

# Institute for International Criminal Investigations

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## Guidelines for Using Financial Evidence in the Investigation of International Crimes

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## Foreword

The Institute for International Criminal Investigations (IICI) has for some years been raising awareness of the potential impact of financial evidence in bringing to justice those responsible for war crimes, crimes against humanity, genocide and serious human rights abuses. (For the sake of brevity, we refer to these as ‘international crimes’.) This has included providing specialist training across the international investigative landscape, including staff from the International Criminal Court, UN agencies, national police war crimes units and civil society. These **Guidelines for Using Financial Evidence in the Investigation of International Crimes** (‘the Guidelines’), created by IICI in partnership with contributions from a variety of outside experts, are the next step in creating a broader awareness of the possibilities. The purpose is to highlight the potential importance of financial information in the investigation and prosecution of international crimes and to educate and encourage those starting on the journey. The guidelines are deliberately brief, with more specialist aspects to be covered in annexes, which we will issue subsequently.

Many people have contributed to these guidelines. Some of those are currently serving with national or international organisations. They have provided comments in a personal capacity and in their own time, and prefer not to be publicly acknowledged. These guidelines are also intended to be a living document which will be amended and added to frequently by new contributors. Rather than create an incomplete public list of initial contributors, and then keep adding to it, we will simply express our sincere appreciation to all those involved now and in the future. You know who you are.

## Introduction

1. Financial investigations are not a new concept. They are widely used in gathering evidence of organised crime and corruption; to disrupt ongoing criminal activity; to identify corruptly stolen assets for recovery and reparations; for counter-terrorism operations; to prevent or prosecute breaches of international sanctions; and to meet the costs of prosecutions. They are not yet, however, an automatic - or even regular - aspect of investigations into war crimes, crimes against humanity, genocide and serious human rights abuses ('international crimes'). While some efforts have been made to encourage their use in this regard, the discussion has mainly focussed on asset seizure and recovery and its inherent difficulties. These Guidelines focus less on the problems and more on the evidential possibilities afforded by financial investigation. Their aim is to provide some advice and encouragement to those who may have limited experience of using financial evidence on how that evidence could be used to build or support **individual criminal accountability** for international crimes in domestic or international courts.
  
2. The Guidelines are aimed at the wide modern investigative audience, including those from law enforcement, UN agencies and civil society.<sup>1</sup> They will focus in the main on identifying useful principles and suggesting ideas to overcome obstacles that can be applied in any investigative context, regardless of the coercive powers available. They are also intended to counter a frequently held assumption amongst investigators that financial investigation is only relevant to financial crimes: money-laundering, corruption, tax evasion etc; to raise awareness that financial evidence can be an avenue for investigators looking at international crimes, where the evidence may be less immediately obvious, but no less damning and potentially more accessible than seeking a top secret order or an insider witness to implicate a senior commander; and finally – and perhaps most crucially - to educate investigators about where to start their journey in gathering it.
  
3. Obtaining individual accountability for international crimes is a long, complex process, particularly in relation to those at the top of the command structure. Finding victims willing to testify about the responsibility of senior figures for international crimes committed may be difficult, as is finding physical evidence linking them directly. Financial investigations are potentially a crucial avenue for evidence-gathering to solve this problem. Every crime will involve a chain of events. Each of those events will have involved a financial transaction of some sort – the weaponry was bought, the soldier paid, the fuel ordered, the bonus awarded. Whether that be a few dollars in cash, an exchange of a physical asset or a multi-million-dollar transaction involving sophisticated financial instruments and institutions, there will in

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<sup>1</sup> As such, they will not focus in great detail on aspects such as the use of telephone intercepts, complex surveillance operations and other techniques only available to national law enforcement. Even for national police war crimes units, persuading line management to release those resources for a war crimes case may be difficult.

many cases be a trail of documentation and witnesses. That evidence can help to tell a story; establish connections between entities and people; prove a degree of effective control; establish the existence and knowledge of a plan; establish complicity or aiding and abetting; and widen the net of perpetrators to include those businessmen, bankers, lawyers and others who may never pull the trigger, but without whom the crimes would never have been committed.

4. One final aspect to bear in mind – financial investigations do not stand alone. Any financial evidence needs to be integrated with and viewed alongside all the other types of evidence gathered during the investigation. If the financial investigator can't see the bigger investigative picture or the 'traditional' investigators can't understand why the money trail is useful, then the links will be missed, and opportunities wasted.

#### A brief note on the law

5. Financial evidence will probably not be enough on its own to demonstrate that an individual committed or ordered a particular crime to be committed, other than perhaps in cases such as forced enslavement. It is more likely that payment authorisations, procurement documents *et al* could be used to demonstrate other, less direct forms of legal liability, such as command or superior responsibility, complicity or aiding and abetting. Whatever jurisdiction you are working in, the evidence will need to demonstrate some form of significant connection between the financial transaction and the specific crime, as well as a degree of knowledge/intent about that crime by the person involved in the transaction. Make sure you have solid legal guidance from the beginning as to what you need to collect to make a case.

In April 2017, the Dutch Court of Appeal sentenced a businessman, Guus Kouwenhoven, to 19 years imprisonment for complicity in war crimes and violation of weapon embargoes during the civil wars in Liberia and Sierra Leone in the early 2000s. Charles Taylor, President of Liberia, supported militias engaged in armed campaigns which routinely featured horrific crimes including beheading of civilians, rape of women and children and many other atrocities. As owner of two timber companies, Kouwenhoven received large logging concessions and the use of and control over the port of Buchanan. In return, he transferred shares in his companies to Charles Taylor's daughter and paid Taylor 50% of the profits. Kouwenhoven was a major weapons supplier for Taylor, even being personally on the ground in Liberia when shipments were received. His close financial relationship with Taylor extended into active assistance in the conflict by threatening to dismiss his own company staff if they refused to participate in the conflict and placing a company helicopter and other assets at the disposal of Taylor for military purposes. The court stated: "*Businessmen...who operate [internationally] and who do not shy away from doing so in cooperation with regimes such as Charles Taylor's, must be made aware of the possibility of becoming involved in serious [international] crimes*". (Dutch Court of Appeal judgement, 21 April 2017)

## Breaking down the barriers

6. If financial investigations are not implemented at the start of international crimes investigations, vital evidence may be destroyed or lost over time or ignored during the normal investigative process. One of the main reasons why financial investigations are not incorporated into the planning may be a mistaken belief at that stage that they are too complex, too difficult and can only be done by those with specialist expertise which may not be available in-house. None of this is completely true. The specialist terminology surrounding financial transactions and an unfamiliar professional landscape may, however, seem daunting at first and a key step in the process of ensuring financial investigations are more widely used to prove international crimes is to demystify the financial world. In this section, we introduce a few key concepts and definitions.

## What is a financial investigation?

7. The Financial Action Task Force (FATF) defines financial investigation as ‘*an enquiry into the financial affairs related to a criminal activity, with a view to*
  - a. *identifying the extent of criminal networks and/or the scale of criminality;*
  - b. *identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation;*
  - c. *and developing evidence which can be used in criminal proceedings*’.<sup>2</sup>

The last aspect is the most relevant here, so for the purposes of these guidelines, we will define ‘financial evidence’ as any evidence relating to a financial transaction associated with the planning and execution of international crimes or deriving from them.

## The international financial landscape

8. There are numerous international bodies involved in financial intelligence and creating policy. These organisations are extremely important intelligence gatherers and disseminators, but they are not involved in the enforcement – that responsibility flows to those agencies which have access to the financial intelligence and use it to gather evidence and support litigation. The financial intelligence and policy organisations include:
  - the Financial Action Task Force (FATF) - an inter-governmental organisation which coordinates policy on money-laundering and counter-terrorist financing worldwide. Many of the current systems of complementary country legislation, cooperation and the establishment of monitoring, reporting and

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<sup>2</sup> ‘Interpretive Note to Recommendation 30’, in ‘International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations’, 2012, updated October 2016, p. 97. <https://www.fatf-gafi.org/en/home.html>.

financial investigative processes are a direct result of FATF policies and coordination.

