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Documentation for Accountability

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DOCUMENTATION FOR ACCOUNTABILITY

Jessica C. Levy & Paul R. Williams†*

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Millions of civilians as well as combatants have been killed in wars during the last three decades.¹ Millions more have died from indirect causes related to the violence, such as starvation and disease.² State

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1 *European Security Strategy: A Secure Europe in a Better World*, COUNCIL OF THE EUROPEAN UNION 29 (2009), <https://www.consilium.europa.eu/media/30823/qc7809568enc.pdf> [<https://perma.cc/33X3-LN69>].

2. Ratnayake R. Degomme O., et al., *The Many Victims of War: Indirect Conflict Deaths*, in GLOBAL BURDEN OF ARMED VIOLENCE, GENEVA DECLARATION SECRETARIAT, GENEVA 31 (2008).

sponsored violence also enacts an enormous toll.³ Around the world, “[d]esperate or despotic rulers continue to kill their fellow countrymen, harm and destroy opponents, target less favored ethnic group simply because of their ethnicity, attack persons from regions that are unpopular or threatening to the status quo.”⁴ The cost is borne not only in the stark number of lives lost, but also in the atrocity crimes committed during these periods.⁵ Despite the legal protections set forth in the Geneva Conventions and other foundational documents of international humanitarian law, perpetrators continue to commit crimes against humanity, war crimes and genocide.⁶ Documenting these atrocity crimes has become a crucial step in efforts to secure justice. To support this expanding field, the international community must redouble its efforts to ensure that civil society actors engaged in documentation and evidence collection have access to the sustainable, tailored, and secure technology platforms they need to contribute to justice, truth, and accountability.

I. JUSTICE DELAYED

Victims of atrocities deserve justice. Unfortunately, the delay in attaining justice for atrocity crimes after conflict is substantial. Many victims—or their descendants—are still waiting for some degree of accountability.⁷ Even when governments acknowledge the commission of atrocity crimes, it is often done with the insistence that it comes with no legal liability. For instance, in 2016, over a century after Germany’s 1904 genocidal campaign against the Herero and Nama peoples in Namibia, Germany finally admitted that the violence was genocide but

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3. See, e.g., *Zimbabwe: Surge in State-Sponsored Violence*, HUMAN RIGHTS WATCH (Apr. 25, 2008), <https://www.hrw.org/news/2008/04/25/zimbabwe-surge-state-sponsored-violence> [<https://perma.cc/9LKP-BRWT>].
 4. ROBERT ROTBERG, *MASS ATROCITY CRIMES: PREVENTING FUTURE OUTRAGES 2* (Robert Rotberg ed., Brookings Institution Press 2010).
 5. Adama Dieng & Jennifer Welsh, *Assessing the Risk of Atrocity Crimes*, 9 GENOCIDE STUDIES AND PREVENTION: AN INT’L J. 4, 6 (2016).
 6. ROTBERG, *supra* note 4 at 2–3.
 7. See, e.g., Sam Levin, ‘*This is all Stolen Land*’: Native Americans Want more than California’s Apology, THE GUARDIAN (June 21, 2019), <https://www.theguardian.com/us-news/2019/jun/20/california-native-americans-governor-apology-reparations> [<https://perma.cc/FP4T-DEA9>]; Rouben Paul Adalian, *International Recognition of the Armenian Genocide*, ARMENIAN NAT’L INST., <https://www.armenian-genocide.org/recognition.html> [<https://perma.cc/PC2U-38F4>] (“The continued denial by the Republic of Turkey, however, has created conditions, which in the view of many Armenians, necessitates the continuation of the search for international reaffirmation until such time as acknowledgment is made universal and irreversible.”).

insisted such a label was only a “historical-political” label that bore no legal implications.⁸

When there have been efforts to provide accountability, it has often times taken years—sometimes even decades—for criminal justice mechanisms to hold some perpetrators accountable for the crimes they committed during a conflict. Thirty years passed after the genocide committed by the Khmer Rouge in Cambodia before the Extraordinary Chambers in the Courts of Cambodia held its first trial of the leaders alleged to be responsible for the atrocity crimes and serious violations of international law that took place from 1975 to 1979.⁹ It was not until 2018, almost four generations later, that the Chambers declared that acts of Pol Pot and his senior officials constituted genocide.¹⁰

