did it can be even more critical.

Third, linkage evidence won’t often be the footage that makes the nightly news, but it can be invaluable none-the-less.

Finally, as the media landscape continues to evolve, some leaders may be more cautious about publicly boasting, while others may utilize video or social media to share their “successes”. So, whether it’s using footage shot by you or an ally, or finding a telling video on Facebook or Twitter, it’s important for activists and investigators to explore various platforms that might lead to clues that link remote commanders to crimes.

FILMING

FOR MORE INFORMATION

Skylight Pictures produced a 23-episode short film series that takes you inside the courtroom to watch Ríos Montt stand trial for genocide and crimes against humanity in Guatemala. To preview some of the episodes of this historic trial, visit [Dictator in the Dock: Genocide on Trial in Guatemala](#)

ELEMENT 2**Prove a Commander “Knew Or Should Have Known” That His Or Her Forces Were Committing Crimes****KEY PRINCIPLE**

Prove a commander **“knew or should have known”** that his or her forces were committing crimes. To prove this, investigators and lawyers look for what is called “notice evidence”. Below we will look at an example from the Central African Republic to better understand this principle.

KEY DEFINITIONS

Notice evidence is relevant and reliable information showing that a military, paramilitary or civilian commander received information that alerted them that their forces were committing crimes.

ELEMENT 3**Prove a commander “failed to act”****KEY PRINCIPLE**

To be held accountable, the third element a lawyer has to prove to show command or superior responsibility is that a remote commander “failed to act”. In other words, they failed to stop the people under their command from committing crimes. Let’s look at a simple everyday example to figure out what this means.

Example: Good Boss v. Bad Boss

If you are a commercial airline pilot, your boss is, in part, responsible for ensuring you receive training to fly, know and follow aviation protocols, and fly responsibly.

Let’s say you are caught flying while drunk. Your boss is also responsible for disciplining you. If your boss purposefully turns a blind eye to your illegal behavior and continues to allow you to fly while drunk, your boss could also be held accountable for any damage you cause by crashing the plane while drinking because he or she has “failed to take action” to stop your wrong doing.

It’s the same for military, paramilitary and civilian commanders. Commanders are responsible to train, supervise and discipline their troops or the people they have authority over. If these people commit crimes on the frontlines, they know or should have known about these crimes, and then fail to stop their people, then these commanders “failed to act”. Simple as that.

The question then becomes how could you capture the lack of action on video. Seems impossible right? Let’s look at a Field Note to see what you could point your camera towards.

FIELD NOTE

PART 1: A KNOWLEDGEABLE COMMANDER

INTERNATIONAL CRIMINAL COURT V. BEMBA

The Basics

Tribunal: International Criminal Court (ICC)

What Crimes: Murder as a war crime and crimes against humanity, rape as a war crime and crimes against humanity, pillaging as a war crime

Who: Jean-Pierre Bemba Gombo

How: Command responsibility

Backstory

In October of 2002, Jean-Pierre Bemba Gombo's personal army, the Movement for the Liberation of Congo (MLC), allegedly crossed the border from their stronghold in the northern Democratic Republic of Congo (DRC) into neighboring Central African Republic (CAR) to help then President Ange-Felix Patasse put down a coup attempt.



Bemba stands accused of leading a devastating and widespread campaign of rape, murder and pillaging 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 raped men and important elders to publicly humiliate them.

Bemba claimed that the troops were not under his effective command (Element 1) and dismissed the reports of criminal activity by his troops as "untrue". We will not address the evidence prosecutors submitted to prove he had effective command here. Instead, we go directly to the evidence prosecutors submitted to prove that he knew his troops were committing crimes (Element 2). Let's look at some of the "notice evidence" prosecutors assembled in their attempt to prove that Bemba was well aware that MLC troops were, in fact, committing crimes.

FILMING

FROM AN EXPERT

"Different from a single rapist, Bemba's weapon was not a gun; it was his army."

ICC Prosecutor, Luis Moreno-Ocampo, Opening Statement, ICC v. Bemba

TRIAL STATUS

As of November 2015, the verdict in Bemba's Case had not been issued by the International Criminal Court. For continuous updates on the trial go to: ijmonitor.org/category/jean-pierre-bemba-gombo/summary/.

EXAMPLES OF NOTICE EVIDENCE USED TO PROVE “KNEW OR SHOULD HAVE KNOWN”	WHY THIS PUT BEMBA ON NOTICE THAT TROOPS UNDER HIS CONTROL WERE COMMITTING CRIMES.
MEMORANDUMS & PUBLIC ADDRESS	In November 2002, Bemba gave a public address to troops in Bangui, the capital city of CAR. Before he gave his address, local leaders in Bangui presented a memo to Bemba. This memo informed him that his MLC soldiers were killing civilians and carrying out mass rape. In his address, Bemba acknowledged the existence of reports of widespread criminal activity committed by MLC troops.
WITNESSES & MILITARY SITUATION REPORTS	Witnesses testified that all military and rebel forces had a system of reporting from the battlefield. Specifically, MLC’s operational rules required that the lowest command submit a situation report to the highest command every 24 hours. The report covered aspects such as operations, intelligence, logistics and casualties.
TESTIMONY SUPPORTING THE ABOVE	Witnesses also testified that Bemba: <ul style="list-style-type: none"> • Was in constant and direct contact with the military commanders via other various communications devices such as, radio, walkie-talkies, satellite phones and fax machines; and • Visited CAR during the military campaign and spoke with commanders and troops.
INTERNATIONAL MEDIA	Reports by Radio France International, BBC, Voice of America, etc., put Bemba on notice of his troops’ crimes by reporting on these abuses.
NGO REPORTS	Reports from NGOs, including Amnesty International and International Federation for Human Rights, that described both previous criminal allegations against Bemba’s troops and that MLC leadership had acknowledged those allegations, as well as crimes committed during the time period at issue.

Video is absent from this list of evidence. One key reason is because in 2002–2003, villagers under attack in CAR had few — if any — cameras to record events. If the situation in CAR happened today, here are some ideas on how notice evidence could be documented with video to show that Bemba knew or should have known his troops were committing crimes.

TEST YOUR SKILLS

If applicable in your situation, consider how you could use video to prove a commander “knew or should have known”. Make a list.

Video clips of:

- Speeches where Bemba acknowledges crimes;
- The commission of crimes or the aftermath of the crimes broadcast on television or over the Internet on platforms Bemba would be likely to see;
- The commission of crimes or the aftermath accompanying written NGO reports that are widely distributed;
- Bemba using communications technologies;
- Bemba in the field with his troops in CAR; and
- Speeches by UN officials presenting evidence of the crimes on the world stage.

Additionally, citizens could film uniforms, insignias, patches, or equipment used by the soldiers committing the crimes to show the troops were in fact Bemba's soldiers instead of members of a different army. Public sharing of this type of footage would also put Bemba on notice, preventing him from plausible deniability.

TAKE HOME POINTS

BEMBA - A KNOWLEDGEABLE COMMANDER

First, to be held accountable, a remote commander must have "known or should have known" his or her people were committing crimes. To prove this, investigators and lawyers gather "notice evidence" which is simply information that would have communicated that the crimes were taking place.

Second, video can demonstrate that a high-level commander had knowledge of crimes, but it requires planning and strategy to capture video that meets the legal requirements needed for evidence.

Third, if safe, it could be important to publish "notice evidence" — such as troops committing crimes or speeches of officials detailing crimes — widely because it may someday prevent a perpetrator from being able to say, "I did not know" during his or her trial.

FIELD NOTE

PART 2: BEMBA'S FAILURE TO ACT INTERNATIONAL CRIMINAL COURT V. BEMBA

Assuming that the prosecution proved the first two elements, that Bemba had “effective command and control” and that he “knew or should have known,” next they would need to prove “failure to act.” Bemba claimed that he didn’t fail to act and that the MLC soldiers who committed crimes were put on trial and sentence for the crimes they committed. The prosecution disagreed.

To prove “failure to act” the prosecution primarily relied on witness testimony. For instance, witnesses testified that:

- While the MLC has a Code of Conduct for troops to follow, the MLC code was written in French. The majority of the lower ranking soldiers, however, did not speak French and instead spoke Lingala so they could not read the code.
- These soldiers were also often illiterate, meaning that regardless of the language, the lower soldiers could not read the code and would not know exactly what the code included without a verbal explanation.
- Bemba presented no clear evidence that he and his commanders made an effort to inform all of his troops in the MLC of the Code of Conduct.
- Any interest in enforcing the Code of Conduct lessened as the MLC moved further into CAR and further away from their DRC home making statements such as “The main purpose [of operations] was conquest rather than looking into matters of discipline.”
- Field Commanders did nothing as they watched their troops commit crimes.
- The trials Bemba claims to have held did not charge the commanders, who were present when the MLC soldiers committed crimes against civilians. Instead, the alleged trials tried low-ranking individuals guaranteeing impunity for commanders.
- Even though Bemba was made aware of the killing of civilians and mass rapes, the trials that Bemba claims to have completed against the MLC soldiers did not include charges of murder or rape. They were instead tried for lesser charges such as extortion.
- Low-ranking soldiers who were given multi-year prison sentences for crimes were pardoned after serving just a few months once neutral observers and the international community left the region.
- The attorneys and judges arguing and overseeing the trials were appointed by Bemba and the outcomes for the MLC soldiers were also determined by Bemba.

Video is also absent from this list of evidence for the reasons shared above – cameras weren’t in everyone’s pocket in 2002 and 2003. However, video could have played an important role in corroborating and strengthening the evidence because Bemba’s defense disputed all of the testimony listed above. If the situation in CAR happened today, here are some ideas on how you could use video to show that Bemba failed to stop his troops from committing crimes.

Video clips of:

- The MLC’s Military Code in French;
- MLC soldiers on the frontlines speaking Lingala instead of French;
- Bemba giving a speech to troops before their deployment;
- Commanders in the field watching – not acting – as crimes are being committed by soldiers;
- Conversations between Bemba and his commanders discussing what to do about crimes being committed by troops;
- Stockpiles of pillaged goods on MLC bases or in commanders’ homes;
- Insignias on uniforms showing the rank of the soldiers that were tried for crimes;
- The trials of the MLC soldiers, including the reading of the charges against the soldiers and the announcement of the sentence; and
- The soldiers that were found guilty taking part in military activities with a time and date stamp showing they did not fulfill their full sentence.

Additionally, citizens could film:

- Commanders rallying their troops and encouraging them to commit crimes;
- Commanders participating in the commission of a crime with their troops;
- Commanders using property pillaged from the frontlines such as stolen vehicles; and
- Any ceremonies or parades honoring troops that were known for committing crimes.

Undeniably, the “failure to act” is difficult – yet not impossible – to film. If you were in a village where low-ranking officers were giving orders in Lingala instead of French and then killing civilians while Commanders did nothing, this video could add strength to the witness testimony outlined above. That said, your safety, and the safety of those around you comes first.

TAKE HOME POINTS

BEMBA - FAILURE TO ACT

First, to be held accountable for committing a crime by command or superior responsibility, a remote military commander or civilian leader must have “failed to take action” to stop the people he or she controls from committing crimes.

Second, video can show lack of action, but you have to think about to show this. It’s not instinctual. It requires thinking outside of the box. Video may or may not be your best investigative tool, so really think about how it could help and if it’s worth the risk.

TEST YOUR SKILLS

If applicable in your situation, consider how you could use video to prove “failure to act”. Make a list. If your list is short, don’t worry. Gather what you can to corroborate the other evidence you collect.

KEY POINTS

FOCUS ON COMMAND AND SUPERIOR RESPONSIBILITY

Value

Human rights investigators have stated that almost anything a commander says during a conflict can be useful in later investigations and prosecution. So, while the recording and/or collection of speeches, interviews, statements and public declarations may seem like a futile undertaking, it is most certainly worthwhile, even if it is not immediately clear how the footage will be helpful.

Source

It is also important to recognize that as an activist you will not likely have access to film commanders. However, you could have access to footage found on:

- the phones of defectors or prisoners
- computers or hard drives confiscated from the battle field
- television broadcasts
- Internet platforms such as YouTube

In turn, knowing how to identify and preserve linkage and notice evidence is as important as knowing how to capture it when you are holding a camera in the field.

Playing By The Rules Counts

There are many military and civilian commanders that believe in playing by the rulebook when it comes to war. There are certainly commanders that do not support killing civilians. They do not believe in torture. They do not believe in pillaging civilian homes. However, even if they strive to play by the rules, sometimes they may have rogue troops in their ranks.

Commanders and leaders who play by the rules and properly train, supervise and discipline the people they have authority over aren't the ones the international criminal justice system seeks to prosecute. Crimes may have happened on their watch, but if they did everything in their power to try and stop it, the commander should not be charged for crimes. Time is better spent prosecuting commanders and leaders who either supported people as they committed crimes, or turned a blind eye and did nothing to stop the crimes from happening in the first place.

PART III




HOW CAN VIDEO LINK A PERPETRATOR TO A CRIME?

Here's what we know so far:

- Crime-based video evidence shows “What” happened. Linkage and notice evidence helps us prove responsibility for the crime by identifying “Who” committed the crime and “How” they did it.
- Collecting information about who committed the crime and how they did it is often trickier than collecting evidence of a crime itself. This is because not all perpetrators are at the scene of the crime. In turn, we need to think creatively about how and when to use video to collect linkage evidence so we can link remote perpetrators to the crimes on the ground.
- Additionally, to prove command and superior responsibility we also have to capture notice evidence to show that a remote perpetrator knew, or was put on notice, that persons under their control committed crimes.

As noted at the start of this section, citizen witnesses and human rights activists are uniquely placed to gather crime, linkage and notice evidence. Here are some ideas on how you can use video to do so.

EXAMPLES OF VIDEO THAT COULD SERVE AS EVIDENCE

CRIME-BASED EVIDENCE	LINKAGE EVIDENCE	NOTICE EVIDENCE
<ul style="list-style-type: none"> • Torture in progress • Unarmed persons being repeatedly beaten by national police • Unarmed persons being shot by military forces • Injuries suffered after the use of excessive force • Mass graves • Damage to civilian property, such as schools and hospitals • Damage to cultural objects • Children bearing arms or participating in military activities • Billboards with hate speech • Impact zone of a suspected weapons attack • Unhealthy labor conditions • Children working in factories • Inadequate detention conditions • Pillaging of humanitarian aid in progress or the aftermath • Environmental degradation, such as a visually contaminated water source • Etc. 	<ul style="list-style-type: none"> • Police formations at a protest • Uniforms and badge numbers • Passports or other official documents of identification • License plates of official vehicles • Military equipment, such as small arms, large arms, protective gears, missile heads, tanks, planes, etc. • Serial numbers on military equipment • Speeches by leaders and those that they have authority over • Checkpoints • Troop movements • Buildings where perpetrators based their operations out of • Communications equipment, such as satellites dishes, radios, etc. • Video of documents that can't be taken because of security risks so the contents are filmed or photographed instead • Video-taped interviews with perpetrators, prisoners or defectors • Etc. 	<ul style="list-style-type: none"> • The crimes or the aftermath of the crimes broadcast on television • Public speeches by UN or national officials presenting video clips of the crimes and calling for crimes to stop • Public speeches by remote perpetrators acknowledging crimes on the ground • Perpetrators in the field with their troops • Perpetrators using communications technologies • Interviews with perpetrators acknowledging the commission of crimes • Interviews with prisoners and defectors acknowledging communications with remote commanders and leaders • Video reports produced and distributed by NGOs that document crimes • Etc.
		

KEY POINTS

HOW CAN VIDEO LINK A PERPETRATOR TO A CRIME?

Security

While this has been said, it is worth repeating — filming linkage and notice evidence can be dangerous. Consider whether it's worth the risk.

Add Context

In addition to capturing visual content such as the examples described here, be sure to capture details that provide context as well. Specifically, document visuals that allow a viewer to easily determine the time, date and location of the video, such as landmarks, street signs, newspapers or a clock.

Make A Plan

Filming crimes often happens because you find yourself in the wrong place at the right time. What you capture often shows the crime and the direct perpetrator. However, if you are filming in hopes of proving that a remote perpetrator is actually responsible for the commission of the crime, this takes a different level of commitment and planning. Video has strengths and limitations.

Perpetrators, Prisoners & Defectors

Perpetrators, prisoners and defectors are often your most valuable witnesses as they are a key source of linkage and notice evidence. They can provide invaluable information such as who did the planning, who gave the orders, where the weapons came from or the actual command structure. They also often film themselves and colleagues committing crimes. In short, they know things the investigators need to know. Video filmed by these insiders is often invaluable.

Preservation

Here are two key tips:

- Collectively, activists provide hundreds upon hundreds of hours of video to investigators, which can be difficult to review. Keep a log of what you film, noting footage that you believe could be useful for justice and accountability.
- Footage that has been broadcast or released online can disappear and become extremely hard to track down. Do not rely on online video platforms to store your video. Instead, save clips offline that you believe could be useful. Remember to log those clips.

FOR MORE INFORMATION

Learn more about filming techniques and planning: bit.ly/WITNESSLibrary_VaE.

ADDITIONAL RESOURCES

Understanding how to hold perpetrators accountable for crimes is complex. As a documenter, it's important to understand that you can support the case by capturing video that provides clues linking remote high-level perpetrators to crimes on the ground, and sharing those clues with professional investigators, analysts and lawyers.

If you would like to learn more about the law and linkage evidence here are several in-depth training resources that will take you beyond the basic principles:

Modes of Liability: Commission & Participation, International Criminal Law and Practice, can be downloaded at: http://bit.ly/Module9_ModesLiability

Modes of Liability: Superior Responsibility, International Criminal Law and Practice at: http://bit.ly/Module10_SuperiorCommand

Public International Law & Policy Group, Documenting Human Rights Violations: A Handbook for Untrained First Respondents (forthcoming, November, 2015)
<http://publicinternationallawandpolicygroup.org/>

To download all of the training materials on international criminal law and practice published by the International Criminal Law Services' (ICLS') War Crime Project go to:
http://wcjp.unicri.it/deliverables/training_icl.php

Another good resource is the Crimes of War Education Project at:
www.crimesofwar.org/category/a-z-guide/term/

Special Thanks

Special thanks to the Commission of International Justice and Accountability and to Alex Whiting, Professor of Practice at Harvard Law School for their insights on this section.

TAKE HOME POINTS

The points below are summary of the key lessons from this section.

Know The Rules And Know When To Break Them

Your safety and the safety of those you are filming comes first. None of this guidance is absolute. Modify the suggestions here to meet your needs.

Your Role

As a person on the frontlines, you are uniquely placed to gather linkage and notice evidence and in turn, can provide valuable information about the perpetrators to investigators and lawyers who aren't on the ground.

Prove What, Who & How

To successfully hold a perpetrator accountable a lawyer must prove:

- What crime was committed;
- Who committed the crime; and
- How the perpetrator committed the crime.

Activists tend to document the “What”. If you are living somewhere where mass atrocities or daily human rights violations are endured, your efforts to capture “Who” committed the crime and “How” they did it by capturing linkage and notice evidence will likely prove to be of greater importance for long-term justice and accountability.

Modes of Liability

In general, there are six primary ways to describe how a person can commit a crime. They are:

- individual perpetration
- co-perpetration, conspiracy or joint criminal enterprise
- aiding and abetting
- instigation or incitement
- ordering
- command or superior responsibility

It's valuable to learn to use video to show “How” a person committed a crime because this tends to be the most difficult aspect of a case.

Focus On Command And Superior Responsibility

This is the principle that commanders, both military and civilian, can be responsible for the crimes committed by their forces if they were aware of the crimes and failed to prevent them. These commanders tend to be “remote commanders”, which simply means that they are likely to be high-level commanders who do not go into the field, but instead control their people from a location that is a safe distance away from the frontlines. To hold remote commanders accountable, lawyers must prove the commander:

- Had “effective command and control” over the people he or she commands;
- “Knew or should have known” that his or her forces were committing crimes; and
- “Failed to act” to stop the commission of those crimes.

Your video footage can help prove this.

Make a Plan

Filming “What” happened often occurs because you find yourself in the wrong place at the right time. What you capture will likely show the crime and the hands-on perpetrator. However, if you are filming in hopes of proving that a remote perpetrator is actually responsible for the commission of the crime, this takes a different level of commitment, planning and thinking outside the box because it’s not instinctual. Develop a Collection Plan.

Value

Almost anything a commander says during a conflict can be useful in a later investigation and prosecution. So even though filming and/or collecting speeches, interviews, statements and public declarations may seem like a futile undertaking, it is worthwhile, even if it is not clear in the moment why what the commander is saying is significant to the case.

Include context

In addition to capturing visual content such as the examples described in this section, be sure to capture details that provide context such as time, date and location of the video.

Collect Footage From Perpetrators, Prisoners, Defectors & Broadcast Platforms

As an activist you will not likely have the access needed to film commanders at work. However, you may have access to footage from defectors, prisoners, computers or hard drives confiscated from the battle field, and television broadcasts or Internet platforms. Knowing how to identify and preserve this valuable footage is as important as knowing how to capture it because these third party sources are often your most valuable sources of linkage and notice evidence.

Preservation

If you are the filmer, always keep an unaltered copy of your video in a secure location, plus a back up in a second location when possible. Also, log your footage and make note of clips that you believe could be useful for justice and accountability. If using videos from other sources, remember that even if a video has been broadcast or released online it can disappear. Once it goes offline, it's extremely hard to track down. Download and save a version of clips you believe could be useful as soon as possible.

Publish

If safe, publishing notice evidence widely may someday prevent a perpetrator from being able to say, "I did not know these crimes were happening" during his or her trial.

TESTIMONY: FILMING PRELIMINARY FIELD INTERVIEWS



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record.”

