Atrocity's Archives: The Role of Archives in Transitional Justice

Guidance Note

This workshop brought into conversation academics from Europe and archive professionals from a range of transition countries, globally, in order to discuss relevant differences and commonalities in their respective political and social contexts and to exchange on the struggle to advance and promote the role of archives in transitional justice processes. There is a pressing need to discuss these issues because at present, we know little about how different types of archives such as court archives, truth and reconciliation archives, survivor testimony archives, (secret) police or state archives impact on the different stages in a transitional justice process or on proclaimed goals such as reconciliation, forgiveness or healing. This guidance note is a first step to kick-start the conversation about the role of archives in transitional justice. The project was carried out in collaboration with swisspeace and the Stasi Records Archive. It was generously funded by the UK based Economic and Social Research Council's Impact Acceleration Account at the University of Oxford and the Leverhulme Trust Fund.

Executive Summary

Archives can play multiple and complex roles in the different stages of a transitional justice process. The workshop "Atrocity's Archives: The Role of Archives in Transitional Justice" brought together archive practitioners and researchers to discuss these different roles of archives in transitional justice and to learn from each other's experiences and contexts. The following highlights some of the roles of archives that were discussed. The archive as:

- A site of power
- A site of societal contestation
- A site of knowledge production
- A site of memory-making
- A site of education (on human rights abuses and the importance of fighting impunity)
- A site of and for academic research
- An opportunity to include different voices (if not a site of power)
- A tool in furthering specific transitional justice mechanisms (such as the use of archives for the evidentiary foundation in criminal trials)
- A complementary way of dealing with the past, in conjunction with parallel or succeeding transitional justice mechanisms
- A symbolic way of preserving and furthering accountability measures
- Symbolic institutions to pay respect to victims of atrocities
- Advocates to support the cause of human rights defenders
- Advocates of victims
- Repositories of memories over time

The discussion further revealed some essential best practices and general issues to consider that are summarised below:

- A definition of human rights archives is useful to ensure their protection, preservation and recognition. It needs to be precise without lending itself to deliberately restrictive interpretations.
- Freedom of Information requests can be a powerful tool to gain access to secret and unpublished documents.
- Vertical and horizontal networks of human rights archives are needed to provide international support structures.
- An archival tradition through awaren, now ICRCaising of the importance of archives should be cultivated.
- Using different degrees of decentralisation can ensure accessibility and ownership of the memory-making process.
- Digitisation should not be perceived as the gold standard of archival practice. It is important to be aware of the advantages and disadvantages digitised documents bring with them.
- The protection of archives through legal regulation is an important consideration in the early phase of establishing archives but also throughout their whole lifespan.
- Human Rights (education) can play an important role in legitimising the establishment, protection and preservation of archives.
- Archives never tell the "whole story" and always entail gaps; they might represent truths, in plural but never the truth in singular.

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Workshop Summary & Conclusion

This document aims to provide an overview of the discussions held at the international knowledge exchange workshop "Atrocity's Archives: The Role of Archives in Transitional Justice" on 27th and 28th March 2018 at the University of Oxford. This summary reflects the main points of discussion that emerged during the workshop.

On the nature of archives

The way archives are conceptualised - be it formally or in people's minds - affects what contributions they can make and are expected to make to transitional justice and dealing with the past processes[1]. What stands out is that the question of **what** constitutes a human rights archive escapes a simple definition. There are different legal and policy frameworks both nationally and internationally that provide guidance on this, but there is no general agreement among practitioners and academics on the definition and nature of a human rights archives. It is in the circumstance that created it or in the decision of who owns it or who uses it or in the eye of the beholder that ascribes meaning to it.