As time passes, memories fade and information disappears, but the need to hold perpetrators accountable for grave violations of international criminal law does not wane. With efforts to provide accountability facing so many delays already, it is imperative that the evidence of atrocities is collected, prepared, and available for use as soon as an appropriate judicial mechanism emerges. There is a growing awareness in the international community of the “importance of evidence to buttress claims of human rights violations, and that in many situations such information is lost by the lack of investigations.”¹¹ Documentation projects, particularly those organized and completed by civil society, have expanded significantly to meet this need and fill the gap in formal investigations.¹²

In the last two decades of the twentieth century, there were a number of high profile cases at international tribunals, such as the Yugoslavia Tribunal, which demonstrated the vital role that documentation could play in securing criminal accountability.¹³ Since then, civil-society documentation has both expanded and become more effective, particularly with the exponential growth of mobile

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8. Gabriele Steinhauser, *Germany Confronts the Forgotten Story of its Other Genocide*, WALL ST. J. (July 28, 2017), <https://www.wsj.com/articles/germany-confronts-the-forgotten-story-of-its-other-genocide-1501255028> [<https://perma.cc/2CTH-DF3F>].
 9. *Extraordinary Chambers in the Courts of Cambodia*, INT’L BAR ASS’N, https://www.ibanet.org/Committees/WCC_Cambodia.aspx [<https://perma.cc/35S2-XPC3>].
 10. *Khmer Rouge Leaders Found Guilty of Cambodia Genocide*, BBC NEWS (Nov. 16, 2018), <https://www.bbc.com/news/world-asia-46217896> [<https://perma.cc/4L3F-XL7P>].
 11. HANDBOOK ON CIVIL SOCIETY DOCUMENTATION OF SERIOUS HUMAN RIGHTS VIOLATIONS 11 (Federica D’Alessandra, et al. eds., Public Int’l L. & Policy Group 2016).
 12. *Id.*
 13. *Id.* at 11–12.

technologies.¹⁴ While there have been significant developments in the mobile technologies that are available to assist documenters, there is still immense demand for additional technology solutions that will build the capacity of civil-society documenters to safely and effectively gather, store, and share evidence of atrocity crimes and other violations of international law.¹⁵

II. DOCUMENTING ATROCITIES

Prosecuting those who committed atrocity crimes during conflict is a critical piece of states' efforts to secure justice after conflict.¹⁶ Pursuing accountability rather than sanctioning impunity for atrocity crimes committed during a conflict helps in "establishing individual responsibility and denying collective guilt, dismantling and discrediting institutions and leaders responsible for the commission of atrocities, establishing an accurate historical record, providing victim catharsis, and promoting deterrence."¹⁷

To prove criminal guilt, prosecutors rely on evidence meticulously collected, analyzed, and presented according to strict evidentiary standards.¹⁸ As trained professionals and local civil society actors work

14. *Id.* at 12.

15. *Id.* at 12–13. The authors of this article acknowledge that in some cases the materials that civil-society documenters may be gathering can be most aptly categorized as information helpful in finding or corroborating evidence, rather than strictly as evidence itself. To enhance the readability and concision of this article, however, we use the term "evidence" to broadly refer to both the materials that meet the strict legal definition of evidence and information of this kind.

16. See *Selling Justice Short*, HUMAN RIGHTS WATCH (July 7, 2009), <https://www.hrw.org/report/2009/07/07/selling-justice-short/why-accountability-matters-peace> [<https://perma.cc/XT5Y-2XV2>].

17. Michael P. Scharf & Paul R. Williams, *The Functions of Justice and Anti-Justice in the Peace-Building Process*, 35 CASE W. RES. J. INT'L L. 161, 170 (2003). There is consensus around these objectives in much of the peace with justice literature. See, e.g., PREVENTING ATROCITIES: FIVE KEY ATTITUDES 20 (U.S. Agency for Int'l Dev. 2014) ("Transitional justice is an important tool for reducing the likelihood of renewed conflict and potential future mass atrocities by providing official recognition and redress to victims, establishing historical truth, achieving accountability for human rights abuses, and rebuilding civic trust."); ROTBERG, *supra* note 4, at 55 ("As in the case of all prosecutions, for what are increasingly being called "atrocity crimes," there are substantial benefits. I discuss six of them, namely: —Bringing an end to impunity for war criminals; —Providing justice to the victims; —Ending fabricated denials; —Deterring potential criminals; —Advancing international humanitarian law; and —Increasing the capacity of states.").