Do your best to implement the guidance below, but understand that nothing stated in this guide is absolute, and you should modify the practices to fit your needs. When possible, seek support from local experts. Even if you cannot fully implement this guidance, your footage may still provide valuable information that could lead human rights organizations and advocates to answers and, in turn, to the protection of our basic human rights.

INTRODUCTION

There are many reasons frontline documenters may want to record on-camera testimony of people who have suffered, witnessed, or have information about human rights situations. These reasons include:

- empowering people who underwent human rights abuses by giving them an opportunity to tell their stories;
- sharing stories with the media to draw attention to a human rights situation and amplify the voices of the victims;
- sharing stories with key decision-makers to influence policies and laws;
- preserving personal stories for the historical record; and
- documenting abuses to support justice and legal accountability efforts.

If your primary goal in filming testimony is to document it for legal accountability purposes, experts recommend that you:

- get professional training on how to conduct such interviews; and
- document the interview in writing instead of on camera under most circumstances.

The reasons for these recommendations are summarized in Part II below, but in short, irresponsibly collecting, copying, or circulating a recorded interview can seriously endanger the life of the witness.

GOAL

While the general recommendation is to get training and to turn off the camera if you are collecting testimony *solely* as part of human rights investigations, the reality is that frontline documenters don't always have access to training and are often on the ground collecting testimony during or immediately after human rights violations, when it's difficult to pull out a pen and paper. In light of this reality, this section provides guidance on filming testimony to support legal accountability efforts, should you decide to film testimonies during a human rights situation without much time to thoughtfully plan out an interview. The specific goals for this section are as follows:

- to provide guidance on whether to record testimony on camera or write it down; and
- to provide guidance, should you decide to press record, on how to film a preliminary field interview that will help professional investigators and lawyers secure accountability for human rights violations.

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

PART I Preliminary Field Interviews v. Comprehensive Interviews

This part defines the types of interviews that are typically conducted with witnesses and defines the different categories of witnesses.

PART II Choose Your Recording Method

Here we explore the reasons for capturing an interview on camera or not.

PART III Principles and Practical Tips for Filming Preliminary Field Interviews

This part summarizes the key principles to abide by to ensure you are capturing testimony in a safe, ethical, and effective manner.

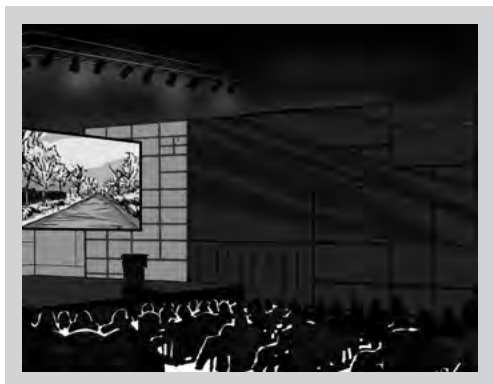
PART IV conducting Preliminary Interviews: Before, During, and After

This part provides practical step-by-step guidance on how to film the interview, including what to do before, during, and after the on-camera testimony is provided.

PART V More About Informed Consent

Here we define “informed consent” and explore the challenging questions around how to obtain it and what to do when you can't.

ADVOCACY



EVIDENCE



KEY POINT

DIFFERENTIATING VIDEO ADVOCACY FROM VIDEO EVIDENCE

Video Advocacy is the use of video to draw attention to a human rights issue and pressure targeted audiences to take action, in order to create change in human rights practice, policy, or law. The primary goals of filming a person's testimony for advocacy are to:

- tell a compelling story;
- empower the interviewee to tell their own story;
- honor the basic human rights of freedom of expression and participation in governmental decision-making;
- amplify voices that aren't often heard and include these voices in the call for change; and
- preserve a historical record for generations to come.

Video Evidence, loosely defined, is the use of video documentation in human rights justice processes to hold states or individuals civilly or criminally accountable for violations of human rights. Video can be used at every stage of the justice process, starting with the call for an investigation and ending in the courtroom. The primary aim is to secure a judgment from a court that requires that a state act, that damages be paid, that a perpetrator be sent to prison, or that an individual who has been wrongly accused to be set free. The primary goals of documenting a person's testimony for evidentiary use are:

- to objectively obtain factual information about the incident (who, what, when, where, etc.);
- to identify other witnesses and evidence;
- to provide a sufficient amount of information to professional investigators, in case they want to follow up with the interviewee at a later date; and
- to eventually hold a state or individual accountable for the human rights crime that has been committed, or to free someone who has been falsely accused.

If you are a frontline documenter and are documenting for advocacy reasons, you will often record testimony on camera. If you are *solely* documenting for evidence or legal accountability, you rarely need to document testimony on camera because preliminary interviews are most often captured in writing. If you decide to press record for advocacy reasons, this section will help make it more likely that the testimony you collect could be used for legal accountability purposes too.

FILMING

FOR MORE INFORMATION

See how video can be used in human rights advocacy outside the courtroom, as well as in the criminal justice process, in "The Role of Video Beyond the Courtroom" at vae.witness.org.

PART I

PRELIMINARY FIELD INTERVIEWS V. COMPREHENSIVE INTERVIEWS

Types of Interviews

There are two basic types of witness interview: preliminary field interviews and comprehensive interviews. The characteristics and goals of each are described below.

Preliminary Field Interview

A short interview, often done at the scene of the incident, designed to obtain important information that a professional investigator will need during the early stages of an investigation. This type of interview tends to be conducted in the midst of a human rights incident or in the immediate aftermath, while the details are fresh in the interviewee's mind.

The primary goals of a preliminary interview are to obtain

- basic, factual information about the incident — who, what, when, where, how, and sometimes why;
- information that will help identify other witnesses and evidence and provide solid leads that an investigator could pursue (in either the short or long term) in their efforts to reconstruct what happened; and
- enough contact information so that a professional investigator can get in touch with the interviewee to follow up with a comprehensive interview if necessary.

Comprehensive Interview

A longer, more thorough interview in a safe, comfortable environment, separated in time and space from the incident.

The primary goals of a comprehensive interview are:

- to find out everything the witness knows about the event;
- to gather information in order to evaluate the truthfulness and accuracy of the witness's statement;
- to learn if there are additional witnesses or physical evidence the witness knows of; and
- to gather sufficient background information to enable locating the witness in the future (e.g., current address, social media handles, contact information of relatives who will know where the interviewee is should he or she have to move).

If you are a locally based frontline documenter and/or first responder, you will only be conducting preliminary field interviews. This will be our focus for the rest of this section.

If you are interested in improving your interviewing skills and learning more about conducting comprehensive interviews, see the Additional Resources section at the end of this document. However, keep in mind that, no matter how proficient you become, the investigator working the case must always complete his or her own comprehensive interview.

FILMING



KEY POINT

The goal of a preliminary field interview is not to get a full, detailed statement but to collect reliable information that is complete enough to provide professional investigators with solid leads, in a manner that is effective and ethical. If the interview provides leads and helps an investigator determine whom to complete comprehensive interviews with and what to ask during those interviews, then you have been successful.

Types of witnesses

There are typically three categories of witnesses that can provide preliminary information at the scene of the incident or shortly thereafter: **bystanders, victims, and persons who know or have knowledge of the victims**. In traditional human rights investigations, these individuals are considered key witnesses because they have invaluable information about the violations committed. Key witnesses can provide details of the crime (such as how many perpetrators there were, what type of weapons were used, what time the events happened, how many victims there were, and the extent of property damage). However, they may not be able to provide the information required to demonstrate the involvement of those who bear the most responsibility for the crime. Legal teams often need to rely on linkage evidence or notice evidence to prove who ordered the attacks or allowed them to happen.

There are three additional categories of witnesses you should be aware of: **insiders (also known as whistleblowers), suspects, and experts**. As a frontline documenter, it's unlikely that you will conduct preliminary interviews with anyone from these three categories; however, during prolonged mass-atrocity situations, there are times when activists will find themselves in a face-to-face conversation with these individuals. Specific guidance on how to interview insiders, suspects, and experts is beyond the scope of this section, but if you do find yourself in this situation, the principles included here apply.

FOR MORE INFORMATION

To learn more about crime-based and linkage evidence, see “Anatomy of a Crime” and “Proving Responsibility: Filming Linkage and Notice Evidence” at vae.witness.org.

KNOW BEFORE YOU GO

Witnesses are an essential part of any investigation and court case. No matter how much evidence is gathered, without witnesses to explain its relevance, a successful prosecution is unlikely. That said, witnesses can be challenging sources of information, and interviews that are not conducted properly can undermine investigations and compromise your work to secure accountability.

Here are some of the major challenges one faces in working with witnesses:

Everyone makes mistakes. Human memory is imperfect. Numerous studies show that eyewitness testimony tends to contain inaccuracies despite the very best intentions of the witness. Additionally, traumatic experiences can further inhibit a witness's ability to accurately recall events. For example, studies show that when a person witnesses a crime where a weapon (like a gun or knife) is used, their focus tends to be on the weapon. As a result, their ability to remember other details about the crime is reduced.

We all have biases. Cultural upbringing, religious beliefs, political affiliations, gender, educational background, socio-economic class, status, and age can all influence our biases. Since people are wired to see things from their own perspectives, even two people standing side by side during an event will experience it differently.

Consider some examples of how this might come into play:

- If two religious groups are embroiled in a conflict and you are interviewing in an area where only one group lives, the testimony will be biased toward the beliefs of that one group.
- The testimony of police officers is often trusted over the testimony of the accused.
- People who hold shares in a company that has been accused of wrongdoing may consciously or unconsciously protect the company, because they have a financial stake in the outcome of the case.

Acting as a witness can be time-consuming and emotionally exhausting. Witnesses may be greatly effected by the amount of time and energy required to participate in a case or trial. Participation can substantially disrupt their personal relationships, their jobs, and their own well-being. Additionally, they may be thrust into the media spotlight in intense or undesirable ways. It is important to ensure they are aware of these possibilities and choose to participate in spite of the risks.

PART II

CHOOSE YOUR METHOD OF DOCUMENTATION

Imagine yourself at the scene of a car-bomb explosion in front of a school, in a community where bulldozers are illegally demolishing houses, or at a worksite where an international corporation is violating safety standards and employees are working in dangerous conditions. You want to interview witnesses about the human rights violations either at the scene or a short distance away. Should you conduct the interviews on camera or not? Here's some guidance to consider.

Key Principles

Principle 1: Do No Harm

Under all circumstances, frontline documenters must strive to “do no harm” when asking individuals to provide information about a human rights incident. In some cases, individuals, their families, or their communities may be put at risk simply by being in the presence of or in contact with a frontline documenter who is collecting testimony. Capturing testimony on video increases the possibility that the interviewees will be identified as cooperating with advocates for accountability, which may amplify the risks they will face should the video fall into the wrong hands or be seen by the wrong person.

Frontline documenters must make every effort to avoid causing harm when doing monitoring work. This means constantly balancing the need for information with the potential risk of harm to those who provide such information. In some circumstances, this may mean that you forgo the collection of information.

At minimum, frontline documenters need to

- understand the risks involved in the collection of information;
- ensure interviewees give their informed consent to participate in the interview;
- protect the information documented;
- take special precautions when working with children, persons with mental disabilities, survivors of sexual violence and other trauma, and other vulnerable populations; and
- to the extent possible, seek further guidance and training that will help you with your interviewing efforts.

Additional strategies to ensure that the principle of “do no harm” is honored during the interview process are woven throughout this section.



Principle 2: Lead Evidence Only

It's important to understand that testimony collected or recorded by frontline documenters in the field can — and often does — serve as valuable lead evidence. Lead evidence is information that leads us to believe a crime may have happened. That information alone, however, is not sufficient to determine whether a crime actually happened. Further research must be done to determine whether an investigation should be launched.

It is also important to know that rarely — if ever — will interviews collected by frontline documenters be used in a courtroom, because of two key legal doctrines:

Preference for Live Testimony. Judges prefer that witnesses testify in person, because this makes it easier to evaluate the credibility of the witness and discourages false testimony. There are rare exceptions to this in which live testimony is not required, but it is much preferred.

Right to Confrontation. Most criminal tribunals give the accused the right to have a face-to-face confrontation with witnesses who testify about the accused's participation in the alleged crime. This is sometimes referred to as the “right to confrontation and cross-examination.” Accordingly, witnesses need to be informed that they may someday have to testify in court in the presence of the accused.

Even though preliminary interviews are not likely to be used in court, this does not mean they are not valuable for advocacy purposes or in the early stages of an investigation.



KEY DECISIONS

TO INTERVIEW OR NOT? TO PRESS RECORD OR NOT?

- 1) “Should I interview this person or not?”
- 2) “Should I record this interview on camera or write down the information provided?”

Question 1:

To determine whether to interview the person – for either accountability or advocacy – discuss the following with the interviewee before documenting an interview in any way. Ask if an interview will

- threaten the interviewee’s safety and security or the safety of their family or community;
- violate their right to privacy;
- infringe upon their dignity; or cause the interviewee to be re-victimized.

If any of the above might happen, you should not proceed with the interview.



QUESTION 2:

If, after considering the above, you decide to complete a preliminary field interview for accountability purposes, then you will need to determine whether video (or audio) is the appropriate choice or whether you should instead document the testimony in writing. Consider the issues outlined below.

PRELIMINARY INTERVIEW: ON CAMERA OR IN WRITING?

REASONS TO DOCUMENT PRELIMINARY INTERVIEWS IN WRITING

Expediency: An investigator, analyst, or lawyer can quickly scan written interview notes and summaries to find the key information they seek. With video, they must review the entire video to find the information they need. This can prove to be very time-consuming. If you do use video, it is best to pair the video file with a synopsis of the interview, a full transcription of the interview, and a summary of the file's metadata. Although new technologies are being developed to automate the transcription of video, transcriptions can still be time-consuming and/or expensive to complete.

Interviewer Skill: Interviewing eyewitnesses to a crime is a specialized skill; if you decide to press record, the mistakes you make as the interviewer will be captured as well. Witnesses are a critical part of every case, and an improperly conducted interview – even if the interviewer has good intentions – can permanently compromise the possibility of the witness providing further information to investigators, lawyers, and courts, resulting in the exact opposite result you are striving for.

Consistency: Each time a witness recounts an incident, their recollection contains small, unintentional changes; stories are never told exactly the same way twice. If an interview is recorded and then weeks, months, or even years later the interviewee is asked to testify in court, inconsistencies between the recorded interview and in-court testimony could undermine the witness's credibility. If the interviewer writes down what the interviewee says in notes, it will be more difficult for the opposition to identify who is responsible for the inconsistencies – the interviewer or the interviewee.

Safety: While any interview can put a person at risk, written interview notes only divulge a person's name along with their testimony. A video file also includes their face and voice, making them easier to identify.

Re-victimization: Some people are uncomfortable providing information about human rights violations on video, and in some situations, a camera pointed at the witness could feel intrusive. Others may have experienced extensive trauma, and the recording of an interview may cause them to feel re-victimized. Watching playback of their interview can also cause trauma. Taking the testimony in writing can help you avoid some of these dangers.

Informed Consent: It can be difficult, if not impossible, to secure informed consent when working in the aftermath of a human rights incident. If you cannot secure informed consent, the internationally agreed-upon best practice is to not record the interview. However, should you decide to record an interview without informed consent, keep in mind that written documentation is a better option because there are likely fewer security risks if the person's face and voice can't be seen or heard. See Part V below for more about informed consent and what to do when it's not possible to secure.

REASONS TO DOCUMENT PRELIMINARY INTERVIEWS ON CAMERA

Timing & Speed: During or in the immediate aftermath of a human rights incident, time with witnesses is limited. An interview recorded on video can be accomplished much more quickly than one in writing. The video file can then later be reviewed, analyzed, and transcribed in a calm and secure location.

Access: During or in the immediate aftermath of a human rights incident, access to witnesses can also be limited. The situation may make it impractical or unsafe to pull out a pen and paper and take a written statement. There are times when video or audio recording are your only viable options.

Availability: Sometimes a key witness may not be available for trial because of relocation, death, or other extraordinary circumstances. In some jurisdictions and under rare and specific circumstances, portions of an interview may be allowed in court without the possibility of cross-examination if the person is no longer available to testify.

Assessment of Credibility: A videotaped interview will allow members of an investigation or legal team who are not present in the field to more easily assess the credibility of a witness. Videos show physical affect, voices, location. If interviews are conducted while the incident is ongoing, the video may even show the events in the background. This adds valuable contextual information to the spoken testimony that a written account cannot capture.

Aid to Memory: Justice processes can be slow. In many situations it can be months, years, or even decades between the first time a witness gives an interview and subsequent interviews or testimony in court. Testimony recorded earlier on camera could be used to refresh a witness's memory at these later dates.

Withdrawn Testimony: Witnesses sometimes withdraw their testimony for personal reasons or because they are pressured to do so. The legal term for this is "recant." If their original testimony is on camera, it may be possible to use it in court under specific circumstances.

Advocacy: Finally, as highlighted at the beginning of this section, legal accountability is only one of many valid reasons to interview a witness on camera. You may have other reasons for pressing record.

FILMING

CHECKLIST: TO PUSH RECORD OR NOT?

YES	NO	
		<i>Are there any advocacy reasons to record this testimony in addition to evidentiary reasons?</i>
		<i>Is it logistically easier to film the testimony rather than write it down?</i>
		<i>Is it safe to record a person's identity (name, face, and voice)?</i>
		<i>Is it probable that the person can provide relevant information?</i>
		<i>Is this likely to be the only opportunity for someone to speak with this person?</i>
		<i>Does this person strike you as a credible and reliable witness?</i>
		<i>Is an on-camera interview likely to empower (rather than re-victimize) the person giving the testimony?</i>
		<i>Is the likelihood that contradictory testimony will later be given low?</i>
		<i>Is it possible to secure informed consent? (See details below.)</i>
		<i>Do I have the means to securely preserve this video footage?</i>

The decision to record an interview on camera is generally not an easy one. This is a decision you will need to make based on the information you have at the time. Ideally, you want to be able to answer “yes” to each of the above questions before choosing to press record.

FILMING

FOR MORE INFORMATION

To learn more about lead evidence and other purposes video can serve in the pursuit of accountability, see “All About Evidence” at vae.witness.org.

PART III

PRINCIPLES AND PRACTICAL TIPS FOR FILMING PRELIMINARY INTERVIEWS

Preliminary field interviews often happen spontaneously, so interviewers often won't have time to thoroughly prepare. That said, if you are reading this, it's likely because you seek to collect testimony as part of your human rights-documentation work. In a spontaneous field interview, it will be challenging to implement all the guidance here, but keep these principles in mind for those times when you find yourself recording in the field.

Interviews take time, so interview with purpose. Interviews can be time-consuming, even if the duration of the actual interview is short. It takes time to identify a reliable and credible witness, locate a suitable space for recording, prepare and ask questions, and so on. Additionally, it takes time to carefully organize and preserve the footage, to transcribe the interview, and to review it for relevant content. Be strategic about whom you interview and whether you do so on or off camera.

Security concerns. Speaking the truth can sometimes seriously endanger a person's life, their family, or members of their community and, in turn, can influence the answers they give, either consciously or unconsciously. As the interviewer, it is your responsibility to ensure that the interviewee is fully aware of these risks and provides documented consent.

Remain objective. Do your best not to let your personal feelings intrude into the interview. Do not communicate your feelings about the interviewee's testimony. You may have strong reactions to what you hear, but these are best processed later, away from the interviewee. If you use an interpreter, make sure they understand this principle too and set their agendas aside when translating the conversation.

Seek the truth. If you seek to document for accountability, your role is not to prove that your theory of what happened is right. Your role is to let witnesses share their views of what happened, even if it contradicts your own beliefs. Each account will contribute to getting as close as possible to the truth about what happened. If you capture evidence that suggests someone's innocence, don't fear it. The end goal is to hold accountable those actually responsible for crimes and to ensure the innocent are not wrongly accused. Additionally, if you have information that supports the defense's arguments, it is much better for an investigator or lawyer to know about this evidence early, so they are not caught off guard and can prepare a response to the evidence before they get into the courtroom.

Interview the person in private. All interviews, including preliminary field interviews, should be done in private whenever possible so that the information witnesses provide is not influenced by others and does not influence the testimony of other potential interviewees.

Example:

In cases of gender-based violence, a woman may minimize the incident or even deny it altogether if her husband is present during the interview. Or, if the first person you interview states that the getaway car was red, and the second interviewee, who thought the car was blue, overhears this answer, the second witness may experience self-doubt and become confused about how to answer.

Never offer incentives. If incentives are offered in exchange for testimony, the information the witness provides may be considered untrustworthy.

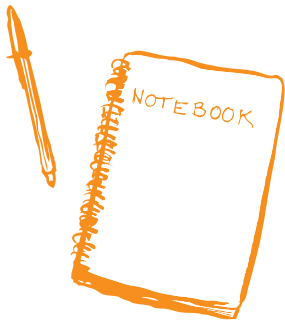
Examples of incentives include:

Financial help, assistance with relocation or visa applications, and witness protection.

Behave ethically. A thorough discussion of ethical conduct during interviews is beyond the scope of this guide; it is a complex subject and varies from country to country and culture to culture. The bottom line is that, once you decide to collect testimony, it's essential to adhere to the highest ethical standards. Failure to do so will impact the reliability of the information collected, the witnesses' credibility, your reputation, and the reputation of any organizations you work with.

Take care of yourself. While it is often hard for a witness to retell the story of a human rights violation, these interviews can also be emotionally difficult for the interviewers and interpreters. Seek emotional support as needed.

Archive it. Understanding that you can never be sure if an interview will be valuable, do your best to record only interviews that you plan to save and use to protect human rights. Interviewees often take risks to give testimony. Honor this to the extent you can, taking into account practical limitations such as safety and security considerations and digital storage space.



**FOR MORE
INFORMATION**

To learn more about archiving video, see the "Activists' Guide to Archiving Video" at archive.witness.org.