Other points discussed under this heading include:

- **In some instances (state) archives represent how an institution wants to be remembered. In others, archives help uncover aspects of an institution that it did not want to be made public.** For a long time the value of (state) archives was seen in preserving memory and documentation speaking to power and influence. Whilst this is not always the case, it is relevant to keep in mind this limitation when using state archives to reconstruct a "full" picture of the past. One way of constructing a broader picture is the inclusion of the perspective of those without power or influence and thus creating an archive like the Prison Memory Archive in Northern Ireland. Another way would be the inclusion of more personal archives like the ones united under the roof of Memoria Abierta in Argentina holding collections of the desaparecidos and of the efforts of their families trying to find them. One central factor in using archives for transitional justice can then be seen in including or documenting alternative perspectives. At the same time they can also offer hidden perspectives or judicial perspectives on atrocities like archives of tribunals and trials such as for example those of the International Criminal Tribunal for Rwanda or the Former Yugoslavia. Similarly, archives sometimes represent the "crème de la crème" of documents, implying these are a representation of what was considered worthy to keep and maintain by criteria not conducive to the TJ process. In yet other cases, archives represent nearly complete record collections that were never meant to be public, like the Stasi Records Archive, an archive

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[1] The United Nations (UN) defines transitional justice as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof." (UN document S/2004/616, The rule of law and transitional justice in conflict and post-conflict societies, available at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/2004/616&Lang=E). Dealing with the past refers to the processes addressing the rights of victims and societies as a whole to truth, justice, reparations and guarantees of non-recurrence in the aftermath of grave human rights violations and breaches of international humanitarian law. For the purposes of this summary document the terms transitional justice and dealing with the past will be used interchangeably assuming a broad understanding of the transitional justice concept.

holding state secrets that then was turned on its head in defining it as an archive documenting human rights violations.

- **Archives are not neutral per se**. Whilst many archives strive for neutrality by providing access to all groups of society, by being open to as many views as possible and by broadening their aims, outreach and purpose, other archives explicitly acknowledge their partiality and focus rather on how to **practice partiality with often the goal of advocacy for victims** like DOCUMENTA in Croatia. This partiality comes about in a myriad of ways, for example through retention schedules and archiving decisions, but also through communication strategies or access policies that an archive pursues as well as the (educational) materials it might produce. Whilst all archives agree to strive for as broad and diverse a use and access to their records as possible, doing so is no guarantee for neutrality; ultimately socio-political realities and the specific context of an archive shape its ability to be neutral.
- Archives can be seen as the **embodiment of a fight against impunity** especially in the context of transitional justice. Sometimes they are created to address the ignorance and the will to forget past injustices in an on-going conflict situation like the Akevot Institute for Israeli-Palestinian Conflict Research. They are not only a very practical tool and basis for dealing with the past, but they also have a symbolic role in aiding, preserving and representing the search for accountability, "truths" and acknowledgement. The Stasi Records Archive serves this role as a symbolic mirror to the injustices of the communist past that were nearly impossible to address successfully through the rule of law.
- Another debate about definitions at the workshop referred to the nature of information in archival documents. Whilst the documents themselves represent **snapshots of a particular moment in time**, at a particular institution or with regard to a particular process or person(s), archives as accumulation of such snapshots do a lot more than that. They are **representations of the evolution of a system**, the development of a specific institution in relation to its context and surroundings, but also in the way it developed internally, e.g. with regards to their management practices, organizational structure or self-understanding. Archives can thus be the foundation for understanding process, context and actors, but they can, if used out of context and for a particular agenda, also be misused. In such cases, the past is misrepresented by disassociating information and records from their archival as well as from their originating context.

On the use of archives in transitional justice

Often, archives are used as **a tool for transitional justice**. In and of themselves they are no guarantee for non-recurrence, but as they are used by a variety of actors in different transitional justice processes and for various mechanisms they contribute to raising awareness of the **right of victims to non-recurrence**. Therefore, archives are also a way of bringing the past into the present, and of shaping the future through **righting the wrongs of the past**. However, archives are also used to address and **challenge on-going injustices** such as social inequality or corruption as they are patient repositories of information open to the questions of many.

Notably, many of the challenges that "human rights archives" face, mirror practical and conceptual challenges in transitional justice, more broadly. These relate, among others, to questions of ownership, locality or distance to the place of the crimes, accessibility and debates around the tension between "local" and "international" approaches, notions of imperialism implicit in the export of certain models from the global North, as well as the relationship with time, which will be explored further below.

