



## **A Difficult Balancing Act: How Civil Society Tests the Limits of Atrocity Documentation**

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### **Abstract**

Civil society's participation in the documentation of atrocities is a phenomenon that has grown alongside technological advances. While non-governmental organisations (NGOs) have played a role in documenting violations for several decades, recent conflicts in particular have seen a boom in individual members of civil society and communities taking on documentation. This blog explores some of the tensions arising from civil society's involvement in the judicial process, and how this phenomenon relates to broader trends of contestation in international law.

**Key words:** Atrocity Documentation, Civil Society, AI, OSINT, Humanitarian Law, War Crimes, Human Rights

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### **Introduction**

Ukrainians spreading video evidence of potential Russian war crimes through social media, Palestinians in Gaza sharing the realities of wartime starvation and indiscriminate bombings, and people from Sudan making known the extent of the humanitarian crisis they are suffering: smartphones and other digital technology have transformed nearly everybody into potential documenters of mass atrocities. They have “flooded the media with an exponentially growing amount of footage, allowing for a quasi-live (and increasingly graphic) coverage of real events” and have given affected communities a chance to make their voices heard around the globe.<sup>1</sup> At the same time, traditional legal investigation and evidence procedures have yet to fully come to terms with atrocity documentation increasingly entering the domain and civil society transforming into an ever-growing documenter.

### **Who are the civil society documenters?**

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<sup>1</sup> Federica D'Alessandra and others, 'Handbook on Civil Society Documentation of Serious Human Rights Violations' (ILPG 2016) 12 <[https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/59dfab4480bd5ef9add73271/1507830600233/Handbook-on-Civil-Society-Documentation-of-Serious-Human-Rights-Violations\\_c.pdf](https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/59dfab4480bd5ef9add73271/1507830600233/Handbook-on-Civil-Society-Documentation-of-Serious-Human-Rights-Violations_c.pdf)> accessed 1 February 2026.



Civil society documentation in and of itself is quite a broad term, and acts of documentation are far from equal. Rather, they exist on a spectrum of professionalism, quality, motivation, and context. The person spontaneously pulling out their phone to record events unfolding right in front of them is in no way comparable to an established NGO that has, in its own right, professionalised and institutionalised its documentation process.

Still, the two do not operate independently of each other. By contrast, if an individual chooses to upload a video to social media, multiple organizations may immediately detect it, download it, and archive it for future use, particularly if it relates to a specific conflict.<sup>2</sup> The video might also end up in other civil society actors' open-source investigation as one piece of evidence in the puzzle they are putting together.<sup>3</sup> And should that person have already come across NGOs that partake in the documentation of atrocities, they might opt for uploading their video to the growing number of platforms organisations specifically establish for this purpose.<sup>4</sup> In that case, the spontaneous documenter might just be one step away from entering the training some organisations offer individuals to improve upon the evidentiary value of what they film and photograph, and becoming part of an ever-growing number of volunteers that function as on-site documenters for wider civil society documentation networks.<sup>5</sup>

The route to evidence in judicial proceedings is, however, only one path these photos and videos can potentially take. They might not even be produced with *legal* evidence in mind in the first place. Much more than that, they are social evidence of a lived experience for which a person seeks recognition— from within their own community and from the considerably more intangible international community. Insomuch as “[f]ilming to get global attention on an issue is much, much different than filming for evidentiary purposes”, civil mass atrocity documentation efforts are forced to occupy a tension-ridden double role.<sup>6</sup> On the one hand, they function as civil and political mobilisers, hoping to spark (re)action in response to the documented events, which ultimately also includes a judicial one in the form of official legal proceedings. On the other hand, actors in these legal proceedings might then actually look to invoke them as legal evidence. Both place distinct

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<sup>2</sup> John Goodmann and Maria Korenyuk, ‘AI: War Crimes Evidence Erased by Social Media Platforms’ (31 May 2023) <<https://www.bbc.com/news/technology-65755517>> accessed 1 February 2026.

<sup>3</sup> Paul R Williams and Nicole Carle, ‘The War in Ukraine: A Case Study in Modern Atrocity Crimes Documentation’ (2023) 55 Case W. Res. J. Int’l L. 7, 12.

<sup>4</sup> eyeWitness to Atrocities, ‘Resources’ <<https://www.eyewitness.global/resources.html>> accessed 9 February 2026.

<sup>5</sup> ; Caitlin Thompson, ‘How to Document War Crimes in the Digital Age’ (*Coda Story*, 5 April 2022)

<<https://www.codastory.com/newsletters/war-crimes-in-digital-age/>> accessed 1 February 2026.

