RECONSTRUCTING THE TRANSITIONAL JUSTICE PARADIGM FROM THE GROUND UP THROUGH A FOCUS ON DOCUMENTATION

SUBMISSION OF INPUT FOR THE THEMATIC REPORT ON 'DOCUMENTATION OF SERIOUS HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF TRANSITIONAL JUSTICE PROCESSES' BY THE SPECIAL RAPPORTEUR ON TRUTH, JUSTICE AND REPARATION

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This memo provides a brief overview of the research undertaken by the Justice Visions research Team at Ghent University (ERC-CoG-101171170) and how it could inspire the forthcoming UNSR report on documentation.

Documentation is not a transitional justice mechanism in its own right. Yet almost any transitional justice initiative depends on accurate and comprehensive documentation of violations of IHRL and IHL. As such, documentation and documentary practices underpin and cut across each one of the established pillars of transitional justice. Yet despite their centrality, they are currently mostly seen as the helpmeet of other formal transitional justice mechanisms.

To date, documentation has received limited attention in its own right. It has mostly been researched in the contexts of criminal accountability, but little is understood about how documentation shapes transitional justice efforts at a more fundamental level. Limited attention has for example been paid to what counts as documentation across various transitional justice initiatives, how different kinds of documentary practices (by state and non-state actors alike) may become mutually reinforcing, or how a focus on documentation may serve as a practical way for overcoming the sometimes siloed nature of transitional justice efforts.

At the same time, the importance of documentation is steadily growing because of, amongst many other things, the availability of new technologies and new methods for gathering and analyzing data. These new opportunities also bring to the fore new justice actors, who often develop innovative initiatives, and ascribe ambitious objectives to their documentary practices that go well beyond the objectives of standardized transitional justice processes (like countering ongoing violence or disrupting structural injustice).

This memo starts from this central importance of, but limited attention for, documentation and highlights how taking documentation more seriously as an organizing principles of transitional justice helps to (a) acknowledge the agency of civil society actors, (b) bring the paradigm of transitional justice closer in line with its increased presence in so-called ‘aparadigmatic’ contexts where there has been no political transition, and (c) tap into innovation happening in this realm to futureproof transitional justice more generally. It also offers a limited number of examples and highlights key takeaways.

DOCUMENTATION AND THE IMPORTANT ROLE OF CIVIL SOCIETY

Documentation and documentary practices often play a central role in justice efforts installed by civil society organizations, grassroots collectives and victim groups, who seek justice prior to or following a peace agreement or political transition.

On the one hand this is because documentation is arguably the least state-centric realm of transitional justice, which creates opportunities and openings for civil society actors to play a meaningful and leading role in struggles for justice.

On the other hand, the availability of new sources and the development of new technologies for analyzing these sources at an unseen scale create new opportunities. This includes the wide availability of cell phone footage, satellite imaging or OSINT technologies, for example, all of which have decentralized and democratized opportunities for documenting violations of IHL and IHRL. This has contributed to a boom in 'documentation' of human rights violations and violations of IHL. Beyond these technical evolutions, there has been growing attention for approaches like community-driven archival projects. An example of this is a community-driven documentation initiative in the Africatown (USA) which documents genealogies and the scope of the loss of descendant communities to push for an encompassing reparations program. In addition, it is also worth mentioning that also artists for example, are sometimes using their practice as a means to document experiences of harm or working with forensic documentation to translate the information contained in this to a wider audience.

While states continue to be primary focus for ensuring accountability and justice more generally, these evolutions foreground the important role played by civil society. The act of documenting human rights violations is crucial to facilitate future accountability and redress work, but also has an inherent value for many of these civil society actors, because of the ways in which it validates their agency. There is an empowering potential in the way in which these documentary practices recast dynamics of power and agency, and are often developed as part of a strategy to reach more ambitious objectives.

Paying more attention to the important role of documentation and documentary practices in transitional justice can therefore be seen as a way to re-center the debate on the agentic and creative practices and priorities of this broad range of grassroots justice actors who are 'doing transitional justice' in practice, and to systematically acknowledge these actors as central figures in the wider transitional justice architecture.

DOCUMENTATION AND THE EXPANSION OF TRANSITIONAL JUSTICE TO "APARADIGMATIC" CONTEXTS

Despite rounded critiques of transitional justice, TJ language and initiatives seem to be flourishing and ever-expanding. They are notably finding their way into an increasingly broad and diverse range of struggles, including in so-called 'aparadigmatic' cases. These are contexts where transitional justice is not implemented as part of a political transition or peace accords, but to address very different kinds of violent legacies and ongoing violence. These contexts typically have little in common with those in which the paradigm emerged. Examples are contexts of protracted conflict or democracies dealing with legacies of historical injustices, such as colonialism or slavery. In these contexts, there is no formal or external push for standardized transitional justice (e.g. by the United Nations or donors). Instead, the process typically emerges in a more bottom-up, context-sensitive way because of an interest and belief in the practices and language of transitional justice – often on the side of grassroots actors mobilizing for justice. As such, grassroots justice actors in these contexts are increasingly and explicitly turning to transitional justice language and practices to resist injustices and disrupt dynamics and structures contributing to harm.

This expansion to an increasingly wide range of cases that defy the foundational assumptions of the paradigm, underlines transitional justice's continued practical relevance, but it also raises questions about transitional justice's foundations and warrants a rethinking of what the building blocks of transitional justice are. This has so far not happened systematically.

Documentation can be a generative starting point for engaging in this reconstruction because of its centrality in both formal and informal transitional justice initiatives, but also because of the innovation happening in this realm, as the next section shows.