- European Union Asset Recovery Offices (AROs) and various other Asset Recovery Inter-agency Networks worldwide - networks of police, prosecutors and judges involved in asset tracing, freezing, seizure and confiscation. Their aim is to assist efforts to deprive criminals of illicit wealth, by providing fast, often informal information between jurisdictions and supporting operational requests.
- Financial Intelligence Units (FIUs) - government agencies which collect and disseminate information relating to suspicious, unusual or threshold financial transactions, or cross-border movement of funds. Information comes from financial institutions and some types of private entities which are required to report on financial activities, (for example, lawyers and real estate agents).
- the Egmont Group - a platform which allows for exchange of expertise and financial intelligence between national Financial Intelligence Units to combat money-laundering and terrorist financing.

These organisations are mainly designed to help national law enforcement agencies. International tribunals, UN agencies and civil society may have more limited or no substantive access to official cooperation with these bodies. The legal basis for acting on financial information requests in many countries may be limited to requests from states and domestic legal provisions may not fully apply to the international crimes you are investigating. In some countries, the FIU may not be operational or have the financial information you expect. Any financial investigator should, however, be aware these agencies exist. They might not officially be able or willing to help a civil society or UN organisation, but they might guide you to someone who will...

### A few essential concepts

9. As with any specialised area, it is easy to become lost in jargon and feel you will never understand it. You will, however, be surprised at how quickly you become familiar with the terminology. Some of it is discussed below, but there is a wealth of explanatory information online.<sup>3</sup>

### Banks & Financial Institutions

10. Most people are familiar with how a bank account works, but a few aspects are worth looking at in a bit more detail. Opening one may involve the creation of **Bank Opening Records**. These often include lots of interesting information. They may have the name of the **Beneficial Owner** of that account (see below); their address and

<sup>3</sup> The Basel Institute on Governance, to whom we are indebted for some of these definitions, has produced significant relevant material available at their website: [www.baselgovernance.org](http://www.baselgovernance.org).



date of birth; details of anyone else with authority over the account; and copies of identity documents, including passports. The Bank Opening Records may contain what is known as **Signature Authority**. A person has signature authority over a bank account if that person can control what happens to funds in the account through providing a signature, even if they are not named as the account holder of the bank account. There may be multiple signatories and these may change, even though the account name remains the same. Bank Opening Records should also therefore include examples of signatures. This can be invaluable for purposes unrelated to the bank account – for example, comparing it to signatures on political and military orders to establish their authenticity.

11. The **beneficial owner** (or **ultimate beneficial owner**) of a company, asset or bank account is the “natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement”.<sup>4</sup> There may be other nominees or company names on the public documentation, but somebody in the end will be listed as the beneficial owner.
12. Banks usually move money through **Wire Transfers**. No physical money need be exchanged, only information. Almost everything is done electronically, mostly through the SWIFT network, a system which allows financial institutions to send and receive information, although this is changing with the development of other international banking communication systems and the use of blockchain. Each bank also has a unique identifier, known as a Bank Identifier Code (**BIC**) or **SWIFT** code. Many international transactions will also usually use an International Bank Account Number (**IBAN**). This contains the bank identifier and bank account number. If you know this number, there are free tools which can help you quickly identify the name and address of a bank branch which sent or received money.<sup>5</sup>

**Think:** What currency are they using? Why use this bank and this branch? Does the person own property near there or visit often? Is their family there? Is there a strong diaspora population in the region?

13. The person sending the money from their bank account is the **Originator** or **Ordering Customer** or **Payer**. The financial institution which initiates the wire transfer and transfers the funds is the **Ordering Financial Institution**. Once the transaction is completed there will be documentation showing the money leaving or arriving in an account. These take various forms, known as **bank advice slips**, **remittance advices**, **debit advices**, **credit advices** or **Electronic Funds Transfer slips**.

<sup>4</sup> Guidance on Transparency and Beneficial Ownership ([www.fatf-gafi.org](http://www.fatf-gafi.org)).

<sup>5</sup> See, for example, [www.iban.com/iban-checker](http://www.iban.com/iban-checker).



14. For SWIFT transactions, the instruction between banks may be in the form of a document known as an MT103. (There will be other related instruction documents such as an MT202 which allows the bank to communicate the movement of those funds through the correspondent bank – see below). These can be a good source of information, particularly where references are added stipulating the purpose of the transfer. The sender wants the recipient to know what the money is for. They do not always realise someone might come looking for the document later. Every document provides not just evidence of a particular transaction but intelligence on the parties which can broaden the network.
15. If a transaction is done in cash, there will still be documentation. No legitimate bank will hand over thousands of dollars in cash without a **withdrawal receipt**. Nor will they receive money without generating a **cash deposit slip**. If the amount is substantial or suspicious, the bank may also have to file a **cash transaction report** (with the local FIU).

Your suspect may be Mr Smith. But if he is paying funds to Ms Sanchez, you need to know who she is. What service is she providing? How did she contribute to the crime? Who does she represent? The timing of the transfer might also be extremely important – did the transactions happen around the date of a specific action, such as an attack or the delivery of weapons? The type of transfer can also be relevant - why were several smaller transfers made instead of one big one? Was it to avoid financial reporting obligations and therefore escape official notice? This can be an offence in itself, and some jurisdictions could take criminal action against your target based on information you may hold, regardless of any other war crimes prosecution. Use whatever tools you have to generate a prosecutor's interest.

16. A **correspondent bank** is a bank which provides services for other banks in countries where they do not have a physical presence. These services might include currency conversions and acting as a middleman for wire transfers, where a bank in country A wishes to send money to another bank in country B. The domestic bank sets up an account in the foreign bank. It saves that domestic bank from having the expense of opening a branch in the foreign country.<sup>6</sup>
17. Banks and other financial institutions, as well as certain other businesses at risk of money-laundering, are required to apply **Know-Your-Customer (KYC)** standards. This is a due diligence process required from financial institutions to ascertain the true identity of their customers as well as the real nature of their business. KYC processes will often require ongoing and in some cases detailed correspondence with the

<sup>6</sup> A useful explanation can be found here: [Correspondent banking relationships | AUSTRAC](https://www.austrac.gov.au/correspondent-banking-relationships) (<https://www.austrac.gov.au/correspondent-banking-relationships>).

customer and should include copies of identity documents presented. If false documents are provided, it may present an opportunity for local law enforcement to become involved in investigations. (In some jurisdictions, funds in bank accounts operated in false names are automatically considered to be proceeds of crime and can be seized.)

### Trusts

18. **Trusts** can be used as a way of hiding assets or disguising ownership. A **settlor** (the original owner of the money or assets) transfers effective control to a third party **trustee**, often a lawyer or other company. There will be a **trust deed**, often accompanied by a **letter of wishes** provided by the settlor naming **beneficiaries** for the trust, in other words, who should have access to the cash or asset and how it should be distributed. The trustee becomes the legal owner but holds the assets for the benefit of the beneficiaries. This benefit might be interest from cash, profit from investments or simply the right to live in a house. This can be an effective way of disguising real ownership. A simple example would be where a corrupt official (settlor) seeking to protect their illicit wealth would transfer the money to a law firm (the trustee), with their children named as beneficiaries. The official would cease to be the owner. The law firm would not be the owner as they cannot use the asset themselves. The children would not be the owner. Yet the children could continue to live in the house, spend any interest earned by the money, etc.

