

**Bearing Witness:
Testimony and Transitional
Justice in the Aftermath of Mass Violence**

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Abstract

The act of telling one's story in a post-conflict setting—whether as a witness testifying in a criminal trial, recounting events before a truth commission, or speaking up at a community meeting—demands resolution and courage. This chapter explores the role testimony plays in transitional justice processes after mass violence. Psychological, social, and political factors, as well as the nature of the violence itself, influence witness testimony and memorialisation. Collective memories of violence evolve as societies pass through processes of social reconstruction and community reckoning. The chapter provides guidance to court investigators and researchers about the complexities of survivors' testimonies and the risks and ethical obligations of doing fieldwork in post-conflict settings.

Introduction: Testimony and Transitional Justice

A central question for witnesses to atrocity is whether or not to tell their stories at all. Testifying often forces people to come to terms with their own actions during conflict, as well as how they may have failed to protect others, especially family members and members of their communities. The psychological, social, and political consequences for people who speak out can be overwhelming and fraught with fear and uncertainty. Public

testimony often places personal relationships and, at times, personal safety at risk (Meernik and King 2020). Yet empirical research shows that many witnesses feel compelled to speak, not only for themselves but also on behalf of lost loved ones and their communities (Stover 2005, 126-127). Many survivors of mass violence also reject the notion that they should move on and forget the past and attend to other problems and concerns (Weinstein 2011). Instead, they feel their experiences and those of other survivors should be documented and memorialised for future generations (Gready 2008, 41-48).

Our focus here is on survivors, witnesses, and perpetrators who provide testimony about their experiences in public forums designed to advance accountability and justice. However, survivors are often also witnesses to atrocity. Some are perpetrators as well. Typologies can shift during conflicts. Throughout this chapter we refer to individuals who have experienced international crimes or human rights violations as either “survivors” or “victims.” The term *victim* implies the person concerned is not responsible for his or her misfortune and directs attention to perpetrators and the damage they have inflicted on others. Some scholars, however, argue the term robs individuals of their agency and oversimplifies what are essentially complex personal and social losses (Matua 2002). Some prefer *survivor*, a term indicating resilience and strength in overcoming adversity. We have chosen to use both terms interchangeably to underscore the victimisation of individuals and also their struggle to cope with psychological and material harms. We use the term witness to include witnesses for both the defence and prosecution in criminal trials, as well as individuals who provide testimony before truth commissions and other transitional justice mechanisms. Finally, we use the term

perpetrator for people who have committed crimes or human rights offences. However, we recognise that the line between perpetrators and victims shifts during conflicts (Hillburg 1993). Perpetrator typologies often fail to capture the complexities of collective violence (Williams 2018, 17-35; Busch 2018, 27-28). In this chapter, we do not advance a neutral or objective statement on testimony in transitional justice contexts, but argue that testimony in times of political transformation reflects evolving psychological, social, and institutional changes. For this reason, scholars and transitional justice practitioners must be aware of the research methods used to collect and analyse witness testimony and the processes by which it is presented to others. Empirical findings offer valuable, if contingent, insights into the meanings of testimony for witnesses and transitional societies.

What Is Transitional Justice?

Transitional justice refers to the ways that countries address human rights violations so numerous and systematic that the ordinary legal system cannot provide an adequate response (Teitel 2000; McEvoy and Mallinder 2016). The term emerged in the 1980s and 1990s during the transition from military to civilian rule in several Central and South American countries and soon spread throughout the world largely in response to the demands for justice by survivors, their family members, and local human rights activists. Transitional justice is based on the premise that “[t]he many problems that flow from past abuses are often too complex to be solved by any one action.” (International Center for Transitional Justice 2020). To overcome this dilemma, transitional justice relies on a range of strategies and institutions, including the establishment of criminal tribunals,

truth commissions, reparations programmes, and memorials (Arthur 2009). Drawing on theory and empirical work in a wide range of fields—law, anthropology, political science, sociology, and psychology, among others—transitional justice pursues goals that include accountability for perpetrators, reparations for victims, historical documentation, and peace building (Roht-Arriaza and Mariezcurrena 2006; Bell 2009). Scholars and practitioners alike disagree on the precise conceptual boundaries of transitional justice but the approach broadly seeks to understand and support people in local communities as they rebuild their lives after mass violence.

Critics of transitional justice have argued that the approach at times places too much emphasis on legal institutions and legal definitions of justice, often at the expense of efforts to address deeper social inequalities, economic harms, and gender-based violence (Nagy 2008, 276; Miller 2008, 267). Some critics also note that transitional justice mechanisms implemented in countries far removed from affected communities may be ineffective in promoting justice and social reconstruction (Oomen 2005). In response to such critiques, transitional justice practitioners have sought to ‘localise’ transitional processes through greater consultations with affected communities and tailored judicial and quasi-judicial mechanisms (Lundy and McGovern 2008). They have also worked to find ways of ensuring that members of vulnerable groups have access to transitional justice mechanisms and, if they wish, opportunities to participate directly in the proceedings.