INNOVATION IN THE REALM OF DOCUMENTATION

Earlier work undertaken by the Justice Visions research team has shown that a significant amount of innovation and experimentation is happening in the realm of documentation.

On the one hand, the growing number of justice actors engaging in documentary practice, and the wide variety of contexts in which they do so, often 'against the odds', typically means that existing mechanisms need to be adapted or re-imagined to fit these diverse justice struggles and contexts. Their normative objectives, too, often go beyond those typically assigned to paradigmatic transitional justice (such as accountability, non-recurrence and redress).

On the other hand, this innovation and experimentation can be understood in light of the absence of standardized transitional justice programs (structured around five pillars of truth, (criminal) justice, repair, non-recurrence and memorialization). In these struggles that do not follow the parameters of the reigning transitional justice paradigm, and without there being a push by institutional transitional justice actors (like governmental actors, UN bodies, or the International Center for Transitional Justice), there is typically more room to experiment and innovate.

The need and the opportunity for innovation mean that grassroots justice actors are re-imagining a new transitional justice practice from the ground up. These innovations, like the abovementioned expansion of transitional justice, contribute to a dynamic and expanding practice. At the same time, they, too, challenge the foundations of transitional justice, and require rethinking TJ's modalities and objectives.

It is therefore crucial to identify how practical innovations happening in the realm of documentation, which envision a better alignment of justice initiatives with local contexts and current practices, may also feed into other transitional justice practices, and allow for the futureproofing and contextualization of the oft-critiqued standardized mechanisms and practices of transitional justice.

EXAMPLES

There are several contexts where documentary initiatives are being undertaken that could play the role of connecting and rethinking existing transitional justice practices. A necessarily limited number of examples that could all be considered 'aparadigmatic', is briefly introduced here.

In **Syria**, prior to the ousting of Assed on 8 December 2025, for example, significant innovation in the domain of documentation had been happening, and a broad range of objectives has been pursued through the transitional justice paradigm. Here, the language and tools of transitional justice were mobilized over a decade ago, following protests against the Assad regime, and they continued to be relevant, even in what seemed to be an entrenched non-transition. Moreover, the Syrian conflict is one of the most documented ones in modern history (van Schaak 2020), which is a direct consequence of the extent to which a broad range of justice actors has prioritized documentary practices since the start of the conflict (Aboueldahab 2018). Moreover, since access to the terrain was often impossible, many justice actors have developed innovative ways of documenting, for example, through the use of digital commons (like mnemonic.org)

(Kayyali 2022) or artistic practices (Herremans & Destrooper 2021; 2022). In addition, because formal transitional justice processes were not possible, many of these actors have been re-imagining the aim of documentation (Herremans 2023).

The **United States** is a case in which transitional justice has long been invoked in a piecemeal fashion to deal with legacies of settler colonialism and slavery, but where there has been a proliferation of initiatives in the past five years (e.g. redressnetwork.org). This proliferation has been pushed for by grassroots actors, like descendant communities. It suggests that transitional justice decisively moved to the center of the debate about dealing with legacies of historical injustices. Moreover, documentary practices play a central role in these struggles. It is often part of a transformative agenda.

Belgium is one instance of a trend, which started around Summer 2020, whereby a number of European countries established truth initiatives to deal with their overseas (in the case of Belgium) and settler (in Scandinavian countries) colonial pasts. This boom in formal truth initiatives complemented decades of civil society activism related to these violent legacies. In these contexts, too, transitional justice language and practices moved to the Centre of the debate about how to deal with historical injustices. Because of their recent emergence, these initiatives have been underexamined in transitional justice literature, and especially the relation between these formal initiatives and long- standing civil society activism has been underexamined. Moreover, documentation is a constitutive element of these processes, and grassroots actors, like diaspora groups, often ascribe ambitious objectives to documentary practices (Destrooper 2022; 2023a).

In the **Philippines** a range of transitional justice initiatives were installed to deal with the legacy of the Marcos dictatorship. Even though the language of transitional justice was sometimes implicit back then, it decisively moved to the center of the justice conversation in the mid-2010s. This happened in the context of struggles mostly unrelated to the Marcos dictatorship, such as peace talks in Mindanao or extra-judicial killings by the Duterte regime. Innovative ways of documenting, including through artistic practice, played an important role in pursuing a broad range of objectives (Destrooper 2023d; 2023c; 2023b).

In **Peru** Indigenous groups are proposing a truth commission on human rights violations taking place in the context of resource extraction in the Amazon (Kerremans & Destrooper 2023). Documentation is a constitutive element of this proposal, especially documentary practices rooted in indigenous epistemologies and serving a broader justice agenda.

These examples underline the need to:

- Foreground documentation as a constitutive component of any transitional justice effort
- Map the nature of innovation in the domain of documentation
- Map how innovation in the realm of documentation affects other modalities of transitional justice

TO CONCLUDE

Documentation is like a spider in the web of many informal transitional justice initiatives as well as undergirding all formal transitional justice pillars. This makes it a good starting point for reassessing the pillarized model, which seems increasingly ill-equipped to capture the dynamics of contemporary transitional justice practice. Focusing on documentation facilitates a more ecosystemic understanding of justice struggles, which acknowledges transitional justice's embeddedness in broader struggles.

Making documentation and documentary practices the focal point of transitional justice practice offers many opportunities for futureproofing the paradigm by establishing links between existing pillars and initiatives, foregrounding the protagonism of civil society in justice struggles, moving the paradigm closer to its currently dominant usage in so-called 'aparadigmatic' contexts, and understanding transitional justice as part of a broader justice struggle.

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