

Preserving Information for International Criminal Convictions: A Pocket Guide for Journalists



Centre for Law and Democracy

Atrocity Crimes

Genocide

Any of five enumerated acts (killings, causing serious bodily or mental harm, forcible transfers of children, preventing births, or inflicting conditions designed to bring about the physical destruction of a group, in whole or in part) when done with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.

Crimes Against Humanity

Certain serious offences against one or more people, committed as part of a widespread or systematic attack against the civilian population.

Key underlying offences are various crimes such as murder, enforced disappearances, forcible transfers, sexual violence, torture, and persecution (a severe discriminatory denial of fundamental rights).

War Crimes

Serious violations of international humanitarian law, such as:

- Crimes against individuals who are not or no longer taking part in hostilities.
- Attacking protected objects, including those carrying the distinctive emblems of the Geneva Conventions.
- Actions which are not justified by military purpose (such as directing attacks at civilians or pillaging or destroying civilian property).
- Prohibited forms of warfare (using weapons such as expanding bullets or poisonous gas, or civilians as shields).

Examples of International Crimes against Journalists and the Media

Attacks

Intentionally directing an attack at journalists or other civilians who are not directly participating in hostilities

Intentionally directing an attack at media infrastructure or other civilian objects (objects which are not military objectives)

- Only applicable if the targeted object had not been transformed into a military facility (which might be the case, for example, if a media office had been taken over by armed forces)

Disproportionate attacks

- May include attacks on military objects where incidental damage to civilian objects (such as media facilities), injuries or deaths of civilians (including journalists), or environmental harm are excessive

Property Crimes

Pillage of property (taking property for personal use)

- Absolutely prohibited

Destruction, appropriation and seizure of civilian property

- Prohibited unless justified by military necessity

Liberty and Mobility Crimes

Taking hostages, enforced disappearances, unlawful deportation, transfer or confinement of journalists or other civilians

- Some detentions and displacements of civilians are allowed under international humanitarian law, so context is key

Crime against Humanity of Persecution

Severe denials of fundamental rights on a discriminatory basis (such as on grounds of political opinion, gender or nationality)

- Some retaliation against journalists might qualify as persecution based on political opinion
- Like other crimes against humanity, this must be part of a widespread or systematic attack against the civilian population

Violence and Mistreatment

Compelling journalists to take part in operations of war against their own country

Severe forms of violence and mistreatment like torture, many kinds of sexual violence and wilful killing

Identifying Potentially Relevant Information

- Were people or buildings nearby being used for military purposes or could they reasonably have been mistaken for legitimate military targets?
- For attacks on journalists, was their media role clearly identified (for example through labelling on jackets or vehicles)?
- Were any of the weapons used potentially absolutely prohibited?
- Does anything suggest the attack may have been indiscriminate? It can be dangerous to touch potentially live ammunition, which can instead be photographed ideally next to a recognisable object (such as a hand) to show size. Also relevant here is information about the context of the attack, such as whether the area was heavily or sparsely populated.
- How much harm was caused to civilian infrastructure, civilians or the environment? Does that appear to be excessive compared to the military advantage that was or could have been gained? Was any harm inflicted on military targets (if there were any)?
- Do any precautions appear to have been taken before the attack to mitigate risks to civilians, such as advance surveillance of the area or warning civilians to evacuate?
- Is there any indication that victims may have been targeted due to their profile (such as their gender or journalistic work)?
- Is there any information on which individuals or military units may have been responsible for the attack (for example based on uniforms, insignia, equipment used or names of individual soldiers)?

Kinds of Evidence for Establishing International Crimes

- **Direct Evidence:** Evidence showing a crime has occurred, such as the corpse of a civilian with a fatal bullet wound
- **Linkage Evidence:** Evidence showing who may be responsible, such as photos showing an individual soldier or military unit was in the area at the time
- **Contextual Evidence:** Evidence which supports a conclusion that a crime was committed, such as the use of non-precision weapons in a densely populated civilian neighbourhood

Key Elements for Information to be Admissible

- **Relevance:** Helps prove or cast doubt on a fact at issue in the case, such as an element of the offence or a defence
- **Reliability:** The trustworthiness of the information based on its verifiability, authenticity and probative value
- **Absence of Prejudicial Effect:** The information will not unfairly influence decision-makers. To cover cases where evidence is excluded on this basis, it is helpful to collect different kinds of information establishing the same fact.

Tips for Capturing and Preserving Evidence

- Be aware of your legal right to protect your sources and do not expose confidential sources.
- Get informed consent before interviewing witnesses and survivors of international crimes. This includes assessing whether the individual is capable of giving informed consent, for which age or trauma may be relevant.
- Assess whether collecting information may cause additional harm, especially when interacting with vulnerable people.
- When taking photos or videos, consider using specialised applications for this, such as the ProofMode or eyeWitness to Atrocities applications.
- Do not accidentally delete metadata for electronic files, for example by uploading videos to social media sites.
- Try to preserve a 'chain of custody' over any information collected.
- Try to collect supporting information, such as written descriptions of where and when you took photographs/videos, and who, where and when third parties gave you information.
- Ensure that information is kept secure and organised, and take steps to minimise security risks, such as by:
 - storing the information in encrypted format
 - deleting/concealing files from/on your device
 - encrypting/anonymising/deleting the names of contacts to protect them
 - archiving evidence securely, ideally on an external hard drive and/or in cloud storage

For more information, please visit our website:

<https://www.law-democracy.org/live/>

Full manual is available at:

https://www.law-democracy.org/live/wp-content/uploads/2023/09/Manual.War-Crimes.Final_-1.pdf