This emphasis on localised transitional justice and victims’ rights has expanded the right of survivors to participate in legal proceedings not only as witnesses but also as victim participants. Historically, the field of international criminal law often has sidelined

victims as spectators to international justice and focused primary attention on high-level perpetrators and extreme incidents of widespread and systemic violence (Rudling 2019). For example, in all twenty-four of the high-profile Nazi trials at Nuremberg, the prosecution called only thirty-three victim-witnesses, and even then witness testimony was largely restricted to narrow legal issues (Gaskin 1990). However, transitional justice practitioners have advanced more victim-oriented approaches in recent decades (Killean and Moffet 2017). At the International Criminal Court, for example, counsel for victim participants can cross-examine witnesses, submit filings, and present witnesses, subject to the judge's discretion (Funk 2015). Inclusion of victims' voices in international justice has helped to bring more attention to local histories of violence and also expanded the scope of testimony in some criminal proceedings.

Witnesses: Motivations for Testifying

Survivors' testimonies form the backbone of most transitional justice processes (Méndez 2016). For example, testimony is essential to criminal tribunals that investigate and prosecute those most responsible for organising and carrying out atrocity crimes. Survivors lead criminal investigators to physical evidence and aid prosecutors in preparing criminal cases for trial. Likewise, in truth and reconciliation commissions that investigate and document historical violence, victims' stories chronicle the lived experiences of violence and convey to broader audiences the gravity of offences under previous regimes. Survivors' testimonies transform, in the words of sociologist C. Wright Mills, "the personal troubles of milieu" into "the public issues of social structure." (Mills 1959, 8). Beyond testimony for historical truth and criminal accountability, storytelling

can build support for reparations programmes designed to compensate victims and rebuild communities and generate military reforms that increase public sector integrity (Sharp 2018). Gender justice initiatives created as part of transitional justice efforts may help to reduce sexual and gender-based violence and increase social equality. Finally, victims' testimonies are the foundation for many memorials that raise public consciousness and educate future generations by commemorating those who were killed in past state-sponsored violence, as well as those who resisted. Witness testimony often promotes social reconstruction, a process that reaffirms and develops a society and its institutions based on shared values and human rights after a period of mass violence (Weinstein and Stover 2004).

However, the act of recalling painful and traumatic events, especially in public, can be retraumatising and fraught with uncertainty for witnesses (Meernik and King 2019). Does telling one's story help to provide "closure"? Is individual and collective closure even possible? Will witnesses be able to hold up on the stand under questioning from lawyers or judges? How will they respond when they encounter the accused? Will people believe their testimony? Will their testimony deliver justice or inflame new tensions?

Survivor motivations for testifying in transitional justice processes vary. In an interview survey of 144 victim-witnesses at the Special Court for the Sierra Leone, researchers identified 18 conceptually distinct motivations for testifying (Stepakoff et al. 2014). Yet, the responses given most frequently were "to denounce wrongs committed against me during the war" and "to contribute to public knowledge about the war." (Stepakoff et al. 2014, 426). Another 2012 study of 60 Rwandan prosecution and defence

witnesses who testified before the International Criminal Tribunal for Rwanda (ICTR), Rwandan national courts, or community-based *gacaca* courts identified four main motivations for testifying: to speak about events they had witnessed firsthand; obtain more information about those who died and identify perpetrators; to gain public acknowledgement of personal suffering; and to contribute to social reconstruction. The strongest motivation, according to the study, was “the individual sense of obligation to bear witness to genocide.” (Clark and Palmer 2012, 10).

In a study of 87 victim-witnesses who had testified before the International Criminal Tribunal for the former Yugoslavia (ICTY), researchers reported that while many witnesses felt a sense of relief, and even catharsis, after having testified in court, they also experienced uncertainty about the value of their testimonies, especially if they faced a difficult cross-examination by the defence (Stover 2005, 88). The vast majority—whether Serbs, Croats, or Bosnian Muslims—usually brought with them intertwined manifestations of individual and collective victimhood. They came to the tribunal to speak not only about the wrongs they personally suffered but also those endured by their social group, whether they defined it as ethnic, familial, communal, gender-based, or religious. Testimony about the experiences of others in some cases clarified understandings of their own experiences. Yet, it was often the case that the ICTY judges seldom let victim-witnesses stray from reporting the facts about the incident they observed (Stover 2005, 129). This is because the law is primarily interested in “restrictive facts” and rarely gives quarter to expansive and nuanced storytelling that so many witnesses yearn to engage in (Minow 1988, 25-51). Courtrooms offer a place to tell a

story about the crimes of an accused perpetrator, but rarely provide a space to explore the complexities and contradictions of lived violence.

