

# THE ROLE OF VIDEO BEYOND THE COURTROOM



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”.

## INTRODUCTION

This *Field Guide* sets forth guidelines, techniques, practices and ideas to help you collect and document video to the highest possible standard – what is also called a “trial-ready” standard. This ensures investigators, analysts, lawyers, and judges can rely on the video when making decisions about a person’s innocence or guilt in a criminal investigation or about remedies in a civil case. In many cases, this guidance can be essential to making your video easier to verify and trust; however, you should not worry if you cannot implement all of it. Every frontline documenter faces challenges in the field that sometimes make it impossible to film, organize, manage, protect, and share footage to a trial-ready standard. Realistically, only a fraction of the video captured by frontline documenters will ever meet these trial-ready standards and be presented inside of a courtroom.

This being the case, in this section we will highlight the other human rights justice and accountability processes where video can still have profound value in protecting human rights without meeting this trial-ready standard.

## GOAL

The goal of this section is to briefly outline the primary human rights justice and accountability processes – beyond the courtroom – where video documentation can be used to protect human rights.

**PART I** Human Rights Justice and Accountability Processes

**PART II** Who Does What?

# PART I

## HUMAN RIGHTS JUSTICE & ACCOUNTABILITY PROCESSES

Governments and non-governmental organizations (NGOs) utilize a number of processes to pursue justice. Here are five important processes we can use to seek truth and accountability.

### 1) Human Rights Monitoring & Fact-finding

Monitoring is a broad term that means the close observation of a situation (e.g. conflicts, detention centers, refugee camps) or specific events (e.g. elections, trials, demonstrations) over an extended period of time. Activities include the purposeful collection and verification of information. Advocates then draw conclusions of fact based on the information and immediately use their findings to determine what action should be taken to remedy human rights problems. The product of monitoring and fact-finding is usually a report that includes an assessment about the situation and recommended steps for action.

### 2) Human Rights Advocacy

Human rights advocacy is a set of organized actions taken by members of the public and civil society organizations that pressure and persuade state authorities, international financial institutions, and other powerful actors to influence and change public policies, social attitudes, and laws.

### 3) Media Advocacy

Media advocacy is the strategic use of local, regional, national, or international media to bring attention to social issues and, in turn, influence and change public policies, social attitudes, and laws.

### 4) Transitional Justice

Transitional justice is a set of measures implemented by countries after a conflict in order to move societies from war to peace, address violations, rebuild community trust, and implement laws that are rooted in human rights. The transitional justice measures typically used are:

- **Truth and Reconciliation Commissions.** These entities are established to investigate a past history of human rights violations in a particular country, including violations by the military, other government forces or armed opposition forces. These commissions are tasked with discovering and revealing past wrongdoings in the hope of resolving any residual conflict.
- **Institutional Reform.** The rebuilding of government after a conflict. It is the process of reviewing and restructuring state institutions (such as police forces, militaries, and courts) so that they respect human rights and preserve the rule of law and are accountable to their constituents after a conflict ends.
- **Reparations.** Simply put, reparations are compensation for an abuse or injury. More specifically, they are measures taken by states to recognize systematic violations of human rights and provide some form of support for victims. Reparations can be symbolic or material. They can be in the form of public apology for past violations or can be financial compensation for injuries, psychosocial support, educational funds, micro-finance, etc.