PART IV

CONDUCTING PRELIMINARY INTERVIEWS – BEFORE, DURING, AND AFTER

Before

Step 1: Prepare Your Equipment

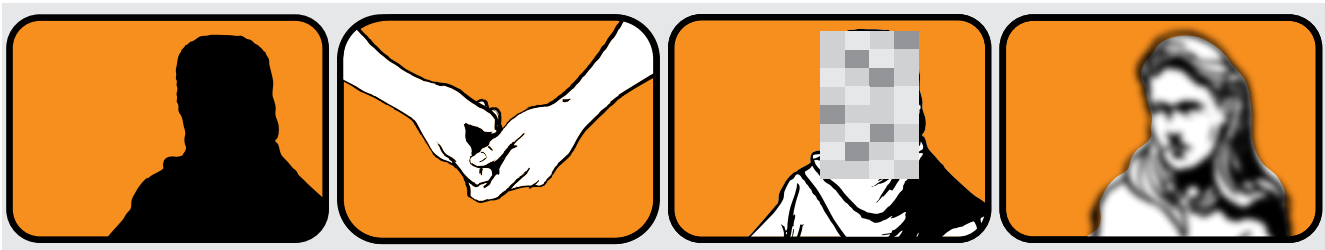
Preliminary field interviews are typically collected in less-than-ideal circumstances, but if you have a small amount of time to prepare your equipment in advance, do the following before you go:

- clear any information off your camera or phone (contact information, files, photos, etc.) that you would not want an authority to have if confiscated;
- charge your camera or phone batteries;
- set the proper date, time, and location on your camera;
- make sure your memory cards have sufficient space;
- test to make sure your equipment is working properly; and
- practice filming with your equipment to ensure you know how to use it properly and can easily do so in field conditions.

Step 2: Identify and Minimize the Security Risks

Carefully evaluate the security implications of conducting an interview on video. How might this impact you, your interviewee, or their community? Consult with the interviewee to help identify potential risks and options for minimizing them. Clarify and document what information the interviewee wishes to remain confidential. Consider how and where you will securely store the video files and documentation after the interview. Will you upload them to secure servers via an encrypted Internet connection and then delete the files locally? Will you pass the original files to a trusted ally?

Consider if you need to conceal your witness's identity during the filming process. Know that an anonymous witness can provide important lead information, but their testimony may be less valuable moving forward as a result of their anonymity, because an investigator cannot assess their credibility or complete a follow-up interview with them.



Step 3 : To the Extent You Can, Know what You Need to Collect and why

Prepare a list of interview topics or questions with your objective in mind. If you don't have time to prepare questions, know that you want to ask questions about safety in addition to the "who, what, where, when, and why."

CHECKLIST: KEY QUESTIONS DURING PRELIMINARY FIELD INTERVIEWS

Here's a checklist of key questions to ask during a preliminary field interview:

	<i>What, if any, security concerns do you have? Are there any actions you would like us to take while filming you or afterward to minimize your risks and/or the risks to your community?</i>
	<i>What is your name? Please spell it.</i>
	<i>Could you tell me the date, time, and location of the interview?</i>
	<i>Please state the date, time, and location of the event we will be speaking about.</i>
	<i>Can you describe what happened? How do you know?</i>
	<i>How do you think it happened? Why do you think this?</i>
	<i>Can you tell me to whom it happened? How do you know?</i>
	<i>If you have an opinion about why this happened, could you share your thoughts with us? What is your opinion based on?</i>
	<i>If it's safe to do so, could you share the names and contact information of anyone else at the scene or with information about the event?</i>
	<i>Are there any witnesses you believe we should talk with or any physical evidence we should film (such as property damage, injuries, impact areas, bullet holes, or environmental degradation)?</i>
	<i>Can we or someone else get back in touch with you to follow up or complete a more thorough interview? If yes, how can we contact you? What is your address, phone number, email, and any other key contact information?</i>

Step 4: Prepare Supporting Materials in Advance

Supporting materials can be used to refresh an interviewee's memory, but not to prompt a particular answer.

Examples:

- Maps may help witnesses more accurately provide details of the location of an event.
- Photographs of common weapons may help them identify a weapon that they do not know by name.
- A calendar can assist with recalling dates.



Step 5: Select Witnesses

In many situations, it is simply impossible to interview all the witnesses to a human rights incident. Consider the type of information you are trying to gather and the gaps in information you are trying to fill. Then be thoughtful about whom you interview about what. For example, a witness who is devastated by the loss of his or her family would likely be able to recount the events before, during, and after the attack, but would likely not be well qualified to provide details about the weapons used. On the other hand, a neighbor with military training would be the better person to interview regarding the types of weapons used. Also, consider how many witnesses you need to interview to ensure credibility and compensate for witnesses who may provide mistaken or unclear information.

Step 6: Choose a Safe, Private, and Informative Interview Location

When possible, locate a safe, private, and reasonably quiet space to conduct the interview. It can be helpful to find a location that allows the viewer to also see the area where the incidents took place; these background images and sounds may help corroborate the interviewee's testimony. For instance, if the witness is speaking about shelling while shelling is actively taking place, the noises in the background will corroborate their testimony. If the witness is speaking about the intentional burning of an oil refinery, and you can see and hear the flames in the background, this too will corroborate their testimony. The bottom line is that, while it is good to have high-quality images and sound in some situations, it may be better to sacrifice the image and sound quality to capture background information that supports the witness's testimony. This choice will be only yours to make according to the situation and how you hope to use the video.

Step 7: Select an Interviewer

If possible, have two people whom the interviewee is comfortable with record the interview — one to handle the technical aspects and the other to ask the questions. When selecting an interviewer, consider their gender and cultural, political, and religious affiliations.

Step 8: Make the Interviewee Comfortable

Individuals need to feel comfortable and trust you if you want them to tell you their story honestly. Introduce yourself and explain what you are doing and why. Explain all the aspects of confidentiality, and permit the interviewee to ask questions before starting the interview.

WHEN PLANNING IS POSSIBLE

Even though many preliminary interviews arise unexpectedly, there are times when a little planning is possible. What follows are a few examples of scenarios in which you could outline a list of interview topics before heading into the field.

Protests

If your community is planning a protest and you expect that the police will be excessively violent, you can sit down ahead of time and develop a short list of relevant questions that will help to illuminate what happened if violence does occur. For example:

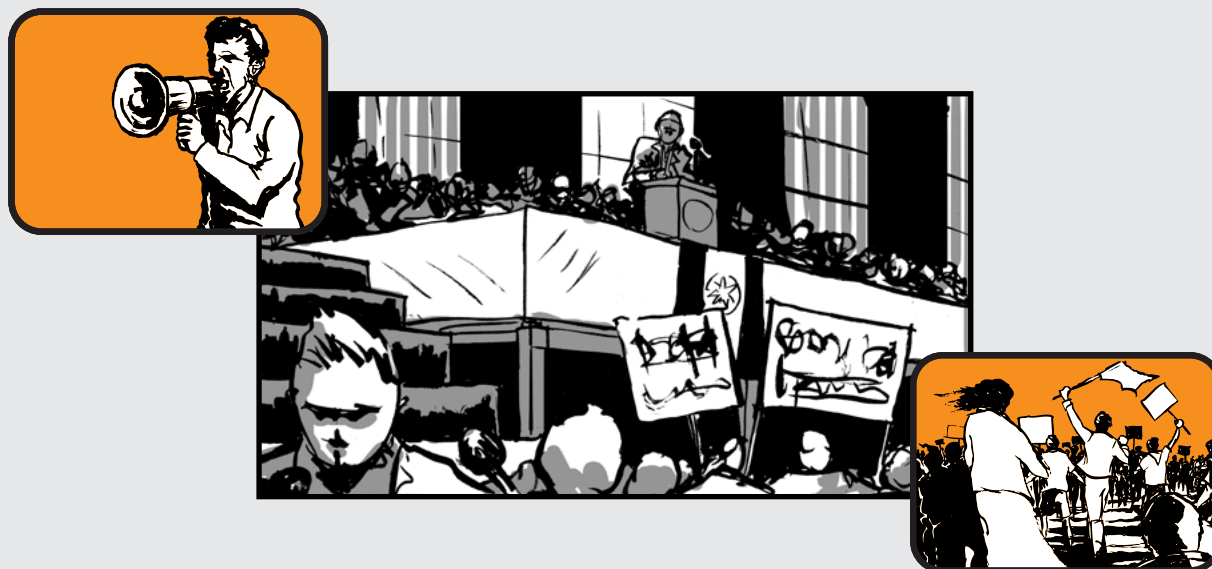
- Was the officer involved with the alleged force on duty or not?
- What happened in the lead-up to the violent encounter?
- How did the assault occur?
- What happened in the aftermath of the attack?

Elections

If you are documenting an election that is expected to be controversial, you may want to ask witnesses questions such as:

- What was the situation like during the lead-up to the election and while registering to vote?
- What was your experience on election day, both inside and outside the polling stations?
- What were your interactions with election officials like?

If you are working to document a particular violation or build a specific case, consider reading the section on “Collection Planning” (available at vae.witness.org) and developing a relevant set of questions before you go into the field to film.



During

Step 1: Secure Informed Consent on Camera

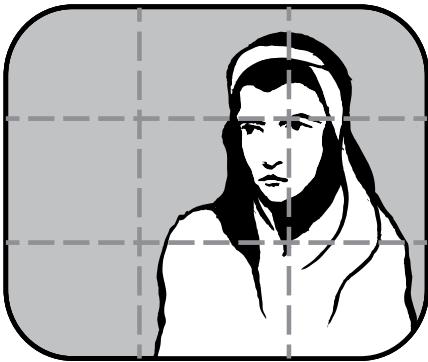
“Informed consent” refers to the filmer’s responsibility to ensure the interviewee knows and fully understands the potential implications to their safety and well-being that may result from agreeing to an interview – especially an interview on camera – and from the future use of that interview. For example, if you are interviewing someone in a remote village in northern Russia where literacy rates are low and access to the Internet is limited, you must do your best to explain how the video will be used, who will see it, and the potential risks the interviewee may face if the video is posted online or becomes publicly available.

The internationally accepted rule is that, when conducting interviews – both on or off camera – with victims and witnesses of human rights abuses, the interviewee’s informed consent must be obtained. Understandably, however, some frontline documenters will find it impossible to secure informed consent in the midst or the immediate aftermath of a human rights incident. Part V explores the challenges around informed consent and what to do if you can’t secure it.

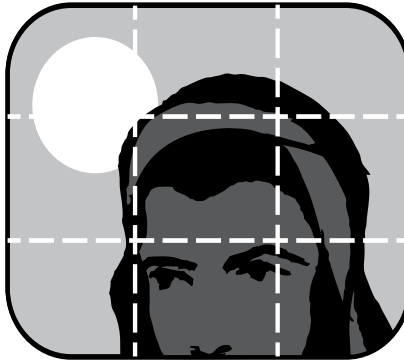
Step 2: Framing, Lighting, and Sound

Capturing footage with good framing, lighting, and audio increases the chance of its being used in investigations, in the media, or for advocacy purposes, and/or preserved for historical memory. However, it is important to recognize that it can be difficult to focus on these technical aspects while you are filming at the scene of a human rights incident. Make your best attempt to capture clear images and audio so reviewers can easily identify the speaker and location and understand what they are saying. But keep in mind that capturing relevant and useful content is more important than capturing footage that is technically perfect. Even technically imperfect footage may still be valuable for its content.

GOOD SET-UP



BAD SET-UP



FOR MORE INFORMATION

To learn more about camera, sound and lighting techniques, visit library.witness.org.

Step 3: Add Objective On-camera Narration

Whenever possible, verbally record the following information on camera prior to conducting the interview:

- your name;
- your contact information;
- the date, time, and location of the interview;
- a one- or two-sentence objective summary describing the incident you are about to discuss with the witness; and
- a one- or two-sentence objective summary describing why you are interviewing this particular person.

Step 4: Ask the interview questions

Ask Questions to Solicit Basic Factual Information. The key questions to ask during a field interview are, first, about safety and, then, about “who, what, where, when, and why.”

Ask Neutral Questions. Depending on the situation, you may want to begin the interview with neutral questions to build trust and help the interviewee feel comfortable.

Ask Relevant Questions. Be thoughtful about people’s time and ask only questions relevant to the witness you are speaking to. For example, ask a resident who was evicted from their community about how their home was bulldozed without warning or about the compensation they did or did not receive for their home. Save questions about why the community was evicted and who is responsible for a community organizer, an insider, or the person implementing the evictions.

Ask Open-Ended Questions. Generally, your questions should be open-ended, as this will solicit a narrative response from the interviewee. These are called TED questions because they begin with prompts like:

- Tell me about ...
- Explain to me ...
- Describe to me ...

Ask Follow-up Questions. Also follow up by asking them how they know the answer they are giving is correct. For example, if you ask, “What time did the car bomb explode?”, it’s good to follow up with questions such as “How did you know what time it was?” — not because you don’t believe the interviewee, but because we all have difficulty remembering details correctly during stressful and scary situations. Follow-up questions help clarify what the person is saying and enhance their credibility.

Acknowledge cultural and language barriers. The gender, race, nationality, religious group, political party, or socio-economic class of the interviewer — and interpreter if you have one — can impact the quality of the answers provided. If you are working in a team, consider cultural norms and practices and be thoughtful about who conducts the interview and how the questions are asked.

Examples:

- Time is defined differently in different places, so you may not be able to ask, “How many years ago did the incident take place?” Instead you may have to ask, “How many rice harvests have passed since the incident took place?”
- Family is defined differently too. Instead of asking, “How many family members do you have?” you may have to ask, “How many people eat from your pot every evening?”

Avoid hearsay. As the interviewer, it’s your job to ensure the interviewee understands how to provide accurate information. Work with witnesses to help them distinguish between what they know to be true and what they have merely heard from others. In other words, help them distinguish first-hand from second-hand knowledge. If the interviewee did not see or hear something themselves, they can still share the information by stating, “I did not see/hear this myself, but I was told by _____ that _____ happened.”

Protect your credibility and theirs. Any on-camera interview you capture may find its way into the public realm, either intentionally or not. If there is any suspicion that you have tried to put words into someone’s mouth or pressured them to say something, it will call the testimony into question and can permanently taint your own credibility. Therefore, you should avoid leading questions in favor of open-ended ones.

Examples:

- Leading question: How much over the speed limit was the red car going when it smashed into the gray car?
- Open-ended question: How fast was each car going when the accident happened?

KEY POINT: FOLLOW-UP QUESTIONS

It is good practice to warn the witness before the interview that, after nearly every answer they provide, you will ask a follow-up question, such as “How do you know this?” or “How do you know whom this happened to?” These follow-up questions are perhaps the most important questions during the interview, because they prompt the witness to think carefully, to put the story into a chronological sequence, and to provide corroborating information. In short, follow-up questions make the testimony more trustworthy.

However, this type of question can make a witness feel you don’t believe them or are questioning their recollection. This is why it’s important to make sure the witness understands, prior to recording, that you are not questioning his or her personal credibility, integrity, or recollection. Instead you are asking because their answers will enhance the value of their testimony.

Example:

Question: *“Tell me what you saw when you first walked into the factory?”*

Answer: *“I saw approximately 100 people working. They all appeared to be under the age of 14. The conditions they were working in were”*

Follow-up question: *“Did you say you saw approximately 100 people who all appeared under the age of 14?”*

Answer: *“Yes. That is right.”*

Follow-up questions: *“How did you approximate that number of people?” and “Why do you believe the workers were under the age of 14?”*

Step 5: Keep Recording

Unless the interviewee requests that you stop the camera, try to record continuously. The more continuous the footage, the more reliable it will generally be. If you need to stop recording, it’s helpful to say, “We are going to take a break, and the time is _____.” Then, when you resume filming, it’s helpful to restate the time, date, and location and provide a concise synopsis of the context before starting the interview.

Step 6: Interview One Person at a Time

Do your best to interview one person at a time, in a place where the interview cannot be overheard, so that the person is more likely to speak honestly and openly, and so that other interviewees are not influenced by their testimony.

Step 7: Listen Closely

Be a good listener and keep an open mind. Your objective may change as you listen and learn more about what information the interviewee can provide. Be flexible, and based on their answers, adapt your questions as needed. Allow the interviewee to provide an account of the relevant facts in their own words. Do not interrupt them.

FOR MORE INFORMATION

For an example of what to record prior to an interview, see “Adding Essential Information.” For how to enhance the reliability of your footage through filming techniques, go to “Filming Secure Scenes” at vae.witness.org.

Step 8: Film Additional Information

In addition to the testimony, you will likely want to capture visual information that corroborates what the person is telling you. If the witness is providing information about an explosion, film the site of the explosion. If the witness is discussing their injuries, ask if you could film their injuries. If the witness is discussing a mass grave, film the grave site. If they are talking about a labor camp, film the camp.

Also try to capture visual information that could help corroborate the date, time, and location of the interview. For example, you could film details such as

- the time and date display on your cell-phone screen;
- the angle of the sun in relation to the horizon or shadows;
- a cultural or natural landmark or a recognizable building;
- a street sign;
- indicators of the day's weather;
- surrounding trees or plants;
- various angles of the interview location.



See the Additional Resources section at the end of this guide for more information about collecting other sources of evidence to support witnesses' testimony, such as documents, still photos, and physical evidence (bullet casings, weapons, human remains, clothing, blood splatter, etc.).

Step 9: Close the Interview

Before ending the interview, it's good practice to

- Avoid ending with discussion of the witness's worst trauma. Ease them away from the trauma by shifting the conversation to the day-to-day or what comes next for them.
- Give the interviewee the opportunity to ask any questions about the interview, and try to ensure they leave in a positive state of mind.
- State the time that the interview ended on camera.

After

Step 1: Revisit Safety and Security

Once the camera is off, check with the interviewee to see if they are aware of any new risks in light of the information that was provided. Make a plan to address any additional risks – for example, concealing a person's identity by using editing tools.

Step 2: Develop Next Steps

If you have a plan in place, inform the interviewee of what will happen next. Consider whether you should pass this interview along to an investigator, share it with the media, post it online, etc. Did the interviewee give you information that you should follow up on? If so, what is the plan to do so? Is there any other follow-up that you can *realistically* implement?

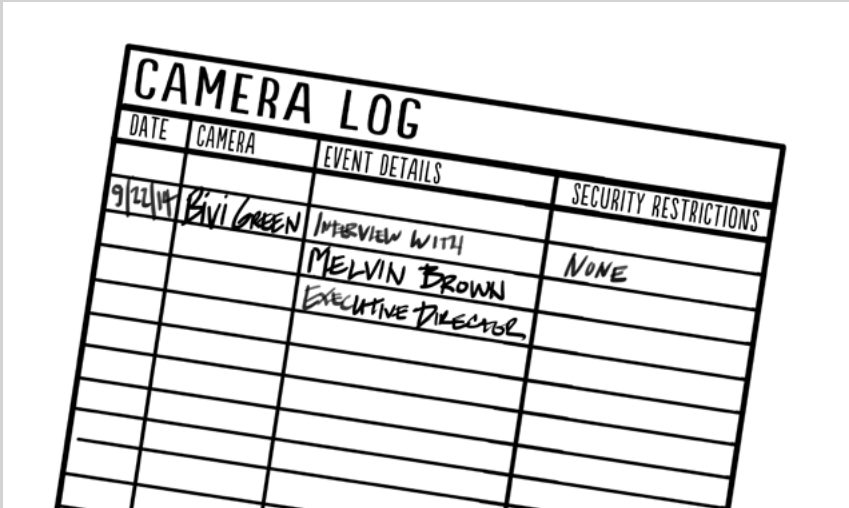
Step 3: Provide Follow-up Support

As a frontline documenter, it's improbable that you have the resources to provide any follow-up. If you don't have the resources, don't make promises. No matter what, do not falsely raise an interviewee's expectations. That said, if it is possible and practical to provide the interviewee with information about support options or assistance that may be available, then pass that information along. You may also want to give them your contact information.

When you get back from the field, complete an objective written summary of the interview, highlighting the information you believe to be relevant and important and why you believe it to be so. Remember, gut instincts are often right!

Step 4: Summarize It

When you get back from the field, complete an objective written summary of the interview, highlighting the information you believe to be relevant and important and why you believe it to be so. Remember, gut instincts are often right!



DATE	CAMERA	EVENT DETAILS	SECURITY RESTRICTIONS
9/22/14	BVI GREEN	INTERVIEW WITH MELVIN BROWN EXECUTIVE DIRECTOR	NONE

Step 5: Archive and Protect It

Archive the testimony and protect it from being used in ways that are not authorized. If possible, seek expert help to ensure your footage is protected and won't fall into the wrong hands.



Step 6: Learn From Your Experience

Consider what you learned from the experience, so you may improve your interviewing efforts the next time you go into the field.

PART V

INFORMED CONSENT

What is informed consent?

Informed Consent is the interviewee's agreement to be filmed and can only be provided after they fully understand

- who you are;
- the purpose of the interview;
- what you hope to achieve with the interview and what you cannot achieve;
- the risks of providing the testimony;
- how and where the video will be used;
- who will see it;
- how you will protect their privacy and security; and
- what you can provide and not provide. For example, most frontline documenters are not in a position to assist in relocation, visa applications, finances, or witness protection.

The internationally agreed-upon standard is that informed consent must be secured when taking testimony in writing, via audio recording, or via video recording. This is a clear recommendation that this Field Guide supports. However, in the field at the preliminary-interview stage, it can be impractical – or even impossible – to follow this recommendation. Accordingly, we will first discuss how to secure informed consent and then address what to do when securing consent is not possible.

Elements of informed consent

The concept of “informed consent” is rooted in four fundamental principles. These principles help us understand the legal definition of consent and the moral obligation of human rights documenters and organizations to protect the safety, security, and dignity of interviewees.