18. See, e.g., Lindsay Freeman, *Digital Evidence and War Crimes Prosecutions: The Impact of Digital Technologies on International*

to document human rights violations and other violations of international law that occur during armed conflicts around the world, they strive to document these violations in a way that preserves the ability for the evidence to be used in future prosecutions.¹⁹ The high caliber of evidence needed for criminal accountability serves as a benchmark for other forms of transitional justice.²⁰ If the material meets the evidentiary standards for such a trial, it typically also meets the standards for other justice mechanisms, such as reparations or truth commissions.²¹

The materials collected by documenters have served as key pieces of evidence in the investigations and prosecutions of alleged perpetrators. Civil society groups have provided documentation—ranging from photographs and videos to statements and witness testimony—that has been vital to a number of cases before international tribunals. These cases include the prosecution of Khmer Rouge leader Kaing Guek Eav at the Extraordinary Chambers in the Courts of Cambodia, of Serbian President Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia, and of President of Chad Hissène Habré at the Extraordinary African Chambers.²² Global and regional consultations completed by the Open Society Justice Initiative in 2015 found “clear agreement on the enormous contribution made by NGOs and CSOs in sharing their fact-finding with the ICC and national accountability institutions.”²³ Civil

Criminal Investigations and Trials, 41 *FORDHAM INT’L L. J.* 283, 333 (2018).

19. HANDBOOK ON CIVIL SOCIETY DOCUMENTATION, *supra* note 11, at 79–80.
20. Guidance Note of the U.N. Secretary-General, United Nations Approach to Transnational Justice, at 6 (Mar. 2010), *available at* https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf [<https://perma.cc/YM5N-V7SD>].
21. *See id.* at 3.
22. Hannah Ellis-Petersen, *Khmer Rouge Leaders Found Guilty of Genocide in Cambodia’s Nuremberg’ Moment*, *THE GUARDIAN* (Nov. 16, 2018), <https://www.theguardian.com/world/2018/nov/16/khmer-rouge-leaders-genocide-charges-verdict-cambodia> [<https://perma.cc/LPT8-B8BP>]; Vesna Peric Zimonjic, *Serb ‘Scorpions’ Guilty of Srebrenica Massacre*, *INDEPENDENT* (April 11, 2007), <https://www.independent.co.uk/news/world/europe/serb-scorpions-guilty-of-srebrenica-massacre-5332749.html> [<https://perma.cc/MB4R-NCEK>]; Christine Grillo, *HRDAG Testifies In Hissène Habré Trial*, *HUMAN RIGHTS DATA ANALYSIS GROUP* (Sept. 23, 2015), <https://hrdag.org/2015/09/23/hrdag-testifies-in-hissene-habre-trial/> [<https://perma.cc/W6DC-RZDN>]. 9
23. *Civil Society Perspectives on Fact-Finding and the International Criminal Court*, *OPEN SOCIETY JUSTICE INITIATIVE*, at 6 (Nov. 2015), *available at* <https://www.justiceinitiative.org/uploads/af4fc727-36fd-4d9f-a737->

society documenters have advanced accountability through both the provision of trial-ready evidence as well as through non-evidentiary submissions that helped guide prosecutors and investigators.

Documentation can also play a large role in efforts to create judicial mechanisms, as was the case for the creation of the Extraordinary Chambers in the Courts of Cambodia. In the absence of official initiatives to preserve evidence of the atrocities committed by the Khmer Rouge, scholars at civil society organizations worked alongside survivors to collect, identify, and store evidence in the hope of future legal proceedings.²⁴ The Documentation Center of Cambodia, for instance, compiled an estimated 155,000 pages of documents and 6,000 photographs, creating “extensive bibliographic, biographic, photographic and geographic databases of information related to Khmer Rouge abuses [...and locating and mapping] 189 prisons, 19,403 mass graves, and 80 genocide memorials throughout Cambodia.”²⁵

In 1999, a UN Group of Experts drew heavily upon the Documentation Center’s extensive collection of materials in determining that there was not only clear evidence of serious violations of international and Cambodian law, but also that “sufficient physical and witness evidence currently exists or could be located in Cambodia, Viet Nam, or elsewhere to justify legal proceedings against Khmer Rouge leaders for these crimes.”²⁶ When the Extraordinary Chambers in the Courts of Cambodia were subsequently created, the Chambers relied heavily on this documentation.²⁷ The Documentation Center of Cambodia itself supplied the Chamber with hundreds of thousands of pages of documentation to support the trials of these perpetrators.²⁸

