

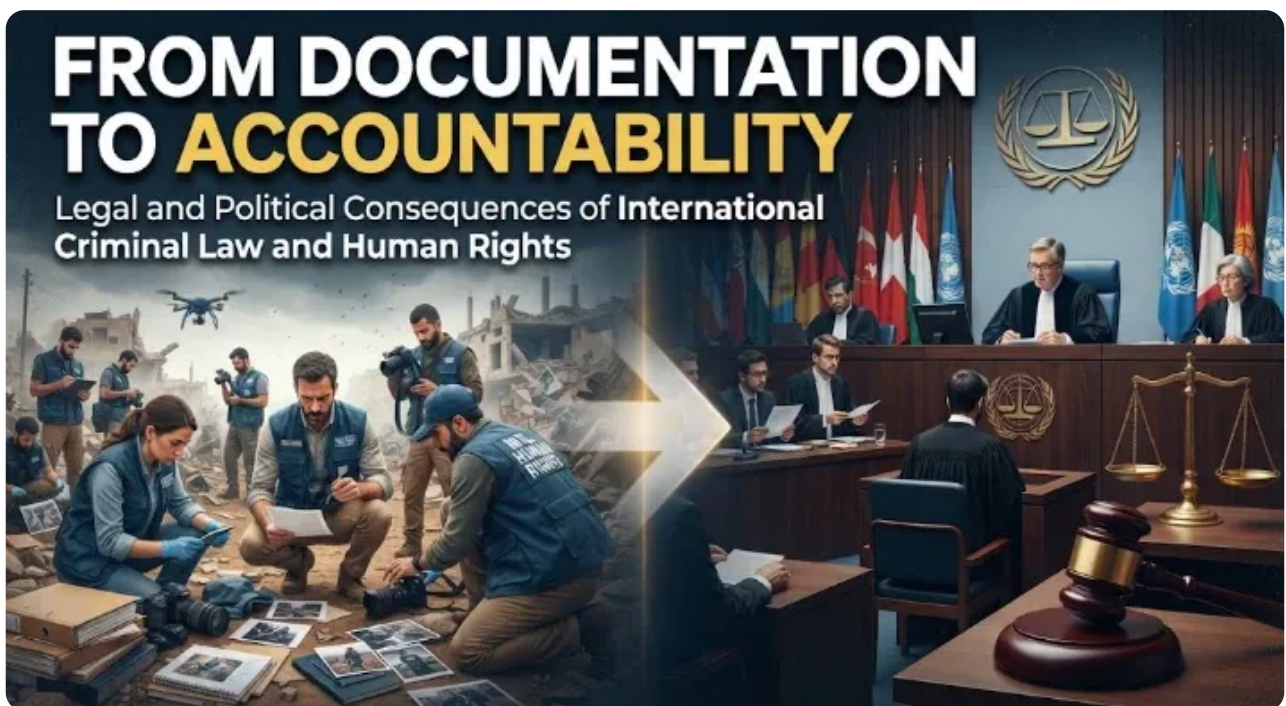
From Documentation to Accountability: Legal and Political Consequences of International Criminal Law and Human Rights

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Abstract

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The fifth month of 2026 is approaching and it means it's time for the pathway from human-rights documentation to accountability to be put in focus again. Big evidence

archives may be incapable of producing prosecution, or reparation, or reform or public truth. Issues that separate the legal precedent from every day life cannot be solved by a legal solution alone since institutional routines have a crucial role in how power arrives to what constitutes everyday life. There needs to be a link within a credible response between rules, facts, involvement and remedy.

The governing framework encompasses the Rome Statute, international Human Rights Law, underpinning of evidence, participation of victims, domestic criminal procedure. Standards are set by those sources but they need institutions that interpret, implement and review standards. Investigators, prosecutors, courts, commissions, civil society, journalists, archivists, and survivor groups are the key actors in the investigation and assessment process. All of this coordination should be done without losing sight of the independence and without the need to do so, while ensuring that there is no loss of responsibility.