- **Disclosure:** The purpose and intended use of the information sought must be explained fully in order to protect the interviewee's safety to the greatest extent possible and to maintain an honest relationship between interviewer and interviewee.
- **Voluntariness:** The interviewee must give permission for the material to be used and express whether he or she is willing to be identified by name; this must occur in conditions that allow them to give their consent voluntarily. For example, they should not be coerced by promise of payment or additional protection.
- **Comprehension:** The interviewee must understand the implications of the interview. This may be complicated if the interviewee does not have a full understanding of the intended distribution— that it may reach the International Criminal Court, for example. The interviewer must find a balance, avoiding condescension but also protecting the interviewee's safety.
- **Competence:** The interviewee must be capable of fully comprehending the implications of his or her participation. This is an especially important issue with vulnerable individuals such as children, people with mental disabilities, and people who have suffered significant trauma (sexual violence, for instance).

Why secure informed consent?

Securing informed consent is essential to ensuring that the interviewee knows the possible repercussions of agreeing to be interviewed. Identifying the worst-case scenario allows the interviewer and interviewee to devise a plan to minimize the risks to safety and security for themselves and those around them. The provision of informed consent also honors the human rights principle of agency and allows an interviewee to make an empowered decision to give the interview or not.

FOR MORE INFORMATION

For sample informed-consent policies and forms, go to bit.ly/ExamplesInformedConsent.

CHECKLIST: SECURING INFORMED CONSENT – BEFORE FILMING

Informed consent can be documented on paper, on camera, or both. Documenting an expression of consent on camera is recommended, because it better ensures that the proof of consent and important security stipulations will not get separated from the footage.

The checklist below is a guide to documenting informed consent on camera. Modify this checklist

- to meet the specific legal requirements of the country where the filming is taking place;
- to honor cultural practices and ethical considerations in the region; and
- as necessary based on the on-the-ground situation.

BEFORE THE INTERVIEW – Begin with an off-camera conversation to establish that your interviewee understands:

	<i>Who the filmer and crew are and your roles.</i>
	<i>The purpose of the interview.</i>
	<i>Why they will be continually asked explain their responses.</i>
	<i>The implications of speaking out.</i>
	<i>Who may potentially see the video.</i>
	<i>How the video will be used and shared.</i>
	<i>That the interviewee may be asked for a more detailed interview or, in some cases, to testify in court.</i>
	<i>That participation is voluntary.</i>
	<i>That no incentives will be provided.</i>
	<i>That they can cancel their permission during the interview, and the video can be deleted on the spot; if they rescind permission after the interview, logistical and legal realities may make it impossible to delete the testimony.</i>

CHECKLIST: SECURING INFORMED CONSENT – DURING FILMING

ON CAMERA – Now turn to the camera, and before beginning the questions about the incident, ask the following:

	<i>If the security situation allows, please state your name and the date and location of this interview.</i>
	<i>Please explain what we are doing in your own words.</i>
	<i>Can you tell me who may see the video and how it will be shared?</i>
	<i>Can we show your face and use your real name and voice in this video?</i>
	<i>Are there any other restrictions to using and sharing this interview that we need to be aware of?</i>
	<i>Are you aware that your participation is voluntary and that you can refuse to answer any question and end the filming process at any time in order to ask questions, take a break, or stop completely?</i>
	<i>Were you informed that no incentives will be provided for your testimony and that we cannot assist with any follow-up services?</i>
	<i>Were you informed that you might need to make yourself available for a further, more detailed interview?</i>
	<i>If applicable, were you informed that there is a possibility that you may be called to testify before a court? (As a frontline documenter, it's impossible for you to say with certainty whether a person will be called to testify in court. However, if you think that might be the case, be honest about it.)</i>
	<i>Do you consent to your interview being used in the manner discussed?</i>

FILMING

CHECKLIST: SECURING INFORMED CONSENT – WRAPPING UP

TOWARDS THE END OF THE INTERVIEW – with the camera still recording, ask the interviewee the following:

	<i>Would you like to make any corrections or add any additional information?</i>
	<i>Have there been any threats, promises, or inducements which influenced your answers?</i>
	<i>Is the statement you gave true to the best of your knowledge and recollection?</i>
	<i>Do you have any additional safety concerns considering what you shared?</i>
	<i>What is the best way to follow up with you if needed?</i>

AFTER THE INTERVIEW – With the camera turned off consider the following:

	<i>Properly document and preserve the footage in a safe and secure location.</i>
	<i>Determine whether you will share the footage, and if so, with whom, when, and how?</i>
	<i>If needed and if you are able to, provide contact information for a counselor or victim-support services.</i>

When securing informed consent is not possible

The internationally accepted practice is that informed consent must be secured when collecting testimony, either in writing, with an audio recorder, or on camera. However, obtaining informed consent takes time and there are field situations where it may be impractical – and even risky – to complete the process outlined above, because you simply don't have the time to explain everything in the midst or immediate aftermath of a protest, an air strike, or a forced eviction, on election day, or while in a person is in the process of migrating.

The decision to capture testimony without obtaining fully informed consent is a judgment that only you can make based on the information you have available to you at the time. **Keep in mind that if you decide to record an interview without informed consent, you are also taking on the obligation to protect the interviewee's physical security, privacy, and dignity to the extent you can, so that no harm comes to them as a result of the interview.**

When you find yourself in a position where it's impossible to secure a person's informed consent, at the *very minimum* you should ask the interviewee the following questions:

- What, if any, security concerns do you have?
- Are there any actions you would like us to take while filming you or afterward to minimize your risks and/or the risks to your community?

Then, before recording any testimony without completing the full informed-consent process, revisit the same questions you asked yourself when deciding whether to capture the interview on camera or document it in writing, looking for as many checks as possible in the “yes” column.

CHECKLIST:

TO COLLECT AN INTERVIEW WHEN INFORMED CONSENT IS NOT POSSIBLE?

YES	NO	
		<i>Is it safe to record a person's identity (face, voice, and name)?</i>
		<i>If not, do you have the ability to adequately mitigate the safety risks?</i>
		<i>Do you have a way to safeguard the interviewee's privacy?</i>
		<i>Will the provision of testimony empower (rather than re-victimize) the person?</i>
		<i>Is this likely to be the only opportunity for someone to speak to this person?</i>
		<i>Is there a high probability that the interviewee can provide relevant information?</i>
		<i>Do you have the means to securely preserve the footage?</i>

KEY POINT

INFORMED CONSENT: PRELIMINARY INTERVIEWS V. COMPREHENSIVE INTERVIEWS

As a frontline documenter, you will be implementing only preliminary field interviews. In field situations, it is often impractical or impossible to provide interviewees with a complete explanation of informed consent and secure their consent. Although it's not ideal, this is reality. Consider the checklist above when deciding to press record without securing fully informed consent. At the very least, ask about safety concerns.

If you hope to use comprehensive interviews for either advocacy or investigative purposes, you will need to fully implement the informed-consent process outlined here, modified as necessary for your situation.

ADDITIONAL RESOURCES

Resources on Conducting Interviews for Human Rights and Media Advocacy Purposes

- *Guide to Interviewing Survivors of Sexual and Gender-based Violence*. WITNESS. <https://library.witness.org/product/guide-to-interviewing-survivors-of-sexual-and-gender-based-violence/>
- *Conducting Interviews*. WITNESS. <https://library.witness.org/product/conducting-interviews-2/>
- *Concealing Identity in Interviews*. WITNESS. <https://library.witness.org/product/concealing-identity/>

Resources on conducting Comprehensive Interviews

International best practices dictate that all investigative interviews for public and private purposes should be based on the PEACE Model developed by British police authorities in 1994 and since adopted by organizations around the globe. You can learn more about it online; here are a few sources to get you started:

- “The Handbook of Human Rights Investigation” by Dermot Groome. Chapter 7 provides an overview of how to conduct both preliminary and comprehensive interviews. Available online through various booksellers.
- “Documenting Human Rights Violations: A Handbook for Untrained First Respondents.” Public International Law & Policy Group. Forthcoming. <http://publicinternationallawandpolicygroup.org/>
- “A Handbook on Assisting International Criminal Investigations.” Folke Bernadotte Academy. http://www.mediafire.com/view/h8dk2hknoa7begr/ICL_FOLKE_Handbook_Assisting_Intl_Criminal_Investigations.pdf
- “International Protocol on the Documentation and Investigation of Sexual Violence in Conflict,” Part II. UK Foreign & Commonwealth Office. http://www.mediafire.com/view/2ixoeq82jrbekml/PSVI_protocol_Documentation_of_SGBV.pdf

Organizations That Offer Professional Trainings

- The Institute for International Criminal Investigations (IICI). <http://www.iici.info/>
- International Investigative Interviewing Research Group (IIIRG). <http://www.iiirg.org/training/>

Other

- “Making Secondary Trauma a Primary Issue: A Study of Eyewitness Media and Vicarious Trauma on the Digital Frontline.” Eyewitness Media Hub. <http://eyewitnessmediahub.com/research/vicarious-trauma>
- *Activists’ Guide to Archiving Video*. WITNESS. <http://archiveguide.witness.org/>

END NOTES

¹ “Handbook of Human Rights Investigations” by Dermot Groome.

VIDEO AS EVIDENCE: TECH TOOLS FOR TRANSFERRING FILES



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess these risks before you press “record”.

Do your best to implement the guidance below, but understand that nothing stated in this guide is absolute. You should modify the practices to fit your needs. When possible, seek support from local experts. Even if you cannot fully implement this guidance, your footage may still provide valuable information that could lead human rights organizations and advocates to answers and, in turn, to the protection of our basic human rights.

INTRODUCTION

Tools for File Transfer

In any situation where video is collected for use as evidence there will come a time when the footage needs to move from the custody of those capturing events to the custody of those who will store and use it. Transferring files often has to happen in the field under less than ideal conditions, so doing so safely and reliably can be difficult.

The process of organizing this footage for transfer may involve gathering video from many different people; it may encompass a range of devices, from phones to cameras to computers and hard drives; and in some circumstances there will be a need to guard identities of those involved or the content itself from potential adversaries. For all of these reasons, it is important to think through both the workflow of how video will be collected and transferred from the field, as well as the tools that will be used to make it happen.

STEP 1

What Are Your Needs?

As with any task, you must assess your needs before choosing the right tools for the job. Here are four factors to think through at the outset:

- **WORKFLOWS:** Are you moving files to or from one or many sources? Are you transferring files to or from people you partner with closely, or are you working in a more open process? Do the videos and other files need to be available online for multiple users at once? How tech savvy are your partners, and what tools are they already familiar with?
- **SECURITY:** Do you need to keep the content of media files away from prying eyes? Do you need to maintain personal anonymity on one or both sides of the transfer? Do you need to protect the anonymity of individuals who appear in the video?
- **CONNECTIVITY:** Does everyone you're working with have reliable access to strong Internet or mobile networks? Is there a need to access anonymous or encrypted channels, and, if so, is everyone in your workflow aware of how to do so? Does the transferring need to happen in the field or can you take it back to your home or office?
- **FILE SIZE:** Are the files being transferred short videos shot on cellphones, or are they longer videos coming from high-quality cameras? Are you transferring one or a few pieces of media from each source, or are you moving a large stockpile of media from one place to another?

KEY DECISION POINT

online or offline Transfer?

Despite the fact that many of us are constantly connected online, it is often the case that transferring files offline is the best choice. Documenters in some locales will be dealing with poor Internet connectivity, and if it is necessary to use encrypted and/or anonymous channels, the already time-consuming process of moving big files can slow to a crawl, even if you are not burdened by low bandwidth. The complexity of keeping video files anonymous and encrypted may mean that documenters and their partners feel safer physically handing over files. In these cases, it makes more sense to use offline storage like flash drives, external hard drives, and SD cards, in combination with encryption and good operational security, to move files from one place to another.

STEP 2

Determine Which Type of Tool Works For You

Once you answer those basic questions about the process, risks, and players involved, you can narrow down the options for moving files. Broadly speaking there are three categories of file transfer tools, and each one addresses different needs.

A: ONLINE SHARING: Online or “Cloud” storage has rapidly grown in popularity as a way to provide others with access to your media files, becoming easy to use and widely available with tools like Google Drive and Dropbox. But there are potential pitfalls – managing access to files, staying under restrictive storage limits, and, most importantly, keeping your videos private and secure. Most popular services do not adequately encrypt your files, and when these services do have encryption they often hold the keys, so they can access your files and could turn them over to any authorities who come asking. To make sharing in the cloud more secure, try using add-on tools, switching to “zero-knowledge” cloud storage providers that are built for privacy, or setting-up a secure server where files can be securely and anonymously uploaded.

- **BOXCRYPTOR:** An add-on tool that provides full encryption for those using cloud storage like Dropbox or Google Drive, Boxcryptor uses public and private keys to encrypt files for sharing with particular users.
- **SPIDEROAK:** A leading encrypted cloud storage option, SpiderOak allows transferring via password-controlled “Share Rooms” that can be linked to other users, even if they don’t have the application downloaded. Similar options include Wuala and Viivo.
- **SECUREDROP:** An open source platform for setting up a secure file transfer server, SecureDrop has been adopted by media outlets looking to provide a safe space for whistleblowers to share files. GlobaLeaks is another opensource option.

KEY DECISION POINT

Sharing on Social Media

Files are often shared on social media and commercial content platforms but this is far from ideal. Potential issues include a loss of privacy, the loss of important metadata in the original video files, and the removal of the video by the platform if the content is considered too sensitive among others reasons.

B: DIRECT DIGITAL SHARING: Directly transferring big files from one person to another has always been difficult on the web, and unless you have web hosting or can run your own server, it's still a challenge. The most common way to send a file directly to someone is email, but when it comes to video, that method can be extremely slow, limited to files of a certain size, and insecure. Often documenters in the field shooting mobile video will use messaging apps like WhatsApp to share their files, but those methods are less than ideal for many of the same reasons as email. For those working together in the same vicinity, Bluetooth, WiFi Direct, and other near-field communication (NFC) technologies are all secure and simple options, but work best if you are only moving a limited number of smaller files.

- **BLUETOOTH:** The same thing that connects your wireless keyboard or mouse to your computer, Bluetooth is a secure option available on even the simplest feature phones, but its slow transfer speeds make it an impractical option for transferring more than a few files.
- **WIFI DIRECT:** An updated protocol with speeds up to ten times faster than Bluetooth, WiFi Direct is available on newer smartphones. NFC-equipped devices use WiFi Direct to tether to other devices and transfer files.
- **BITTORRENT SYNC:** BitTorrent Sync is a file transfer application based on the BitTorrent protocol, and it allows a range of private and encrypted sharing options. Be aware, though, that it is not open source, which means its code cannot be publicly audited for security flaws, and it requires that each device be powered on at the same time for the file to transfer.

C: PHYSICAL STORAGE: It often turns out that handing off or mailing an SD card, flash drive, or hard drive is the safest and simplest way to transfer files. Poor connectivity, limited technical knowledge among partners involved in a transfer, or security concerns may push you towards the tried and true option of transferring files offline.

- **EXTERNAL HARD DRIVES:** External hard drives can hold terabytes of data, while flash drives are small enough to fit discreetly in your pocket but come with limited capacity that can run out quickly if you are moving videos. One good option is the Seagate Wireless Plus which has 1 terabyte (that's 1000 gigabytes) of storage, is battery-powered so it can be used to backup and transfer files in the field, and is WiFi enabled. Similar options include the Kingston Wi-Drive.
- **MICROSD CARDS:** As for smartphone storage, many come with microSD cards that can easily be swapped out and passed to others, though they are becoming less common due to the constant demand for thinner and sleeker phones. Compatible with some Windows and Android phones, GoPros and a range of cameras, these cards offer a cheap option for getting a lot of storage, up to 128GB, that can be easily shared given their tiny size.
- **USB TRANSFER:** Transferring from smartphones or other devices to a computer or external hard drive can obviously be done with the standard USB cables, as well, but if all you have is a phone and a flash drive, you will need an extra cord to make them compatible. The USB On-The-Go (or USB OTG) can be purchased inexpensively online and provides a way to connect a flash drive directly to a smartphone.

TECH TOOLS UPDATES

Tech tools are always changing! Visit the WITNESS blog for the latest information and reviews: blog.witness.org

Security should always be a priority when dealing with evidentiary video. Be sure to include encryption and anonymity in your workflow (and make sure you know the difference between the two). Encryption is an important step no matter which transfer method you opt for, and it can be done in a couple of ways.

Option 1: Full Disk Encryption

Create encrypted volumes on your computer or external storage device. Your operating system comes with built-in tools that allow you to do that, though they are not very convenient if you need your encrypted drives to be usable on devices with different operating systems (for example, when moving from a Windows computer to a Mac). If that's the case, look to a third-party application that can work across PC, Mac, Linux, Android and iOS; just be sure to check the latest security updates to make sure they are still considered safe and, in the case of an open source option, have been audited recently.

- **SUGGESTIONS:** FileVault on Mac OSX and BitLocker on Windows are the built-in options; TrueCrypt, VeraCrypt, and Symantec Endpoint are cross-platform applications. HFSExplorer is an example of a tool that can open a Mac-encrypted DMG volume on Windows. On mobile, Android devices have an encryption option in the settings, though it will slow the device down and there is no easy way, short of a reset, to turn off the encryption.

Option 2: File Encryption

Directly encrypt individual files, rather than whole drives. The best way to go about this is to use the PGP standard, which you may already be using to encrypt your email. This method is very secure and well known, but it requires everyone involved in the transfer to have PGP keys set up and made available to each other, so a bit of preparation is needed.

- **TS:** GPGTools for Mac, Gpg4win for Windows, and Android Privacy Guard (APG) for Android-based smartphones are the best options for using PGP to encrypt your files and share them with specific people.

KEY POINT

Protecting Anonymity

The full disk encryption and file encryption approaches protect the content that you're transferring, but if you need to keep yourself anonymous online when setting up accounts and navigating the web, the Tor Browser is a good place to start. A VPN service is another option that may provide a bit more cover depending on where you are, though VPNs should be avoided if using the torrent option mentioned above. If complete anonymity is needed – when using a public computer, for example -- the TAILS operating system can give you access to browsers and basic applications while not logging any of your activity on the hard drive.

LEARN MORE

The landscape of technologies is constantly changing, and researchers and activists are constantly finding new methods - and threats - when it comes to digital security. Check out **Tactical Tech's Security in a Box** (<https://securityinabox.org/en>) or the **Electronic Frontier Foundation's Surveillance Defense tools** (<https://ssd.eff.org/en>) for additional information about protecting your digital security.

The resources suggested in this document are focused on getting files from one person to another, but managing them once they reach their destination is a complex and important task in its own right. Here are a few suggested resources on media management:

LIST OF RESOURCES

- **The Video as Evidence Field Guide** (http://bit.ly/WITNESSLibrary_VaE)
- **The Activists' Guide to Archiving Video** (<http://archiveguide.witness.org/>)
- **WITNESS Library** (library.witness.org)

Stay updated on new tools and how activists are using them around the world on the **WITNESS blog** (<http://blog.witness.org/>).

VERIFYING EYEWITNESS VIDEO: HOW TO VERIFY FOOTAGE OF HUMAN RIGHTS ABUSE

Value of Eyewitness Video

Videos taken by perpetrators, victims and witnesses of abuse can prompt news coverage, inform investigations, and support legal proceedings. In some cases, these videos are the only visual documentation of abuse and can shine a light on unknown or unconfirmed facts of a human rights violation. However, to use such videos effectively, analysts must verify whether a video is what it purports to be. This resource covers techniques and tools to help verify that a video found online or sent by a source can be trusted as an authentic recording of a particular event.

Goal

Determine, to the highest degree possible, when and where a video was taken and that what it documents is authentic, so that news media, human rights advocates, investigators, analysts, lawyers and courts can trust the substance of the video and use it to piece together a full story about a human rights violation.

KEY PRINCIPLES

Review each video with a dose of skepticism: It is easy and increasingly common to upload an old video to YouTube with a new title and description. Hoaxers and activists do so with the goal of leading reporters and viewers to believe that a video documents something it does not.

Edited videos are more difficult to verify: Critical details could be missing, clips from different contexts could be compiled together, and added text, music, or graphics could also undermine the authenticity of the footage and/or bias viewers. Try to find unedited footage of an incident, rather than a video comprised of several different clips edited together.

Online videos often lack valuable metadata: When a phone or digital camera records video it creates metadata that may include information such as the date and time of the recording. However, when that same video file is uploaded to online platforms like YouTube or Twitter, those platforms create a derivative file that often lacks the original metadata.

100% verification is rarely possible: If the video is not received directly from a primary source, it may be impossible to completely verify the date, time, and location at which it was filmed. That is one reason online video is best used to supplement, not substitute, other forms of documentation and research.

Not all videos can be verified: Not all videos sourced online will lend themselves to verification, even though they may well be authentic. If the video was taken in a closed, private location, or an empty field, there will be fewer visual clues that can help verify the location; if the video was uploaded by a third party to protect the anonymity of the filmer, it may be impossible to contact the original filmer and thus more difficult to verify.

FOUR STEPS

VERIFYING EYEWITNESS VIDEO

STEP 1 Preserve The Video & Document The Verification Process

If you believe the video may be valuable for media advocacy, human rights advocacy or investigations, it is important to preserve the video along with documentation of your process for verifying that it is authentic footage of a particular event on a specific date and time.

Download the video: Online videos can swiftly disappear, especially ones that are controversial or graphic. If an online video contains important information about a human rights issue, save a copy of the video, along with information included with the original upload site such as the user, title, and description. If the video is removed or made private by the user, bear in mind that that may be due to security concerns for the filmer, uploader, or individuals who appear in the video.