Despite constraints imposed by transitional justice institutions, a significant number of survivors feel a need to tell their story. In his memoirs of the Holocaust, Primo Levi frequently suggests that bearing witness to mass atrocity is both an act of narration—a trajectory of cause and effect—and a form of survivorship (Levi 1979, 36-69). Similarly, the psychoanalyst Dori Laub argues that survivors have a need not “only to survive so they can tell their story,” but also a “need to tell their story to survive.” In effect, survivors often have a compelling “need to *tell* and thus come to *know* one’s story” Laub suggests that survivors often need the presence of two listeners—an external listener who acknowledges the survivor’s lived experience and an internal listener, or the self, who comes to comprehend what one has experienced (Laub 1992, 78).

Witnesses: Security and Support

Testifying in a public forum—whether before a criminal court or truth commission—can often be an unsettling experience, particularly in the aftermath of mass violence. Indeed, many witnesses express some initial concern and trepidation about testifying (King and Meernik 2017). This has been especially true for witnesses or victim participants who testify before international criminal tribunals in foreign countries where they may be unfamiliar with court procedures or concerned about their own safety or the safety of their families. Such concerns, however, are not universal and often vary depending on cultural, political, and security dynamics of the post-conflict setting. For example, the vast majority of civil parties who testified in the Duch trial at the

Extraordinary Chambers in the Courts of Cambodia expressed few concerns about their physical safety largely because of the amount of time that had passed—nearly 30 years—since the end of the Khmer Rouge regime and the point of which they testified (Stover et al. 2011, 535-536). Still, these same respondents—and respondents in similar studies—noted that they felt concerned about how they would perform in the courtroom, especially when relating traumatic events. Many of the respondents in the Cambodian study described “a range of physical and emotional symptoms, including a perceived rise in blood pressure, sweaty palms and feet, trembling hands, and alternate feelings of terror and lightness immediately before entering the courtroom” (Stover et al. 2011, 535-536).

Today, most international tribunals and truth commissions have put in place measures to relieve some of the tensions of testifying. For example, the Victims and Witness Section at the International Criminal Court in The Hague has implemented a number of measures in an attempt to mitigate these concerns for survivors participating in proceedings. Before traveling to The Hague to testify, witnesses and victim participants are given a brochure and shown a video that explains what to anticipate at the court. Potentially vulnerable witnesses undergo a psychological assessment to determine their level of vulnerability. Observations and conclusions from this assessment are submitted to the Chamber, which then decides what special measures should be taken to protect the wellbeing of a witness (Cody et al. 2015, 12). Moreover, it is fairly common for war crimes tribunals and truth commissions to have psychosocial professionals available to counsel witnesses and, if requested, accompany them during their testimony.

A witness’s response to the stress of testifying can fall anywhere on a continuum from the traumatic to the gratifying. Yet, the process itself and the outcome of the

proceedings can often influence how that stress becomes internalised. Since the mid-1970s, social psychologists have conducted numerous studies to understand what leads participants in judicial processes to consider them fair or unfair, and ultimately to accept or reject the outcome. Almost universally, these studies found two major influences that led to participant satisfaction with the proceedings: the manner in which a trial was conducted and the extent to which participants had a “voice” in the proceedings. Study participants defined a “fair process” as one based largely on three criteria:

benevolence—the degree to which they perceive the authorities care about their well-being and experiences; *neutrality*—the extent to which they were able to talk about their experiences in a neutral and unbiased forum; and *respect*—the extent to which they were treated in a professional and dignified manner (Thibaut and Walker 1975; Lind and Tyler 1988; Lind et al. 1990). In effect, participants in judicial processes are looking for signs they can trust the authorities (Tyler 1988). For this reason, showing the utmost respect to those who choose to testify in transitional justice mechanisms is a key component for building trust in the legitimacy of transitional justice processes.

The act of testifying—whether in a court or before a truth commission—can strain marriages and friendships and, with the passage of time, can give way to more complex emotions (Stover 2005, 74-75). A grim experience as a trial witness may transform into a cathartic one if the accused is convicted and sentenced. Conversely, an empowering experience on the witness stand can turn to despair if a defendant is acquitted and walks free. Moreover, despite claims by some human rights activists, it is highly questionable if bearing witness actually leads to “closure” or has any real therapeutic value (Weinstein 2011). Writes Martha Minow:

[A] crucial reason to resist any implication of... closure...is that *no* response can ever be adequate when your son has been killed by police ordered to shoot at a crowd of children; when you have been dragged out of your home, interrogated, and raped in a wave of “ethnic cleansing”; or when your brother who struggled against a repressive government has disappeared and left only a secret police file, bearing no clue of his final resting place (Minow 1988, 5).

More empirical research is needed to understand how security concerns and institutional support systems, or the lack of them, impact witness testimony. It is still unclear what adversities witnesses face after testifying or how the passage of time alters witnesses’ understandings of their testimony in transitional justice process. However, it is clear that social and psychological support systems can prove essential to the well-being of victim witnesses.