Criminal responsibility starts well before a courtroom, one that is international. Evidence may disappear due to the moving of the equipment, evidence may go missing, equipment failure, intentional actions to destroy evidence, or lack of proper evidence collection. Provenance, consent, security issues, translation and analytical limitations should be documented through documentation protocols. Initial choices of storage and verification may be key to the viability of later actions.

Unlike prosecution in the past which was purely State driven, the modern Accountability is characterised by the participation of victims. 4 parts of participation: information, representation, safety, and realistic expectations. The importance of institutions not making it seem as if the only wisest way to end the situation is through prosecution. For affected communities these issues of truth, acknowledgment, reparation, institutional reform, memorialization and guarantees against recurrence may also have equal significance.

Political pressure and ethics involved in case selection. We have to choose – too few resources compel prosecutors to prioritise incidents, perpetrators, regions or legal theories. Non-selective justice can be perceived to be less if there are transparent criteria. Gravity, representativeness, evidentiary strength, victim interests, and ability to show organizational patterns should all be taken into account in decided what should be selected.

The institutions can be inter-dependent both within countries and between countries. There is a mix of proximity, language and access through national courts and a mix of

independence and specialised capacity through international bodies. Should include such things as referrals, transfer of evidence, witness protection, who will take responsibility for remedies in cooperation agreements. It is possible that cases are left "stuck" between jurisdictions due to unclear division.

There is a need for institutional learning as well to be held accountable. Individual conduct can be punished through a conviction without a change in the command systems, detention practice, procurement or political incentives. Recommendations must have owners, budgets, timeframes and be followed up publicly. Monitoring should assess the change in the risk conditions, as completed reports may not indicate that risk conditions have been altered.

Proper functioning of a chain of custody mechanism, secure preservation, selection of cases, victim protection and referral agreements, and victim-oriented process should be at the top of the list of useful reform measures to be achieved. Each of the elements acts as a failsafe: authorise prior to acting, document what is done, review once completed, and "remedy" when injury results. This is because, if there are no previous records or reasons, there is not as strong an accountability for the later.

Evidence should consist of confirmed incidents, command connections, evidence gathered, and witness statements, digital records, case determinations, reparations. It is such material that makes it possible to compare among agencies, regions, time periods and affected groups. Sometimes patterns, disparities, delays and repetitions of institutional failure may be revealed without compromising confidentiality by publication.

The focus of the equity analysis needs to be the survivors who are at risk of being displaced, stigmatized, disabled and who may be "poor" and who may be threatened because of participation. The trouble with formality of neutrality is that it, by itself, cannot determine if burdens focus predictably or if there is such a thing as a variation in access to review based on income, status, geography, disability, ethnicity, age, or language. The connection between distributional evidence and design and resource allocation should be made.

Implementation requires resources. Review bodies must consist of staff, have expertise, stable tenure, access to records and have the authority to demand some kind of response. Funding, interpretation, accessible venues and time also are important components of community involvement. Unfunded rights may turn into symbolic statements, as well as participation duties.

There is no such thing as either a universal standard or context when it comes to institutional reform. Protection of the core – legality, equality, notice, review and remedy – is wide-spread. Acting as local experts, people help determine how those protections work. The combination of common safeguards and culture, place and lived-experience responsive procedures are the hallmarks of “durable design.”

Post-launch policies should be evaluated in the longer-term. If this change in leadership, crisis or budget occurs, early compliance can decrease. Continuity as a result of scheduled review, public reporting and independent research. It should be possible to take corrective action without a complete failure of the policy.

The relationship between formal rules and incentives should be included in the analysis at the institutional level. Work load, targets, budgets, professional norms, political signals and expected scrutiny are all factors to which the officials react. Reform can achieve success when it encourages in those powers lawful and fair behavior. A safeguard embodied exclusively in a ‘manual’ can get lost in the ‘heat of the moment’.