Evidence that is collected in ways that meet the evidentiary standards for international trials can be presented in court to corroborate and/or supplement the eye witness accounts. For instance, a case at the Yugoslav Tribunal, *Prosecutor v. Radovan Karadžić*, utilized film known as the “Scorpions Srebrenica video” to support witness testimony about the execution of six Bosnian civilians by Serbian soldiers from a unit known as the “Scorpions” as part of the

e19e6f9e5638/briefing-ngo-guidelines-asp-20151117_0.pdf
[<https://perma.cc/T59A-8RAY>].

24. U.N. Secretary-General, *Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135*, U.N. Doc. A/53/850-S/1999/231 (Mar. 15, 1999) [hereinafter *Report of Cambodia Experts*].
25. *Our History*, DOCUMENTATION CTR. OF CAMBODIA, <http://dcam.org/our-history> [<https://perma.cc/5UY7-BVM2>]. 9
26. *Report of Cambodia Experts*, *supra* note 24, ¶ 58.
27. U.N. Secretary-General, *Report of the Secretary-General on Khmer Rouge Trials*, ¶ 19, U.N. Doc. A/59/432 (Oct. 12, 2004).
28. DOCUMENTATION CTR. OF CAMBODIA, *supra* note 25.

Srebrenica massacres of July 1995.²⁹ The video—discovered by a Serbian human rights activist and first presented in the trial proceedings against former Serbian President Slobodan Milosevic—provided details that were instrumental in the identification and eventual conviction of soldiers who perpetrated the attack.³⁰

The prosecution of individuals responsible for atrocities, particularly prosecutions of those most responsible for the most serious violations, are not only valuable for historical truth and justice but also for a forwards-looking interest in atrocity prevention. In a joint report to the U.N. Human Rights Council, the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence along with the Special Adviser to the Secretary-General on the Prevention of Genocide highlighted how criminal justice works to prevent future atrocities “through the assertion of accountability, which thereby generates a deterrent effect; signaling that no one is above the law, which is important for social integration; the disruption of the criminal networks responsible for atrocities; and the confrontation of the most violent manifestations of discrimination, marginalization and horizontal inequalities.”³¹ By identifying specific perpetrators and attaching legal blame to their crimes, prosecutions can counter societal perceptions of past injustice while also attaching a high cost to such behavior, deterring individuals from acting similarly in the future.

The evidence documented and prepared for accountability efforts is also important in establishing a historical record of the atrocities. As Richard Goldstone, former Chief Prosecutor for the International Criminal Tribunals for both the former Yugoslavia and Rwanda, describes:

There has been an outpouring of evidence from the hundreds of witnesses who have testified at war crimes trials, whether in The Hague, in the case of the ICTY; in Arusha, Tanzania, in the case of the ICTR; or in Freetown, in the case of the Special Court for Sierra Leone. That evidence has brought justice and acknowledgement to a substantial number of victims. As with truth and reconciliation commissions, these courts have also

29. Prosecutor v. Karadzic, Judgments U.N. Admin. Trib., No. 61023, at 3, U.N. Doc. IT-95-5/18-T (2012).

30. Zimonjic, *supra* note 22.

31. Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide, *Joint Study on the Contribution of Transitional Justice to the Prevention of Gross Violations and Abuses of Human Rights and Serious Violations of International Humanitarian Law, Including Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity, and their Recurrence*, U.N. Doc A/HRC/37/65 (June 6, 2018).

helped to establish a historical record of the wars that resulted in the deaths, rapes, and injuries of so many.³²

The creation of a historical record has individual value for survivors who can learn truths about the trauma they endured, but also societal value in bringing about a public understanding of what occurred. For instance, the collection of evidence presented at the Yugoslav Tribunal “banished the notion forever that war crimes had not proliferated in Bosnia, Croatia, and Kosovo between 1991 and 1994. The Arusha tribunal for Rwanda did the same for the history of genocide in that country.”³³

