



## **Ending Impunity Through Proper Documentation**

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It can take many years for a society to move on from repression and violent conflict, and such transitions are never smooth. Documentation efforts can provide support to the transitional process however and whenever it happens.

Oak Foundation's International Human Rights Programme works to end impunity for gross violations such as enforced disappearances, torture, sexual violence and extrajudicial killings. Oak has identified documentation as key to this work. While the ultimate goal of the Foundation is achieving legal accountability for those responsible, proper documentation can be used towards many other important ends, whether prevention, reparations, or guarantees of non-recurrence. Oak is keen to hear from other funders on how we can ensure that the hard-won documentation of our grantees can be used for different, but complementary, purposes.



**Photo Credit: Anne-Cecile Esteve for ICTJ**

Compelling and accurate documentation can be used to:

- Push the international community to exercise its responsibility to protect civilian populations;
- Secure justice for victims in international or domestic courts through its submission as evidence;
- Help establish the historical record and work against revisionist accounts that may deny, minimise or justify past crimes;
- Provide closure to the families of victims of enforced disappearances;
- Form the basis of claims for reparations.

The Oak Foundation has therefore supported a wide range of strategies and activities around documentation. These include:

- Work by local and international NGOs to interview victims and their families, and to gather other evidence about abuses (such as that in Burma described below);
- The use of forensic anthropology and other sciences to recover and identify the remains of forcibly disappeared individuals and determine the circumstances of their deaths (as exemplified by the work of the Argentine Forensic Anthropology Team);
- Support to physical and on-line archives that capture information from a wide range of sources about human rights violations and provide an opportunity for societies to learn about what took place (Memoria Abierta being a notable example of best practice here).

- Development of databases (such as Benetech's Martus software) that allow for human rights NGOs to securely and accurately record information on human rights violations;
- The use of new technologies to gather information on atrocities (such as the American Association for the Advancement of Science's work harnessing geo-spatial technology to monitor international crimes in locations that human rights researchers are not able to access).

The importance of documentation efforts can be seen in the ongoing prosecutions of those who committed horrific crimes during the 'Dirty War' in Argentina (which only recommenced in 2006, more than two decades after the transition to democracy). The information gathered by the National Commission on the Disappearance of Persons was central in the campaigns, in Argentina and abroad, to overturn the laws that had given amnesty to the perpetrators. The information they gathered has also been used as evidence in the trials now underway. These same Argentine organizations are now sharing their knowledge, experience, and skills with civil society groups in other countries that are facing similar challenges.

The long-term significance and multiple usages of documentation is also why Oak has been supporting efforts by a network of Burmese NGOs to securely record evidence of abuses, including crimes against humanity. It is not clear how any transition might unfold in Burma and current prospects for accountability remain remote. However, gathering this information ensures that it can be used in the future and that these abuses are addressed in any peace-building or democratization initiatives.

However, it is also important to recognise that the different aims to which documentation can be deployed (whether building the historical record or achieving legal accountability) may require different methodologies. For example, the kind of forensic investigation necessary to deliver evidence for use in an individual court case may not be able to show the broader picture of a conflict or pattern of abuses, which is necessary to help address absent memory.

More problematically, the research methods used by NGOs reporting on abuses as they take place (which is used for advocacy, usually to persuade the public or governments of the need to take action) can be very different from those used by a crime scene investigator. Evidentiary requirements may, in fact, render the information gathered by these NGOs inadmissible in any later court process (for example, where the evidence was inappropriately handled or where interviewees' identities have been anonymized). In addition, the demand for numbers and statistics to understand the scope and severity of a human rights crisis can give rise to estimates that are methodologically unsound and may even misrepresent the problem. Such inaccuracies can be used to discredit human rights organizations or might result in flawed policy choices.

In order to address some of these tensions, Oak supports initiatives such as the following:

- The Institute for International Criminal Investigations, which provides training to NGOs investigating international crimes on how to ensure that their research is of a standard that can be used in court.

- Benetech's Human Rights Data Analysis Group, which develops statistical techniques to help human rights advocates build rigorous, scientifically sound arguments.

Such initiatives are only a beginning and it is an open question whether the different approaches used by, for example, NGOs, journalists and historians can realistically be reconciled. A recent conference on the submission of forensic evidence to the ICC (organised by University of California, Berkeley with the support of Humanity United, Oak and Open Society Foundations) highlighted many of the above challenges, but also provided some initial ideas as to how NGOs can ensure that information gathered for advocacy might also eventually be used by the Court. It thus seems that solutions will only be found through dialogue and the sharing of perspectives across the different sectors involved in this work. Funders have critical role in supporting such a process and I invite colleagues from the IHRFG to share any reflections they have on this issue.

### **Additional Resources**

[http://www.foreignpolicy.com/articles/2012/02/27/the\\_body\\_counter](http://www.foreignpolicy.com/articles/2012/02/27/the_body_counter)

<http://www.scientificamerican.com/article.cfm?id=qa-forensic-anthropologist-mercedes-doretti>

[http://www.economist.com/blogs/multimedia/2011/01/bones\\_and\\_human\\_rights](http://www.economist.com/blogs/multimedia/2011/01/bones_and_human_rights)

<http://www.wired.com/dangerroom/2012/09/syria-aleppo-satellites/>

<http://www.dw.de/the-hague-institute-teaches-how-to-investigate-genocide/a-4448539-1>

<http://oncallscientists.aaas.org/default.aspx>