Transitional Justice Mechanisms

Testimonies from local survivor organisations are often vital to the establishment of transitional justice mechanisms. For example, victims of the Chadian dictator Hissène Habré worked for years to document his crimes and see him brought to justice (Brody 2015; Brody 2020, 39). Similarly, the Mothers of the Plaza de Mayo and other human rights organisations in Argentina pressured the government of Raúl Alfonsín to establish the National Commission on the Disappeared and led to the prosecution of former members of the military juntas, including the conviction of former presidents Jorge

Rafael Videla and Roberto Eduardo Viola (Robben 2018). Yet, the contributions of victim testimony in some cases are overwritten by legal narratives and criminal verdicts in public histories of past violence. In part, the limits placed on witness testimony reflect the institutional constraints and aims of different transitional justice mechanisms. Below we review three typical transitional justice mechanisms—criminal tribunals, truth and reconciliation commissions, and memorials—and spotlight the ways that each depends upon witnesses and also constrains their testimony.

Criminal Tribunals

Criminal tribunals seek to hold individual perpetrators accountable for international crimes and human rights violations. As legal institutions, they focus on determining culpability under law and this inevitably narrows possibilities for testimony. Prosecutors or defence counsel lead witnesses through a set of precisely crafted questions intended to establish, or contest, specific facts relevant to elements of criminal offences and describe a pre-determined narrative about what happened. Prosecutors usually select only a few victim-witnesses to represent multitudes affected by the alleged crimes and then strictly limit the scope of their testimony. For example, in the trial of Jean-Pierre Bemba Gombo for crimes against humanity and war crimes at the International Criminal Court, the Trial Chamber granted 5,229 persons the status of victims authorised to participate in the proceedings (Case Information Sheet 2019). However, few of these victims had the opportunity to testify in court. The trial judges heard from 77 witnesses, including forty prosecution witnesses, thirty-four defence witnesses, two witnesses called by the Legal Representative of Victims and one witness called by the Chamber. (Case

Information Sheet 2019). On the stand, witnesses also confront tight time constraints (Dembour and Haslam 2004, 158-160). Strict evidentiary standards and procedural requirements mean that legal narratives of violence are inevitably reductive, and generally preclude victims from telling stories on their own terms (Haslam 2004, 328). In recent years, advocacy groups—including the International Federation for Human Rights (Fidh), Human Rights Watch (HRW), and the Victims’ Rights Working Group (VRWG)—have made inroads by lobbying for war crimes tribunals to be more inclusive of victim participation, especially at the International Criminal Court (Pena and Carayon 2013; Moffet 2014). However, despite the expansion of victims’ rights, the pursuit of criminal accountability remains paramount in tribunal proceedings and as a consequence many judicial authorities curtail storytelling that threatens to undermine fair trials or court efficiency. For example, under Article 68(3) of the Rome Statute, International Criminal Court victims may only participate when their personal interests are affected and judges can exercise discretion to limit any victim testimony when they view their testimony as prejudicial to or inconsistent with the rights of the accused. In practice, judges have streamlined victim participation and often relied on legal representatives to speak on behalf of victims. In contrast, judges at the Extraordinary Chambers in the Courts of Cambodia (ECCC) have expanded the scope of victim testimony and permitted “victim impact hearings” and “statements of suffering.” However, defence teams have strongly criticised these practices as prejudicial to defendants because most victim testimony has strayed from specific criminal offences charged in the cases (Ciorciari and Heindel 2016, 270).

Further, tribunal prosecutors tend to focus on those individuals bearing the greatest responsibility for criminal offences, usually political leaders or high-ranking officials. This focus on those most responsible for mass violence, or “the big fish,” makes it difficult to address the collective character of crimes. Many direct perpetrators of killings, torture, lootings, and sexual violence escape trial in national or international courts and often remain in the communities where they committed their crimes. Agitators of violence and culpable bystanders also frequently avoid criminal prosecution. In general, criminal tribunals are ill-equipped to reckon with the scale of past atrocities or the complicity of members in affected communities.

Oral testimony from a few select survivors and eyewitnesses is the most common form of testimonial evidence in tribunals adjudicating serious international crimes. However, expert witnesses—including forensic anthropologist, geneticists, demographers, psychologists, and social scientists—also serve important functions in criminal tribunals. Their expert testimony can provide vital context for understanding violence and its enduring effects on survivors and their communities. For example, since the 1980s forensic anthropologists, like the late Clyde Snow, have often served as expert witnesses and court orators for those killed by the state and buried in unmarked graves. On 24 April 1985, Dr. Snow made history when he presented the case of Liliana Pereyra at the trial of nine military officers who had made up the three successive juntas that ruled Argentina in the late 1970s and early 1980s. Liliana, who was a university student, had been abducted by a military death squad and like thousands of others never seen again. On the stand, Snow told Liliana’s story based solely on her skeletal remains, which he and a team of Argentine students had recently exhumed from an unmarked grave.