### 5) Criminal Justice and Accountability

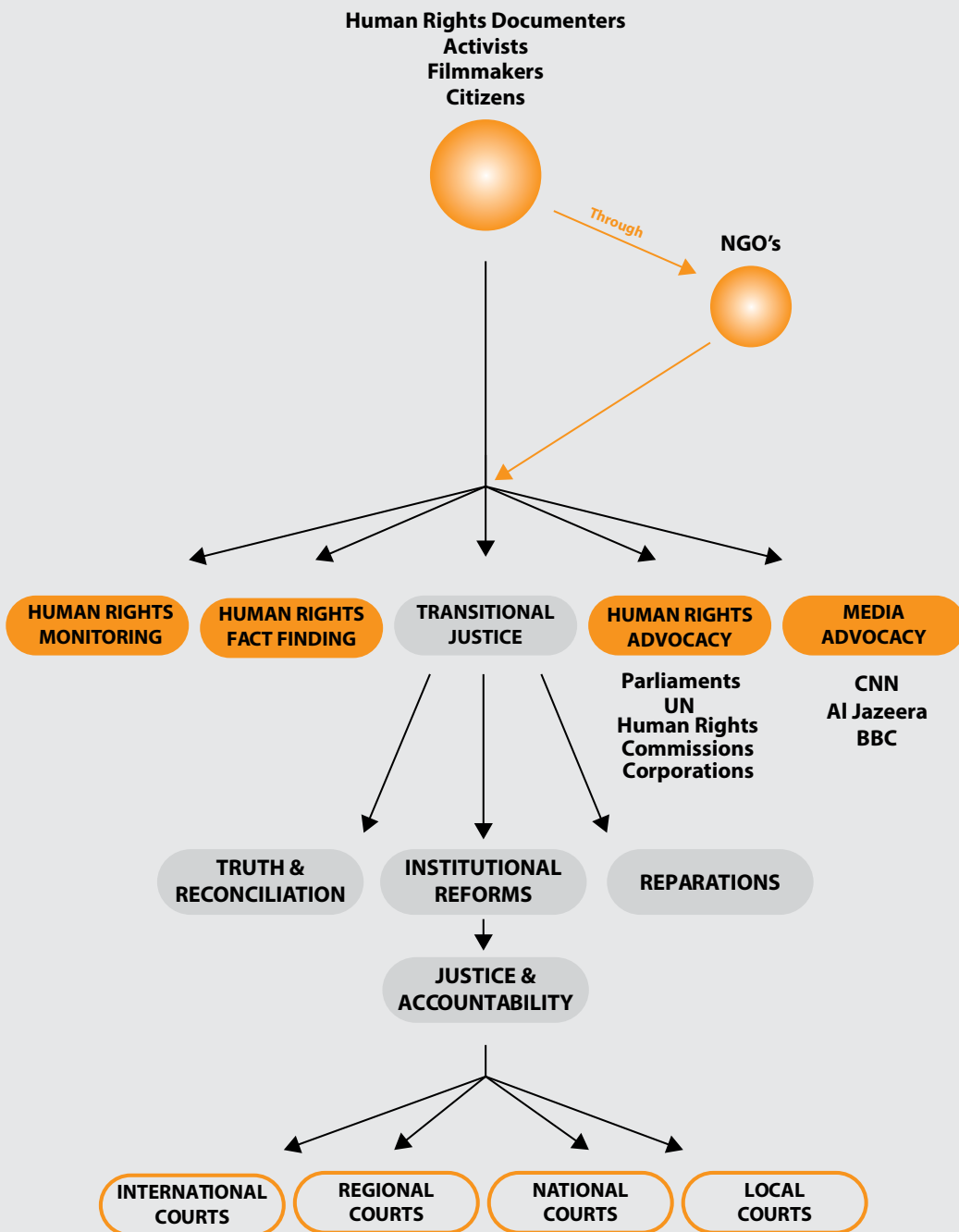
This refers to the process of holding perpetrators accountable for the crimes they committed. It through this process that crimes are investigated, evidence gathered, arrests made, charges brought, defenses raised, trials conducted, sentences rendered, and punishment carried out.

#### FOR MORE INFORMATION

To read more in-depth reports about human rights monitoring and transitional justice, see the “Additional Resources” listed at the end of this section.

# JUSTICE & ACCOUNTABILITY PROCESSES

## HUMAN RIGHTS DOCUMENTATION



# FIELD NOTE

## THE ROLE OF VIDEO IN HUMAN RIGHTS ADVOCACY ENDOROIS WELFARE COUNCIL V. STATE OF KENYA

### Basics

**Tribunal:** African Commission on Human and Peoples' Rights (ACHPR)

**Who and What:** The Government of Kenya stood accused of violating the following rights of the Endorois, an indigenous group in Kenya:

- property
- natural resources
- development
- culture
- health
- freedom of religion

### Backstory

The Endorois are a community of approximately 60,000 nomadic pastoralists who, for centuries, lived in the Lake Bogoria region of Kenya's Central Rift Valley. Throughout time, the Endorois led a sustainable lifestyle inextricably linked to their land. In addition to securing subsistence and livelihood from their land, they saw it as sacred. The Endorois served as trustees of this land for future generations. Their relationship with the land was, and is, essential to their traditional way of life and, ultimately, their survival as indigenous people.