**REMEMBER:** some of this information may be in the form of paper records; some in the form of digital records. Make sure you have the capacity to collect and process either.

### Corporations and Companies

19. A **corporation** or **company** is a separate legal entity from its owners who are shareholders. It will have directors chosen by the shareholders. In many countries, corporations are divided into ‘private’ companies and ‘public limited’ companies. The latter are able to offer their shares to the public at large and list their shares on a stock exchange. There are **shelf corporations/companies**, with no current activity that can be bought ‘off the shelf’ for immediate use (although with the ease and speed with which new companies can be created there is increasingly less demand for such financial vehicles). There are also **shell corporations/companies**, with no independent operations, significant assets, business activities or employees. Generally, their only purpose is to own another entity or have a bank account. A corporation or company may also have subsidiaries, making them the ‘parent’ or ‘holding’ company. Ownership of these corporations will be divided into **shares**, also known as ‘**stocks**’. A share represents a portion of the ownership of a corporation and thus gives its owner a stake in the company and its profits. If a corporation has issued 100 shares in total, then each share represents a 1% ownership in the company.

Ownership is proved through possession of a share certificate. The certificate will show the name of the shareholder and how many shares the certificate represents. Unless it is a **bearer share** (owned by the person with physical possession of it), the certificate will be registered on the corporation's official shareholders' list or register. Some companies are publicly 'listed' on stock markets, in other words anyone can buy shares in them. This is a potential bonus for financial investigators as it usually obliges companies to disclose a good deal of relevant information.

**Just one more thing...** There are also companies created and controlled by governments, called 'State-Owned Enterprises' (or 'SOEs'). These SOEs may exist to control certain industries with strategic importance e.g. oil, gas, weapons production, or to control the media. Some may exist to generate revenue for specific purposes and thus keep a military force or intelligence service outside normal government budgetary constraints or control. In 2019, the International Fact-Finding Mission on Myanmar (FFM) produced a report on the economic interests of the Myanmar military. A key finding was that the revenue from associated military businesses strengthened the military's "autonomy from elected civilian oversight and provides financial support for the [military's] operations with their wide array of international human rights and humanitarian law violations". Two military conglomerates controlled 106 businesses from construction and gem extraction to manufacturing, insurance, tourism and banking. The military also solicited donations in support of the military's 'clearance operations' against the Rohingya. The FFM noted that these companies' officials "may have made a substantial and direct contribution to the commission of crimes under international law... warranting their criminal investigation".

[ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military](https://ohchr.org/en/hr-bodies/hrc/myanmar-ffm/economic-interests-myanmar-military)

### Crypto or digital currencies

20. A cryptocurrency is used to make digital transactions online. It is based on technology known as blockchain (a type of distributed database or ledger). Records of these transactions are held on many different computers so changes cannot be made to individual records and this provides a higher level of security than if the records were held by a single bank or other entity. A buyer creates a 'wallet' with a cryptocurrency provider using 'real' money. While the concept is now becoming mainstream, and is increasingly used for legitimate purposes, cryptocurrencies have been a popular method for transactions on the 'dark web' or to attempt to hide the use and control of assets. Investigators could expect to see them in arms deals and human trafficking situations, for example.

War criminals will probably not use a mobile phone to purchase weapons, but phone records can give evidence of their lifestyle and assets, their movements and their connections. An obvious example might be online banking records, but other apps for insurance or home security, or even saved weather forecast locations might indicate an interest in a property or location in which they may spend time. If they are making mobile phone payments to a company, what services is it providing and why not do it through a bank? Were they distributing small amounts of cash to influential people in a community shortly before an attack? If so, why?

### Offshore

21. Offshore refers to banks, trusts, companies, investments and deposits located or based in a foreign country and primarily used or owned by non-residents. Well-known offshore financial centres (OFCs) include Switzerland, Bermuda and the Cayman Islands, but there are less well-known centres like Mauritius, Dublin and Belize. The level of regulatory standards and transparency differs widely among OFCs. They are often associated with the notion of **tax havens**, jurisdictions where companies and individuals may enjoy lower rates of taxation.

### Money or value transfer services

22. Money or value transfer services (MVTs) involve one intermediary receiving money from Person 1 and another intermediary making a payment of a corresponding sum to Person 2, without the money actually moving directly between Person 1 and Person 2. These services are used particularly in countries where people are less likely to have bank accounts, so are a popular method of sending money back home from immigrant workers, for example. While the sender is traceable, the recipient only requires a control number and identification card to pick up the payment and may therefore be less so. There are well-known established providers such as Western Union and Moneygram, but there are other regional and less formalised networks, such as *hawala*, *hundi*, and *fei-chen*. While established providers usually maintain substantial centralised record-keeping facilities and units dedicated to supporting international requests for information, the latter are much more difficult to access.

### Mobile phone transfers

23. Mobile phone transfers are a cheap, fast and secure method of moving payments and another excellent vehicle for money-laundering. The phone number becomes the bank account number. A shopkeeper or other registered agent receives cash and loads it into a 'wallet' held on the SIM card. Money is transferred to another phone by SMS and the recipient can withdraw the money from another registered agent. Examples include M-Pesa, MTN Mobile Money and Orange Money.

### Mutual Legal Assistance requests

24. A Mutual Legal Assistance (MLA) request is a request from one national authority to another to provide information or execute a legal process such as an arrest or search for information or evidence on its behalf. In practice, there are many obstacles. MLA requests are made on the basis of an agreement between two countries. This excludes some investigators immediately, including NGOs, UN Commissions of Inquiry and other UN agencies.<sup>7</sup> Even where an MLA agreement exists, there remain legal obstacles, including insufficient national procedures, statutory time limits for investigations and laws that require disclosure to the subject of the information request. This is in addition to the need to meet the dual criminality requirement. Dual criminality means that the crime in relation to which the request for information is being made must be a crime both in the country sending the MLA request and the country receiving it. This can be a problem. ‘Persecution’, for example, may not exist as a crime in countries which have not incorporated the ICC statute. Unless torture is specifically listed as a crime in the receiving country, you might need to formulate the crime simply as ‘assault’, and ‘assault’ may not cross the threshold of serious crime required for a request under national legislation. This is where informal cooperation can help. Approach law enforcement informally in the receiving country to work out creative solutions in advance – if you have the power to submit an MLA request, don’t waste time on one which is likely to be refused...
25. Of course, some countries which could help and should help may just choose not to. Common reasons for refusal to comply with MLA requests include requests that are too broad, but also requests that are deemed to impair a country’s sovereignty, security, or other ‘essential interests’.<sup>8</sup> The latter can mean almost anything, including political considerations. If the Minister of Justice and their officials receive a request for information in relation to the President of a powerful neighbouring country on which they rely for natural gas, what are they likely to do?
26. Even when an MLA request is made between countries that regularly cooperate, it is not unusual for the request to take a long time to be actioned. These delays arise as various departments responsible for international cooperation (and their legal departments) review and process the request before it even gets to the unit that may actually be able to action the request.

<sup>7</sup> The International Criminal Court has its own procedures which they call Requests for Assistance. Like MLA requests, they are dependent on the rules and procedures of the receiving country.

<sup>8</sup> For more information, see World Bank Stolen Asset Recovery Initiative (StAR) Asset Recovery Handbook (2011), p.26.



### **Widening the net – a word on deterrence**

Company directors and employees offer a further type of perpetrator to hold accountable. Their link to the actual crime may be more difficult to establish, but their culpability is not removed by the fact that their weapon might be a mobile banking app rather than a pistol.