Projecting the slide of her skull on a large screen, Snow described how he had determined that the young women had been executed at close range with a shotgun. He also explained how he had positively identified the skeleton as Liliana's based on ante-mortem dental x-rays. But the most dramatic moment came when he projected a slide of her pelvis on the screen and pointed out a shallow trench in the front of the sacroiliac joint suggesting she had given birth to a term or near-term infant. Snow ended his testimony by projecting a photograph of Liliana on the screen. "What I would like to point out here," he said, "is that in many ways the skeleton is its own best witness." Years later, military records would confirm Snow's account; namely, that Liliana had been held in a clandestine prison where she gave birth to a boy who was later given up for illegal adoption. After the birth, soldiers executed and buried Liliana in an unmarked grave (Joyce and Stover 1991, 250-268). Over the past 35 years, forensic scientists have presented hundreds of similar cases before human rights and war crimes tribunals—stories that, were it not for their specialized skills, would never have been told (Kleiser and Parsons 2020, 193-207).

Beyond criminal prosecutions, expert testimony also aids transitional justice by identifying bodies of those who have disappeared during the conflict. For example, geneticists working with the International Commission of Missing Persons (ICMP) have used DNA analysis to identify the human remains of nearly seventy percent of the 40,000 who went missing during the conflict in the former Yugoslavia in the 1990s (International Commission of Missing Persons 2021). Once identified, the remains are returned to family members for proper burial. Although the ICMP's remit is largely humanitarian, geneticists at the organisation have provided expert testimony at the ICTY

and national courts. Such investigations have also shown intentional efforts on the part of perpetrators to conceal or move bodies after mass killings.

Truth and Reconciliation Commissions

Since the end of the Cold War, countries emerging from periods of armed conflict and mass violence—including Cambodia, Sierra Leone, and Kosovo—have on occasion sought to prosecute violators of human rights and international humanitarian law. But these judicial approaches remain the exception rather than the rule. Most nations instead have created truth and reconciliation commissions (TRCs) to gather testimonies from victims of human rights abuses in order to investigate and expose the larger historical patterns of abuse, responsibility, and complicity. As of the time of writing, twenty-nine TRCs have been established around the world with varying mandates. Examples include: an Argentine commission created to document the whereabouts of more than 15,000 people who disappeared during military rule in the late 1970s and early 1980s; South Africa's Truth and Reconciliation Commission that set out to study the effects of apartheid from 1948 to the early 1990s; and Canada's Indian Residential Schools Truth and Reconciliation Commission which investigated human rights abuses in the Canadian Indian residential school system that existed from the 1970s to the 1990s.

Local TRCs in less transitional places have also been established to account for past human rights violations. For example, the state of Maine in the United States established the Maine-Wabanaki State Child Welfare Truth and Reconciliation Commission to investigate harms of the child welfare system on the Wabanaki community (Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission

2015). Likewise, the city of Greensboro in North Carolina, United States, created the Greensboro Truth and Reconciliation Commission (GTRC) for victims to provide testimony about an attack by members of the Ku Klux Klan and American Nazi Party on union activists that killed five people in 1979 (Androff 2012, 38-46).

In contrast to criminal tribunals, TRCs are designed to provide public opportunities for survivors of mass violence and their descendants to relate their experiences during periods of repressive rule. Testimony before these commissions need not conform to neat legal narratives. For this reason, TRCs are generally viewed as a more effective mechanism for developing what has been termed “restorative justice,” a process by which those most affected by mass violence and other repressive practices, such as institutional racism, can be heard and through their testimonies play a part in creating new national objectives (Hayner 2001, 134).

By collecting testimony from many different stakeholders and publishing an official record, TRCs can acknowledge victims and give voice to survivors. By expanding the truth-finding process beyond questions of legal culpability TRCs also use victim-witness and perpetrator testimony to establish new national narratives, which helps to ensure that the gravity of violations is not forgotten or ignored (Wiebelhaus-Brah 2010) Perpetrator participation in TRCs can be especially useful in helping to explain how and why mass violence was organised. Perpetrator testimony also reveals the dynamics of mobilisation and helps to identify drivers of individual participation in violence. Depending on the structure of TRCs, perpetrator testimony can also result in individual accountability. Although most TRCs centre on the public dissemination of truth, some also incorporate retributive mechanisms for accountability. The South

African TRC, for example, recommended criminal prosecutions be considered in certain cases where there was evidence of human rights violations and amnesty was either not sought by the TRC participant or was denied. TRCs provide public recognition of state sanctioned violence and reveal intimate effects of such violence on the everyday lives of citizens.

TRCs also frequently translate testimony into policy recommendations for new governments (Laplante 2007). For example, the South African Commission of Truth and Reconciliation, created to investigate human rights violations perpetrated during the Apartheid Regime from 1960-1994, developed recommendations for an expansive nationwide reparations programme and urged reforms to the political system, judiciary, and armed forces.

TRCs' openness can also be a shortcoming. They tend to emerge soon after a conflict has ended and become swept up into processes of negotiation between conflicting parties, including in many cases oppositional armed factions or feuding ethnic groups. They become deeply entangled in the politics of conciliation and transition (Wilson 2001). In such situations, witnesses who appear before TRCs may fear that their testimonies will be exploited by one faction or another, or ultimately doubt that their participation will make any difference at all.