In 1973, the Endorois were forcibly evicted from their land by the Kenyan government to make room for a development project, the Lake Bogoria Game Reserve. The Endorois community was removed from their land and denied access to their homes, their traditional grazing lands, their spiritual sites, and sites where they collected traditional medicine. The Endorois alleged that exclusion from their land resulted in violations of the rights set forth in the African Charter on Human and Peoples' Rights, including the right to property, natural resources, development, culture, health, and freedom of religion.

The Endorois initially brought their case to the High Court of Kenya. After the Kenyan court threw the case out in 2002, the Endorois were then able to bring their claim to the African Commission on Human and Peoples' Rights (ACHPR). In 2003, they asked the ACHPR for the return of their land and financial compensation from the Kenyan government for their losses. The legal term for this is "restitution."



## VIDEOS PRODUCED IN SUPPORT OF THE ENDOROIS

### Video #1: Evidentiary Submission to the ACHRP

The Center for Minority Rights Development (CEMIRIDE), Endorois Welfare Council (EWC), Minority Rights Group International (MRG), and WITNESS co-produced a nine-minute video, which was submitted to the ACHPR as evidence.

The Endorois and their lawyers made the decision to produce and submit an evidentiary video because:

- Video provided context for the Commissioners. The ACHPR met in Gambia. Gambia is nearly 8,000 kilometers away from the Endorois' traditional lands. Video allowed the Commissioners to see the lands the Endorois traditionally occupied, the lands where they were resettled, some of their cultural practices, and the challenges they faced after being forcibly evicted from their traditional lands.
- Video helped frame the core arguments in an efficient and accessible manner. The Commissioners at the ACHRP volunteer their time to do this job and it comes with a massive caseload. The nine-minute video allowed them to walk away from the hearing remembering the issues at the heart of the case.
- Video corroborated the Endorois' claims that their rights had been violated by showing exactly how the poor living conditions they were forced into breached the African Charter of Human and Peoples' Rights.
- Video protected the human rights principles of agency, participation, and access to justice. In many circumstances, the lawyers do all the talking at hearings on behalf of their clients. The video allowed Endorois voices' and testimony to be heard by the Commissioners.

### Video #2: Advocacy Video

Since the evidentiary submission to the ACHPR was confidential until the Commission made a final decision, CEMIRIDE, MRG, and WITNESS co-produced a second 16-minute video, *Rightful Place*, in 2007. This video was used to direct attention to the eviction of the Endorois both in Kenya and internationally. The target audiences for this complementary advocacy film were:



- the Kenyan Ministries of Justice and Constitutional Affairs, Planning and National Development, Lands, Home Affairs, and Tourism and Wildlife;
- local county governments (specifically Baringo and Koibatek);
- Kenyan agencies including the Commission on Human Rights, the Tourism Trust Fund, the National Environment and Management Authority, and the Kenya Wildlife Service;
- UN Working Groups on Minorities and Indigenous Peoples;
- national and international NGOs focused on land rights and the protection of Indigenous peoples;
- national and international media; and
- the Endorois.

### SHOWN IN THIS VIDEO

#### *ACHPR Evidentiary Submission*

This video shows the lands the Endorois traditionally occupied and the cultural practices that distinguish them as indigenous peoples. These images, along with testimony from the Endorois, are juxtaposed with quotes from the African Charter on Human and Peoples' Rights to show how the Charter has been violated. Specifically, the video shows how their rights to property, natural resources, development, culture, health, and religion have been violated. Watch the video: [bit.ly/EvidentiarySubmission\\_CEMIRIDE](http://bit.ly/EvidentiarySubmission_CEMIRIDE)

### SHOWN IN THIS VIDEO

*Rightful Place* shares the personal stories of members of the Endorois community to illustrate the impact of the forced eviction on the community and their struggle to reclaim their traditional lands. Watch the film: [bit.ly/RightfulPlace](http://bit.ly/RightfulPlace)

## IMPACT OF THE VIDEOS

### On the ACHPR's Decision

In 2009, the ACHPR issued a groundbreaking decision finding the government of Kenya guilty of violating the rights of the Endorois community by evicting them from their lands in 1970 to make way for a wildlife reserve. Specifically, the ACHPR found that the:

- Endorois were an indigenous people, and
- eviction violated their rights to property, natural resources, development, culture, health, and religion.