Document the verification process: As you go through the process outlined below, document how you determined that the video was filmed at a particular location, date, and time and is of a specific event. Archive the documentation with the saved video file.

STEP 2 Is The Video The Original Upload?

The closer you can get to an original video file, the higher the likelihood is that you can trust that its description is accurate. Videos are often re-uploaded to YouTube, Facebook, and other platforms with misleading titles, descriptions, edits, and/or translations by individuals who had nothing to do with filming them. Here are a few ways to determine if a video is the original upload:

Google reverse image search: Copy the video's thumbnail image and upload it to [Google image search](#)¹ to see if that image has appeared previously on the Internet. If the video is on YouTube, an easy way to do this is to paste the url into [Amnesty International's YouTube Data Viewer](#),² which automatically extracts the thumbnail images and plugs them into a Google reverse image search. If the image shows up in old articles that result from the image search, you'll know that the video was not filmed recently.

Uploader's online history: Do you have good reason to believe the uploader filmed or uploaded the original footage, or does it appear that the person uploads other people's videos? Look at other videos uploaded to the same account. Are they from the same location? In the same style? When did the person begin uploading videos? Try finding the uploader's other online profiles, such as a website, Facebook page, or Twitter page. Do they indicate that the uploader is in the location the video purports to be from? This can also give you a sense of the uploader's affiliations and any political agenda s/he may have.

Contact the uploader: If possible, contact the uploader to ask for further information about the video. By communicating with the uploader, you can possibly find versions of the video closer to the original, or even acquire a copy of the original digital video file. Be aware that in high-risk scenarios the uploader may intentionally obscure his or her identity and resist divulging information about the filming of the video.

FROM THE FIELD

DEBUNKING VIRAL VIDEOS

Example 1: A video purporting to show³ a “fireball” or meteor shower in California was widely shared by news organizations and on social media. The video turned out to be several months old and filmed in the DC area.

Example 2: A widely circulated video⁴ purporting to show police abuse in Venezuela had been uploaded months earlier and claimed to depict Colombian special forces abusing a farmer. Several months later it was re-uploaded and circulated again, this time purporting to show Mexican police abusing an activist.

STEP 3 where was The Video Taken?

To verify that the video was taken in an alleged location, use satellite images, maps, and other photos or videos taken in that location to corroborate that it was indeed filmed there. The following are some helpful resources:

Google Maps and Google Earth: Google Maps⁵ provides a map, satellite photos, and street views from many locations around the world. Using these, you can try to find any distinctive landmarks that appear in the video in other images of the alleged location. Using Google Earth,⁶ you can use the Photo Layer to see images taken in certain locations, and Terrain Layer to see the area’s terrain. Choose the option “Show Historical Imagery” to go back in time and see satellite images from different months and years. This option can allow you to see change over time, or to see images with different angles and quality.

Scrutinize audio and visual clues: Other indicators that can help verify that a video was taken in a particular place include uniforms of individuals in the video, license plates, accents, flags, and the text on storefronts and street signs. Online communities can be helpful when seeking localized expertise.

SHARING

FROM THE FIELD

USING MAPS TO GEO-LOCATE A VIDEO

Example 1: Blogger Brown Moses used satellite photos in Google Maps to geo-locate a video of a woman being shot⁷ during a protest in Rabaa, Egypt.

Example 2: This video case study⁸ shows how Amnesty International researchers used Google Earth to geo-locate a video depicting likely violations of international humanitarian law in Aleppo, Syria.

STEP 4

When Was The Video Taken?

YouTube and other video sharing sites stamp videos with the time and date they were uploaded. However, the timestamp only indicates when the video was uploaded, not when it was originally filmed. Also, the date and time given may not correspond to the time zone of the uploader's location, but rather the time zone of the online platform's offices. Here are some methods to assist in verifying when the video was filmed:

Narration: If the video is narrated, skilled filmmakers often state the date, time, and location within the video itself, or hold a newspaper or handwritten note up to the camera indicating that information. Of course, the filmer could make up that information, but if this information is included, it could be one place to start.

Visual Indicators: As in Step 2, visual indicators can help determine the day and time the video was taken. Sites like [Weather Underground](#)⁹ give weather on a particular date and time in a given location. Does it match what is in the video? Are there shadows, a sun or a moon in the sky that indicate what time of the day it is? You can use an almanac like [this one from the US Navy](#)¹⁰ to determine the sunrise and sunset at given locations on specific dates.

Corroborate: If several people witnessed the event in the video, you might expect several online reports of what happened. Can you corroborate the substance of the event filmed in the video with simultaneous reports on social media and elsewhere? Services such as [GeoFeedia](#)¹¹ show tweets from given locations throughout the world. Can you use tweets, hashtags, Instagram photos, or Facebook posts to corroborate the event that appears to be documented in the video? In this case, make sure the reports are independent and don't all rely on the same source.

FROM THE FIELD IDENTIFYING MANIPULATED VIDEOS

Videos can be technically manipulated or staged. Here are a few cautionary examples of videos that turned out to be fake.

Technical manipulation: Special effects or even simple editing can be used to create a hoax. [This article explains the debunking of a video](#)¹² that thousands of people believed to show an eagle snatching a baby from a park. Clues that led viewers to debunk it include shadows, the weather, the lack of corroborating information one would expect from other witnesses and local news media, and the existence of an animation school in the city that incentivizes its students to "hoax the Internet". Be cautious of video of low quality or low light, as the lack of visual or audio clarity can make it more difficult for the viewer to notice edits.

Staged videos: A viewer can verify the date, time, and location of a video, but whether or not the action in that video is staged rather than authentic can be nearly impossible to determine. Viewers familiar with the region, issues, or language are more likely to pick up on any red flags that may indicate the video is a hoax or has been manipulated. A two-part series in the Washington Post [describes a video](#)¹³ from South Korea that was thought to be real but turned out to be a performance by paid actors. [A video appearing to show a boy run through sniper fire in Syria](#)¹⁴ was viewed millions of times before the BBC exposed that it was not a Syrian video at all, but was filmed by a professional crew and actors in Malta intended to look like it was a Syrian citizen video.

Acknowledgements

Christoph Koettl, Brown Moses, Storyful and the Open Newsroom community

Links

¹https://images.google.com/imghp?hl=en&gws_rd=ssl

²<http://citizenevidence.org/2014/07/01/youtube-dataviewer/>

³<https://plus.google.com/118358993174479176125/posts/Y8R7uUXMuJc?cfem=1>

⁴<http://blog.witness.org/2014/02/video-exposes-police-abuse-venezuela-mexico-colombia/>

⁵<https://www.google.com/maps/@?dg=dbrw&newdg=1>

⁶<http://www.google.com/earth/>

⁷<http://brown-moses.blogspot.com/2013/08/the-process-of-video-verification-rabaa.html>

⁸<http://citizenevidence.org/2014/01/07/video-verifying-citizen-video-with-google-earth/>

⁹<http://www.wunderground.com/>

¹⁰http://aa.usno.navy.mil/data/docs/RS_OneYear.php

¹¹<https://geofeedia.com/>

¹²<http://www.poynter.org/news/mediawire/198830/viral-video-of-baby-snatching-eagle-declared-a-fake/>

¹³<https://www.washingtonpost.com/blogs/worldviews/wp/2013/07/25/controversial-video-of-western-men-harassing-a-korean-woman-appears-to-have-been-staged/>

¹⁴<https://www.washingtonpost.com/blogs/worldviews/wp/2013/07/25/controversial-video-of-western-men-harassing-a-korean-woman-appears-to-have-been-staged/>

SHARING

ETHICAL GUIDELINES:

USING EYEWITNESS VIDEOS IN HUMAN RIGHTS REPORTING & ADVOCACY

INTRODUCTION

Eyewitness video footage may provide valuable documentation of human rights violations. In some cases, these videos are the only visual documentation of abuse, and can provide critical answers to questions surrounding a story or an investigation.

Yet deciding if and how to share the footage publicly is rarely a simple process. Some eyewitness videos have the potential to put individuals and communities at greater risk of harm if shared widely or misused. Many videos found online were never meant to be public in the first place. Others were taken with the intent to cause fear, inflict harm, or incite violence.

These videos raise the question for journalists, human rights advocates, documentarians, and investigators: How can we apply the principles of safe and ethical human rights practices—including a commitment to respect human dignity, empower affected communities, and minimize harm—when presented with visual documentation that we ourselves did not collect?

While technology makes it easy to link to a YouTube video in an online report, embed it in an article, or edit numerous clips into a video montage or documentary film, you want to consider the implications of doing so for those involved in the video and the issue it documents.

Below are principles to guide the ethical curation of eyewitness videos, as well as tools, resources, and examples of how to approach ethical challenges. The guide is divided by responsibilities to three stakeholders of video footage:

- I. the individuals filmed;
- II. the video creators; and
- III. the audience.

ABOUT THIS GUIDE

The guide's primary audience is investigators, journalists, advocates, archivists, and others who utilize eyewitness video for reporting, investigating, or documenting human rights issues. While the guide is primarily concerned with videos already produced, many of the ethical considerations discussed are also applicable to the broadcast and curation of live streaming footage.

Finally, this guide is just that. Deciding if and how to curate eyewitness videos is rarely an easy process. At times, you may find two or more of the ethical considerations outlined below in conflict, and will have to use your professional judgment to make the best of an imperfect decision. The way you do so may depend on your own expertise, field of work, and objectives. We hope that the guidance and examples herein will support you in making those difficult decisions, and we welcome your feedback to help us update and improve these guidelines.

KEY DEFINITIONS

Eyewitness Video

This guide refers to “eyewitness video” to describe videos taken by individuals at the scene of an incident. These videos are often shot by average bystanders, sometimes by activists, and sometimes by victims, survivors, or perpetrators of abuse themselves. Eyewitness videos usually reach investigators or the news media via online platforms like YouTube, Facebook, or Twitter. Other times, they are sent from a source to investigators via email, chat applications, or another form of communication, or found on the computer or cell phone of the filmer. What they have in common is that you, the viewer—the reporter, investigator, filmmaker, or advocate assessing the footage—were not involved in the filming process. Hence, you have a number of questions about the video, its authenticity, intent, and context. This type of footage is also commonly referred to by the terms “user-generated content,” “UGC,” “open-source video,” or “citizen video.”

Curation

This guide addresses the curation of eyewitness video, by which we mean methods of **publicly sharing and contextualizing eyewitness videos or the information contained in them**. That could take the form of a hyperlink to a YouTube URL in a human rights report, a documentary film that includes clips from eyewitness videos, a blog that embeds relevant online videos, an article reporting on the issue documented in the footage, an interactive map placing videos by location, or other means of sharing eyewitness footage in the public domain.

Curation vs. Preservation

The process of **curation** is distinct from **preserving** footage for potential use in a specific legal or advocacy context. Thus, when we advise, for instance, to edit a video to blur faces, this guidance is targeted toward the public sharing of the video. Human rights advocates will want to keep an archived copy of the original footage for potential use to share with a select audience, such as with local prosecutors.

In fact, we recommend that as a first step, those working with footage that may provide valuable documentation should save and archive a copy of the video. Many online videos of human rights abuse are removed from websites for a myriad of reasons, including violation of terms of service of online platforms. Whether or not you plan to curate the video for a public audience, saving a copy will ensure preservation of the visual documentation it provides is preserved.

For more archiving resources, see the [Activists’ Guide to Archiving Video](#).¹

I. RESPONSIBILITY TO INDIVIDUALS FILMED

PRINCIPLES OF ETHICAL DOCUMENTATION

In the fields of human rights, journalism and documentary filmmaking, there is a tradition of ethical practices generally aligned with the desire to “minimize harm” to the subjects of reportage. These practices include obtaining the informed consent of individuals interviewed and filmed and assessing the potential risks involved in documenting and sharing their stories.

Curators not involved in a video’s production have a more difficult time assessing whether individuals gave their consent to be filmed, and if sharing the video could cause them harm. This section addresses the risk of harm to individuals and communities filmed in eyewitness footage, and provides strategies to help assess, weigh, and address those risks. First, we review some of the main concepts behind ethical documentation.

CONSENT

Obtaining the informed consent of an individual to record and publish his or her image and story is key to responsible and ethical documentation. Some people choose to keep their lives or experiences private, or to share their stories anonymously, for personal reasons or due to security concerns.

Informed consent involves an understanding by the individuals filmed of the purpose and potential audience of the video, as well as the risks involved in appearing in it. By granting consent to be filmed, an individual is deciding to participate and to assume the potential risks that may be involved. That decision is not necessarily permanent; someone who grants consent may regret that decision after further reflection, or due to changing security risks. It is important to respect the fact that an individual’s decision around consent may evolve over time.

While the practice of obtaining informed consent has a long tradition in human rights, journalism, and documentary filmmaking, individuals outside of those professions are often unaware of the concept, or do not have the opportunity to ask for consent from the individuals they film. Some videos are recorded without subjects aware they are on camera. In the case of certain human rights videos, the filmer is also the perpetrator, and exposing the victim’s identity is part of the abuse itself. (See section on Perpetrator Footage on page 9.)

INTENDED AUDIENCE AND USAGE

Not all eyewitness footage found online was created and uploaded with the intent of being shared in the public domain. The subject may have consented to the recording for a specific and limited audience, but not for widespread circulation.

Consider the case of the 2014 hacking of Hollywood celebrities’ online accounts² to obtain nude photos. After celebrities’ private online accounts were illegally broken into, many of their private photos became publicly available online and were widely shared. But this was clearly not the celebrities’ intention for the footage: their original consent was given only for a specific audience and purpose. More generally, individuals often share information on Facebook or Twitter with the understanding that only their limited number of friends or followers will see it, or without a clear comprehension of privacy settings that determine who can see information they share on their social media accounts.

SHARING

**FOR MORE
INFORMATION**

Get tips on obtaining
informed consent
at
[bit.ly/Tips_](https://bit.ly/Tips_InformedConsent)
[InformedConsent](https://bit.ly/Tips_InformedConsent)

SAFETY, DIGNITY & PRIVACY

Inherent in video's power to convey an individual story is the potential for a video to impact the safety, dignity, and privacy of individuals and communities captured in the footage. A video of sexual assault, for example, has the potential to shame, re-victimize, and endanger the abused individual. Widely circulated footage of human rights defenders could make them targets of arrest or violence by repressive governments. Testimony of a police officer describing corruption among his superiors could put that officer at risk of losing his job or worse.

Keep in mind that there may be people beyond those identified on camera who are put at risk from the release of footage. For example, if one individual is captured on camera at a meeting, it could be inferred that the individual's colleagues are also there. If an individual is filmed speaking out against local officials, that person's entire family could be in danger of retribution. An individual's on-camera testimony could include the naming of other people and their locations.

Potential harm also applies to perpetrators of abuse who may be caught on camera. This point is especially important for human rights groups that advocate for a fair trial or don't want to put alleged perpetrators at risk of torture.

PROFESSIONAL JUDGMENT

In the absence of clear indicators of informed consent in a video, a curator must make a professional judgment about whether using that footage could violate the consent, privacy, or dignity of the individuals or communities filmed, or otherwise put them at risk of harm. Take the following steps to make an informed assessment of the potential risks to those filmed. Then weigh the different factors to decide how to curate the footage while minimizing those risks.

STEP 1

ASSESS CONSENT

Certain visual clues can help a viewer assess whether individual subjects consented to the recording.

Questions to consider:

- Was the video recorded in a public or private setting?
- Does the subject appear aware of the camera?

In assessing the subject's agency in giving his or her consent to be filmed, be particularly sensitive to vulnerable populations such as prisoners, children, and the mentally impaired, as they may not be fully cognizant of the risks of being on video or possess the autonomy to decide whether or not to do so.

However, even if visual clues can suggest whether those filmed in eyewitness footage are aware of being on camera or willing to be filmed, it is nearly impossible to assess with certainty whether they gave their *informed consent* to the recording. For instance, if the video was filmed in a crowded public space such as a protest or violent altercation, they may have lacked the ability to "opt-out" of being filmed. They may have had no way to know whether and to what extent those recordings would be distributed, to whom, and for what purposes.

STEP 2

ASSESS INTENDED AUDIENCE

Informed consent depends on an understanding of the purpose and audience of the footage. If a person granted informed consent to the original recording, that consent does not carry over to unanticipated future uses. For instance, a prisoner may consent to a recording taken in his jail cell for use in a human rights report, but not for that same footage to be used for entertainment purposes.

When considering the consent of individuals to share their images, identities, and stories, ask:

- Was consent given with the understanding that it would be shared for a particular audience and/or use?
- How would increased exposure to the footage impact the privacy, dignity, and security of those involved in the video?
- What about the way it is presented with other videos or information?
- Would the individuals filmed consent to the use you intend to make of the video?

Do not assume that because your organization or publication targets a specific audience, the footage you curate will not circulate around the world online and make it back to the community of those filmed. (See the “From the Expert” section on page 10 for the International Committee of the Red Cross’s guidance on handling sensitive information in the public domain.)

STEP 3

ASSESS RISKS

Consider what harm could result from sharing footage publicly. Keep in mind that notions of privacy and risks of violence, social marginalization, and repression are not uniform from one society or culture to the next. In the US, for example, there is a general understanding that “public” events such as protests are fair game for documentation. In other countries, however, protesters take steps to ensure their identities are private so as to avoid targeted repression for activism. Consult with someone sensitive to the social norms and security situation of the community where the recording takes place to gauge the potential that sharing the footage would violate individual privacy or put people or communities at risk.

STEP 4

WEIGH CONFLICTING INTERESTS

When advocates, journalists, and crisis responders document a human rights or humanitarian issue, it is generally out of concern for the “public interest”—the belief that it is in the public’s interest to expose a crime or serious misdemeanor, protect public health and safety, and contribute to an informed and engaged citizenry. Video can be a powerful tool to expose issues of public interest and motivate change.

However, there is a constant tension between this motivation to expose abuse and considerations of consent, security, and dignity. For instance, one may be shocked to see a video of prison torture and tempted to broadcast it on the news before considering the impact of that video on the victims of abuse. (See the example from Malaysia in the “Perpetrator Videos” section on page 9.)

Consider the principles outlined above to weigh what are often conflicting human rights values. Here are a few examples illustrating how those values can clash:

- **Public interest vs. individual risk.** Though exposing injustice has great potential for public good, there may be security risks involved for individuals who choose to speak out on-camera. Subjects should understand those risks and have consented to take them on, due to their belief in the potential benefit of sharing their story.
- **Public interest vs. rights of the accused.** This is often at issue in videos that expose the identities of perpetrators of abuse. Some human rights organizations blur the faces of perpetrators to protect their safety and ensure their right to a fair trial, but others choose to expose their identities to hold perpetrators accountable for their actions and put pressure on society to bring them to justice.
- **Public interest vs. individual dignity.** While it may violate an individual’s dignity to expose his or her abuse, it could also result in greater advocacy for a victim when that individual is known rather than nameless. For instance, when a video emerged documenting police torture of detainees in Fiji, the mother of one of the victims was able to identify her son and advocate for justice.³

The responsibility of the curator is to use his or her professional judgment to weigh the intended social good of exposing human rights abuse with the potential risks involved in sharing eyewitness videos, especially ones in which the individuals filmed may not have given their informed consent to the recording. Strive for a balance that minimizes the likelihood that the video will cause unanticipated harm, especially for those who remain in vulnerable situations after the video is shown or distributed. See below for ways to expose abuse while minimizing risk.

CREATE STANDARDS

Create standards within your organization to guide how you handle footage, and make sure your team clearly understands them before they are put to the test. Are there situations in which you would share videos without receiving the informed consent of the individuals filmed? Will you always blur faces of victims of abuse in eyewitness videos? Will you blur faces of perpetrators? When will you choose not to broadcast, embed, or link to eyewitness footage?

Create your own checklist of questions to be asked to determine whether and how to distribute footage, or use the checklist provided at the end of this guide.

HOW TO MINIMIZE HARM WHILE EXPOSING ABUSE

Just because footage of abuse exists doesn't mean it must be shared publicly, if doing so could potentially cause harm to the individuals filmed. You can choose not to show the footage, and instead provide your audience with a description of it. Alternatively, you can choose to obscure identities before sharing a video:

ANONYMIZING INDIVIDUALS

There are several factors to consider when you want to keep an individual's identity private. Check each of the following to make sure all identifying information has been removed:

- **Facial and Vocal Recognition.** Use a video editor or [YouTube's face blur tool](#)⁴ to blur faces. Make sure they are blurred enough to be unrecognizable and in such a way that the visual information cannot be reconstructed. If voices would also reveal an at-risk individual's identity, use an audio editor to disguise the voice.
- **Other Clues.** Check that clothing, tattoos, testimony, and other audio or visual information in the footage does not reveal identifying information such as names, titles, license plates, or addresses.
- **Metadata.** If there is metadata attached to the footage that would reveal where it was recorded, or by whom, that could also put individuals at risk. Make sure that when you share the video publicly, you do so in a way that does not reveal this identifying information. This may include limiting the use or sharing of related social media posts that could expose someone's identity or location. For example, retweeting or reposting a message containing a video on Twitter or Facebook may unintentionally expose the owner of the account.

In situations where there are multiple subjects (such as a riot), be careful not to unintentionally expose the identity of individuals who are not the focus of your investigation.

NOTABLE EXAMPLES

Example 1: In an [article](#)⁵ about a video that showed one young Syrian child beating another while adults off-camera encouraged the violence, WITNESS shared an edited version of the video that blurs the faces of the children.

Example 2: Amnesty International obtained eyewitness footage of human rights violations committed by members of the Nigerian military. In a [video](#)⁶ report that includes eyewitness clips of beatings and killings, the organization blurred the faces of victims and perpetrators to protect their privacy.

Example 3: In its reporting on a [video of a sexual assault in Cairo](#),⁷ the *New York Times* described the video in text rather than sharing the footage.

