Joint Contribution by Airwars and the Fénix Foundation Response to Call for Inputs: Documentation of Serious Human Rights Violations in the Context of Transitional Justice Processes

Relevant Question Addressed: Question 3 - Civil society initiatives to document serious human rights violations and international humanitarian law breaches in transitional contexts.

Submitted to: Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence

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Submitted by:

Airwars
https://airwars.org/
Contact: info@airwars.org

The Fénix Foundation
https://www.fenix.foundation/
Contact: info@fenix.foundation

1. Introduction

In the pursuit of transitional justice, the accurate documentation of grave human rights violations and serious breaches of international humanitarian law (IHL) is crucial for accountability, truth-seeking and memorialization. Transitional justice frameworks, rooted in international law, aim to address past atrocities through measures like prosecution, reparations, and institutional reform. At the core of these efforts is accountability - the process of holding perpetrators responsible and delivering justice to victims. This collaborative input by the Fénix Foundation and Airwars aims to provide insights into the critical role of civil society organizations in advancing accountability efforts.

Airwars, a UK-based NGO, specializes in documenting civilian harm during armed conflicts by monitoring, assessing and preserving civilian casualty claims resulting from explosive weapons. By leveraging transparent and replicable open-source methodologies, Airwars provides critical data to hold military and governmental actors accountable.

The Fénix Foundation, a Netherlands-based NGO, leverages technology to support international justice, peace, and accountability. With its focus on capacity building and enhancing the effective use of digitally derived evidence (DDE), Fénix operates at the intersection of documentation and legal standards. Fénix develops legal guidelines, tools, and training for practitioners in order to improve the understanding of the role of DDE in accountability efforts.

Together, these organizations illustrate how complementary roles of documentation and capacity-building initiatives can advance transitional justice. This input reflects on key lessons learned, challenges faced, and the critical interplay between documenting violations, transforming documentation into evidence, and building evidence into actionable justice.

2. Civil Society Initiatives for Documentation and Utilization

Airwars

Airwars gathers and analyses data on civilian harm during conflicts through transparent and replicable open-source practices. Using an incident-based approach, Airwars documents the civilian toll of explosive weapons use based on an internationally recognized casualty recording methodology.

Airwars' initiatives serve multiple purposes:

- **Accountability**: Pressuring governments and military entities to acknowledge and take responsibility for the human toll of their actions.
- **Prevention and protection**: Ensuring that measures to prevent human suffering, particularly amongst civilian populations, are centred in military policy and practice.
- **Justice and Advocacy**: Providing evidence and tools to individuals, communities, and international actors to pursue justice and accountability.

Airwars' open-source practices facilitate broad accessibility, enabling diverse stakeholders—from journalists to human rights advocates—to utilize its data, thus serving as a foundation to pursue various advocacy and accountability efforts.

Fénix Foundation

The Fénix Foundation aims to enhance the use of DDE in international and domestic justice processes by identifying guidelines and standards to help practitioners understand the use and role of DDE in accountability processes. In particular, through its Digital Evidence in Domestic Courts (DEDC) project, the Fénix Foundation analyses how DDE is used in domestic courts around the world to develop country-specific guidelines. The DEDC project builds on the Leiden Guidelines, which were developed at the Kalshoven-Gieskes Forum on International Humanitarian Law at Leiden University, with the involvement of two of Fénix's co-founders. The Leiden Guidelines aim to aid practitioners in using DDE effectively in international criminal courts.

The Foundation's core aims include:

- **Empower the lawyers of today** by developing guidelines and disseminating knowledge about DDE, including through innovative tools such as the DDE GPT chatbot;
- **Educate the lawyers of tomorrow** by supporting clinical legal training and education;
- **Secure the rule of law in the digital age** by engaging in capacity building through training, workshops, and resources in order to promote digital literacy and awareness of the value and challenges of digital evidence. This empowers practitioners to streamline the collection and analysis of digital evidence, enhancing documentation efforts and ensuring its effective use to support justice and accountability.

Through these initiatives, the Fénix Foundation integrates innovative approaches and cutting-edge tools to promote the effective use of digital evidence in both international and domestic justice processes, promoting accountability and the rule of law in the digital era.

3. Lessons Learned

Insights from Airwars

Airwars emphasizes transparency and public accessibility in data collection, fostering advocacy and building trust among stakeholders. However, reliance on open-source information presents challenges, including incomplete or conflicting testimonies. Key lessons include:

- **Data Verification**: Implementing structured verification processes are essential for ensuring accuracy. Transparent methodologies, including categorizations and documenting assumptions, help mitigate misinformation.
- **Handling Uncertainty**: Utilizing advanced categorization processes address discrepancies among sources, such as varying casualty numbers or conflicting reports on responsible parties. Communicating uncertainties transparently strengthens the credibility of documentation.
- **Combating Dis- and Misinformation**: In hostile online environments, transparent methods serve as a counter to mis and disinformation, ensuring data remains a reliable foundation for accountability.