TRCs can also flatten or abridge participant testimony in an effort to build national consensus about what occurred. Most TRCs release a final report that details the investigation and summarises findings. Invariably such reports fail to capture all the complexities and nuance of victims' experiences. Emphasis on killings and extreme acts of torture, for example, may downplay other kinds of violence, including sexual and

gender-based violence that often continues during periods of political transition (Kendall and Staggs 2005, 1-23).

A lack of practical results from TRCs can also disappoint participants (Guthrey 2015, 32-33). Beset with inadequate funding, short time horizons, and uncertain political support, many TRCs find it difficult to satisfy victim expectations (Hayner 2011). TRC participants may view their testimony as part of reciprocal agreement with TRC authorities to provide assistance or reparations (Kent 2012). TRCs inability to deliver such aid undermines TRC legitimacy in affected communities (Byrne 2004). For example, although many victim participants in the Peruvian Truth and Reconciliation Commission reported positive experiences testifying about their experiences, many also expressed regret about the incapacity of the TRC to provide reparations and support for basic needs (Laplante and Theidon 2007).

Despite these shortcomings, TRCs can be valuable mechanisms for promoting victims' voices and building new national narratives. They often prime other transitional justice projects, such as public museums, memorials, and monuments. As historian Michael Ignatieff has noted, TRCs:

[can] reduce the number of lies that can be circulated unchallenged in public discourse. In Argentina, [the Commission on the Disappeared] made it impossible to claim, for example, that the military did not throw half-dead victims into the sea from helicopters. In Chile, it is no longer permissible to assert in public that the Pinochet regime did not dispatch thousands of entirely innocent people. Truth commissions can and do

change the frame of public discourse and public memory (Igantieff 1996, 113).

Memorials

Memorials often seek to reflect transitional justice principles of accountability, truth, and redress. They transform survivors' testimonies into a form of collective memory. Rather than seek retributive justice, they commemorate lives lost and provide moral lessons to future generations. Memorials also provide a place where survivors and family members can grieve and honour lost loved ones. In Cambodia, for example, many witnesses and victim participants who have testified in trials of past Khmer Rouge leaders have taken their trial transcripts to memorial sites to have them blessed by Buddhist monks (Gray 2012; Human Rights Center 2009). In contrast to criminal tribunals and truth commissions, memorials generally stand outside of law, offer lessons to end cycles of violence, and reflect aspirational values about the future.

To understand the role testimony has played in contemporary memorialisation, it is useful to examine how the function of memorials, and especially war memorials, evolved since the First and Second World Wars. Before World War I, war memorials were particularly celebratory in nature. They reinforced the authority of victorious leaders or nations. Political leaders used commemorative rituals to build national unity rather than as a means of reflecting on the horrors of war. It was only after 1918 that memorials gradually began to embrace remembrance as a means to trigger a process of collective mourning.

The politics of memorialisation are particularly complex in transitional societies where different factions present competing understandings of the past. Many survivors' groups want a full reckoning for abuses. Other segments of society, however, may prefer more forward-looking and peacebuilding processes of memorialisation. Still others, people with lasting allegiances to previous regime officials, may seek to forget, ignore or even valorise past authoritarian rulers and challenge new accounts that shed light on state violence. Memorialisation functions to open dialogue about past atrocities and often fosters resistance to dominant narratives of past regimes (Buckley-Zistel and Björkdah 2020). However, some political leaders exploit memorials to further destructive forms of nationalism. For example, Franco's construction of Valley of the Fallen near Madrid in 1959 to honour those who fell during the Spanish Civil war was touted as an act of "national conciliation" when it was clear that the real purpose, as historian Bill Niven writes, was to promote nationalism and glorify the Catholic Church while "effectively [downgrading] those who had fallen for the Republican cause to the status of second-class victims" (Niven 2008, 39-45).

Tensions inevitably emerge between survivors' stories and interpretations of history. Memorials link personal experiences to collective senses of belonging and may become flashpoints for conflicts between the state and society or between social groups. For example, when a former detention centre known as El Atlético became a memorial site in Buenos Aires, some opposed the commemorative plaques, and markers at the site were vandalised several times (Jelin 2007, 148). Memorials rewrite histories and in doing so spotlight state failures to protect citizens. In many cases, they also illuminate the role of political leaders played in organising and promoting violence.

Even in less transitional periods, memorials reflect cultural histories and may become sites of contestation. In the United States, for example, the Black Lives Matter (BLM) movement has taken aim at public memorials associated with white supremacy, including monuments to defenders of slavery and Jim Crow (Leyh 2020). Protesters have vandalised, torn down, and called for the removal of Confederate monuments. BLM activists have also sought to remove the names of oppressive historical figures from university buildings, streets, and public schools. Some philanthropic organisations, including the Andrew W. Mellon Foundation, have pledged hundreds of millions of dollars in the coming years to reimagine memorials that will unearth forgotten histories and better reflect diversity in the United States (Schuessler 2020).