The Commission then ordered Kenya to restore the Endorois to their historic land and compensate them for damages caused by the wrongful eviction.

In the ruling on this case, the Commissioners relied on video evidence to find that:

- the Endorois are a distinct indigenous people which entitles them to rights as a community in addition to individual rights;
- access to clean drinking water was severely undermined as a result of the eviction from their ancestral land; and
- their traditional means of subsistence – grazing animals – was limited due to lack of access to the green pastures of their traditional land.

ACHPR decisions do not become law until the African Union (AU) adopts the decision. They did so on February 2, 2010, resulting in a landmark victory for indigenous peoples throughout Africa and a high point in the forty years of struggle led by the Endorois community.

### Advocacy Impact

To reach the target audiences, *Rightful Place* was screened at international events such as the UN Forum on Indigenous Peoples and at locations in Kenya's capitol city of Nairobi, as well as in locations near the Endorois' ancestral lands in the Rift Valley Province.

The full campaign, supported by the films, generated significant debate about indigenous rights and land rights during the drafting stage of Kenya's most recent constitution. As a result of these debates, Kenya's 2010 constitution better protects indigenous peoples and their land rights. Regionally, indigenous groups in Tanzania, such as the Maasai, successfully leveraged the Commission's decision to secure further protections.

Additionally, the Endorois community felt empowered by the creation of the videos. The filming helped motivate the community to stay united and continue the decades-long fight, because they felt that finally someone from outside of was listening and willing to help. Also, the many hours of recorded interviews now serve as a valuable oral history for the Endorois people and will be shared for generations to come.

## A CONTRASTING EXAMPLE

To counter the Endorois’ arguments, the Kenyan government decided to submit their own video. But unlike the Endorois’ submission, the government’s video was long and roughly edited. The Commissioners did not want to watch several hours of videos, so they watched only a part of the government’s film.

The screening resulted in a moment in court that every lawyer looks forward to in his or her career. The video submitted by the Kenyan government included an interview with a member of the Endorois community. As the Endorois Chief was speaking in Kiswahili on camera, English subtitles appeared below. One of the subtitles quoted the Chief as saying that all the Endorois had been fully compensated by the Kenyan government. One of the African Commissioners spoke Kiswahili. As he listened, he noticed that the Kiswahili audio did not match the written English subtitles, so he asked the government to rewind and play a section of the video again. Upon listening for a second time, the Commission discovered that the Chief had actually said the opposite: the Endorois were not fully compensated.

The Kenyan government’s credibility was gone!

## TAKE HOME POINTS

**First**, in addition to using video in the criminal justice process, it is important to consider how it can also be used for human rights monitoring and advocacy, in the media, to secure reparations, and in truth and reconciliation processes. In this case, the Endorois successfully used video at the ACHPR, and in front of key target audiences that could make policy changes.

**Second**, video captured for justice processes must be relevant and reliable. However, it only needs to meet the highest standard when it’s being introduced in a court of law, such as the Endorois’ Evidentiary Submission to the ACHPR. Even if the video does not meet a “trial-ready” standard, it can still be valuable for protecting human rights, as we saw with the use of *Rightful Place*.

**Third**, the same footage can be edited to serve different purposes. In this case, the footage was used as evidence in front of the ACHPR and then re-edited for advocacy directed toward government decision makers, media outlets, and grassroots-awareness-raising efforts. It also serves as an important historical record for the tribe.

**Fourth**, it’s important to think strategically about how, when, and where to share footage. The nine-minute video submission to the ACHPR was embargoed. In other words, it could not be shared publicly until the ACHPR’s decision was final. Sometimes you will be unable to share eye-opening footage because of process restrictions.

