

# 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.

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## 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.

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### LEARN MORE

Read more about relevance and reliability in “All About Evidence”: [bit.ly/WITNESSLibrary\\_VaE](https://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.<br>OR<br>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.

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Individual perpetration



Incitement



Ordering

# HOW?



Aiding and abetting



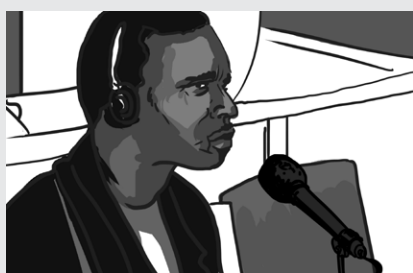
Conspiracy, Co-perpetration,  
Joint criminal enterprise



Command or superior responsibility

# FIELD NOTE

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



RTLM founder, Ferndinand Nahimana

### 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.**

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## 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

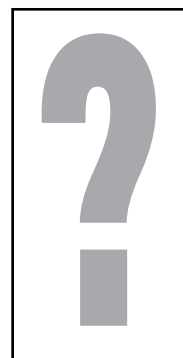
**Question:** Which of the below is the effective commander of the British Armed Forces in 2015?

A: The Queen of England

B: Prime Minister Cameron

C: Chief of Defence Staff Sir Houghton

D: Other



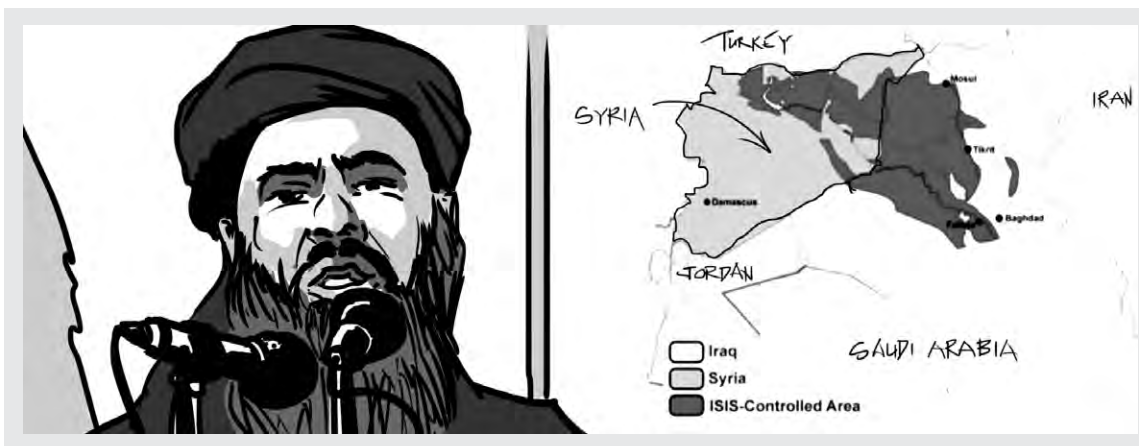
**Answer:** According to England’s constitution, the Queen of England is the Commander-in-Chief of the UK’s Armed Forces. However, in practice, the British government has authority over the military and commands the Armed Forces through the Ministry of Defence. So, if you answered B or C, you have a 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*.<sup>2</sup>

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*.<sup>3</sup> 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.

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SHOWN IN  
THIS VIDEO

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

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### 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.

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## 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.

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#### 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/](http://ijmonitor.org/category/jean-pierre-bemba-gombo/summary/).

| <b>EXAMPLES OF NOTICE EVIDENCE USED TO PROVE “KNEW OR SHOULD HAVE KNOWN”</b> | <b>WHY THIS PUT BEMBA ON NOTICE THAT TROOPS UNDER HIS CONTROL WERE COMMITTING CRIMES.</b>   |
|--|---|
| 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"> <li>• 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</li> <li>• Visited CAR during the military campaign and spoke with commanders and troops.</li> </ul>                              |
| 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 KNOWLEDGABLE 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.

FILMING

### EXAMPLES OF VIDEO THAT COULD SERVE AS EVIDENCE

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

## 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](https://www.witnesslibrary.org/).

# 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](http://bit.ly/Module9_ModesLiability)

Modes of Liability: Superior Responsibility, International Criminal Law and Practice at: [http://bit.ly/Module10\\_SuperiorCommand](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](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/](http://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.

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**PRINT OUT THE MINI GUIDE BELOW AND CARRY IT  
WITH YOU FOR EASY REFERENCE.**

# 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.

# 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.

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# 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.

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# 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.

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