The establishment of that historical truth is particularly vital in contentious post-conflict environments where various factions or perpetrators may deny that these atrocities happened. The collection, corroboration, and dissemination of evidence to the population is an important tool for countering false narratives. For instance, the “Scorpions Srebrenica video” that was presented in the Yugoslavia Tribunal’s trial of Milosevic also aired on television stations across the Balkans.³⁴ The explicit video graphic evidence of atrocity shocked many, but it was particularly poignant for the many Serbians who had previously believed Milosevic’s propaganda messages that the 1995 Srebrenica massacre had not occurred.³⁵

III. VICTIMS DEMAND JUSTICE

Investigations and prosecutions of atrocity crimes call for the acknowledgment of a grave wrong—one that is an affront not only to individuals in the region but to humanity writ large.³⁶ As David Crane, former Chief Prosecutor for the U.N. War Crimes Tribunal for Sierra Leone, reflects, “The key to a crime against humanity is the ‘widespread and systematic’ nature of the act. [...] The RUF’s [Revolutionary United Front’s] or the AFRC’s [Armed Forces Revolutionary Council’s] military operations were named ‘No Living Thing’ and ‘Pay Yourself,’ respectively, with the intent of consuming whole parts of Sierra Leone ‘down to the ants.’ Everything was killed, including humans, livestock,

32. Richard J. Goldstone, *The Role of the International Criminal Court, in MASS ATROCITY CRIMES: PREVENTING FUTURE OUTRAGES* 55, 59 (Robert I. Rotberg ed., 2010).

33. ROTBERG, *supra* note 4, at 9.

34. Zimonjic, *supra* note 22.

35. *Id.*

36. Rome Statute of the Int’l Criminal Court, pmb., *opened for signature* July 17, 1998, 37 I.L.M. 999, 2187 U.N.T.S. 38544 (entered into force July 1, 2002).

wildlife, and all of the crops that the rebels did not need. It was complete and utter devastation.”³⁷

That level of devastation cannot go unanswered. As the survivors are forced to pick up the shattered pieces of their lives, they often call for justice—for an acknowledgment of and reckoning with the atrocities they endured.³⁸

A preliminary investigation by the International Criminal Court into the genocide committed against the Rohingya population in Myanmar found that survivors unanimously called for a full investigation by the ICC.³⁹ In its decision to authorize an investigation, ICC Pre-Trial Chamber III noted that “many of the consulted alleged victims ‘believe that only justice and accountability can ensure that the perceived circle of violence and abuse comes to an end and that the Rohingya can go back to their homeland, Myanmar, in a dignified manner and with full citizenship rights.’”⁴⁰ The Rohingya refugees’ insistence in seeking justice notwithstanding the myriad challenges facing them illustrates how important accountability is for victims of atrocity.

This demand for accountability is voiced by many victims whose lives and livelihoods have been devastated by atrocities committed during conflict. For instance, most respondents in post-conflict surveys in the Central African Republic (98 percent of respondents), eastern Democratic Republic of Congo (85 percent), and Northern Uganda (70 percent) expressed their belief in the importance of holding those responsible accountable for the violence they perpetrated.⁴¹

As Richard Goldstone describes, “Without justice, without courts with jurisdiction, the victims of atrocity crimes have no way of receiving acknowledgment of what they suffered.”⁴² Such acknowledgment, in addition to potential restitution or compensation gained from litigation,

37. David M. Crane, *Understanding Crimes Against Humanity in West Africa: Giving the People What They Want*, in MASS ATROCITY CRIMES: PREVENTING FUTURE OUTRAGES 69, 76 (Robert I. Rotberg ed., 2010).

38. See, e.g., Mark A. Drumbl, *Victims who Victimise*, 4 LONDON REV. OF INT’L L. 217, 235 (2016).

39. Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, ¶ 38 (Nov. 14, 2019).

40. *Id.*

41. PATRICK VINCK & PHUONG PHAM, BUILDING PEACE, SEEKING JUSTICE: A POPULATION-BASED SURVEY ON ATTITUDES ABOUT ACCOUNTABILITY AND SOCIAL RECONSTRUCTION IN THE CENTRAL AFRICAN REPUBLIC 27 (U.C. Berkeley Human Rights Ctr., 2010). 9

42. Goldstone, *supra* note 32, at 57.

can provide victims with valuable reparations—both symbolic and material—for the harms they suffered.⁴³ Insofar as documentation plays a key role in facilitating criminal prosecutions and other forms of accountability, it can be an imperative component of providing victim catharsis.⁴⁴