There are dangers involved in measurement. Indicators can make a complex outcome easier, and can foster strategic reporting. Now quantitative data should also be added next to evidence of the qualitative kind, as well as independent verification and explicit definitions. National averages are important to disaggregate; to not disaggregate results in severe local or group specific failures.

New opportunities and dangers from digital evidence. Images, messages, satellite data and open source information can show what is occurring, but these need to be taken care of in terms of authenticity, context, manipulation and security. Investigators require standardized protocols and standard for disclosure. Private company and platforms also have information that can go missing under regular retention procedures.

There is a need for greater than courtroom anonymity in the area of witness protection. Participation may be a function of relocation, psychosocial support, secure communication, family safety and livelihood protection, and long-term contact. The risks should be reviewed and protection decisions should be revisited as risks change. Too much “promise” can result in further damage and an inability to work together in the future.

Archives need to be governed; Storage is not enough. Preservation format, classification, usage rules and public use should be considered at the outset. Groups of survivors have a right to participate in decisions relating to sensitive data. Trials, truth processes,

education and memorialisation can be facilitated by an archive, where governance is trustworthy.

Plan and promote reparation programs – with real delivery systems. Exclusion can also be introduced by eligibility, proof, payment systems, psychosocial, and community interventions that are tailored too much. The determination of eligibility for final relief is a process that can take many months to finish, and interim relief might be needed to respond to urgent needs prior to final adjudication. There should be a differentiation between announced awards and remedies received.

Independence of action will need to be accompanied by competence in action. Accessibility of procedures, poor case management, tenuous budgets and inadequate staffing may be the reasons a formally autonomous prosecutor or commission fails. Independence and performance can be safeguarded through appointment rules and transparent plans, as well as external review. One of the main principles of good accountability institutions is themselves to be held accountable.

Responsibility needs to be identified throughout the governance buildings. Authorization, delivery, monitoring and remedy are fundamental to the effective cooperation of all investigators, prosecutors, courts, commissions, civil society and journalists, archivists and survivor groups. Where there is an overlap of responsibilities, there are written procedures and escalation mechanisms. Ambiguity is otherwise the safeguarding of institutional boundaries and not affected people.

Risk assessment to be considered including action and inaction. Too much intervention can infringe upon rights and lack of or delayed intervention runs the risk of not tackling serious harm. Decision record should include a discussion on the balance based on evidence and less-restrictive alternative(s). Reviewing these later on will then assess the reasoning rather than making assumptions to derive the correct answer.

There is a need for a link between official reporting and community experience, which independent research can supply. Data access and publication rights afford researchers the opportunity to test institutional claims, while secure data access and ethical oversight protects the integrity of that data. The confidentiality and the community authority should be protected within partnerships. Any findings should be answered in a formal manner, and not merely acknowledged.

Complaint systems are sources for valuable operational intelligence. Persistent complaints can provide it before any significant lawsuit is filed and reveal confusing rules, bias in

discretion, unavailable and inaccessible services, weak supervision and other problems. Themes themselves should be coded on agencies with an individual minimising effect of coding. As a result of trend analysis, work to correct the trend should be assigned and follow-up should be published.

Success can be assessed based on admissible evidence, protected witnesses, clear case progression, and significant engagement, institutional change, and remedies provided. These measures are both result- and process-oriented and include institutional capacity. Targets need to be clear, definitions need to be consistent, there needs to be an explanation of failures and there needs to be plans in place to correct.

This is a viable trajectory of reform from broad commitment to steps that can be seen in institutional practice: chain-of-custody protocols, secure preservation, selection of cases, protection of witnesses, referrals, and remedial responses that are meaningful to victims; institutional reform; and remedial responses that are meaningful to victims. Caring for those affected by the crisis and who may be displaced, stigmatized or disabled, impoverished or at risk for retaliating against taking part is a preventative measure that stops an overall good performance from disguising focused injury. Evidence goes from medium to institutions that can protect, judge and repair to become documentation that is accountability.