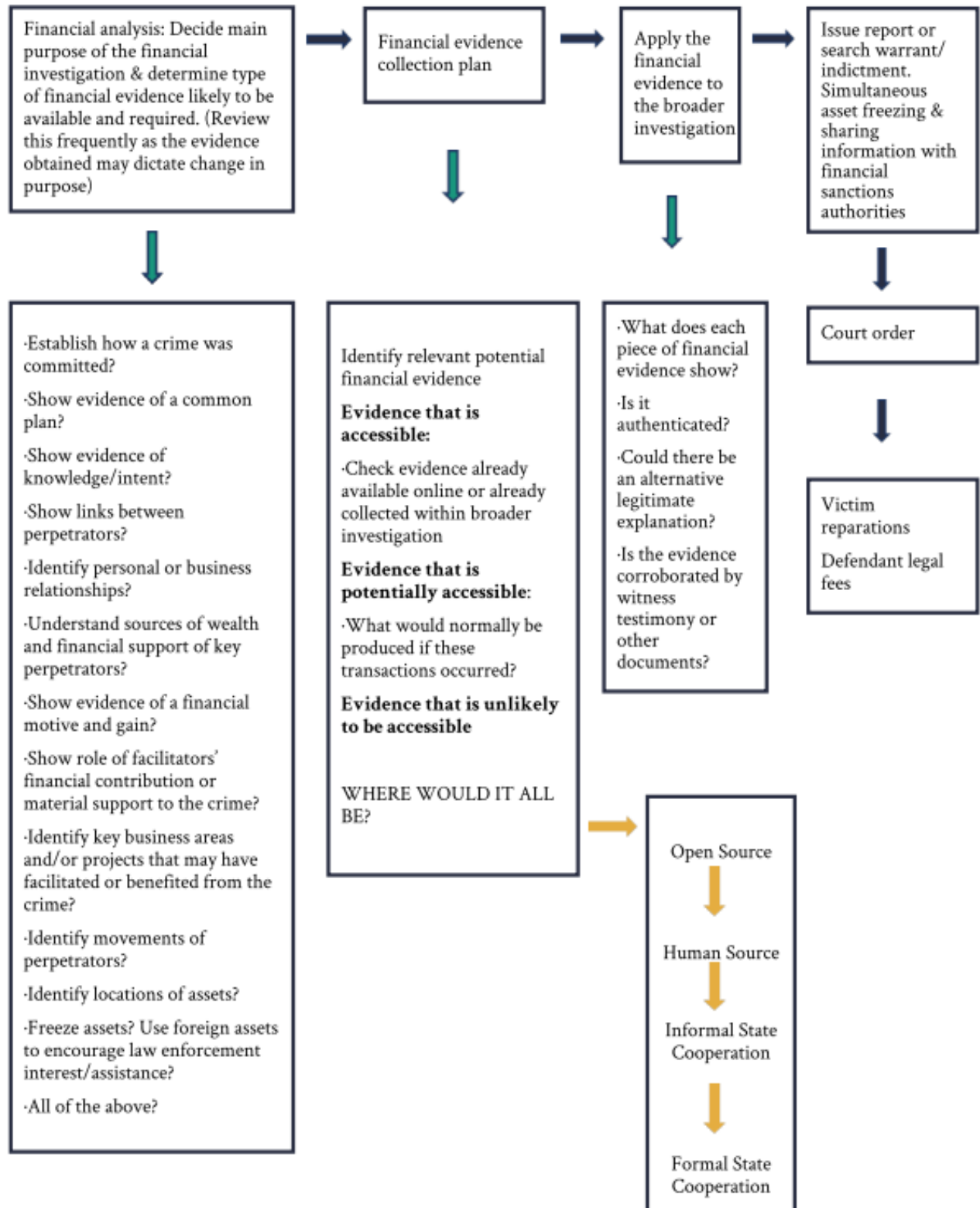
In 2010, Lafarge Cement Syria started running a cement factory in Syria. In 2013, ISIS took control of the area. Rather than withdrawing, the company struck up a deal with ISIS to share revenue and protect the plant. Sherpa and the European Center for Constitutional and Human Rights (ECCHR), together with eleven Syrian former employees, filed a criminal complaint against Lafarge – and crucially its individual executives – which led to a prosecution in France for complicity in war crimes and crimes against humanity. In the US, the parent company paid a fine of \$778m for supporting terrorism. Email exchanges between Lafarge employees confirmed an agreement between the company and ISIS that the terrorists would take active steps to disrupt Lafarge’s regional competition in the cement business – increasing the profits shared between the corporation and an organisation engaged in both terrorism and war crimes.

One other consideration - compared to perpetrators who might make decisions to commit crimes based on perceived military imperatives or ethnic hatreds, business people are more likely to make decisions based on a rational commercial loss/gain analysis. This may offer a kinetic opportunity to interfere in ongoing crimes by exposing key suppliers and transactions. The reputational risk for a company of being implicated in an investigation for war crimes is huge, especially if its shares are publicly listed, and so the fact of the investigation itself may be financially disruptive and offer some chance – albeit limited - to boost deterrence and prevent further atrocities.



## Planning and conducting the financial investigation

**Table 1: A financial investigation cycle**





27. Financial evidence may provide a piece of the puzzle, but will rarely provide conclusive evidence for an individual's involvement and knowledge of an event. Instead, it should be seen as part of the wider investigation, complementing and supporting those aspects of the investigation focussed on gathering crime-base evidence from victims, forensic evidence, and documentary evidence of responsibility such as orders, radio intercepts etc.
28. If a financial dimension to an investigation is envisaged, then it is vital to factor this in from the very beginning. Obtaining relevant documentation may require cooperation with foreign governments or other entities, and it may need significant analysis when it arrives. Crucially, behind every document is a witness who will need to be interviewed, both to establish authenticity of the document, but also to obtain additional information about the transaction and - crucially - those behind it. This all takes time and there is, therefore, little point in starting this work halfway through an investigation, or even worse towards the end, when you realise other types of evidence just aren't sufficient to link the senior figures to the crimes.
29. As with all types of investigation, the key to a successful financial investigation is planning. The financial strategy needs to have a clear purpose. The purpose could be to assist in building evidence of involvement in a crime; it could be to disrupt an ongoing pattern of crimes; it could be to identify assets for reparations; or it could be to deter perpetrators from criminal acts. Done right, it could achieve all of these. But you need to be clear about the goals from the start.
30. Make sure you know why you are doing what you are doing and make a plan to keep you on track. Then – crucially – remember to update that plan as you go. Investigations are dynamic and your plan should reflect that. Doing so will help keep collection efforts focused. It is easy to 'fall in love' with your evidence - to believe it shows something it does not, or to get excited about a piece of financial evidence because it is interesting and accessible, but which has limited eventual use. Keep an independent lawyer or analyst attached to your investigation and let them review the information and evidence regularly. If you can't convince your own team that it is worth spending time and effort on something, it probably isn't.
31. Once you have considered what evidence might exist, consider this:
  - a. Are you likely to get it in a reasonable timeframe with reasonable resources?
  - b. If you get it, will it help you prove the case to the required standard?

The answer to the latter question may help you determine what 'reasonable' means in the former question. Remember, others will be asking your management for resources, so make sure you can justify what you are doing.

## The financial analysis

32. Nearly all actions in life incur a financial cost somewhere. How that financial cost is met will provide evidence of who was involved and who was responsible, both on a macro and micro-level. It can demonstrate or identify, for example:

- how something happened – who initiated the crimes; incited them; planned them; disguised them; or supported them both directly and indirectly.
- who had knowledge of events and failed to stop them.
- an individual's location at a given time and their movements more generally.
- their links to other persons of interest, without the need for insider testimony.
- how a participant in a crime was provided with the means to commit the offences or rewarded for their participation.
- where assets might be which can be used later for reparations or to be frozen to prevent further atrocities.