In practical terms archives have been used for transitional justice in the following ways:

- Archives can be a **tool to create dialogue**, by providing a basis for discussion and even for disputing one-sided interpretations of the past. Archives have been used to create dialogue between victims and perpetrators, between former adversaries (at a political level), in the public, and elsewhere. Archives are additionally destined to be in a long-term discourse with the collective memory of an atrocity or period of injustice as it changes over generations. Academics have an important role to play here as they can open up dialogue and conversation by asking questions that have not been answered yet, and which perhaps have **not been asked yet**, either.
- Archives are often used as a **source of evidence**, e.g. for trials, truth commissions, vetting or reparation claims as was the case with Memoria Abierta in Argentina and the various archives in Chile that were used in criminal trials. In addition, The Lawyers for Justice in Libya archive's aim is precisely to collect evidence for possible future transitional justice measures in the country. The idea of documenting and preserving is superseding in this example any yet concrete context of (legal) usage.
- Artistic archives can be used to **inspire creativity** for on-going struggles against injustice. The South African History Archive has used posters and images from the era of anti-Apartheid struggles to conduct research on "the embodied practice of resistance" and resistance art in South Africa more generally.
- Demonstrating the impact and consequences of injustice in the past is used **to fight injustice in the present**, for example in attempts to counter on-going secrecy in South Africa by using the documentation of the past as mirror to contemporary issues, but also by using access to the documents of the national Truth and Reconciliation Commission (1996-1998) and by publishing them as an inspiration to demand access to contemporary government documents and thereby bridging past and present.
- Archives are used for **advocacy role** with the aim of furthering justice and fighting impunity, which is for instance one of the aims of the Akevot archive in Israel and of Memoria Abierta in Argentina.
- Archives are a **source in and of academic research**. It has been indicated that the archives of international organisations are often used more frequently by academics for research purposes, rather than by TJ-practitioners or personnel of TJ-mechanisms for practical guidance. However, the practical difficulties of accessing international organisations' archives have also been highlighted. These relate to distance and location, restrictive access policies, non-transparent archiving practices and a lack of publicly available information on the records, etc.
- Archives can in some cases help to establish **counter-narratives**. Archives as repositories of certain types of information provide the basis for the creation of narratives. Different archives are therefore the basis for producing different truths about the past (and the present).
- Archives are used for **education** about past injustices fulfilling a need for respect for the victims and as a foundation for non-recurrence. They are used in exhibitions and made accessible to a broader public, but educational programmes are also produced on the basis of archival material and by archival institutions themselves.
- Archives can in and of themselves be a symbolic remembrance of the injustices of the past, like the German Stasi Records Archive or the Sigurimi Authority in Albania who continue the dialogue about the activities of the secret police through their work. For victims it is important to keep the dialogue going.

On strategies to mitigate challenges and risks

Some of the main challenges that were discussed in the workshop include limiting political contexts, insufficient financial means, a lack of awareness on the importance of record-keeping and archival functions. Different archives have found various strategies to alleviate at least some of these challenges:

Protecting archives through the law

- **Legal protection** of archival institutions as well as of their records has to be thought of from the very start. Legal protection should be a continued part of the institution's strategy throughout its lifespan. This requires ensuring that personnel with suitable expertise is recruited from the outset and given a voice in decision-making processes.
- The mere **existence of laws** supporting or limiting the preservation of records or the access to archives **is not sufficient**. As in any other area, **laws need to be known and implemented** to be effective.
- **Law can protect archives or undermine them**. It can ensure preservation of and access to archives, but it can also be designed or (mis-) used to undermine the role of an archive. In the Colombian case, different laws for the national archive and the [Centro Nacional de Memoria Histórica](#) whose archive should document the various perspectives on the civil war has created unintended competition between the two.