Insights from Fénix Foundation

The Fénix Foundation's experience highlights the potential and critical importance of DDE, as well as the challenges that arise when digital documentation work is transformed into digital evidence to be used in a courtroom. Key lessons include:

- **Clear Guidelines:** Establishing clear guidelines from the outset would ensure that data collection aligns with the legal and evidentiary standards. Clear standards provide certainty, reduce the likelihood of evidence being excluded from accountability processes, and strengthen documentation efforts.
- **Capacity Building:** Empowering practitioners through training and resources is essential to ensure the maintenance of high standards and consistency in the collection, preservation, and use of digital evidence.
- **Incorporating Technology:** Creating advanced tools, such as an AI Chatbot answering questions on DDE based on the developed guidelines, improves the accessibility of information and facilitates the advancement of knowledge on DDE. It enables a more focused and time-effective approach to the topic, assisting practitioners in navigating individual questions more efficiently.

4. Obstacles Faced

Airwars Perspective

Airwars confronts significant challenges, including:

- **Operational Challenges:** Balancing the need for accuracy and consistency with the urgency of real-time monitoring and upholding responsiveness is a constant challenge.
- **Funding Constraints:** Adequate funding is crucial for scaling documentation efforts; however, especially during escalating conflicts, funding rarely matches the heightened demands. During the first month of the Gaza war, Airwars documented four times as many fatal incidents as in its previous highest-casualty month; however, this surge was not matched by increased support or coordination from funding bodies, limiting the ability to sustainably document incidents and meet the crisis demands effectively.
- **Impact on Local Organizations:** The intensification of conflict often forces essential local organizations to scale back their operations, further complicating documentation efforts. For instance, since the war in Gaza, organizations like the Palestinian Center for Human Rights and Al Mezan reduced programming to support their staff and families amidst the escalating violence.

Fénix Foundation Perspective

The Fénix Foundation encounters distinct barriers, such as:

- **Diversity of Standards**: The lack of coherent and unified requirements and variations in digital evidence standards across jurisdictions complicate the creation of guidelines.
- **Funding Limitations:** While grants and partnerships enable the development of innovative tools like the DDE GPT Project, long-term projects often suffer from limited funding. Limited financial resources limit the scope and efficiency of projects and affect the sustainability of its initiatives.
- **Capacity and Expertise:** Differences in capacity and expertise among practitioners hinder the effective documentation and use of DDE. Rapid technological advancements further widen these gaps, making it difficult to adapt to emerging challenges.

5. Recommendations

To enhance the efficacy of civil society documentation efforts and ensure the optimal utilization of documentation, we propose:

1. **Strengthening State Support:** Encourage states to provide robust support for civil society initiatives while ensuring their operational independence.
2. **Develop Long-term Partnerships:** Foster sustained partnerships with international organizations and donors to ensure the continuity and scalability of documentation efforts. Long-term funding commitments are essential for maintaining and expanding initiatives.
3. **Promoting Collaboration Across Sectors:** Encourage knowledge sharing among NGOs, governments, and international bodies and across different sectors, such as between law and technology**.** Pooling expertise and resources can lead to more comprehensive and impactful documentation efforts.
4. **Strengthen the Role of Digital Evidence:** Advocate for the integration of digital evidence in transitional justice frameworks and accountability mechanisms at both national and international levels. Clear guidelines and standardized practices will enhance the reliability and admissibility of digital evidence in legal processes.

6. Conclusion

The documentation of serious human rights violations and IHL breaches is a critical element in transitional justice processes. Civil society organizations such as Airwars and the Fénix Foundation are instrumental in these efforts, facilitating the effective collection, preservation, and utilization of evidence, thereby supporting accountability, truth-seeking, and memorialization.

Airwars exemplifies the value of transparent and systematic data documentation, while the Fénix Foundation bridges the gap between documentation and legal standards by equipping practitioners and legal professionals with the knowledge and tools necessary to understand the evidentiary value of data.

As we reaffirm the essential role of civil society in these endeavours, we call for increased support, collaboration, and recognition from states and international institutions to strengthen these initiatives. Sustained funding, cross-sector collaboration, and the development of standardized practices for digital evidence are vital. By fostering these conditions, civil society organizations can continue to play a pivotal role in achieving justice, accountability, and truth in transitional contexts.