**WARNING:** There is often a correlation between those who commit atrocities and those who loot their own and other countries. Your mandate as a war crimes investigator is probably not to prove an individual is corrupt. It is to gather specific financial evidence linking a perpetrator to international crimes. Your team will not thank you for spending months establishing that a perpetrator has a lot of unexplained wealth. They will thank you for providing them with a bank transfer showing the person authorised reward payments following a military operation in which civilians were massacred. It may be that you still need a comprehensive overview of the financial network controlled by perpetrators in order to establish how relevant payments were made. But make sure the effort has a clear purpose. With luck, the financial evidence you gather for this reason will also help with identifying corrupt assets for seizure, but be realistic about your goals and remain focussed on what you are trying to achieve.

33. When the planning starts for the whole investigation, consider an analysis of possible financial evidence, in the same way you might do a gender analysis of a situation in a country before starting a Sexual or Gender-based Violence investigation.

### What type of relevant financial documents could exist?

34. When considering what financial evidence could exist, one idea is to start from the final moment of the events under investigation and work backwards through each step that would have led to those events. Consider how each event occurred and what expense, if any, might have been incurred at each stage. Then consider what documents might have accompanied those expenditures.

35. While there is no guarantee that documentary evidence exists, it is worthwhile at least thinking about what type of records could exist in theory, then prioritise what is most likely to exist and what is most accessible. When it comes to money, people in all cultures have an instinct for caution, self-preservation or just a natural suspicion which means people almost always keep records, even when instructed not to. Especially when instructed not to...

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Transl  
Form SBI

WORK OF VEHICLE, MACHINE AND GENERATOR																						
D A T E	TIME USED	Working for	ROUTE	km counter				Total of jour	Total started	Achieved TKM/TKM	Completer										User's Signature	
				Starting at	km	m/100	m/1000				m/10000	Kilometres										
												10	11	12	13	14	15	16	17	18		19
11 July 1995	VRS/Army of Republika Srpska	"	BASE-MILITARY FARM																			/signed
14 July 1995	"	"	BASE-ORAHOVAC-RETURN																			/signed
16 July 1995	"	"	BASE-KOZLUK-BASE																			/signed
19 July 1995	"	"	BASE-illegibit																			/signed
21 July 1995	"	"	BASE-BALKOVICA																			/signed

*Translation of machine worklog*

In 1995, following the fall of Srebrenica, more than 7,500 Bosnian Muslim men and boys were executed by soldiers of the Bosnian Serb Army and buried in mass graves. While the military had tried to hide the murders, including by moving the bodies to secondary mass graves, the engineering company from which they hired the machines used to dig the graves had maintained records of their use. All this seemingly anodyne financial book-keeping was not considered a ‘smoking gun’ which had to be destroyed by the perpetrators. Instead, it sat, ignored, until investigators with the right mindset came looking.

[ICTY Case Information Sheet - "Srebrenica" \(IT-02-60\) Blagojević & Jokić icty.org](#)

36. This does not mean you need to follow every lead – prioritise by a document’s evidential importance and the amount of effort it takes to get it. While you cannot always predict this, before spending time and resources trying to find a piece of evidence, consider whether - based on your preliminary investigation - it is likely to be:

- **ACCESSIBLE** – do you have the mandate and authority to formally request or seize the evidence? If not, is an informal approach likely to be successful?
- **RELEVANT** – is it connected to the crime you are trying to prove as opposed to just ‘interesting’?
- **SPECIFIC** – what aspect of the case will the evidence specifically prove?

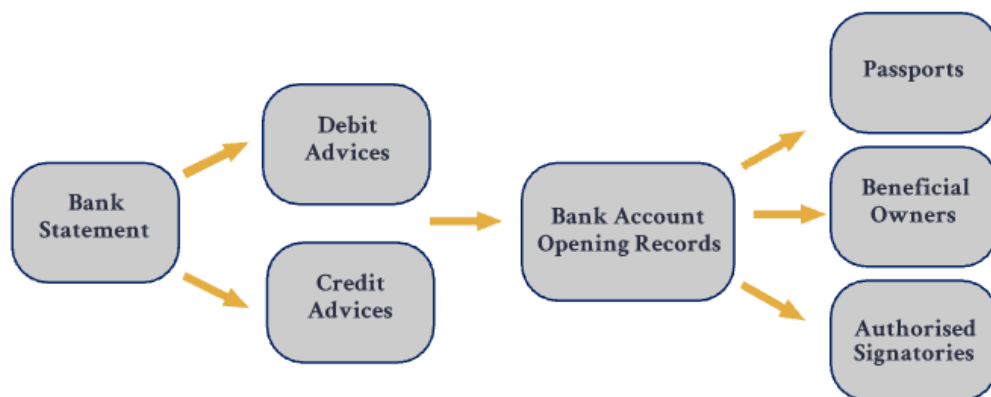
37. It may be that in investigations of widespread atrocities (where there are hundreds of individual crimes to focus on, or where documentary evidence relating to individual

crimes is lacking), the investigation may focus less on a specific financial transaction linked to a specific event, and more on establishing the general financing of a campaign linked to multiple atrocities. In that case, while the evidence may look slightly different, perhaps showing a pattern of cash inflows rather than specific transactions, it will be even more important to demonstrate that those providing or facilitating the cash inflows had the requisite knowledge and intent that the financing would lead to criminal acts.

38. Bear in mind that financial transactions may take many forms. Don't be limited by your own experience. Just because you might have purchased an item through a bank transfer, that doesn't mean you should only look at bank transfers. The transaction could be paid for in bearer shares in a company, or through transfer of a property in a third country. Or perhaps even a straight swap for a service of equivalent value, or in the corrupt payment of expensive private school fees for children.

The RUF, a militia group responsible for horrific crimes during the civil war in Sierra Leone, would take empty mayonnaise jars filled with uncut diamonds to Monrovia to pay for weapons.

39. Also remember to follow the documentary chain back as far as you can go. The financial information contained in a bank statement might not be the most useful aspect. Each transaction will have a further bank advice record behind it showing deposits or withdrawals which may contain more information than the bank statement. Crucially, an account will have with it the bank account opening records. This will probably contain a copy of, or reference to, the details of the passport of the beneficial owner; it may also contain signatures of those entitled to access the account who may not be listed elsewhere. Such signatures from a document, in some cases created years before a crime is committed and probably forgotten about, may prove very useful when matched against disputed signatures on military command orders.



40. Be aware that one type of evidence may lead to another. A bank statement may show a series of payments to an airline or travel agent, meaning there are travel records to be obtained (including the payment for accompanying individuals or individuals on the flight whose connection to the target was previously unknown); a payment to a mobile phone company means there probably exists a mobile phone statement, potentially containing evidence of calls between key people at key moments; payments to or from a company may open up a whole new avenue of investigation in relation to that entity. Before chasing every lead though, think: ACCESSIBLE, RELEVANT, SPECIFIC.
41. Remember that while some of the evidence may be in paper form, much may also be in electronic form, stored on computers, telephones, hard drives, USB drives or in the cloud. Assume you will need to handle electronic data and plan for it. Do you know how to seize it, review it and copy it safely to avoid contamination of the evidence? You should also consider data protection issues, by creating a written justification for every search in line with rules applicable to the jurisdiction. Persons investigated or charged will use every means possible to attack and undermine your investigation, including challenging your ethics and procedures in relation to searches. Have clear policies and guidelines before you act.
42. If the method of payment is not already known, then identifying it may require a broader **financial profiling** of the potential perpetrator. This could include starting from known assets (and working out how they were obtained); details of any accounts the person may have; details of family members and trusts where assets may be hidden; details of known associates. As mentioned previously though, be wary of ‘fishing expeditions’. It is easy to spend precious time and resources on building lavish analyses of a person’s assets without finding a single piece of evidence to show that they were responsible for the crime you are looking at. Remember: ACCESSIBLE, RELEVANT, SPECIFIC.
43. It is, however, worth considering that – at least for those with law enforcement powers - financial profiling can be of value in itself. Establishing that an individual has wealth which cannot be explained through their normal sources of income can be the basis for actions based on illicit enrichment or unexplained wealth orders. This can then be a form of leverage to gain cooperation in relation to other evidence relating to the international crime. The financial profile may even prove useful in court proceedings where the accused seeks to obtain funding for their or their families’ everyday expenses.