FROM THE FIELD

WITNESSES FILM A HOMOPHOBIC ATTACK

One video from Jamaica illustrates several of these concerns. The video documents the beating of a young man, presumed to be gay, by security guards in a college classroom while a crowd watches and films through the windows. While the video documents abuse, publicly distributing the raw video is problematic for a number of reasons:

- **Consent.** The victim was not in a position to consent to the recording.
- **Dignity & Re-victimization.** The distribution of the video could cause him to relive a traumatic experience many times over.
- **Security.** In Jamaica, as in many parts of the world, the perception that an individual is gay can lead to targeted violence. The distribution of this footage could lead to the victim being perceived as gay (whether he is or not) and put him at risk of further harm.

Though the eyewitness video could be found online, local broadcasters made the ethical decision to blur the victim's face when showing the footage on television. While this response addresses some of the aspects of the potential harm involved in the video's distribution, it is an imperfect decision. The victim still had to endure his experience being played out on national television, even if his identity was kept private. The news networks weighed the potential harm of broadcasting the video with the news value of exposing homophobic violence on the university campus, and made the professional judgment to expose the abuse while minimizing harm.



SHARING

TAKE HOME POINT

While eyewitness video can expose abuse, it can also put victims at risk of further harm. In this case, local media reported on the attack by broadcasting an edited version of the video that maintained the victim's privacy and thus minimized the risk of further harm.

PERPETRATOR VIDEOS

Many videos documenting human rights abuse are filmed by perpetrators themselves, presenting a unique challenge for journalists and human rights advocates interested in reporting on the violations without furthering the objectives of the abusers. Here are a few examples:

- In Malaysia, police officers filmed detainee abuse⁸ on their cellphones and shared the footage among themselves. When the videos became public in 2005, they showed female detainees forced to strip naked and squat, as well as enduring other indignities and abuse.
- In a hate campaign in Russia,⁹ perpetrators used online dating sites to lure gay youth to a meeting place, where they harassed and abused their victims. They filmed the attacks, taunting each victim with the threat that he would be outed to his family and community, and shared the videos on social networks.
- Violent videos have become a popular tool for terrorist groups such as Al-Qaeda and the Islamic State. Their videos of hostages and executions are intended to cause fear, energize supporters, and raise money.

As always, it is helpful to question the intent of the filmers or uploaders. Ask yourself:

- Was the video created to spark fear?
- To dehumanize an individual or community?
- To glamorize violence and recruit new members to an organization?
- To entertain the abusers themselves and share tactics among one another?
- To confuse or mislead the viewing public?
- Was the video part of the abuse itself, as in the example from Russia?

SHARING

In many of these cases, such as execution and hostage videos, the footage may provide important information for an investigation or a developing news story. In others, such as those of the abuse of Malaysian detainees, the footage may provide evidence of abuse that can lead to a public debate and contribute to efforts for justice and accountability.

However, one challenge in using perpetrator videos to expose abuse is the re-victimization of the subjects. Not only is the victim unable to consent to the recording he or she is documented in a vulnerable and often dehumanizing situation. Publicly sharing such an event can cause psychological trauma. By exposing their identities, videos can also put the affected at risk of further discrimination and abuse.

When the footage from Malaysian prisons aired on local television, one of the survivors, by then released and at home, recognized herself on screen. “I was surprised and angry and embarrassed all over again,” she told the *Washington Post*.¹⁰ Even though she was glad the videos brought the abuse to the public’s attention, she asked that people stop circulating them.¹¹

When an eyewitness video could potentially harm the individuals or communities filmed, take steps to minimize that risk when reporting on the abuse. For example, when Human Rights Watch reported about targeted abuse of LGBT individuals in Russia, it produced a video¹² using clips of perpetrator footage in which the faces of the abused men were blurred to keep their identities private. Many newspapers report on hostage and execution videos without sharing or linking to the videos so as to avoid complicity in the political or financial objectives of the hostage-takers.

FROM AN EXPERT MANAGING SENSITIVE INFORMATION

In their publication *Professional Standards for Protection Work*, the International Committee of the Red Cross (ICRC) provides standards and guidelines for human rights and humanitarian agencies managing sensitive information in areas of armed conflict and other violent environments. Though they are intended primarily for human rights and humanitarian agencies, the guidelines are relevant for many other actors and situations as well. They include the following advice about using personal information obtained from the Internet:

It is often very difficult or even impossible to identify the original source of the information found on the Internet and to ascertain whether the information obtained has been collected fairly/lawfully with the informed consent of the persons to whom this data relates. In other words, personal data accessible on the Internet is not always there as a result of a conscious choice of the individuals concerned to share information in the public domain.

The fact that information is retrievable does not mean that it was necessarily meant to be “public” in the first place... One has the duty to verify the consent of the person whose data is to be used. When such consent cannot be realistically obtained, information allowing the identification of victims or witnesses should only be relayed in the public domain if the expected protection outcome clearly outweighs the risks. In case of doubt, displaying only aggregated data, with no individual markers, is strongly recommended.

- From the ICRC's *Professional Standards for Protection Work*,¹³ page 96.

SHARING



II. RESPONSIBILITY TO THE FILMER

Curating eyewitness video gives new context to someone else's content. This section addresses the ethical considerations of doing that, including crediting the source, addressing the safety of the filmer and distributor, and providing transparency around their objectives.

FINDING THE SOURCE

Many filmmakers document human rights issues intentionally as professionals, citizen journalists, or activists who share the footage on their personal or institutional channels and social media accounts. In other cases, footage taken by an eyewitness is shared anonymously due to the particular dangers they face. Perpetrator footage is often uploaded to the group's own communication channels to show off their abuse; other times it is leaked by a whistleblower who takes steps to remain anonymous.

Considering the various ways eyewitness footage is shared online, you cannot assume that the person who uploaded a video on social media is the same person who filmed it. Further complicating the issue, there are often several online versions of the same footage.

To begin to consider the potential ethical and safety concerns regarding a video's source, you must first determine who that source is. Who originally filmed the video? Who distributed it? Was it the same person? Different people within a team? Different people with differing objectives?

You may not be able to answer all of these questions with certainty, but asking them can help you assess the original intent of the footage and potential security risks involved in sharing it. Examining the source's identity will also allow you to provide your audience with the context needed to assess the video's substance.

CONSIDER THE SOURCE'S SAFETY

Eyewitnesses in Risky Situations

In conflict situations or breaking news events, there may be eyewitnesses at the scene who take footage and share it on social media. If you are in contact with such filmmakers, prioritize their safety over a desire for footage they could gather. (See "From An Expert: Keeping Eyewitnesses Safe" on page 12 for guidance on communicating with eyewitnesses in such a situation.)

Anonymous Filmers

There are occasions when the filmer and/or uploader of a video will want to remain anonymous due to security concerns. In places where journalists and activists work under grave risks, citizen media outlets often distribute videos taken by a network of filmmakers, whose individual identities remain anonymous. In a different scenario, a whistleblower may leak footage showing crimes committed by colleagues, and the uploader's identity is intentionally kept private to prevent retribution.

If you are dealing with footage in which the filmer or distributor could be at risk for exposing abuse and has taken steps to remain anonymous, make sure to protect the source's anonymity. Does the footage contain metadata—technical or descriptive information embedded in the video file—that could identify the source or his or her location? Does the platform the video is hosted on reveal identifying information about the source, and if so, is the source aware of that? If you learn the source's identity in researching the video, assess the risk to the filmer if that identity is publicly revealed. If you are in contact with the filmer, consider encrypting your emails and chats.

SHARING

FOR MORE INFORMATION

Learn about secure online communication from the Electronic Frontier Foundation's "Surveillance Self-Defense" website at bit.ly/EFF_SurveillanceDefense

FROM AN EXPERT

KEEPING EYEWITNESSES SAFE

Online News Association

The Online News Association's *Build Your Own Ethics Code* was created by a team of journalists in 2014 by a team of journalists to help newsrooms and reporters address ethical challenges in modern journalism. The guide includes the following tips for minimizing risks to citizen journalists:

- **Stay safe.** When a journalist is communicating with a member of the public who's in a dangerous place—such as the scene of a crime or disaster or a war zone—the journalist should urge the member of the public to stay safe. Non-professional journalists should never be asked to gather content in a dangerous place.
- **Sometimes, don't even ask.** News organizations need to consider when simply contacting a member of the public in search of UGC might put them in danger, because it might reveal their presence on the scene, or because the simple act of communicating might distract them from staying safe. Sometimes it's best to wait until after the danger has passed.
- **Be sensitive.** Be considerate about the citizen journalist's emotional state. Remember that you might be telling someone alarming information for the first time when you reach out. And be particularly sensitive when communicating with members of the public who have just suffered a significant personal loss—and consider whether you should be reaching out for UGC at all in this situation.

- Excerpted from the Online News Association's *Build Your Own Ethics Code*, section on "User-Generated Content,"¹⁴ compiled by AP social media editor, Eric Carvin.

Tow Center for Digital Journalism

In 2014, the Tow Center for Digital Journalism published a major report¹⁵ on the use of user-generated content by broadcast news outlets around the world. The researchers found that, for the most part, news outlets must do a better job seeking permission from citizen journalists to use their footage. In some regions, though, news organizations have found that contacting citizen journalists to seek their permission could actually put them at greater risk. The report states:

There was certainly an understanding...that, when working with uploaders from certain countries, not seeking permission is the right thing to do. One BBC journalist working on a photo gallery from Iran told us, "As someone from the BBC it really raises a person's profile if they've posted the image, by me saying, 'Hello, can I use it? I'm from the BBC.' So in that instance the Persian service advised that it's better to just use it.

- Excerpted from *Amateur Footage: A Global Study of User-Generated Content*,¹⁶ Chapter 12.1.

ANONYMITY VS. VERIFICATION

Many videos that document human rights issues could endanger the filmer or distributor if their identity is revealed. This poses a challenge for investigators or reporters attempting to verify that the footage is authentic and from a reliable source. There are a growing number of tools and methods to verify the authenticity of a video but in some cases, there is simply not enough information to verify when and where the footage was filmed and if it is authentic documentation—i.e., not staged or created to deceive viewers.

In these cases, you must use professional judgment to decide whether and how to share the footage. Curating a video that later turns out to have been manipulated or misinterpreted could compromise your integrity and cast a shadow of doubt over authentic eyewitness videos. Worse, spreading false information—even unintentionally—could spark fear or violence, and have grave consequences for the individuals involved. It is important to understand how easy it is to distribute false or manipulated footage and dupe the viewing public. According to Mark Little, founder of the social media news agency Storyful, the organization “has seen multiple examples of political groups creating videos which create hoax abuses allegedly committed by opponents.”

When faced with footage that you cannot verify as authentic, ask the following questions:

- Are there other videos or reports that document the event that *are* verifiable?
- Is there a reason the people behind this video would want to deceive viewers?
- Is it possible you made a false assumption about the video and the motives behind it?

If you decide the video merits being included in your report, be clear to your audience what you do and do not know about it, and give your viewers a means by which to respond. It may turn out that, once footage has been shared with a wider audience, viewers can help answer lingering questions about the video. Don’t forget to consider the safety, dignity, and consent of the individuals filmed.

SHARING

**FOR MORE
INFORMATION**

Find more resources for
verifying online video at:
[lab.witness.org/
verification](https://lab.witness.org/verification)

NOTABLE EXAMPLES

SHARING UNVERIFIED FOOTAGE

The following examples are cases in which news media and/or advocacy organizations reported on online videos despite unanswered questions regarding what, exactly, they documented.

Example 1: In 2013, an online video generated controversy and press attention in South Korea and beyond. The video appeared to show two Caucasian men harassing a Korean woman at a Seoul club. Though the identity of the individuals on-camera and the context in which the circumstances in which video was made were unknown, the video and the controversy surrounding it was covered in the *Washington Post*.¹⁷ In response, the men involved in the video reached out to the reporter to explain that the video had been misinterpreted. It was shot as part of an experimental film¹⁸ and everyone in it was a willing participant. They shared more footage and pictures from the scene to prove their explanation of the video's context. The *Washington Post* published a follow-up article with the updated information.

Example 2: A video that emerged online in early 2013 appeared to show the torture of two men by Fijian police officers. While the source, exact location, and date of the recording was unknown, the video was covered¹⁹ in local and international media, sparking a response from Amnesty International and the United Nations. This led to an internal investigation of the police department, and to the mother of one of the victims identifying her son in the video and pledging to fight for justice.

ACKNOWLEDGING THE VIDEO'S SOURCE

WHY

Occasionally, filmmakers will keep their identity private for security concerns, but in most cases they will, filmmakers identify themselves and expect to be asked for permission and given credit when their footage is used by others.

Whether the filmmaker is identified, anonymous, or unknown, sharing relevant information about the video's source with your audience is important for three main reasons:

- 1) **Ethical responsibility to content creators.** Whether footage is taken by a citizen journalist or by a professional reporter, photojournalist, or news organization, content creators expect to be credited for their work and, depending on the legal jurisdiction, may have a legal right to control its use and distribution. Also, while many individuals share their personal photos and videos publicly on YouTube or social media, they do not necessarily expect or desire the larger audience that would result from their footage being distributed more widely. The Eyewitness Media Hub, which studies the use of eyewitness media by news outlets, has documented several cases²⁰ in which citizen journalists have expressed frustration that their footage was used in the news without permission or attribution.
- 2) **Transparency.** Eyewitness video, by definition, is created by people outside of your organization. They may not be concerned with objective documentation, and may have political agendas or biases. Your audience deserves to know whose perspective is framing this particular version of events, as that context can be critical to understanding what is—and isn't—documented, and why. Think of the footage as a quote a source gives to a reporter. The reporter either names the source or, if there are valid reasons to maintain the source's anonymity, explains those reasons and describes the source's perspective and why the reporter considers that source credible.
- 3) **Chain of Custody.** Chain of custody refers to the chronological succession of ownership or custody of the video. Documenting the chain of custody of the footage you curate will help human rights investigators, filmmakers, historians, or others who may be interested in that footage track down the original video. If the footage turns out to be useful for a criminal investigation, for example, having an unbroken chain of custody can be critical in demonstrating that the footage is authentic.

HOW

There are several ways to acknowledge the original filmmaker and/or uploader of a video. Which you choose depends on what medium you are working in, how much you know about the video, and whether you intend to share the entire video or only portions of it, or to merely report on the information in the video. It also depends on whether there are potential risks involved in revealing the source's identity. Here are some options:

- Embed or link to the online video uploaded by the original source. In this case, be aware that the link could become invalid at a later date, or the video could be removed or its privacy settings changed. (See the section "Curation vs. Preservation" on page 3.)
- State the name of the filmmaker or organization and provide context about who they are (e.g., a political group critical of the ruling party, an independent journalist who contributes to the local paper, a local resident who was at the scene). Describing the video's source as simply "the Internet" or "YouTube" is neither ethical nor informative.
- If you are unable to determine particular information about the source, or have decided for security or privacy reasons to maintain the source's anonymity, describe for your audience how the video was found, why you believe it to be authentic, and any relevant unanswered questions you may have about the source.

A NOTE ON LEGAL CONCERNS

The guidance above solely regards the ethics of curating eyewitness video for documentation purposes, not the legality of doing so. Scraping and re-sharing a video, or creating a new piece of footage from the original source, may be subject to local laws addressing copyright, libel, and other related issues.

NOTABLE EXAMPLES REFERENCING THE SOURCE OF EYEWITNESS FOOTAGE

Example 1: For a video montage compiling eyewitness footage of human rights issues from around the world, WITNESS included a link in the YouTube video²¹ description to a document²² that lists the URLs of each of the YouTube videos used in the montage. Viewers who want to know more about any particular clip or where it originated can go to the source.

Example 2: The YouTube channel Syrian4all World²³ adds English descriptions and subtitles to citizen videos of the war in Syria. In the description of each video on the channel, viewers are provided with a link to the original YouTube video.

Example 3: The New York Times project “Watching Syria’s War,”²⁴ curates online videos of the war in Syria. The website embeds YouTube videos from various Syrian citizen-media channels and provides context for each video in sections including, “What We Know,” “What We Don’t Know,” and “Other Videos.” For example, in the “What We Don’t Know” section for a video described as showing protesters running from shots fired by Islamic State fighters, the “What We Don’t Know” section states:

We do not know the identities of the people shown in this video, nor do we know the identity or political beliefs of the cameraman. We cannot see the gunmen who are firing the shots heard in this video, so we cannot verify claims that they are members of the Islamic State in Iraq and Syria.

- From “Watching Syria’s War”

FROM THE FIELD

TWO DIFFERENT DESCRIPTIONS OF A VIDEO AND LACK OF CREDIT LEAVE VIEWERS CONFUSED

During the war in Gaza in July of 2014, Palestinians and Israelis documented the conflict and shared their footage online. Also widely disseminated was false footage—images filmed in totally different violent conflicts but described as showing the current war in Gaza. These images were intended to incite hatred or violence toward one side of the conflict or the other.

One eyewitness video, showing a rocket interrupting an Israeli wedding, was broadcast on NBC²⁵ and several other international news outlets and described as taking place in Holon. The same clip was uploaded to the YouTube channel of the Israel Defense Force (IDF)²⁶, which described the scene as taking place in Ashdod, an Israeli city twenty miles from Holon.

Neither the media nor the IDF explained how the footage was found or who filmed it. Some news outlets credited the video to “Arakelians Vartan,” but it is unclear who or what that source is. Is that the name of the original filmer? A wedding guest? The online alias of the first person to upload the footage? None of the outlets link to the original source or contain further context with which to understand the video. Because the video was shared by the propaganda wing of the Israeli military during a violent conflict, one must wonder whether it is authentic or was created and shared to support the IDF’s military campaign. Yet because neither the IDF nor the news outlets provided transparency for viewers, it was impossible for a viewer to determine the true context of the footage.



III. RESPONSIBILITY TO THE AUDIENCE

This section covers additional ways of providing your audience with context as part of responsible and ethical video curation. This includes ensuring that the curation is truthful, that it does not provide a platform for hateful views or malicious reports, and that it respects the emotional and psychological capacity of the audience.

CURATE RESPONSIBLY BY PROVIDING CONTEXT

Curating eyewitness footage consists of adding context so that the audience can better understand what they are viewing. This context may take the form of a montage of clips pertaining to one particular situation, or an interactive timeline, map, or other non-linear selection of videos. It could also comprise text about the scene filmed.

The following principles are essential for responsible curation:

1) Truth in Curation

The curator should ensure that choices made in curation—in placing information and media next to each other—do not fundamentally distort an underlying reality. Ask yourself or your team:

- Does the juxtaposition of clips create a false equivalency?
- Does it imply a connection that did not previously exist?
- Does it erase context from the original clip pertinent to understanding its meaning?
- Does it provide the audience with enough information about why and how the featured clips were selected?

2) Curation of Videos by Hate Groups

As discussed elsewhere in this guide, some videos are made to propagate hate, fear, false rumors, or stereotypes. Consider whether the videos you curate have been produced or distributed with such an objective. If so, take steps to ensure that you are not providing a platform for hateful beliefs or false rumors. Provide your audience with information about the objectives of the video.

3) Transparent Objective

Finally, what is your objective in curating videos? There are a variety of purposes of curation—advocacy, journalism, justice, community organizing, etc. Many of the judgment calls you make in curating footage will depend on your own perspective and the purpose of your project. Provide context and explanations for your audience about the choices that were made so that the audience can best understand why certain clips and videos are included and others are not.

FROM THE FIELD

A MONTAGE OF CLIPS OUT OF CONTEXT REDUCES FOOTAGE TO “VIOLENCE WALLPAPER”

In September, 2013, the news network Al Arabiya²⁷ reported on a massacre at a camp of Iranian exiles in Iraq. Its coverage included a video “posted on the Internet” which it described as showing “suspected Iraqi military forces brutally assaulting a camp in Iraq occupied by Iranian dissidents, killing dozens of them.” But the video was comprised of a compilation of clips, clearly taken from different cameras and possibly from different contexts. At least one of the clips has been identified in another video²⁸ (WARNING: graphic content), described as showing a massacre at the same camp, two and a half years earlier.

There are several problems with the use of this video. First of all, Al Arabiya did not sufficiently verify that the video is of the same event reported on in the story. Secondly, by describing the source of the video with the vague term of “on the Internet” without more detail about who posted the video and where, the audience doesn’t know who posted the video and for what reason. Finally, by posting a video that is made up of several different clips of brutal violence, at least one of which is from a different context than the story reported on, Al Arabiya reduces the original footage to mere “violence wallpaper,” offering only generalized images of massacre, devoid of the true reality and specifics of the story at hand and instead standing in as symbolic imagery of a massacre.

A CONTRASTING EXAMPLE

The *New York Times* online feature, “Watching Syria’s War”²⁹ curates footage of the Syrian conflict, including videos from warring sides of the conflict, and graphic images of violence and death. Collectively, the videos show horrific violence. But the videos are presented individually, with context about the particular scene and source of each featured video. Furthermore, when the site features particularly graphic footage,³⁰ the viewer must click past a warning of the graphic content in order to watch the video.

DISTURBING CONTENT

Many eyewitness videos documenting human rights issues are inherently graphic and disturbing, and can be difficult to watch. To witness the abuse of others can cause horror, fear, sadness, and a sense of hopelessness. Cumulative viewing can contribute to compassion fatigue and vicarious trauma.

WHEN & HOW TO CURATE GRAPHIC FOOTAGE

Sensitivities around graphic footage vary across cultures and over time; a viewer is much more likely, for instance, to see graphic footage in Arab news media than on U.S. broadcast news, and thus one could infer that the two audiences have different expectations and sensitivities.

Take steps to curate eyewitness footage in a way that supports your audience's capacity to engage with the information it documents. This includes recognizing when it may not be beneficial to share a particular piece of footage. To make a professional judgment about to decide whether or not to curate a graphic video, ask the following questions:

- Is the graphic content gratuitous?
- Does the video use horror in an attempt to manipulate the emotions of the viewers?