Guaranteeing and increasing access to archives and documents

- **Knowledge and use of information laws** can be a tool for archives to obtain previously confidential or non-public records and in turn to expand their collections. Requests based on such laws (often freedom of information acts) may be difficult, but there have been many success cases as for instance the non-governmental [National Security Archive](#) in the United States or SAHA in South Africa demonstrate. A strategy for access in this field is a **high quantity** of requests, as well as **persistence** in terms of renewing requests and appealing rejections. However, international organisations, in particular judicial institutions, often have very tight restrictions regarding accessibility. This in turn can impact on **what material** can be made public and on the timespan – often decades - in which documents become available. In this sense it is very important that these institutions **engage in dialogue with social and political groups** to manage expectations and to be clear about the purpose of the archive. Potentially, lobbying efforts to open these archives sooner or to a broader audience can be attempted.
- Another strategy to challenge secrecy and address government retention is to **set precedents through "low-hanging fruit"**. Governments may be more likely to release documents relating to the past than those relating to on-going conflicts and those that are of immediate relevance. Once a legal precedent is set, however, this can be used to ensure the release of more recent documents and records.
- The **human-rights related value** and content of specific documents and archives can be used in legal procedures in certain contexts to enforce access to such materials or to force governments to release such materials to the public.
- There is a need for greater international awareness to **safeguard records** of this nature as the Croatian case demonstrates where some international bodies such as the OSCE destroyed their documentation of human rights violations at the end of their mandate.

- **Digitization** is both a tool for **empowerment** and for **disruption**. Whilst digitization can "unleash the power of archives" and can make an important contribution to transitional justice archives, various challenges remain: digitization would be required on a large scale to actually improve cross-checking and verification mechanisms; high storage costs; the rapid outdating and overhaul of technology requiring a constant awareness and planning for new technology as well as the continuous replacement of storage solutions; security challenges and the costly authentication and protection of data, and the like. Digitization can also increase the value of documents. However, access rules and practicalities remain a problem for digital collections. It bears the risk of facilitating an information overload. In summary, digitization should not be seen as an unproblematic "catch-all solution" to archival issues. It sometimes has the connotation of a gold standard of archival practice and whilst digitization can make an important contribution to transitional justice archives (improved cross-checking, remote access, etc.), the practical challenges highlighted above need to be enquired and thought through before implementing a digitisation process.

Navigating integrity, origin and use of an archive

- In using archives for transitional justice, the **integrity of the original structure and content** and the **meaning-creating relevance of the originating context** need to be kept in mind.
- Different archives have used **degrees of decentralisation** to ensure the preservation and safety of an archive but also to facilitate access and democratise ownership of the memory-making process. For example, archives can be "owned" by the establishing/collecting organisation, but a safety copy is handed over to an umbrella organisation or to an outside institution. Alternatively, umbrella organisations might only provide tools to improve and facilitate access to an archive, without hosting or owning any of the data itself (or even back-up copies) as is the case with Memoria Abierta in Argentina. It provides the roof to eight independent human rights archives from victims' perspectives and strengthens their position through its role as a central voice for them. In other cases, individuals are trained how to collect and to preserve their personal archives with no institution having any access to or control over this material. This strategy might be particularly important in the work with indigenous archives that are not necessarily designed to be systematically recorded or centrally stored. In the Colombian case indigenous communities feel that Mother Earth is the primary victim of violence. How can state archives even begin to address such a concept that is foreign to mainstream conflict narratives, and that is embedded in a context of oral storytelling that opposes recording – a process that is however central to archiving. The term "ephemeral archives" was used by SAHA to describe such oral history or living archives.

Ensuring preservation of an archive

- Archiving and establishing archives require **early action**. Their use, access, ownership, decision-making procedures, classification, retention schemes and all other parameters have to be decided as early as possible in the process.
- The **priority** should always be to **keep records and to preserve an archive**. Questions of use, access and other technical matters can always be discussed at a later point. But, what doesn't exist cannot be used.
- New archives face numerous challenges and can benefit from support of established archives. There are different scenarios for different types of archives. The Sigurimi Authority' fight as a rather new state archive is different from the one of non-governmental organisations such as Akevot's in Israel. Aligning one's effort with a national archive can help or harm one's own goals as

is the case sometimes with international support or individual donor support. Who you align yourself with greatly impacts on the perception of the archive and can potentially undermine its credibility. One challenge is sustainability of funding, or lack of long-term funding. For fledgling archives funding opportunities are often short-term (1-2 years). This contradicts the need for long-term planning that archives have, in turn creating major challenges for the longevity of archival structures and activities. In addition, as new archives grow the importance of ensuring robust security policies, particularly for "born digital" documents, must be a key consideration.