Particularly when there are political barriers or obstacles delaying the pursuit of justice, documentation processes provide a foundation from which to galvanize future accountability efforts. For instance, in the cases of Syria and Myanmar, there is political gridlock at the U.N. Security Council with Russia and China, respectively, vetoing initiatives aimed at establishing accountability for the war crimes and genocide that have occurred.⁴⁵ Unable to use the Security Council to establish an international tribunal to prosecute these crimes, the U.N. has instead focused on facilitating the documentation of these crimes.⁴⁶

In December 2016, the General Assembly created the International, Impartial and Independent Mechanism for Syria,⁴⁷ and in September

43. See KELLI MUDELL & SIBLEY HAWKINS, *GENDER AND TRANSITIONAL JUSTICE: A TRAINING MODULE SERIES*, 9–10 (Int'l Ctr. for Transitional Justice, 2018).

44. It is worth noting, however, that practitioners may inadequately or insufficiently provide justice for victims if they are not cognizant that their perspective on justice may not match that of the victim. There are many, often culturally specific, perspectives of justice. As David Crane reflects: “An important question to ask ourselves as we consider how best to seek justice for crimes against humanity and other international crimes should be: Is the justice that we seek the justice that they want? If we do not carefully consider that answer, we may find that what we do as an international community will be a form of “white man’s justice” and not a culturally refined justice that factors in not only the legal, diplomatic, political, and practical results of the decision to seek justice for the victims of an atrocity, but also the cultural ramifications of that decision.” David M. Crane, *supra* note 37, at 79. Crane does not mean to suggest that international criminal prosecutions are not vital, but rather that in prosecuting individuals for violations of international law, effort must also be made in outreach to the victims and communities affected by the violations. Moreover, it may require supplementing international criminal justice with other justice mechanisms based in truth, confession, or reconciliation rather than international law.

45. See Reality Check Team, *Syria: Does Russia Always Use a Veto at the UN Security Council?*, BBC, (Apr. 16, 2018), <https://www.bbc.com/news/world-43781954> [<https://perma.cc/CP96-3ZXS>]. See also Michelle Nicols, *U.N. Security Council Mulls Myanmar Action; Russia, China Boycott Talks*, REUTERS, (Dec. 17, 2018), <https://www.reuters.com/article/us-myanmar-rohingya-un/u-n-security-council-mulls-myanmar-action-russia-china-boycott-talks-idUSKBN1OG2CJ>, [<https://perma.cc/5Z4S-7AGG>].

46. See G.A. Res. 71/248 (Jan. 11, 2019). See also H.R.C. Res. 39/L.22 (Sept. 25, 2018).

47. G.A. Res. 71/248, *supra* note 46, ¶ 4.

2018, the Human Rights Council created the Independent Mechanism for Myanmar.⁴⁸ Both mechanisms are mandated to “collect, consolidate, preserve and analyze evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings.”⁴⁹ The establishment of these two mechanisms reflected the U.N.’s understanding that insofar as documentation was the only politically viable step towards justice, it was vital to support those efforts so that material would be ready to be used as soon as the political factors aligned to make the pursuit of justice possible.

The ability for documentation to support accountability in this way is already beginning to prove itself. The International Criminal Court Pre-Trial Chamber’s decision to authorize an investigation into the genocide committed against the Rohingya relied extensively on the material provided by the Public International Law & Policy Group’s documentation mission and subsequent report.⁵⁰ PILPG’s unprecedented, large-scale documentation project provided 1,024 interviews yielding a representative sampling of first-hand accounts from refugees in Cox’s Bazaar, Bangladesh.⁵¹ The evidence, which systematically detailed the patterns of abuse and atrocity crimes committed against the Rohingya population in Myanmar’s Rakhine State, was cited over fifty times in the Office of the Prosecutor’s Request for Authorization⁵² and more than twenty-five times in the Pre-Trial Chamber’s Decision to Authorize.⁵³

IV. DOCUMENTATION TECHNOLOGY SOLUTIONS

The expanded international interest in documentation for accountability has been paralleled by a significant growth in the number of civil society actors involved in documentation as well as in the mobile technology available for documenters to use. The confluence

48. H.R.C. Res. 39/L.22, *supra* note 46, ¶ 22.

49. G.A. Res. 71/248, *supra* note 46, ¶4; *see also id.*

50. Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19, Decision, ¶ 15.