See the box titled "From An Expert" below for more questions to ask to help you determine whether share graphic footage.

The way you curate and contextualize a graphic video can make the difference between viewers seeing it as gratuitous violence or as informative documentation. Do not curate videos to shock, but rather to inform your audience. Providing context about why the video(s) is important and suggesting ways viewers could respond helps ensure that the video contributes to a more informed and engaged audience, rather than leaving viewers emotionally exhausted.

If a video shows graphic images such as a killing, corpses or severely injured people, take steps to warn viewers of the graphic content they are about to see and give them the option to learn about the abuse without being exposed to such images. If the video is included in an online article or blog, consider including a hyperlink that leads to the video and warning readers that the video is graphic, rather than embedding the video within the post, which could result in visitors watching the video before they have seen the warning.

WARNING
GRAPHIC CONTENT

FROM AN EXPERT

WHEN IS IT OK TO SHARE A GRAPHIC VIDEO?

On April 7, 2015, the *New York Times* homepage prominently featured video footage from a bystander's cellphone that showed a police officer shooting and killing a man who was running away from him in North Charleston, South Carolina. The video was edited with text from the *New York Times* introducing the video, warning of its graphic content, and providing subtitles and descriptions to help viewers understand the recorded dialogue.

In a [Poynter Institute article](#),³¹ Al Tompkins, a senior journalism trainer, posed questions about the video to determine whether the *New York Times* was justified in sharing such a graphic video on its homepage. “Is this just an example of gratuitous violence that will attract online clicks and sharing,” Tompkins asked, “or are there solid journalistic reasons to let the public see this video?” Tompkins posed the following questions to make his assessment:

- What do we know, what do we need to know?
- Why is this video newsworthy? What is the journalistic reason for making it public?
- What is the right tone and degree of coverage?
- What alternatives could you consider if you choose not to show the graphic video?

Tompkins concluded that the *New York Times* was justified in publishing the video footage, explaining:

Journalists are in the truth-telling business. Sometimes the truth is hard to watch. But the public has to be able to trust that when police make mistakes, journalists will hold them accountable, just as when the police shoot a suspect out of legitimate fear for their safety, journalists will report that fairly and aggressively too.

ADDITIONAL READING & RESOURCES

ARTICLES

Poynter - “Graphic New York Times Video Seems Justified” by Al Tompkins

<http://www.poynter.org/how-tos/visuals/333613/graphic-new-york-times-video-seems-justified/>

WITNESS - “Abuse by Viral Video: Break the Cycle with Identity Protecting Tools” by Madeleine Bair.

<http://blog.witness.org/2013/08/abuse-by-viral-video-break-the-cycle-with-identity-protecting-tools/>

BBC - “Safety Issues with User-Generated Content” by Trushar Barot on how the BBC considers the authenticity and personal safety of contributors.

<http://www.bbc.co.uk/academy/journalism/article/art20131113144258981>

Storyful - “A Year-Long Mission to Tame the ‘Wild West’ of Viral Video” by Louise Tierney.

<http://blog.storyful.com/2014/08/06/a-year-long-mission-to-tame-the-wild-west-of-viral-video/#.VbUPAWRVikp>

iRevolutions - “Humanitarianism in the Network Age: Groundbreaking Study” by Patrick Meier.

<http://irevolution.net/2013/04/09/humanitarianism-network-age/>

WITNESS - “Malaysia: Cellphone Video Captures Police Excess” by Sameer Padania.

<http://hub.witness.org/en/node/7690>

Eyewitness Media Hub - “Protecting the Victim’s Identity: Should We Do More to Protect the Identity of Victims Featured in Eyewitness Media?” by Sam Dubberley.

<https://medium.com/1st-draft/protecting-the-victim-s-identity-3b7df432ec09>

RESEARCH

Tow Center for Digital Journalism - “Global Study of User-Generated Content in TV and Online News Output” by Claire Wardle, Sam Dubberley and Pete Brown.

<http://towcenter.org/tow-center-launches-amateur-footage-a-global-study-of-user-generated-content-in-tv-and-online-news-output/>

Victoria Law Foundation - “When I Tell My Story, I’m in Charge: Ethical and Effective Storytelling in Advocacy” by Rachel Ball.

http://www.victorialawfoundation.org.au/sites/default/files/attachments/VLF%20-%20CLC%20final%20report%2012-13%20_Final_web.pdf

The Royal Society of Medicine - “Witnessing Images of Extreme Violence: a Psychological Study of Journalists in the Newsroom” by Blaire Audet and Elizabeth Waknine.

<http://shr.sagepub.com/content/5/8/2054270414533323.full>

FURTHER READING & RESOURCES

RESOURCES

Electronic Frontier Foundation - “Surveillance Self-Defense: Communicating with Others.”

<https://ssd.eff.org/en/module/communicating-others>

International Committee of the Red Cross - “Professional Standards for Protection Work Carried out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence.”

<https://www.icrc.org/eng/resources/documents/publication/p0999.htm>

WITNESS - *Video for Change: A Guide for Advocacy and Activism*.

<http://library.witness.org/product/video-change-book-all-chapters/>

Online News Association - *Build Your Own Ethics Code*.

<http://journalists.org/resources/build-your-own-ethics-code/>

Society of Professional Journalists - “SPJ Code of Ethics.”

<http://www.spj.org/ethicscode.asp>

WITNESS - *Activists’ Guide to Archiving Video*

<http://archiveguide.witness.org/>

SHARING

ACKNOWLEDGMENTS

WITNESS would like to thank the following individuals whose feedback provided valuable ideas and perspectives: Fergus Bell, Claire Wardle, Danielle Wenner, Alex John London, Michele Aaron, Josh Stearns, Courtney Radsch, Christoph Koettl, Amila Sampath, Malachy Browne and Mark Little.

Thanks also to the following individuals and organizations without whose support, camaraderie, and assistance, this would not have been possible: The Online News Association’s UGC Ethics Group, Ellery Biddle, Kristin Antin, Emma Raynes, Susan Meiselas, Al Tompkins, Kim-Jenna Jurriaans, Guilhem Ravier, Sylvie Doppelt, Trushar Barot, Justine Mackinnon, Della Kilroy, Steve Grove and Olivia Ma.

END NOTES

- 1 *Activists' Guide to Archiving Video.* <http://archiveguide.witness.org/>
- 2 "2014 Celebrity Photo Hack." http://en.wikipedia.org/wiki/2014_celebrity_photo_hack
- 3 "Fiji Prisoner Beating: 'They treated my son like an animal.'" <http://tvnz.co.nz/world-news/fiji-media-publishes-interview-mother-beating-victim-5363991>
- 4 "How To Use YouTube's New Blurring Feature To Protect Identities." bit.ly/howtoblurYT
- 5 "Abuse of Syrian Child on Video Sparks Outcry and Arrests." <http://blog.witness.org/2014/08/abuse-syrian-child-video-sparks-outcry-arrests/>
- 6 "Nigeria: Gruesome Footage Implicates Military in War Crimes." <https://www.youtube.com/watch?v=GA7SIbvEO64>
- 7 "Video of Mass Sexual Assault Taints Egypt Inauguration." http://www.nytimes.com/2014/06/10/world/middleeast/video-of-mass-sexual-assault-taints-egypt-inauguration.html?_r=3
- 8 "Malaysia: Cellphone Video Captures Police Excess." <http://hub.witness.org/en/node/7690>
- 9 "Abuse by Viral Video: Break the Cycle with Identity Protecting Tools." <http://blog.witness.org/2013/08/abuse-by-viral-video-break-the-cycle-with-identity-protecting-tools/>
- 10 "Amateur Videos are Putting Official Abuse in New Light." <http://www.washingtonpost.com/wp-dyn/content/article/2006/11/14/AR2006111401312.html>
- 11 "Malaysia: Cellphone Video Captures Police Excess." <http://hub.witness.org/en/node/7690>
- 12 "Russia: Gay Men Beaten on Camera." https://www.youtube.com/watch?v=zMTbFSJ_Tr4
- 13 *Professional Standards for Protection Work.* <http://www.icrc.org/eng/resources/documents/publication/p0999.htm>
- 14 *Build Your Own Ethics Code.* <http://ethics.journalists.org/topics/user-generated-content/>
- 15 "Tow Center Launches Amateur Footage: A Global Study of User-Generated Content in TV and Online News Output." <http://towcenter.org/tow-center-launches-amateur-footage-a-global-study-of-user-generated-content-in-tv-and-online-news-output/>
- 16 "Responsibility Toward Uploaders." http://towcenter.gitbooks.io/amateur-footage-a-global-study-of-user-generated-content/responsibilities/responsibility_toward_uploaders.html
- 17 "Korea's Web Community Roiled by Shocking Video of Western Men Tormenting a Local Woman." <http://www.washingtonpost.com/blogs/worldviews/wp/2013/07/15/koreas-web-community-roiled-by-shocking-video-of-western-men-tormenting-a-local-woman/>
- 18 "Controversial Video of Western Men Harassing a Korean Woman Appears to Have Been Staged." <https://www.washingtonpost.com/news/worldviews/wp/2013/07/25/controversial-video-of-western-men-harassing-a-korean-woman-appears-to-have-been-staged/>
- 19 "Fiji's Military Government Barely Bats an Eyelid at Shocking Torture Video." <http://observers.france24.com/en/20130315-shocking-fiji-torture-video-military-government-barely-bats-eyelid>
- 20 "The Use of Eyewitness Media in Breaking News: What Has Changed Since Our Research Was Published." <https://medium.com/@emhub/the-use-of-eye-witness-media-in-breaking-news-3f3df0535f18>
- 21 "Human Rights Channel: 2013 Year in Review." https://www.youtube.com/watch?v=Mil3zPB_S-4
- 22 "Human Rights Channel 2013 Year in Review." <https://docs.google.com/document/d/1BgjoIF7Pzh4P7FpaelmvRmU2x4zEF-mQIvS2z0TqMa4/edit?usp=sharing>
- 23 Syrian4all World. <https://www.youtube.com/user/Syrian4allWorld/videos>
- 24 "Watching Syria's War." <http://projects.nytimes.com/watching-syrias-war>
- 25 "Caught on Video: Rockets Disrupt Wedding in Holon, Israel." <http://www.nbcnews.com/news/world/caught-video-rockets-disrupt-wedding-holon-israel-n151436>
- 26 "Life in Israel: Gaza Rockets Interrupt Wedding in Ashdod." <https://www.youtube.com/watch?v=x7qUIUEH5RE>
- 27 "Video Shows Troops Attacking Iranian Exile Camp in Iraq." <http://english.alarabiya.net/en/News/middle-east/2013/09/03/Video-shows-troops-attacking-iranian-exile-camp-in-Iraq.html>
- 28 "Massacre in Camp Ashraf April 18 2011" [GRAPHIC] <https://www.youtube.com/watch?v=qm2V1V4NDgQ&feature=youtu.be&t=3m30s>
- 29 "Watching Syria's War." <http://projects.nytimes.com/watching-syrias-war>
- 30 "Rebels Celebrate Over Body of Downed Helicopter Pilot." <http://projects.nytimes.com/watching-syrias-war/pilot-helicopter-attack-rebels>
- 31 "Graphic New York Times Video Seems Justified." <http://www.poynter.org/how-tos/visuals/333613/graphic-new-york-times-video-seems-justified/>

THIS PAGE INTENTIONALLY LEFT BLANK

**PRINT OUT THE MINI GUIDES BELOW AND CARRY THEM
WITH YOU FOR EASY REFERENCE.**

BASIC PRACTICES 1: GETTING READY TO FILM

IMPLEMENT THESE BASIC PRACTICES TO ENHANCE THE EVIDENTIARY VALUE OF THE VIDEO YOU CAPTURE.

STEP 1

Know your rights before you press record.

STEP 2

Protect, encrypt or delete sensitive personal information and contacts on your filming device in case it's confiscated.

STEP 3

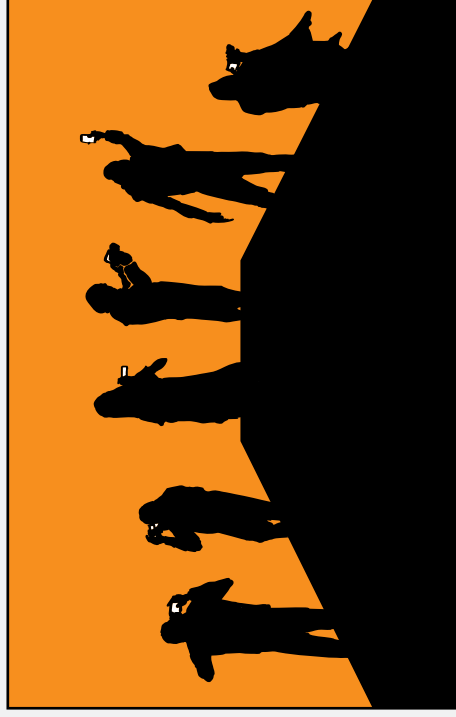
complete a security assessment to protect yourself and those you are filming.

STEP 4

Determine which images you should film (see other side).

STEP 5

Learn more at bit.ly/WITNESSLibrary_vae.



VIDEO AS EVIDENCE: **MINI GUIDE** VAE.WITNESS.ORG

DETERMINE WHAT TO FILM

To hold someone accountable for a crime, lawyers must prove:

- What crime was committed?
- Who committed the crime?
- How the perpetrator committed the crime?

Capture images and details that provide information about “WHAT”, “WHO” & “HOW”

Example Images to Prove “WHAT”

- A death caused by gunshot
- Persons being beaten or tortured
- Injuries resulting from abuses
- Damage to civilian property
- Damage to cultural objects
- Children bearing arms or participating in military activities

Example Images to Prove “WHO” & “HOW”

- Police formations at a protest
- Uniforms and badge numbers
- License plates of official vehicles
- Military equipment & serial numbers
- Speeches

VIDEO AS EVIDENCE: **MINI GUIDE** VAE.WITNESS.ORG

BASIC PRACTICES 2: FILMING FOR EVIDENCE

IMPLEMENT THESE BASIC PRACTICES TO ENHANCE THE EVIDENTIARY VALUE OF THE VIDEO YOU CAPTURE.

STEP 1

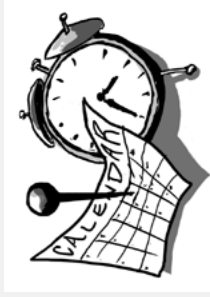
set the correct date, time and GPS location on your device.

STEP 2

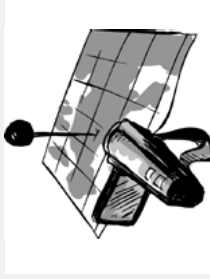
use the camera microphone and/or written documentation to record:

- Date, time and location
- who is filming
- who and/or what is being filmed
- others on scene with information

WHEN?



WHERE?



WHO?



STEP 3

Film strategically and logically:

- ✓ Film continuously
- ✓ Film a variety of shots from the incident scene
- ✓ Hold all shots for 10 seconds or more
- ✓ Move the camera slowly
- ✓ When possible, use a tripod, monopod or level surface to stabilize the camera

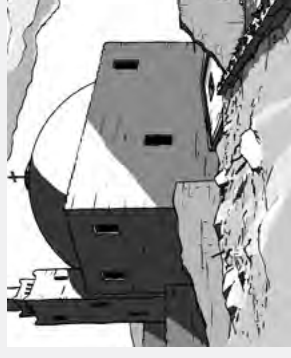
STEP 4

create written documentation that summarizes key information, including security information.

FILMING FOR EVIDENCE: SHOT LIST



LANDMARK



360°



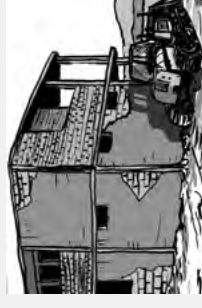
WIDE



OVERVIEW



MEDIUM



CLOSE UP



BASIC PRACTICES 3: SAFEGUARD YOUR FOOTAGE

STEP 1

Protect your media in the field:

- Keep your memory cards safe from physical damage and confiscation;
- swap out the used card with a blank card and hide the used one;
- create an immediate backup to a drive that you carry with you or to a secure server.



STEP 2

Protect your media in your home or office:

- Set the write-protection lock on your memory card before transferring your media;
- Back up the original file at least once, twice if possible, once copied, don't alter the original file in any way; and
- Keep backup copies on separate devices and in a separate physical location from your primary copy.



STEP 3

Organize your videos once you are out of the field:

Do not alter the format, filenames or directory structure. Instead, place in folders with standardized names.



STEP 4

Track your videos

Use a spreadsheet or database to keep track of where you store the footage and who you share it with.

Find more in-depth information about archiving footage at archive.witness.org.

VIDEO AS EVIDENCE: **MINI GUIDE** VAE.WITNESS.ORG

BASIC PRACTICES 4: SHARE YOUR VIDEO PRIVATELY

STEP 1

Research

Sharing video footage and information with human rights organizations, investigators, law enforcement officers and court's triggers rights and responsibilities. These rights and responsibilities vary, so learn about this before sharing. Choose an intermediary you trust and has the skills, resources and infrastructure to keep your video secure.

STEP 2

Decide how to provide the original file

If you can meet and transfer your footage in person, do so. If you need to transfer footage online, research secure options to transfer footage safely. Find more information about securely transferring footage at bit.ly/vae_techtools_transferring

STEP 3

Provide supplementary information

If possible, provide a printed or electronic summary that includes:

- Time, date and specific location of where the video was captured;
- A concise factual summary of what is shown in the video;
- Names and contact information for the videographer; persons filmed and others who may have valuable information about the incident; and
- Security information.



VIDEO AS EVIDENCE: **MINI GUIDE** VAE.WITNESS.ORG

BASIC PRACTICES 5: SHARE YOUR VIDEO PUBLICLY

IF YOU DECIDE IT IS SAFE AND STRATEGIC TO SHARE VIDEO CLIPS ONLINE, FOLLOW THESE BASIC PRACTICES.

STEP 1

Title your video properly. Include date, specific location, city, country and key descriptive words.

STEP 2

Add an accurate description. Repeat the information in the title and add a factual summary of what is shown in the video. Facts only. No opinions. If safe, include the name and contact information of the videographer or posting organization.

STEP 3

Make your video easier to find online by adding tags. Repeat the date, time, specific location, city and country then add words that describe the content.

STEP 4

Keep the original file. Video sites like YouTube optimize video files for web streaming. This means the video is often compressed and stripped of key information, so you must keep your original.

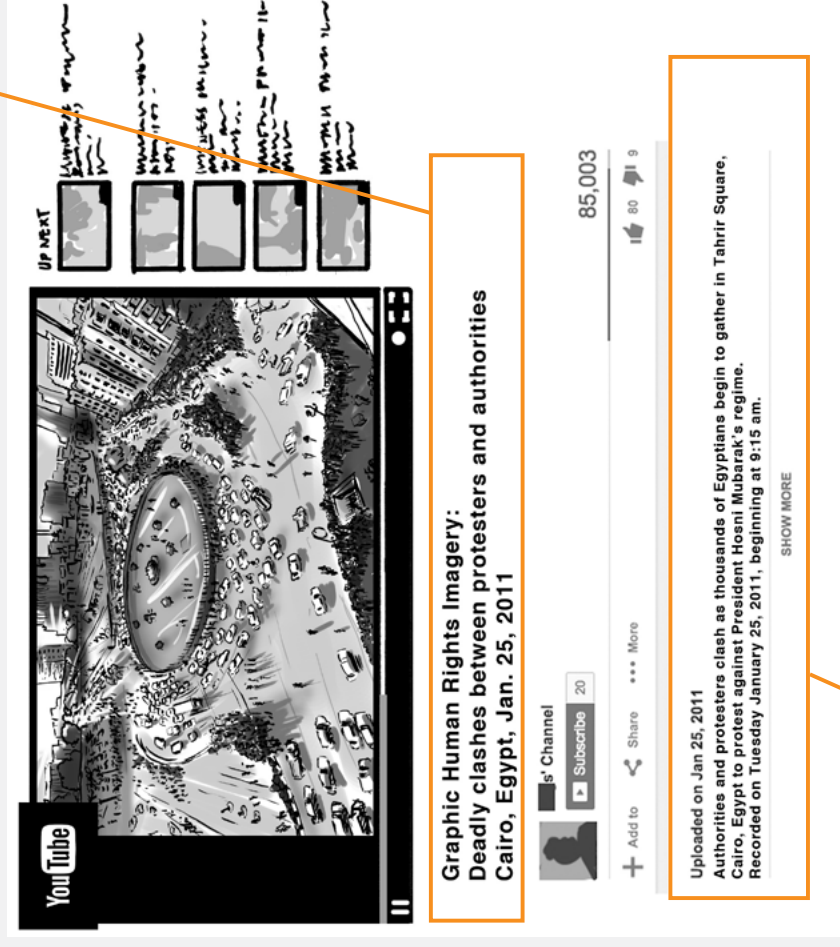
KEY POINTS

If the footage is graphic add "Graphic Human Rights Footage" to the title and description so viewers are aware of the content and online platforms know not to take it down.

Do not add false dates, locations or tags for any reason.

HERE'S AN EXAMPLE

Title



Description & Tags

Find more in-depth information about uploading and sharing online videos at library.witness.org

COLLECTION PLANNING FOR VIDEO EVIDENCE

Definition

A Collection Plan helps investigators and lawyers communicate their needs to frontline activists so the footage activists collect can better support a legal case. It is an advanced practice for activists who intentionally seek to capture video documentation to use as potential evidence for long-term justice and accountability.

A Collection Plan consists of three lists:

- LIST 1: “Elements of a Crime” you seek to prove;
- LIST 2: Evidence you have already collected to prove those elements;
- LIST 3: Evidence you still need to collect.