In post-authoritarian transitions, memorialisation generally seeks to honour victims through both physical sites and symbolic acts. Memorials range from commemorations to museums and public monuments (Williams 2007). Yet, testimony tends to anchor such memorialisation. In addition to personal testimonies, investigative commissions often identify archives and compile documentation of state repression that detail survivors' stories. These archives actively construct memories and aid in building historical narratives (Campbell 2013, 250-254). Memorials provide victims and families of the disappeared opportunities to build a collective past and communicate this history of violence to future generations (Dempster 2019). Whether memorials are built to commemorate events or to mark social transitions after conflict, they construct historical meaning and memory (Mégret 2012, 26). For this reason, memorialisation has emerged as a vital aspect of transitional politics. Building memorials publicly recognises the suffering of local communities and often deepens awareness of victims, past crimes, and

human rights violations (Buckley-Zistel and Schäfer 2014, 8-9. This can also contribute to a sense of justice for survivors, even as memorials frequently unearth complicated feelings about victims' pasts and identities.

The processes by which memorialisation supports transitional justice are not completely understood, but appear to operate beyond individual victims, witnesses, or perpetrators. Memorials create a mnemonic community of individuals who can affirm or contest group narratives. Spaces to remember and interpret past experiences cultivate collective stories and aid in the distribution of new histories. Memorials are sites for the production and documentation of testimony and contribute to broader processes of social memory and history-making (Jones 2015, 174). How a community builds collective memory after state violence also constrains possibilities for political claims-making and legal change (Savelsberg and King 2007, 203).

Researchers and the Collection and Use of Testimony

Studying transitional justice mechanisms and the processes by which they collect and use witness testimony presents a number of thorny methodological and ethical issues for researchers.

First, testimony often requires that witnesses revisit past violence and trauma in their lives. And, unlike therapists, human rights investigators and researchers are rarely trained in mitigation techniques designed to avoid the re-traumatisation of survivors who have suffered atrocities, such as rape or torture. For this reason, researchers should be especially sensitive to the potential harm of eliciting testimony and should undergo

training to mitigate retraumatizing survivors. Additionally, researchers must ensure that witness recruitment is wholly voluntary. Many survivors live in precarious economic situations that make them vulnerable to researchers who offer direct payments to participants. They may also face retaliation in their communities. Before any interview, researchers should receive informed consent from study participants and review the objectives of their study or investigation with each person who agrees to provide testimony, and ask if he or she has any questions or concerns before beginning the interview. If a prospective study participant declines to participate in an interview, the research must fully respect that request. Researchers should also allow study participants to be interviewed at a time and place of their choosing and take precautions to maximise subject privacy before, during, and after testimony. For example, researchers should strive to interview study participants in a room or other private space away from other people unless the study participant desires another situation.

Second, researchers should be well versed in studies about the relationship between trauma and memory retention and processing. Over time, traumatic memories can become unfixed, fragmented, and at times unreliable. According to Richard McNally, high levels of stress during a traumatic event do not necessarily produce impairments in memory. But they can “direct attention to the central features of the arousing event at the expense of the peripheral features” (McNally 2003, 51-52). Robbery victims, for example, often remember details of an assailant’s gun because they become fixated on it but do not remember much about the robber’s appearance. Researchers, therefore, should not expect that witnesses are going to get every detail correct, especially given the trauma they may have experienced and the time that has lapsed since the event. “The line

between valid retrieval and unconscious fabrication is easily crossed,” writes Elizabeth Loftus (Loftus 1996, 109).

Third, researchers should be aware that memories of past events can change over time. Witnesses, according to Loftus, are particularly susceptible “to having their memories modified when the passage of time allows the original memories to fade.” (Loftus 1996, vii). Memories can also become distorted when witnesses who have experienced “the same event talk to one another, overhear each other talk, or gain access to new information from the media, interrogators, or other sources” (Loftus 1996, 211-219). Therefore, it is important that researchers document when they spoke with study participants and, whenever possible, follow up with them to better understand how their views and perceptions of past events may have evolved. Finally, more longitudinal studies of witness testimony are needed to better understand how memories of atrocity crimes may have evolved as a result of personal, social, and political influences.

Fourth, researchers should be aware that the time allotted for individual witness testimony and other factors in transitional justice mechanisms, especially criminal tribunals, may limit what a witness may or may not testify to on the stand or in other public forums. As a consequence, a witness’s testimony before such bodies may not fully capture his or her conflicted feelings about events and the roles played by other actors and institutions. Moreover, war crimes trials, like most criminal trials, have the potential for the unexpected to happen at any stage of the proceedings. Either side may produce evidence designed to challenge a witness’s credibility or the veracity of his or her testimony. While TRCs provide greater leeway for witnesses to be more expansive about what they have experienced, some witnesses may withhold certain salient details out of

fear of public reprisals. Even within small community meetings, gender divisions and social hierarchies often limit who can speak and the kinds of stories they can tell.