51. *See* DANIEL J. FULLERTON, ET AL., DOCUMENTING ATROCITY CRIMES COMMITTED AGAINST THE ROHINGYA IN MYANMAR’S RAKHINE STATE: FACTUAL FINDINGS & LEGAL ANALYSIS REPORT 17 (Public Int’l L. & Policy Group, Dec. 2018).

52. *See* Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19, Request for Authorisation of an Investigation Pursuant to Article 15 (July 4, 2019).

53. *See* Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19, Decision.

of these factors means that accountability mechanisms can now utilize materials from a broader range of sources, rather than having to rely exclusively on professionally trained, and typically U.N.-mandated, investigators.⁵⁴ This is significant because “[i]ndictments and prosecutions serve a critical purpose in the battle to curb war crimes and limit the proliferation of atrocity crimes. But there are not enough courts, judges, prosecutors, and funds to cope with every conceivable atrocity amid civil war.”⁵⁵ The combination of an omnipresent demand for justice and constrained resources makes documenters’ contributions extremely valuable.

Involving local human rights documenters also brings the added advantage of engaging individuals who typically have greater access to and trust of conflict- and atrocity-affected communities. Local documenters usually have greater knowledge of the socio-political contexts in which the events occurred, which can be helpful for handling extremely sensitive cases and for constructing a holistic understanding of how the violations impacted the population.

The involvement of civil society in human rights and international criminal law documentation also presents challenges. As the Public International Law & Policy Group’s *Handbook on Civil Society Documentation of Serious Human Rights Violations* explains:

On the one hand, the pro-activism of civil society groups living in conflict zones or under authoritarian regimes has brought about an improvement in coverage and an abundance of information. On the other hand, however, it has confronted the investigative and judicial practice with a number of dilemmas. Is it possible to use information collected through citizens’ journalism for the purpose of judicial proceedings in light of the quality requirements for evidence? What is the role of such civil society actors in the investigation and documentation processes and accountability mechanisms? What weight should the information they collect carry? And what risks and challenges does their presence and interplay create?⁵⁶

Documenters are typically working in restricted, insecure environments where the collection of witness statements and physical evidence may pose risks to both the documenter and those interviewed.⁵⁷ Documenters need the ability to securely store testimony and other collected materials, so that they neither jeopardize the

54. HANDBOOK ON CIVIL SOCIETY DOCUMENTATION OF SERIOUS HUMAN RIGHTS VIOLATIONS, *supra* note 11, at 12.

55. ROTBERG, *supra* note 4, at 11.

56. HANDBOOK ON CIVIL SOCIETY DOCUMENTATION OF SERIOUS HUMAN RIGHTS VIOLATIONS, *supra* note 11, at 12..

57. *See id.* at 79–92.

evidence's credibility nor endanger the individuals who provided it.⁵⁸ They require specific and unique data collection, storage, and analysis technology in order for their documentation efforts to be effective, secure, and sustainable.⁵⁹

To meet this demand, there are a number of technology solutions emerging. For instance, the Human Rights Center at Berkeley University launched a Human Rights Investigations Lab as part of the "Technology and Human Rights Program" it started in 2015.⁶⁰ By conducting open source investigations, the Lab seeks to corroborate publicly available evidence of human rights abuses as well as share its technological capacity with the investigators at the International Criminal Court.⁶¹ During the 2018-2019 school year, law students conducted 39 investigations of potential war crimes and other violations of international law in Syria, Iraq, Myanmar, amongst other states.⁶²

There are also mobile applications, such as eyeWitness, that allow individuals to take photos and videos of human rights violations in ways that meet the evidentiary standards for use in future criminal prosecutions.⁶³ EyeWitness embeds metadata about the time, place, and edited or non-edited nature of the photo or video into the footage and then securely transfers that footage to servers.⁶⁴ The servers keep a record of the chain of custody, tracking who has had access to the material, as legal teams process the materials, verifying them, and identifying the judicial entities to which they may be of use.⁶⁵

Organizations are also designing open source software tools to combat various information technology challenges that human rights defenders face in the field.⁶⁶ For instance, HURIDOCs (Human Rights Information and Documentation Systems, International) created a

58. *Id.* at 38.

59. *Id.* at 61.

60. *Human Rights Investigations Lab: Where Facts Matter*, U.C. BERKELEY, <https://humanrights.berkeley.edu/programs-projects/tech/investigations-lab> [<https://perma.cc/8LWV-C6U7>].