#### If they exist, where would copies of relevant documents be kept?

44. Where there is a business transaction, each party will probably have a copy of key documents. The locations where documents are kept are obviously determined by the

nature of the document. Make a list of every document you think may potentially exist. Then think:

- a. What entity would have generated it?
- b. What entity would have been the final intended recipient?

45. Remember that copies may be held in more than one place, even within the same bureaucracy. If a document or transaction requires input from several departments or branches within a government or organisation, then each one will probably keep a copy. Not only does this provide alternative options if one entity is uncooperative, it also has evidential value. Finding duplicate copies held in different locations can assist in establishing authenticity. Do not just accept a statement that records have been destroyed (sometimes as part of the organisation's routine data destruction processes). Whilst they may have administratively been listed as destroyed, they may actually exist in a backroom, a storage facility or a hard drive awaiting that destruction or simply forgotten.

46. If the relevant documents are not in the official files, think about the people involved in the bureaucracy. They might just have kept copies of documents for their own protection.

- Which person/official would have generated them?
- Which person/official would have been the final intended recipient?
- Which person/official might have been copied?

Each one of these people is a potential witness and their offices, homes, laptops etc are a potential source of further documents.

### How might documentary evidence be obtained?

47. Once the potential financial documentation that *could* exist has been identified, there are a number of ways to obtain it. Which one to use may depend on: where it is; who has it; and the powers and mandate of the investigation. If you are an agent of domestic or international law enforcement with both the formal powers and associated influence, then this obviously gives you an advantage in some cases. But there are alternatives for those without those powers.

There are certainly difficulties in extracting confidential financial information from official sources. Financial investigators do have one practical advantage though. Non-financial investigators will often not have access to the country or area where documents are located, or if they do it is severely restricted by security considerations. Financial evidence may, however, be found either online or through other actors involved in the transaction, perhaps based in jurisdictions where investigators may have easier access and/or benefit from cooperation.



## Open Source Investigation

48. Increased transparency in some countries means that information that used to be closely held, and difficult to obtain without visiting government offices or making complex requests, is now freely available online. In addition, unauthorised disclosures such as the revelations of the ‘Panama Papers’, ‘Paradise Papers’ and ‘Pandora Papers’, detailing offshore financial dealings, placed a wealth of previously secret information online. While much of it will be less relevant today as asset holders have scrambled to re-disguise their wealth, these sources remain valuable for establishing connections between people and companies and places of interest. There is also still plenty out there to find from other open source data.
49. Typical public record resources most used by financial investigators include corporate, property, aircraft and ship registries; licenses and procurement data; trade and customs data; and legal and regulatory databases. From a financial perspective, geolocation and satellite imagery can be used to find and assess assets and infrastructure. Content published on social media platforms is also an invaluable source of information through which investigators can establish relationships, build a chronology of events, and profile an individual or company. When building a team, keep in mind that it is rare to find a single analyst with the technical expertise to apply all open source methods to the right standard, so look to build external partnerships with specialists.
50. Information openly available online is an obvious place to start, but it comes with some risks. Once you start, you will almost certainly leave a trace, which may alert the subject of your investigation. So, prior to starting, get some security advice. At the bare minimum, you should consider basic security measures for open source searches, whether that be anonymous profiles or Virtual Private Network connections.
51. One other thing to always consider is the lawfulness of any collection of online data. If you do not follow a clear legal process, it may be considered as unlawfully obtained information and may not be useable as evidence – but that does not stop you still using it as information and leads for further investigation. A related consideration is making sure you follow appropriate standards for capturing, preserving and analysing open source information to ensure its credibility in court.<sup>9</sup>
52. You should set sensible expectations - evidence directly linking perpetrators and facilitators to international crimes will be extremely hard to obtain from public sources. Open source data can, however, be crucial in corroborating information from

<sup>9</sup> See, for example, *Berkeley Protocol on Digital Open Source Investigations: A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law*: United Nations Office of the High Commissioner for Human Rights; Human Rights Center, UC Berkeley School of Law, 2022).



other sources (such as witness interviews or documents obtained through other legal means); in establishing a perpetrator's 'footprint' in a certain jurisdiction in order to interest local prosecutors; and in identifying assets held by an individual, company or state complicit in international crimes for recovery and reparations to victims.

### Ask your witnesses

53. An obvious option for obtaining documentation - available to any investigator - is simply to ask witnesses or sources if they have it, particularly those who are not themselves implicated in the crimes. They may have a reputation to protect by dissociating themselves from the potential perpetrator or by seeming to cooperate, or may just want to be a good citizen. As noted above, people always keep records, whether they are supposed to or not. They may have retired or moved to a new position, but they may just have a copy of everything on their laptop. It is always worth asking. Be aware that some witnesses, even when they want to help, may be unable to do so because of local laws or confidentiality obligations. For example those with fiduciary obligations towards clients such as financial institutions, lawyers or accountants are unlikely to be able to release anything without a court order. At the very least:

- Make a list of potential witnesses.
- Consider what documents they might have.
- Assess their likely willingness to assist.
- Consider any security concerns they might have.

Don't assume those implicated in crimes or associated with the criminals won't help – if their assets are seized either unilaterally or through a sanctions regime, they may have good reason to want to help you. It usually does not hurt to ask...

### Voluntary disclosure

54. Another obvious route for any investigator, whatever their mandate or powers, is a direct request to the entity which generated the documentation, whether a government, individual or a company. This may work with international companies keen to protect their reputation or governments eager to distance themselves from former regimes and seek international acceptability. Even if they are only trying to give the appearance of cooperation, they may not see the relevance of a request to

copy old procurement records, for example.<sup>10</sup> Consider any legal barriers which would prevent the provider giving you the material. For instance, local privacy/data-protection legislation might need to be addressed in your request by providing guarantees that the information will be appropriately handled and used only for investigative purposes, or that dissemination to third parties will be limited.

55. A request for voluntary disclosure of documents has advantages and disadvantages. One advantage is that if crucial – and correct – information is provided by the generating entity, it adds to its evidential value. Another is speed. For those without subpoena powers, there is no option to exercise them, but even for law enforcement, it may also be much quicker to simply ask for documents, rather than seeking formal seizure through legal processes. The disadvantage clearly is that it highlights areas you are interested in and may lead to those documents being destroyed, hidden or altered.

Being open about your interest in specific documents can even be a useful tactic – an investigator looking at corruption in Africa copied records of company ownership, showing relatives of government officials as the beneficial owners of a company to which they had awarded large contracts in their official capacity. During the initial interviews, the officials were asked if they had any connection to the company’s owners. They each denied it. The investigator then said that they planned to confirm the ownership at the official registry, without mentioning that they had already done so. Within hours, the records in the corporate registry had been altered to disguise their ownership. This attempt to alter information was further evidence of their culpability.

## Legal Disclosure

56. This obviously varies between jurisdictions, but investigators with legal mandates can make applications to courts for disclosure of evidence relevant to their case. As an example, in the United States, what is known as a Section 1782<sup>11</sup> application allows a party in a legal case outside the United States to apply to an American court to obtain evidence from people or companies resident in that court’s jurisdiction. This can be done by government request, but also - crucially - upon the application of any ‘interested person’ in a foreign proceeding. An applicant needs to show that they are such an ‘interested person’ and that the person/company holding the evidence is

<sup>10</sup> You should always bear in mind the consequences for interlocutors of cooperating with your investigation. While a mid-ranking official may see no harm in handing over a document, if that proves important for your case, then there may be repercussions for them. See the section on Security.