<sup>6</sup> Dalila Mujagic as cited by Thompson (n 5).



expectations upon the same piece of documentation: what evokes an emotional response is not necessarily legally usable, and what provides sufficient context and clarity for legal use might lack emotional resonance.

### **Civil Society Documentation in Court**

Once the results of such a complex web of interactions enter the legal process, they occupy a space somewhere between a challenge to traditional evidence procedures and facilitating what would otherwise not be possible. Indeed, “many stories and pieces of evidence may go uncollected” without civil society rising to the occasion.<sup>7</sup> This is especially true since “the interval between the commission of a crime and the deployment of professional investigators is key to the preservation of evidence”, while in conflict-affected and insecure regions investigators are often unable to access crime scenes or be deployed immediately after an attack.<sup>8</sup> In some cases, such as Syria and Yemen, open-source investigation and, therefore, publicly available civil society content played a significant role in atrocity documentation.<sup>9</sup>

Where there is an undeniable gap in institutions’ capacities to conduct timely and thorough investigations,<sup>10</sup> civil society has taken to filling it through its own initiatives – to such an extent that some institutions warn of “the risk of over-documentation”.<sup>11</sup> And it is true that unprecedented amounts of potential evidence are being produced almost daily and that courts and tribunals will have to face them, should an investigation ever be opened. At the same time, and despite legal accountability undeniably functioning as a crucial motivator, the production of such massive amounts of data still operates outside of exclusively judicial parameters. It creates a historical record, for which trials are only one potential use.<sup>12</sup>

However, when this record does enter trials as evidence, “just knowing what happened is not enough for proving criminal responsibility of individuals”.<sup>13</sup> Apart from the fact that photos and

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<sup>7</sup> Williams and Carle (n 3) 35.

<sup>8</sup> D’Alessandra and others (n 1) 13–14.

<sup>9</sup> Thompson (n 5).

<sup>10</sup> Williams and Carle (n 3) 34.

<sup>11</sup> ICC, Eurojust, and Genocide Network, ‘Documenting International Crimes and Human Rights Violations for Accountability Purposes: Guidelines for Civil Society Organisations’ (2022) 6 <[https://www.icc-cpi.int/sites/default/files/2022-09/2\\_Eurojust\\_ICC\\_CSOs\\_Guidelines\\_2-EN.pdf](https://www.icc-cpi.int/sites/default/files/2022-09/2_Eurojust_ICC_CSOs_Guidelines_2-EN.pdf)> accessed 1 February 2026.

<sup>12</sup> Williams and Carle (n 3) 34.

<sup>13</sup> Netherlands Helsinki Committee, ‘The Realities of Recording History: The Importance of Documenting War Crimes’ (*Netherlands Helsinki Committee*, 8 February 2024) <<https://www.nhc.nl/the-realities-of-recording-history-the-importance-of-documenting-war-crimes/>> accessed 1 February 2026.



videos are often not even able to do that on their own, international criminal law requires context.<sup>14</sup> Sufficient proof of individual criminal responsibility goes beyond crime-based evidence; it necessitates proof of intent or knowledge.<sup>15</sup>

Furthermore, digital evidence in particular demands specific verification and tracing procedures to establish authenticity, accuracy, and origin.<sup>16</sup> Even before more recent advances in AI development, digital technology offered numerous options for tampering with digital evidence.<sup>17</sup> Now, atrocity content is – in no little part due to civil society documentation – more available than ever before, and supposed evidence of such violence – in no little part due to technological developments – more easily fabricated than ever before. The threat of denialism, distortion, and the trivialisation of suffering that looms as a result of both<sup>18</sup> is something the legal sphere is yet to grapple with adequately.

Verification of digital evidence is further hindered by the fact that the commonplace truth of something on the internet being forever does not seem to hold for atrocity evidence uploaded on social media. Instead, the AI content moderation algorithms by social media sites often remove such content for being harmful or illegal, unable to distinguish between evidence of atrocities and other depictions of violence. In the process, they also erase all metadata that would be crucial for a proper digital evidence verification process.<sup>19</sup> Sometimes it is not even the host platforms that delete uploads, but the users themselves.<sup>20</sup> Or they cannot be identified or contacted.<sup>21</sup> Either way, digital content can disappear at any moment, while a verification process for its accuracy and reliability is indispensable in proper judicial proceedings and particularly hard to come by if it originates in civil society.<sup>22</sup>

## And the Ethics of it all?

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<sup>14</sup> Thompson (n 5).