61. *See id.* 9

62. *Id.*

63. *What We Believe*, EYEWITNESS TO ATROCITIES, <https://www.eyewitness.global/about-us.html> [<https://perma.cc/6E4W-53FS>].

64. *What We Do*, EYEWITNESS TO ATROCITIES, <https://www.eyewitness.global/our-work.html> [<https://perma.cc/A3GM-NZN4>].

65. *Id.*

66. *See, e.g., Who We Are*, HURIDOCs, <https://www.huridocs.org/who-we-are/> [<https://perma.cc/25UV-S9CF>]; KOBOTOOLBOX, <https://www.kobotoolbox.org/> [<https://perma.cc/V949-DP6K>].

platform Uwazi on which human rights organizations and other advocates can better organize and access information.⁶⁷ The Center for Justice and International Law in Argentina has already been able to use Uwazi to store, categorize, and analyze over 2,500 documents related to important human rights decisions in the region.⁶⁸

Yet, these *ad hoc* initiatives largely lack consistency across their practices and suffer from the field's lack of established best practices. As different organizations create their own tools, the information each gleans and lessons each learns remain siloed.⁶⁹ In one attempt to overcome this deficit, the Public International Law & Policy Group has partnered with HURIDOCS and the Engine Room to begin the Human Rights Documentation Solutions Project.⁷⁰ The project aims to complete an audit of existing technology solutions, to assess the underlying strengths and weaknesses of available documentation platforms, and consult with international accountability mechanisms, to determine how to best employ technology to strengthen documentation efforts aimed at supporting criminal accountability.⁷¹ The knowledge gleaned will then inform the creation or modification of an existing technology platform, which will be designed to address the shortfalls of solutions currently available to civil society documenters.

A coordinated technology solution that can connect and guide documentation efforts going forward has enormous potential in catalyzing the efforts of civil society to collect evidence of atrocity crimes and contribute to accountability mechanisms in the future. Initiatives such as the Human Rights Investigations Lab, eyeWitness, Uwazi, and the Human Rights Documentation Solutions Project present incredible opportunities for the international community to support the burgeoning field of civil society documentation.

67. See *Our Story*, HURIDOCS, <https://www.huridocs.org/our-story/> [<https://perma.cc/H7AT-3UDB>].

68. See *Make Important, Public Information More Accessible*, UWAZI, <https://www.uwazi.io/make-important-public-info-more-accessible/> [<https://perma.cc/R5M-SAC4>].

69. See generally ZARA RAHMAN, TECHNOLOGY TOOLS IN HUMAN RIGHTS (The Engine Room 2016), available at https://www.theengineroom.org/wp-content/uploads/2017/01/technology-tools-in-human-rights_high-quality.pdf [<https://perma.cc/6W7X-XTX4>].

70. See *Our Partners*, HURIDOCS, <https://www.huridocs.org/our-partners/> [<https://perma.cc/P5UM-KYKZ>].

71. 2018–2020 Strategy, HURIDOCS, https://docs.google.com/document/d/1e0Yx3xbhd8fhhNwc7UTB8gTIRVL075-siXiHcAg_5Vk/edit [<https://perma.cc/T2AC-5H2R>].

V. CONCLUSION

In armed conflicts across the globe, it is imperative that war crimes, crimes against humanity, genocide, and other violations of international humanitarian law are effectively documented. Providing such documentation to judicial mechanisms can be critical for efforts to hold those who commit atrocities accountable.⁷² Given the delays that routinely plague efforts to secure justice, it is important that the crimes are documented and that the evidence is ready for use in prosecutions when they emerge. Fortunately, the number of civil society actors engaged in documentation projects is growing rapidly, and technological innovations are beginning to emerge to assist this new group of documenters.⁷³ These documentation technology solutions have the potential to significantly improve the capacity of civil society to contribute to justice and accountability, an outcome that would be lauded by those impacted by atrocities across the world.

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72. *See* JENNIFER KEENE, INTERNATIONAL CRIMINAL TRIBUNALS AND CIVIL SOCIETY: IMPEDIMENTS AND OPPORTUNITY FOR ENGAGEMENT 6–9 (Syria Justice and Accountability Ctr., 2018).
73. THE CENTRE FOR INTERNATIONAL GOVERNANCE INNOVATION, CRITICAL MASS xi–xvi (James W. St. G & Andrew S. Thompson eds., 2008).