- **Archiving of an archive** or of records of an archive is becoming **increasingly important**. Whilst it is generally acknowledged that not every document and record can always be kept, **what is not being kept or what gets lost, needs to be documented.** In addition, if an archive is considered fundamentally important to a transitional justice process there is a need to document its effect on that process.
- In order to increase record-keeping in various institutions, archiving needs to become a **core function** of these institutions. An **archival tradition** needs to be established. This might require lobbying and might be a long-term process that involves shifts in current debates and public opinion.

Complementarity of archives

- Limited official records can be **complemented through the use of unofficial archives** as an additional source of evidence or information.
- The need for more interaction and accessibility across different archives relating to the same post-conflict context can help societies gain a fuller understanding of the atrocities and give victims better access to all documents relating to their suffering.

"It needs more than just us"

- An archive in itself is **not a guarantee of non-recurrence** and neither can it be a contribution to justice and memory, without working hand in hand with others such as political stakeholders, non-governmental partners and civil society, and citizens.
- **Outreach activities in and with communities** have been identified as an important **strategy to increase knowledge** about the archive and its work (which can help the longevity of an archive if communal support is given) and might increase its legitimacy. Outreach also helps an archive to spread its message.
- Building horizontal and vertical **networks** (with human rights organisations, with other archives) as a funding security strategy is important. Currently, personal contacts and trust play an important role in networks, which brings with it the problem that the base for consultation is fairly small. A **network of human rights archives** seems important in order to increase exchange, ensure regular meetings, and provide a support structure to the many archives that find themselves time and again in a dire situation.

On conceptual issues

Archives and time

In many ways archives seem to have a special relationship with time, both conceptually and in technical and practical terms with regard to their establishment, preservation, perception and use. For example, different generations might perceive archives and their role differently, but they can also use archives for

different transitional justice measures or decoupled dealing with the past processes, depending on how close or how far removed they are from the past in a sense of time.

Archives also require a special amount of advance planning, with the particular challenge of having to plan for uncertainty, thus requiring particular, long-term foresight. Important here is to resolve the tension between temporary institutions and their long-term task to permanently preserve an archive. Lastly, like other transitional justice mechanisms, archives are located between the past and the future.

Archives and space

Similarly, archives have a special relationship with space. They can redefine, reconstitute and re-occupy space, for example by locating an archive at a former site of decision-making or of atrocity. But archives can also help redefine space hitherto by documenting the exact ways in which places and sites were used as part of systematic violence.

Lastly, archives can be a means of reclaiming space. Through the involvement of victims and a participatory approach to creating an archive, victims can potentially reclaim a site of atrocity as a space of survival and agency, or even reconciliation.

Archives and orality

Archives are often based on the assumption that in order to preserve events and actions they should be put into writing, or at the very least recorded. This can create tension in cases where groups favour oral preservation of culture and memory, as is the case with numerous indigenous groups, for example in Colombia. Exploring and addressing this tension, which also holds great potential for more flexible, decentralised and creative approaches to archiving, needs further attention.

Conclusion

The above summary of a two-day discussion on the role of archives in transitional justice is certainly not exhausted with this document. However it demonstrates the vast ground of political, societal, international and conceptual issues that need to be taken into account when developing a typology of archives and guiding principles for those active in the establishment or running of archives. In general, the workshop revealed that different types of archives such as state-led, civil society archives or international archives play different roles in transitional justice. However, this needs further unpacking and detailed research into the different types of archives, the stages of a TJ-process and the societal and political context and the interplay between these factors. We hope the workshop and this guidance note will kick-off more in depth discussions and reflections on the role of archives in transitional justice processes.

Appendix: list of participants

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Geraldine Frieslaar, South African History Archive (SAHA), Johannesburg, South Africa

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Romain Ledauphin, formerly UN Mechanism for International Tribunals, Arusha, Tanzania and at time of workshop with Committee on Missing Persons in Cyprus since, now ICRC

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