Therefore, researchers studying testimony in transitional justice contexts should pay close attention to institutional constraints on speakers and also notice and invite the participation of witnesses who do not give testimony. Perpetrator testimony raises particular concerns because perpetrators often describe multiple motivations for their acts of violence—coercion, identity, fear, numbness—and evidence suggests that perpetrators' feelings about killings also shift over time (Straus 2017, 35-38; Luft 2020, 3). Repeated participation in violence can normalise killing and other human rights violations.

The challenge for transitional justice researchers is to design studies that recognise social complexities and generate findings more inclusive of marginalised members of affected communities. In this process, partnerships with local organisations and ongoing relationships with community intermediaries can often foster mutual trust and encourage open dialogue. However, the development of such relationships also imparts ethical responsibilities, such as the duty to report findings back to study participants, to listen to their feedback on research findings, and, whenever feasible, to make testimony and research available in local languages. Testimony for some witnesses provides a meaningful opportunity to reckon with the past and even find a degree of closure (Tietjens 2016). This is especially true of witnesses who seek to build a historical record and draw attention to killings and other human rights violations. But for others transitional justice's focus on legal accountability and criminal punishment can silence other aspects of their experiences. For example, child soldiers may hesitate to recount details of their experiences as fighters out of fear that they will face criminal prosecution

or social condemnation. Testimony that calls out social and economic inequalities, articulates victims' material needs, or seeks to end political corruption can also be undervalued by researchers as peripheral to TRC mandates. While testimony is essential to transitional justice, researchers should be careful not to permit a focus on legalism and historical reckoning to overshadow other meaningful concerns for victims. The meanings that survivors give to their experiences are often as valuable to understand as witnesses' descriptions of actual events. Researchers must be cognisant and reflexive about their own presumptions and theories during fieldwork and remain open to alternative belief systems and values in transitional justice processes.

Conclusion

Providing testimony in a truth commission, courtroom, or public memorial can be a precarious process for survivors who have suffered or witnessed horrific crimes (King and Meernik 2019). Many face psychological and social repercussions in their daily lives, and some witnesses also confront political pressures, threats to their livelihoods and property, or physical intimidation. Yet, witnesses persist, often compelled by a 'moral duty' to tell their stories (Stover 2005, 126). Witness testimony, of course, can seek many other ends as well, including social reconstruction, rehabilitation, reparation, and potentially forgiveness.

Transitional justice institutions and processes, however, condition the kinds of stories that a witness can tell. For witnesses who take the stand during criminal proceedings and answer questions posed by prosecutors, defence counsel, victims' counsel, and judges, stories are usually restricted to events within the scope of charged

offences. Lawyers may eschew testimony focused on a survivor's underlying material needs or broader desires for truth, reconciliation, or reparations. Legal testimony tends to be laser-focused on relevant facts and elements of charged crimes, and witnesses may have few opportunities to express conflicted or contradictory views.

Testimony in criminal trials also tends to focus on physical acts of violence and those associated with systematic and widespread offences, such as crimes against humanity. Criminal proceedings rarely provide a nuanced examination of the historical and social origins of violence or the enduring psychological effects of trauma. Courts hand down historic judgements but seldom address underlying patterns of social inequality or political corruption that caused the violence in the first place.

In contrast, TRC testimony is often geared more toward history-making and shattering myths than seeking accountability and punishment for perpetrators. Witnesses usually have more freedom to tell their stories and to explore emotional contradictions in their experiences of violence. TRCs are also likely to include testimony from a broader array of witnesses, including bystanders from different affected communities, victims of diverse human rights violations, and even blameworthy state officials and street-level perpetrators. TRC testimony is often more public as well. In contrast to criminal tribunals, TRCs are less preoccupied with reaching a formal verdict of wrongdoing and geared more towards building a new national narrative that will hopefully assuage conflicts between divided communities.

However, TRCs and related processes of national reckoning may be insufficient to bring peace or closure to survivors. TRCs can mollify historical violence rather than confronting atrocities. Promises of amnesty in exchange for truth may undermine the rule

of law. TRC testimony may become a form of leniency, even injustice, if guilty state officials escape all responsibility for their roles in past violence.

Finally, memorials provide valuable forums for survivors of mass violence to tell their stories and remember loved ones. Memorialisation seeks to build a collective narrative or unified truth for communities. One challenge in memorialisation, however, is that some voices are muted or missing. Memorial testimony frequently requires reconstruction of events from hearsay and historical accounts that may be disputed or incomplete. Stories may undervalue the experiences of particular groups—such as women, children, or sexual violence survivors—or create fictional hard boundaries between victims and perpetrators and overlook a more complicated reality in which people during conflicts navigate many-sided identities and have multifaceted levels of responsibility for violence.

In closing, bearing witness in the aftermath of mass violence demands courage, whether testimony is provided as part of a formal transitional justice process or simply given in a personal conversation. Transitional justice researchers, therefore, have a heightened responsibility to handle witness testimony with care and transparency. Researchers must guard against actions or questions that will re-traumatise witnesses and also remain open to the complex, and at times fragmented, experiences described by survivors.

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