**Fifth**, never, ever compromise your credibility, because once it’s lost, it is very difficult (if not impossible) to get back.

**Sixth**, be thoughtful about the length of your video. The Commissioners happily watched a nine-minute video but did not watch the hours of video submitted by the government.

### FOR MORE INFORMATION

To learn more about “relevance”, “reliability” and what makes video “trial-ready”, see “All About Evidence”: [bit.ly/WITNESS\\_Video\\_Evidence](https://bit.ly/WITNESS_Video_Evidence)

# PART II

## WHO DOES WHAT?

### LAWYERS SUPPORTING ACTIVISTS, ACTIVISTS SUPPORTING LAWYERS

It is always beneficial for human rights activists to work alongside human rights lawyers, because lawyers can advise which footage can best support the monitoring and advocacy efforts. However, there are several situations wherein it is mandatory that human rights activists and frontline defenders work with lawyers – for example, when you:

- are working to build a case that you plan to take to court;
- accidentally find yourself involved in a legal proceeding because you were a witness to a crime or are falsely accused of a crime; or
- have captured footage of a wrongdoing that a lawyer would like to use in an investigation and possibly in court.

In other words, citizens, activists, filmmakers, journalists, NGOs, and others do not need a lawyer to share video with the UN bodies, commissions of inquiry, human rights commissions, war crimes offices, parliaments, truth commissions, village councils, financial institutions, media outlets, etc. But if you want your video to be used inside the courtroom, you will have to work with investigators, analysts, and lawyers. Below we will review who does what.

### Job Descriptions

**Frontline Documenter** (e.g. bystanders, media activists, human rights documenters): Collects evidence (either accidentally or intentionally) at the location while the violation is in progress or in the aftermath of the violation. Protects the evidence until it can be shared with the appropriate parties.

Since frontline documenters are most often the first on the scene, they are critical because:

- Investigators are rarely on location when a human rights violation is in the process of being committed and therefore are not able to capture evidence, including video;
- When investigators do arrive at the location of the violation – sometimes hours, days, or even years later – the evidence is likely to have deteriorated or be gone; and
- Sometimes crimes are not thoroughly investigated by police. Even if a crime is investigated and there is sufficient evidence to bring an alleged perpetrator to trial, a lawyer may not bring the case for political reasons. In these situations, while accountability will never be secured, video captured by frontline documenters ensures the truth is exposed.

**Human Rights Non-Governmental Organization (NGO):** NGOs play a variety of roles. In this context, they often facilitate the transfer of information from frontline documenters to decision-makers and media outlets. Specifically, NGOs monitor, investigate, and document human rights situations. They can also compile information, provide analysis, and make broad calls for action. NGOs also support frontline documenters by receiving the information collected in the field, preserving it, and analyzing it in the context of all the other information collected, and then taking it to a broader audience, often as part of a larger advocacy strategy or campaign.



**Investigator:** Collects evidence to solve crimes and then sifts through that evidence, making an initial decision about what is valuable and what is not. Reports findings and conclusions to the analyst.

**Analyst:** Evaluates the evidence collected by the investigator to determine whether it is relevant and whether or not it would be admissible in court. Reviews the opposition's evidence to determine whether there is any way to exclude it from being used at trial. Reports findings and conclusions about the evidence to the lawyer.

**Lawyer:** Evaluates all the evidence to establish the facts of the case and determine how best to bring a case against an alleged perpetrator or defend a person who has been accused of a crime. Develops the legal strategy and arguments. Asks the court for permission to submit evidence and then presents the evidence to judges and juries.

**Judge:** Decides whether evidence meets legal standards and, in turn, whether the evidence will be admitted into court. Hears cases, listens to witness testimony, reviews all the evidence submitted during a trial, poses procedural decisions, and delivers the final decision on the guilt or innocence of defendants when a jury is not present. When a jury is present, the judge instructs the jury on what to consider when deciding whether the defendant is guilty or innocent.

**Jury:** Responsible for deciding — based only on the facts of the case — whether a person is guilty or innocent of the crime with which he or she has been charged. This decision can be based only on the evidence introduced in court and the directions of the judge.