<sup>11</sup> S. 1782 of Title 28 of the United States Code: “Assistance to foreign and international tribunals and to litigants before such tribunals.”

resident in the district of the relevant court. The evidence may be documents or witness testimony.

### Informal government cooperation

57. Another option is to request assistance from supportive governments or institutions. As noted above, nearly every country in the world now has an FIU, created to monitor suspicious transactions as part of efforts to counter organised crime, money-laundering and corruption. Depending on the jurisdiction, these FIUs may be able to provide information informally, which can then be used to progress the investigation or to draft specific formal requests for information to government authorities.

### Formal seizure

58. Law enforcement in national jurisdictions will have the option to either seize documentation and other evidence directly or to issue subpoenas with which the entity holding the evidence is obliged to comply. National law enforcement can also operate through Mutual Legal Assistance requests to third-party governments as described above. International tribunals may have their own procedures, such as the International Criminal Court's Requests for Assistance. These obviously all have the potential advantage of surprise, meaning that the evidence can be seized without forewarning the holders and so cannot be altered or removed (although there are many stories of investigators being kept talking at the front door while boxes of files are carried out the back...). The disadvantages of relying on this method, however, are clear:

- a. This approach is not open to civil society, nor to UN human rights investigators, unless they can persuade governments to assist.<sup>12</sup> (Try to appeal to their self-interest, though: what information that you have will likely interest them or assist them to do their job?).
- b. If you are a law enforcement official, you may not have access to the country or search area where the evidence is and won't be able to do the seizure yourself, leaving open the possibility of 'errors' – deliberate or otherwise.
- c. If you do have access, there may be security issues as formal seizures are confrontational and in conflict and post-conflict areas, many key government offices will have armed protection.
- d. Obtaining the legal authority and acting on it, particularly if operating through a third-party government, can be a famously slow process, as well as increasing the chances of information about the request being leaked to the perpetrator or others.

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<sup>12</sup> Mutual Legal Assistance Treaty requests operate between governments. UN agencies are generally not a signatory to such treaties.

59. An MLA request should if possible only happen after the use of informal channels to establish the procedural and evidential requirements of the receiving jurisdiction. Requests need to be detailed and specific in order to be effective, so you need to do your financial investigation first. A ‘fishing expedition’ - seeking large quantities of information in the hope it contains something useful - at the beginning of an investigation is unlikely to be useful, and an unduly onerous burden on the receiving jurisdiction is one of the grounds for refusing or delaying an application. Investigators should provide clarity in the MLA request as to the potential location of financial information. A request to a state for details of all transactions relating to a specific bank account number (if possible referencing the state’s legislation that would support the request) is more likely to get a positive response than asking a broad question as to whether the country concerned has any financial information about a subject of an investigation. The key is to ask for what you need, not just what you might potentially want. A useful guide is the UNODC Mutual Legal Assistance Request Writer Tool.<sup>13</sup>
60. The pros and cons of each option need to be considered carefully at the planning stage. Consider the likely success of each option; the time it will take; and whether notifying the subject of the investigation of the documents which interest you - whether deliberately or not - is likely to adversely impact your investigation.
61. Finally, you need to plan for how you handle the documentation received. It might be substantial. Terabytes of largely unstructured data, or data that can only be accessed by proprietary software – which you may not be able to afford – is of limited use. Develop a process:
- Ensure a chain of custody is maintained – where it came from, who transported it, where and how it is stored and secured – this is an ongoing responsibility.
  - Store original documents safely and work from copies – don’t have the only original copies of bank statements in your lost luggage and don’t write notes on/use highlighter pens on original documents...

### What witnesses might there be for each step of the chain?

62. Behind every financial action and every document there is a witness who can provide information about the transaction and who was involved; who can confirm the authenticity of the document; and who can lead you to other documents and witnesses. You need to find them.

<sup>13</sup> <http://www.unodc.org/mla/en/index.html>. See also World Bank Stolen Asset Recovery Initiative (StAR) Asset Recovery Handbook (2011), p.38; *Tracing Stolen Assets: A Practitioner’s Handbook* (Basel Institute on Governance International Centre for Asset Recovery (2009)) p.53.

63. Identify those involved at every stage, particularly those who may have been at decision-making meetings – they may have heard/seen things and be keen to distance themselves reputationally. They may also know of or have possession of records.

Lower-level perpetrators involved in the financial transactions may prove very useful inside witnesses. Bankers, lawyers, accountants, salesmen and other goods/service providers might not have pulled the trigger, but they might have knowledge of plans for the crimes and who made them; who was at a particular meeting; who else met with the main alleged perpetrator at the time; who travelled together. An accountant may well have been present at key discussions with senior figures and may have less reason to protect those at the head of the command chain than others more closely linked to them through national, tribal or organisational ties. The key issue is whether these lower-level perpetrators are accessible and cooperative and whether you can keep them – and your team – safe while obtaining testimony.

64. Start with those witnesses who are not implicated in the crime and who may cooperate willingly; then move closer to the inner circle, looking for those with less to lose and much to gain from cooperating. Then identify potential insider witnesses.
65. Consider realistically what activities you could carry out in relation to insiders or main perpetrators to identify where financial information may be held.
- Do you have the capacity and mandate to carry out **safe** and **legal** surveillance of persons of interest to see where they bank, where their lawyers are, which businesses they are connected to and who their trusted associates are? If not, don't.
  - Mobile telephone data, emails, 'smart' watches, fitness trackers/apps and even loyalty (frequent flyer) accounts can provide valuable information on movements and connections. Do you have technical and legal capacity to access any of this? If not, focus your resources elsewhere.

### Putting this into practice

66. Let's imagine a scenario where a Private Military Company, allegedly operating in support of a government counter-insurgency campaign, has used a helicopter to shoot civilians. What might an initial plan look like? The following table offers some ideas for potential evidence in relation to the case study above. It should be emphasised that this is possible evidence. It does not mean the documents are accessible or the witnesses cooperative. As with everything, plan carefully and assess the risks versus the benefits.

**Table 2**

Events in reverse order	Points to prove	Possible financial documentary evidence	Possible financial witnesses
Civilians killed or injured by attack helicopter with no official markings; possibly operated by a Private Military Company (PMC)	People killed/were injured by gunfire from the helicopter	-Receipts confirming burial/treatment costs.  -Compensation paid by government or PMC?	-Family members  -Hospital accounting staff
	Victims were non-combatants	-Pension books  -Child welfare payments  (Both helpful in proving age/status of victims)	
Helicopter flies over town and attacks	-Who was operating the helicopter?  -If PMC, did government/military facilitate it?	-Fuel allocation & receipts, showing source of fuel  -Helicopter pilot's log including maintenance records  -PMC employment contract specifying nature/location of combat duties and associated payment schedule	-Pilots  -Maintenance personnel  -Military administrative staff
Helicopter imported from another country		-Bills of lading  -Fuel purchase  -Export licence  -End user certificate for weapons  -Shipping information  -Delivery note/receipt  -Import licence	-Ministry/military administrative staff  -Exporting company staff/PMC staff  -Exporting country government officials
Helicopter purchased/leased/transferred by government on behalf of PMC	-Payment made  -Government intended helicopter to be used by PMC in combat operations	-MT103 bank transfer from government agency or PMC to exporter or third party  -Contract  -Invoice  -Insurance (may stipulate combat operations)  -Receipt for payment	-Transferring or receiving bank officials  -Ministry/military officials  -Exporting company staff (current or former)  -PMC finance staff

NB This is a brain-storming exercise. Just because you put it in a plan, it does not mean you will actually do it. But it does allow you to think laterally and creatively and seek solutions.