<sup>15</sup> Netherlands Helsinki Committee (n 14).

<sup>16</sup> Humaira Arshad, Aman Jantan and Oludare Abiodun, 'Digital Forensics: Review of Issues in Scientific Validation of Digital Evidence' (2018) 14 *Journal of Information Processing Systems* 346 ~ 376, 347–348.

<sup>17</sup> Ella McPherson, 'Risk and the Pluralism of Digital Human Rights Fact-Finding and Advocacy' in Molly K Land and Jay D Aronson (eds), *New Technologies for Human Rights Law and Practice* (Cambridge University Press 2018) 196 <<https://www.cambridge.org/core/product/FBF030B438D1F6CB7631C533A8A99D41>>.

<sup>18</sup> Mykola Makhortykh and others, 'Shall Androids Dream of Genocides? How Generative AI Can Change the Future of Memorialization of Mass Atrocities' (2023) 3 *Discover Artificial Intelligence* 2.

<sup>19</sup> Goodmann and Korenyuk (n 2).

<sup>20</sup> Syria Justice & Accountability Centre, 'How to Document Atrocities in the Gaza War' (*Syria Justice & Accountability Centre*, 2 November 2023) <<https://syriaaccountability.org/how-to-document-atrocities-in-the-gaza-war/>> accessed 1 February 2026.

<sup>21</sup> Thompson (n 5).

<sup>22</sup> Syria Justice & Accountability Centre (n 21).



And while evidentiary value and judicial handling of civil society documentation form part of its central (legal) challenges, none of these considerations touch yet on the many ethical questions that accompany it. These include managing the security of volunteer documenters, especially without institutional backing, on the one hand, and preserving the dignity and well-being of victims, on the other, not least when graphic imagery of their suffering becomes publicly available. Among them are also issues of privacy in open-source investigations and fair trial rights, including the presumption of innocence, whilst (mis)information and supposed evidence already circulates in the court of public opinion.

That is precisely why documenting without training, reference to appropriate ethical principles, and legal knowledge holds the potential for more harm than good. It is alas the case that “unofficial investigators may lack the training and/or resources to properly handle information they might come into contact with; and that contamination or loss of important information is often the unfortunate outcome of such circumstances”.<sup>23</sup> Furthermore, in interacting closely with potentially traumatised and vulnerable individuals, civil society documenters individually vary in their preparedness for such situations. As such, these interactions carry a very real risk of re-traumatisation and harm.<sup>24</sup>

Lastly, legal knowledge proves particularly relevant, when there exists a discrepancy between what intuitively feels not right and what is indeed illegal. International humanitarian law, for example, is a legal field not just formed of an array of highly complex rules, but also one where the principle of humanity is constantly weighed against military necessity<sup>25</sup> – not uncommonly in ways that defy what the average person would consider permissible or moral. Those are perceptions the law increasingly has to manage, not in the least because of its very own promise of justice. What said justice requires and can entail under international criminal law is certainly not easily communicated to the general public, nor to spontaneous and volunteer documenters.

All of this is most certainly among the reasons why even the creators of handbooks on civil society documentation seem hesitant to endorse it fully themselves. Instead, they proclaim it as “a last resort” and implore outsiders of affected communities not to take the handbook as encouragement

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<sup>23</sup> D’Alessandra and others (n 1) 13–14.

<sup>24</sup> ICC, Eurojust, and Genocide Network (n 12) 13–15.

<sup>25</sup> Netherlands Helsinki Committee (n 14).



for travelling to places where violations occur and participating in the documentation.<sup>26</sup> That civil society resorts documentation in the first place is, however, also reflective of deeper issues within international law, above all an undeniable lack of accountability and lingering impunity.

### Conclusion

Civil society atrocity documentation is exactly where so many of (international) law's most substantial current issues clash. It is only made possible by new technological developments that provide individuals with the tools to document almost every moment in their lives. Yet, it is these exact technological developments that challenge traditional judicial fact-finding and evidence procedures. Furthermore, civil society documentation echoes the gap between text and enforcement that haunts international law much more than any other field of law, while the act of documentation itself is the strongest vote of confidence that legal truth indeed matters and can be served through contributing all the evidence possible. Ultimately, it is also one of the many sites of uncertainty in international law's broader struggle to accommodate non-state actors in its deeply state-centric doctrine. Much of this ambivalence is unlikely to be resolved any time soon. If anything, civil society documentation seems to be here to stay.

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<sup>26</sup> D'Alessandra and others (n 1) 13.



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