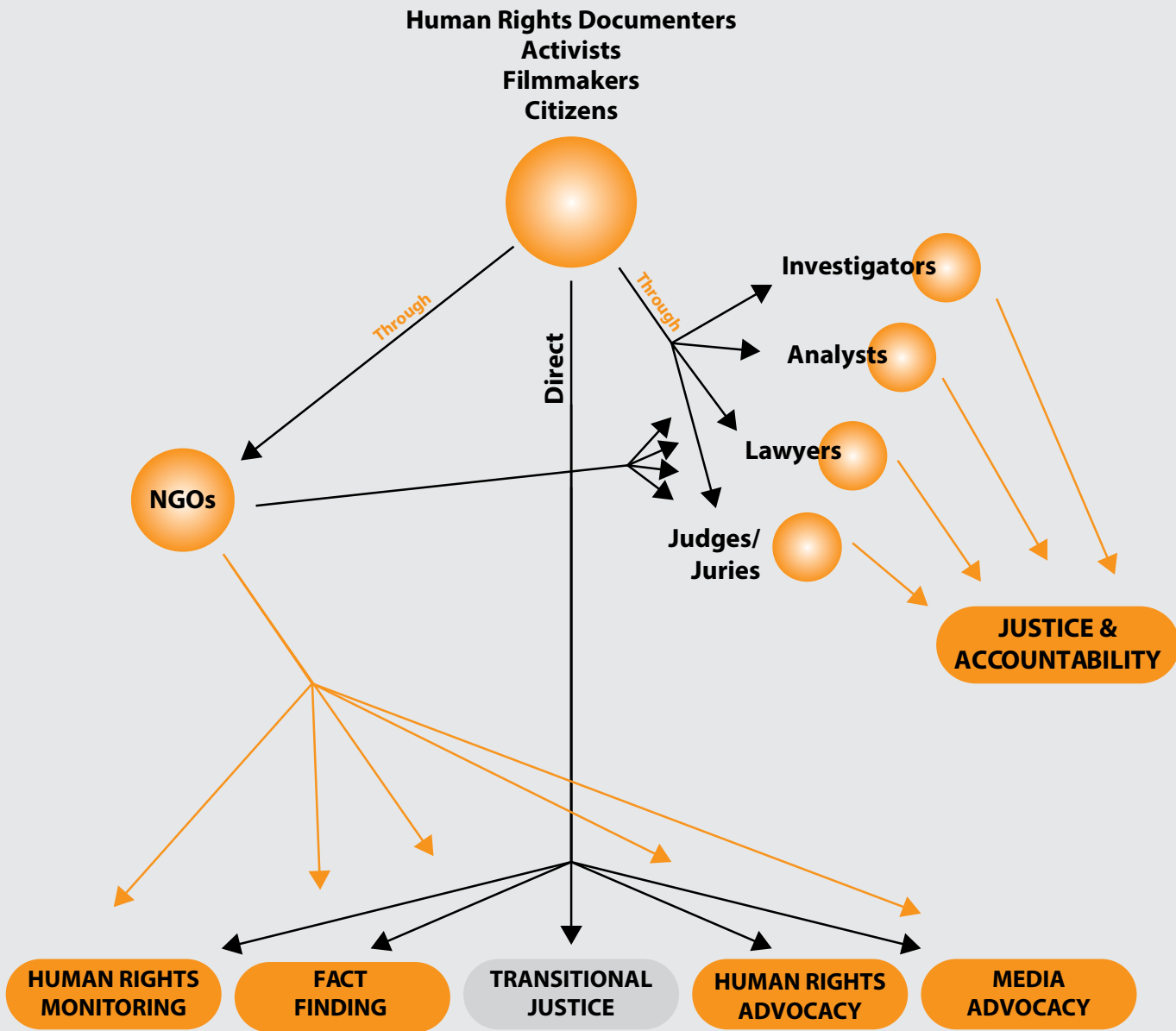
## FROM AN EXPERT ILLUSTRATING THE VALUE OF FRONTLINE DEFENDERS

In Brazil, if a police officer is accused of shooting someone without cause, there is only a 0.8% chance that the state prosecutor's office will investigate violent confrontation cases involving the police. Often, the officer's false version of events becomes the official story — unless there is a video. Priscila Neri, Senior Program Manager at WITNESS, reflects on the situation in Brazil:

*“[It’s] fascinating to look back ... and realize how important video had been to break this engrained pattern of impunity. Against all odds, the existence of a [bystander-shot] video often served as a real hope—sometimes the only hope—for truth and accountability in cases of violence perpetrated by police. Video provided undeniable evidence, dismantled false narratives, and helped ramp up the pressure on the processes, institutions, and authorities responsible for ensuring justice ... It’s as if the existence of a video is the best way to ensure the word of a police officer does not prevail over the silence of a dead victim.”*

Stories similar to this are echoed across the globe and illustrate the invaluable role frontline documenters play in collecting information that can be used to protect human rights — whether it's outside or inside a courtroom. Read more from Neri on the issue: [bit.ly/PoliceAbuse\\_Brazil](https://bit.ly/PoliceAbuse_Brazil).

# WHO DOES WHAT?



# ADDITIONAL RESOURCES

HURIDOCS - “What is Monitoring?” by Manuel Guzman and Bert Verstappen.

[http://www.mediafire.com/view/vg0ozrt8i1tndt0/OHCHR\\_Training\\_Manual\\_on\\_HR\\_Monitoring.pdf](http://www.mediafire.com/view/vg0ozrt8i1tndt0/OHCHR_Training_Manual_on_HR_Monitoring.pdf)

Norwegian Center for Human Rights, University of Oslo - “Manual on Human Rights Monitoring: An Introduction for Human Rights Field Officers” by Marit Møehlum.

[http://www.mediafire.com/view/45cpn4p3z6pixnz/HURIDOCS\\_What\\_is\\_Monitoring.pdf](http://www.mediafire.com/view/45cpn4p3z6pixnz/HURIDOCS_What_is_Monitoring.pdf)

Office of the High Commissioner for Human Rights - “Training Manual on Human Rights Monitoring.”

[http://www.mediafire.com/view/vg0ozrt8i1tndt0/OHCHR\\_Training\\_Manual\\_on\\_HR\\_Monitoring.pdf](http://www.mediafire.com/view/vg0ozrt8i1tndt0/OHCHR_Training_Manual_on_HR_Monitoring.pdf)

Institute for Democracy & Conflict Resolution - “Transitional Justice: Key Concepts, Processes and Challenges” by Clara Sandoval Villalba.

[http://www.mediafire.com/view/wbe5255mzdb8o6s/IDCR\\_Transitional\\_Justice\\_Concepts\\_Processes\\_Challenges.pdf](http://www.mediafire.com/view/wbe5255mzdb8o6s/IDCR_Transitional_Justice_Concepts_Processes_Challenges.pdf)

African Commission on Human and Peoples’ Rights - Decision on Endorois Welfare Council v. The State of Kenya.

[http://www.mediafire.com/view/15rygmz3ik6vn2w/EWC\\_v\\_Kenya\\_ACHPR\\_Decision.pdf](http://www.mediafire.com/view/15rygmz3ik6vn2w/EWC_v_Kenya_ACHPR_Decision.pdf)

Minority Rights Group International - “Landmark ruling provides major victory to Kenya’s indigenous Endorois” by Lucy Claridge.

[http://www.mediafire.com/view/syre1c3lcbwhggp/Briefing\\_EWC\\_v\\_Kenya.pdf](http://www.mediafire.com/view/syre1c3lcbwhggp/Briefing_EWC_v_Kenya.pdf)

WITNESS - “Dispatches from Brazil: If killed by police, guilty by default ... unless there’s video” by Priscila Neri.

<https://blog.witness.org/2015/09/dispatch-from-brazil-if-killed-by-police-guilty-by-default-unless-theres-video/>

WITNESS - Video Advocacy Curriculum.

<https://library.witness.org/product-category/curriculum/>

Another good resource is the Crimes of War Education Project at:

[www.crimesofwar.org/category/a-z-guide/](http://www.crimesofwar.org/category/a-z-guide/)

## Special Thanks

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