Create a Plan

STEP 1: ASK WHY? Determine why it is worth the time, resources and risks to collect this footage.

STEP 2: INCLUDE BASIC DETAILS. Write down basic information about the situation or violations you seek to document, such as a summary of the incident, names, dates, locations, etc. Download a blank Collection Plan form at bit.ly/WITNESSLibrary_VaE.

STEP 3: FIND THE ELEMENTS OF THE CRIME. List the elements of a crime you need to prove by working with a lawyer, researching the elements online, at a library or making an educated guess.

STEP 4: DETERMINE WHAT YOU HAVE AND WHAT YOU NEED. Write down two lists, “Completed” and “To Do”, for all the evidence you:

- Have already collected to prove each individual element of the crime;
- Still need to collect to prove each individual element of the crime.

Highlight the video images you need.

STEP 5: REVIEW THE PLAN. If possible, go over the plan with the people you are filming with and those who you intend to give the footage to and then, go film!

Learn More about the “Elements of a Crime” and Collection Planning at bit.ly/WITNESSLibrary_VaE.

SAMPLE COLLECTION PLAN: VIDEO “TO DO” LIST

CRIME: Excessive Police Force by an Officer on Scene

*The elements are based on Brazilian Law --- two of the eight elements of this crime are listed here.

The Element of the Crime we need to prove	TO DO: List of images that could help prove this element if possible to capture safely
<input type="checkbox"/> The suspect was acting within the scope of his/her employment as an employee of a civil or military service.	<input type="checkbox"/> Medium shot of the suspect in full uniform. <input type="checkbox"/> Close-up shot of the suspect's badge number, nameplate and face and anything that shows rank. <input type="checkbox"/> Wide shot of the vehicle the suspect was driving. <input type="checkbox"/> Close-up of the license plate and any identifying marks on the vehicle the suspect was driving/riding in. <input type="checkbox"/> Close-up video or photos of any documentation showing the suspect was on duty that day --- timecards, signed and dated reports, etc. <input type="checkbox"/> A variety of shots placing the suspect at the scene of the crime. <input type="checkbox"/> A variety of shots of the suspect giving orders on scene.
<input type="checkbox"/> The suspect intended to undermine the physical safety of the victim.	<input type="checkbox"/> Continuous footage of force being used by the suspect against the victim. <input type="checkbox"/> Images that allow for identification of the weapon being used. <input type="checkbox"/> Images showing the severity of the injuries to illustrate disproportionality. <input type="checkbox"/> Any images showing the violation of prescribed protocols. For example: <input type="checkbox"/> Images showing the use of live ammunition versus rubber bullets; <input type="checkbox"/> Close-up shots of the bullet cases including the head stamp on the casing as the stamp is the most important part; <input type="checkbox"/> Wide and medium shots showing the number of rounds fired; <input type="checkbox"/> If official protocols call for officers to aim and shoot below the waist, capture images that show the height of the shot fired as compared to the ground. <input type="checkbox"/> Any audio of the suspect giving orders or making statement that would go to show intent to violate prescribed protocols.



MINI GUIDE: COLLECTION PLANNING V 1.0

10 STEPS

FILMING SECURE SCENES



STEP 1

Ensure the scene safe for filming

STEP 2

Make a filming plan

STEP 3

Add preliminary information

STEP 4

Film an overview shot and the horizon

STEP 5

Film in a 360° circle in a 15-second interval

STEP 6

Film 10-second wide shots from the four points

STEP 7

Film 10-second medium shots from the four points

STEP 8

Film 10-second close up shots of key evidence

STEP 9

Complete a Camera Report

STEP 10

Supplement video with with maps, still photos, drawings, etc.

Adapt steps as necessary

FILMING SECURE SCENES

SHOT LIST

STEP 4



horizon with
sun or moon

STEP 5



360°

STEP 6



wide

STEP 7

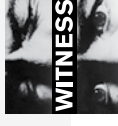
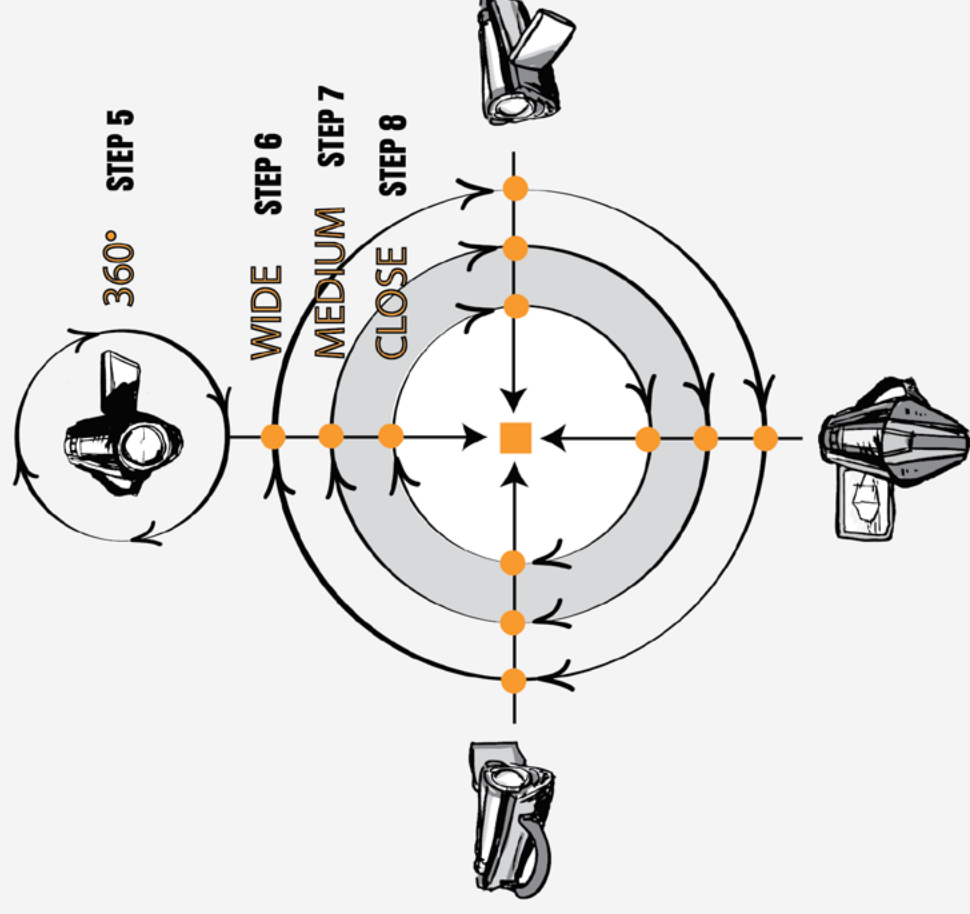


medium

STEP 8



close up



MINI GUIDE: **FILMING SECURE SCENES V 1.0**

ADDING INFORMATION

if you have determined it is safe to include essential information then, use the camera microphone or a piece of paper to add the following information:

STEP 1

who, when, and where: introductory info

Begin by recording your name, contact information, date, time, location and the names and contact information of other individuals that may have information about the incident.



STEP 2

HOW: orient your viewers by describing how you will film

While filming, clearly state how you are filming the scene – from north to south, from above the scene, etc.

STEP 3

optional What: Factually describe what the video documents

If appropriate for your situation, add a concise and factual description of the human rights content the viewer sees to the recording.

STEP 4

Wrap Up Filming

End by stating the time you completed filming.

- Adapt as necessary to fit your situation.
- Provide only factual information.
- Leave out unsupported opinions.

• if you need to film anonymously, see Techniques for Filming Anonymously.

HERE'S AN EXAMPLE

My name is Morgan Wells. I work for the organization EVIDENCE and can be contacted at morgan@xxxxx.com or +1 111.222.3333. This video footage was captured on January 25, 2015 beginning at 10:08 am at 800 Wall St., New York, NY, USA.

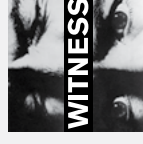
Other people who are here on scene with me and who may have relevant information about the likely arrest at the corner of Wall Street and Pearl Street in New York are:

- John Smith, 800 Wall Street, 5th Floor, New York, NY, USA, john@xxxxx.com , +1 111.222.3333; and
- Jane Williams, 800 Wall Street, 5th Floor, New York, NY, USA, jane@xxxxx.com , +1 111.222.3333

The footage is captured from a 5th floor window located on the southeast corner of the building. I am filming from the window looking down onto the scene on the street at the corner of Wall St. and Pearl St. This was the only vantage point from which I was able to film.

OPTIONAL: The video captured here documents an alleged use of excessive force by the New York Police Department against an African American man who appears to be in his early 20s. No protests were taking place at the time and I do not know what sparked the incident.

I completed filming this incident at 10:30 am.



MINI GUIDE: ADDING ESSENTIAL INFO TO VIDEO V 1.0

PROVING RESPONSIBILITY

KEY DEFINITIONS

Crime-based evidence is relevant and reliable information about “What” happened? In other words, “What” crime was committed?

Linkage evidence is relevant and reliable information that helps prove responsibility for the crime. In other words, it helps prove “Who” committed the crime and “How” they did it (i.e. individual perpetration, conspiracy, aiding & abetting, command responsibility).

Notice evidence is relevant and reliable information that shows that 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.

Remote commander tends to be a high-level military, paramilitary or civilian commander who does not go into the field and instead controls people from a location that is a safe distance away from the frontlines.

Citizen witnesses and human rights activists are uniquely placed to gather crime-based, linkage and notice evidence.

MINI GUIDE: **PROVING RESPONSIBILITY V 1.0**



PROVING RESPONSIBILITY

HOW CAN VIDEO SHOW THE COMMISSION OF A CRIME?

Examples of video that could serve as...

CRIME-BASED EVIDENCE

- Torture in progress
- Unarmed persons being repeatedly beaten by national police
- Unarmed persons being shot by military forces
- Injuries suffered after the use of excessive force
- Injuries showing permanent mutilation after an attack such as an acid attack
- Mass graves
- Damage to civilian property such as schools and hospitals
- Damage to cultural objects
- Children bearing arms or participating in military activities
- Billboards with hate speech
- Impact zone of a suspected chemical weapons attack
- Unhealthy labor conditions
- Children working in factories
- Inadequate detention conditions
- Pillaging of humanitarian aid in progress or the aftermath
- Environmental degradation such as a visually contaminated water source
- Etc.

MINI GUIDE: **PROVING RESPONSIBILITY V 1.0**



PROVING RESPONSIBILITY

HOW CAN VIDEO LINK A PERPETRATOR TO A CRIME?

Examples of video that could serve as...

LINKAGE EVIDENCE

- Police formations at a protest
- Badge numbers
- Passports or other official documents of identification
- License plates of official vehicles
- Military equipment – small arms, large arms, protective gears, missile heads, tanks, planes, etc.
- Serial numbers on military equipment
- Uniforms
- Speeches by leaders and those that they have authority over
- Checkpoints
- Troop movements
- Buildings where perpetrators based operations out of
- Communications equipment – satellites dishes, radios, etc.
- Video of documents that can't be taken because of security risks so the contents are filmed or photographed instead
- Video-taped interviews with perpetrators, prisoners or defectors
- Etc.

MINI GUIDE: **PROVING RESPONSIBILITY V 1.0**



PROVING RESPONSIBILITY

HOW CAN VIDEO PUT A PERPETRATOR ON NOTICE?

Examples of video that could serve as...

NOTICE EVIDENCE

- The crimes or the aftermath of the crimes broadcast on television
- Public speeches by UN or national officials presenting video clips of the crimes and calling for crimes to stop
- Public speeches by remote perpetrators acknowledging crimes on the ground.
- Perpetrators in the field with their troops
- Perpetrators using communications technologies
- Video-taped interviews with perpetrators acknowledging the commission of crimes
- Video-taped interviews with prisoners and defectors acknowledging communications with remote commanders and leaders
- Video reports produced and distributed by NGOs that document crimes.
- Etc.

MINI GUIDE: **PROVING RESPONSIBILITY V 1.0**



FILMING PRELIMINARY INTERVIEWS

V. COMPREHENSIVE INTERVIEWS

A preliminary Field Interview is typically (but not always)...

- collected by a frontline documenter;
- conducted in the field, either during or shortly after an incident;
- captured in a spontaneous manner;
- shorter in length;
- intended to collect basic information; and
- to help identify if there are additional witnesses or physical evidence the witness is aware of.

A comprehensive interview is typically (but not always)...

- collected by a trained human rights advocate or investigator;
- conducted in a safe, comfortable environment;
- separated in time and space from the incident;
- captured in a planned manner;
- longer in length;
- intended to collect thorough information about everything the person can remember; and
- to learn if there are additional witnesses or physical evidence the witness is aware of.

FILMING PRELIMINARY INTERVIEWS

V. COMPREHENSIVE INTERVIEWS

PRELIMINARY FIELD INTERVIEW



COMPREHENSIVE INTERVIEW



FILMING PRELIMINARY INTERVIEWS

CHECKLIST: TO PUSH RECORD OR NOT?

The decision to record an interview on camera is generally not an easy one. This is a decision you will need to make based on the information you have at the time. Ideally, you want to be able to answer “yes” to each of the above questions before choosing to press record.

YES	NO	
		<i>Are there any advocacy reasons to record this testimony in addition to evidentiary reasons?</i>
		<i>Is it logistically easier to film the testimony rather than write it down?</i>
		<i>Is it safe to record a person's identity (name, face, and voice)?</i>
		<i>Is it probable that the person can provide relevant information?</i>
		<i>Is this likely to be the only opportunity for someone to speak with this person?</i>
		<i>Does this person strike you as a credible and reliable witness?</i>
		<i>Is an on-camera interview likely to empower (rather than re-victimize) the person giving the testimony?</i>
		<i>Is the likelihood that contradictory testimony will later be given low?</i>
		<i>Is it possible to secure informed consent? (See details below.)</i>
		<i>Do I have the means to securely preserve this video footage?</i>

CHECKLIST: KEY QUESTIONS FOR

PRELIMINARY FIELD INTERVIEWS

Here’s a checklist of key questions to ask during a preliminary field interview:

	<i>What, if any, security concerns do you have? Are there any actions you would like us to take while filming you or afterward to minimize your risks and/or the risks to your community?</i>
	<i>What is your name? Please spell it.</i>
	<i>Could you tell me the date, time, and location of the interview?</i>
	<i>Please state the date, time, and location of the event we will be speaking about.</i>
	<i>Can you describe what happened? How do you know?</i>
	<i>How do you think it happened? Why do you think this?</i>
	<i>Can you tell me to whom it happened? How do you know?</i>
	<i>If you have an opinion about why this happened, could you share your thoughts with us? What is your opinion based on?</i>
	<i>If it's safe to do so, could you share the names and contact information of anyone else at the scene or with information about the event?</i>
	<i>Are there any witnesses you believe we should talk with or any physical evidence we should film (such as property damage, injuries, impact areas, bullet holes, or environmental degradation)?</i>
	<i>Can we or someone else get back in touch with you to follow up or complete a more thorough interview? If yes, how can we contact you? What is your address, phone number, email, and any other key contact information?</i>

CONDUCTING PRELIMINARY INTERVIEWS

BEFORE FILMING

- STEP 1 prepare your equipment
- STEP 2 identify and minimize the security risks
- STEP 3 know what you need to collect and why
- STEP 4 prepare supporting materials in advance
- STEP 5 select witnesses
- STEP 6 chose a safe, private, and informative interview location
- STEP 7 select an interviewer
- STEP 8 Make the interviewee comfortable



CHECKLIST:

SECURING INFORMED CONSENT

BEFORE FILMING

Begin with an off-camera conversation to establish that your interviewee understands:

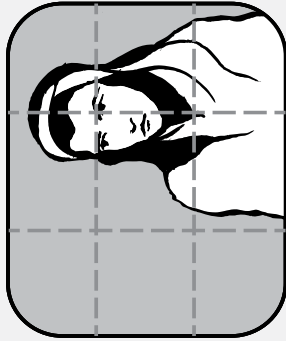
	Who the filmer and crew are and your roles.
	The purpose of the interview.
	Why they will be continually asked explain their responses.
	The implications of speaking out.
	Who may potentially see the video.
	How the video will be used and shared.
	That the interviewee may be asked for a more detailed interview or, in some cases, to testify in court.
	That participation is voluntary.
	That no incentives will be provided.
	That they can cancel their permission during the interview, and the video can be deleted on the spot; if they rescind permission after the interview, logistical and legal realities may make it impossible to delete the testimony.

CONDUCTING PRELIMINARY INTERVIEWS

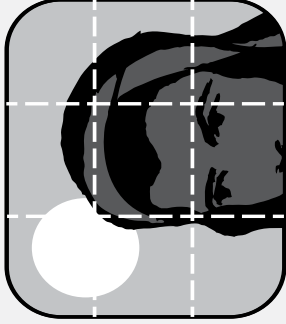
DURING FILMING

- STEP 1 secure informed consent on camera
- STEP 2 consider framing, lighting, and sound
- STEP 3 Add objective on-camera narration
- STEP 4 ASK the interview questions
- STEP 5 Keep Recording
- STEP 6 interview one person at a time
- STEP 7 Listen closely and adapt your plan as needed
- STEP 8 Film additional information
- STEP 9 Close the interview

GOOD SET-UP



BAD SET-UP



CHECKLIST:

SECURING INFORMED CONSENT

DURING FILMING

ON CAMERA – Now turn to the camera, and before beginning the questions about the incident, ask the following:	
	If the security situation allows, please state your name and the date and location of this interview.
	Please explain what we are doing in your own words.
	Can you tell me who may see the video and how it will be shared?
	Can we show your face and use your real name and voice in this video?
	Are there any other restrictions to using and sharing this interview that we need to be aware of?
	Are you aware that your participation is voluntary and that you can refuse to answer any question and end the filming process at any time in order to ask questions, take a break, or stop completely?
	Were you informed that no incentives will be provided for your testimony and that we cannot assist with any follow-up services?
	Were you informed that you might need to make yourself available for a further, more detailed interview?
	If applicable, were you informed that there is a possibility that you may be called to testify before a court? (As a frontline documenter, it's impossible for you to say with certainty whether a person will be called to testify in court. However, if you think that might be the case, be honest about it.)
	Do you consent to your interview being used in the manner discussed?

CONDUCTING PRELIMINARY INTERVIEWS

AFTER FILMING

STEP 1

Revisit safety and security

STEP 2

Develop next steps

STEP 3

Provide follow-up support if possible

STEP 4

Summarize it

STEP 5

Archive and protect it

STEP 6

Learn from you experience



Learn more about preserving video at archive.witness.org

VIDEO AS EVIDENCE: **MINIGUIDE V 1.0** [VAE.WITNESS.ORG](https://vae.witness.org)

CHECKLIST: SECURING INFORMED CONSENT

AFTER FILMING

TOWARDS THE END OF THE INTERVIEW – with the camera still recording, ask the interviewee the following:	
	Would you like to make any corrections or add any additional information?
	Have there been any threats, promises, or inducements which influenced your answers?
	Is the statement you gave true to the best of your knowledge and recollection?
	Do you have any additional safety concerns considering what you shared?
	What is the best way to follow up with you if needed?
AFTER THE INTERVIEW – With the camera turned off consider the following:	
	Properly document and preserve the footage in a safe and secure location.
	Determine whether you will share the footage, and if so, with whom, when, and how?
	If needed and if you are able to, provide contact information for a counselor or victim-support services.

VIDEO AS EVIDENCE: **MINIGUIDE V 1.0** [VAE.WITNESS.ORG](https://vae.witness.org)

CHECKLIST: ETHICAL GUIDELINES

KEY QUESTIONS TO ASK BEFORE SHARING EYEWITNESS FOOTAGE

- ☐ **who is identifiable in the video and how are they portrayed?**
Are those individuals aware they are being filmed? How might their appearance in the footage, if seen by a wide audience, impact them or their community?
- ☐ **what was the intent of the filmer?**
Was this filmed to document abuse? Was it filmed to promote hate or fear, or to glamorize violence?
- ☐ **who is the intended audience?**
Was it intended to be seen widely, or was it filmed for a specific, limited audience?
- ☐ **does the video contain shocking or graphic imagery?**
Is the graphic footage gratuitous, or is it critical for documenting a particular event? How can you warn your audience before they view it?
- ☐ **are you certain the video is authentic?**
Is it possible the video has been manipulated or misinterpreted to mislead viewers?
- ☐ **what is the intended purpose & audience for sharing the video?**
Do the potential benefits of sharing the video outweigh the potential risks of doing so?

VIDEO AS EVIDENCE: **MINI GUIDE** VAE.WITNESS.ORG

DEVELOP STANDARDS

CREATE GUIDELINES WITHIN YOUR ORGANIZATION TO DETERMINE HOW TO ETHICALLY CURATE EYEWITNESS FOOTAGE

Below are some of the considerations they should address:

- ☐ **In what situations will you curate videos without the consent of the individuals filmed?**
- ☐ **When will you protect the privacy and anonymity of those filmed?**
Will you blur the faces of victims of abuse? Children? Activists? Perpetrators?
- ☐ **How will you share video footage publicly?**
Link to the original online video? Embed the video within your online content? Create a new version on your own channel?
- ☐ **How will you indicate to your audience the source and context of the footage?**
- ☐ **If you have not verified what the video depicts with certainty, how do you decide whether to use it and how to acknowledge uncertainties about it to viewers?**
- ☐ **When the footage contains graphic content, do you share, embed, or link to it?**
How do you warn viewers?
- ☐ **When footage is created by hate groups, do you share the video?**
Link to the original? Provide a screenshot? Refuse to distribute any element of the imagery?

VIDEO AS EVIDENCE: **MINI GUIDE** VAE.WITNESS.ORG