67. As well as the people noted in Table 2 above, it is always worth looking for former employees. They may keep personal records and be more willing to cooperate as they have less to lose than current staff. Try searching LinkedIn or other websites for people listing relevant companies in their employment histories. Did someone leave the company shortly before or after a particular transaction occurred? Might they have had ethical concerns? Is there a Facebook page for current or former employees? Remember though, as noted above, once you start searching, you will leave a trace, so don't use your own account to log in or the person will be alerted that they are of interest to you and that they may be under investigation.

### An additional note on interviewing witnesses about financial evidence

68. It is one thing to identify relevant witnesses. It is another to persuade them to cooperate. It is then another skill entirely to extract the right information from them. Interviewing is a crucial part of any investigation but is not always done well. The simple advice is that before you start interviewing people, make sure you have access to good quality training. At the very least, take advantage of some of the guidance which is openly available online.<sup>14</sup>

69. Financial interviewing is, in principle, no different to any other form of witness interviewing. The same careful approach to planning and preparation is needed; the same consideration of how to approach the witness in a safe manner; the same evaluation of their likely motivations, needs and credibility; and the same need to build rapport and listen.

70. While the skills may be similar, there are some additional aspects to bear in mind. The financial world is full of unusual terminology and concepts. If you are questioning someone about a street robbery, you are unlikely to need specialist knowledge, other than a familiarity with the local area and some knowledge of local gangs. If you are interviewing someone about complex offshore corporate structures, however, you might soon find yourself drowning in unfamiliar terminology and concepts which make it difficult to identify the most crucial information, or if interviewing a potential perpetrator or accomplice, to challenge them effectively.

71. One other possible difference to 'normal' interviewing is that you may not be just asking about specific events or specific payments. It can be equally important to ask about processes or patterns of behaviour, as well as lifestyle questions. Always ask witnesses about the processes followed in making payments. They may describe documentation which you never expected, as procedures in one country may be very

<sup>14</sup> See for example *Achieving best evidence in criminal proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures* (UK Ministry of Justice, 21 June 2023); *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, Chapter 11 (UK Foreign & Commonwealth Office, March 2017).



different than in your own. If you are preparing a financial profile of a suspect, ask witnesses for financial background information, such as:

- How are payments made normally?
  - i. Were there any unusual payments?
  - ii. How did the suspect pay you?
- Does the suspect own any property?
- Does the suspect visit any particular location on a regular basis?
- What family do they have? Where do the children go to school?
- Who is their accountant?
- Who is their lawyer?

## Security

72. One thing that financial interviewing has in common with other forms of international crime interviewing is that the security of the witness is paramount. A witness whose testimony and cooperation may threaten not just a suspect's ability to pursue their military or political strategy, but also their lifestyle, wealth and eventual escape route, is in a precarious position. Even if there is limited physical danger, a witness's cooperation may endanger their own business and prosperity.
73. Witness management and security is an ongoing and often long-term commitment which may stretch across multiple investigations and court proceedings. Mishandling of witnesses/informants can impact on the trust others have in you, damage your organisation's reputation and drive potential witnesses/informants away.
74. As with any investigative step, an interview should be accompanied by a proper security risk assessment. The same applies to people you might consider a confidential informant rather than a witness. It is easy to lecture them about their responsibility to cooperate when you are on a flight home tomorrow. Do you really want to be responsible for that person being punished afterwards? While security and managing confidential sources need a manual and specialist advice in their own right, some essential basics to consider include:
- Advise the witness to limit the number of people who know they are meeting you.
  - Don't allow multiple sources to be present at the same interview/meeting.
  - Be conscious of the possibilities of physical and electronic surveillance when choosing venues.
  - Be careful about communication methods – unencrypted emails, mobile phones and hotel internet networks are all to be treated with caution. There are numerous encrypted email and phone packages available for free. Use them as a minimum.

75. More broadly, before every step you take in an investigation you must think through the security implications of what you are about to do. While few people would attempt to infiltrate a terrorist organisation or organised crime group without concern, it is easier to imagine oneself adopting a new persona and organising a meeting with a banker under false pretences. Outside of national law enforcement, which will have its own procedures normally, this type of activity should in general be avoided. It is unlikely to produce much useful information or material of evidential value as financial intermediaries are by nature cautious about sharing information. More pertinently, you may violate national laws. More worryingly, any such activity may attract very unwelcome attention and jeopardise your security or that of others. It also carries the risk of reputational damage.

What will the impact of your action be? Don't just focus on the security of the potential witness, but think more broadly: consider security of information, the risk to your investigation as a whole, your reputation and the reputation of your organisation. If there is a degree of risk, can it be mitigated? Does the potential gain from the step you are proposing outweigh the risks?

### How else might the evidence be used?

76. While the key question is always “how will this evidence help the case?”, there are some potential benefits to collecting evidence of assets, whether they provide evidence of the main crime or not. One of these is that the location of assets may indicate where the perpetrator might travel to and potentially be arrested. The other is that you might be able to have those assets seized.
77. The obvious purpose behind asset recovery is to restore money or property to the country from which it has been stolen or to pay it to victims as reparations. Asset seizure and recovery is not an easy process and can only be done through law enforcement or judicial action, but civil society can assist by identifying assets and highlighting the connection of their owners to it.
78. If asset seizure or recovery is contemplated, some key considerations are:
- Does the asset belong to the suspect? The ‘corporate veil’ involving nominee ownership and complex corporate structures can be difficult to pierce.
  - If you can prove ownership, is the property under the sole ownership of the suspects or are there others who might contest the seizure? If co-owners contest the seizure, they will be required to provide proof of ownership and resulting documents might be helpful in linking suspects to other assets..
  - If the evidence provided in investigative or court proceedings is false, this may allow local law enforcement to become involved to provide assistance or increase scrutiny of the suspects and their associates.

- Are there mortgages or other loans linked to the asset which might prevent liquidation? Can the asset be redeemed for a worthwhile sum?

79. A seizure or freezing of assets offers some advantages. Disrupting money flows may affect a suspect's ability to pay soldiers and purchase weapons, all of which in turn may disrupt their ability to orchestrate further international crimes. While potential perpetrators may feel confident that they can avoid prosecution domestically or even internationally, knowing their assets could be seized could in some circumstances act as a deterrent to further international crimes. It also offers the possibility of leverage over insider witnesses. Those close to power often enjoy its financial benefits: the foreign property, expensive schools, family shopping trips. They also enjoy the escape route offered by wealth if a regime falls or is defeated. Removing that can provide a powerful inducement to cooperation with an investigation. There are a number of publicly available guides to the fundamental skills required for asset tracing which go into far more detail than can be provided here.<sup>15</sup>

## Conclusion

80. The guidelines above are deliberately brief. They do not purport to answer every question. More detailed guidance on individual issues will follow in future annexes, as we encourage subject matter experts to contribute to and edit these guidelines to maintain their relevance. The real goal of these initial guidelines is to raise awareness of the *possibilities* offered by financial investigation; to educate a little; and finally to encourage. The investigation of international crimes is difficult, time-consuming and sometimes fruitless. If financial investigations give one more avenue to bring perpetrators to account in some form or another, then they should be tried. But, if you do, always remember:

- THINK CREATIVELY
- FOCUS CLEARLY
- PREPARE PROPERLY
- EXECUTE CAREFULLY

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<sup>15</sup> A good example is *Tracing Stolen Assets: A Practitioner's Handbook* (Basel Institute on Governance International Centre for Asset Recovery (2009))



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