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Tele-evidence – On the Translatability of Modernity’s Violence.  
Special issue guest edited by Fazil Moradi and Richard Rottenburg

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Introduction: Tele-evidence – On the Translatability of Modernity’s Violence
Fazil Moradi and Richard Rottenburg

Later in the afternoon the captain announced that he would not be taking the usual route along the Nile valley over northern Sudan, but would instead fly farther westward over El Obeid (Al-Ubayyid) and from there over to Malakal before resuming a southern course over Ethiopia. For me that meant that we would be crossing the Nuba Mountains of South Kordofan, where I had lived for three years. There was not a cloud in the sky. I hurried into the cockpit – which was sometimes possible before September 11, 2001 – so I could finally catch another glimpse of my lost paradise, if only from the air. The captain – a native Nigerian – found it extremely exotic that I could name the mountains and rivers below us, so he offered me the third seat in the cabin. He knew that southern Sudan was caught up in an armed struggle and he thought that this was also the reason why he had to fly over Ethiopian territory as far north as Malakal. But he had never heard anything about the genocide in South Kordofan. I saw Mount Lebu for the first time since December 1983, recognizing the mountain immediately even from this bird’s-eye view. From letters I received from Khartoum, I knew who had been left behind on the high plateau of the mountain, living – at the moment I was flying overhead – in stone-age conditions and desperately trying to avoid the horrors of ethnocide. When we were over Malakal I had to return to my seat since a snack was being served in the cockpit. It was hard for me to go back to the development experts. Most of these experts consider the African wars to be a return to the barbarian past rather than innovative reactions to the presumptions of mismanaged modernization that they themselves helped to bring about with their projects.

In this autobiographical scene of seeing from above, taking place on an airplane flying from Amsterdam to Dar es Salaam in 1997, Richard Rottenburg is confronted with the world in which he had lived and carried out anthropological inquiry between 1979-1984, up to the unfolding of yet another war in the post-colonial/independence Sudan. The translatability of a modernity of violence or the violence of modernity is no longer confined to human eyes and testimony, and comes to involve technoscience that shifts the epistemology of violence, and

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2 We are grateful to the critical interest of the members of Law, Organization, Science and Technology Research Network (LOST) – Laura Matt, Stefanie Bognitz, Bertram Turner, Timm Sureau, Lorenz Gosch and David Kananzadeh.
extends its reach across time and space in a manner unimaginable in 1980s. Technoscience is by now inescapable in the organization of violence as well as in the making and production of evidence and evidentialization, i.e. it is becoming important for providing proof and the prevention of modernity’s violence. As this introduction and this special issue show, this historical shift entails unforeseen translations of violence worldwide; violence which is marked by global modernity and at the same time hides from view the untranslatable lived experiences of ever more technologized violence and its social, cultural, ecological, political and economic consequences. Our attention is then transformed, shaped and controlled by various translations rather than directed towards the pain of others. Thus, the area that Rottenburg surveyed from the air, and particularly the adjacent oilfields of Abyei along the Bahr al-Ghazal River (further west known as Bahr al-Arab River in the Sudan), has come to take on an epistemology of life pointing at an uncertain future.

In March 2012, at a hearing of the Senate Foreign Relations Committee in the United States, Senator Tom Udall, Hollywood actor George Clooney and activist John Prendergast sustain that to prevent and punish state violence committed in Sudan requires a new technoscientific evidence. The hearing is video recorded and is available on the personal website of the Senator but also on YouTube for anyone anywhere in the world with access to the Internet. The 6:28 minutes long moving images display a question and answer session over the connection between satellite images, evidence, and state violence in a Sudan now defined and divided into two separate countries, Sudan/“Arabism” and South Sudan/“Africanism”. As the co-founders of the Satellite Sentinel Project, Clooney and Prendergast are invited to testify to how they intend to proof past, ongoing and future violence in Sudan but also elsewhere in the world. At this point, the Satellite Sentinel Project (SSP) is operating in the space above the oil-rich area of Abyei that is located on the border separating Sudan from South Sudan and a short distance from the above mentioned Nuba Mountains. The area constitutes part of what is called the Sub-Saharan belt in Africa, which is also known as an oil belt and sometimes referred to as an uranium belt. The SSP is a

8 Mahmood Mamdani, Saviors and Survivors: Darfur, Politics, and the War on Terror (Cape Town: HSRC Press 2009), 55; Amal H. Fadlalla, “Humanitarian Dispossession: Celebrity Activism and the Fragment-
satellite-based violence surveillance infrastructure that is inhabited by a web of specific persons, organizations, national and global institutions, and tele-technologies that make it circulate on earth and in orbital space all at once. It configures conditions wherein the power of modern state and global politics is shifted, advanced, expanded, and transferred to corporations, “with the inevitable reinvention of politico-juridical space – of citizenship, governance, rights, ownership,” and inescapable ecological implications.\(^9\) SSP obtains satellite imagery, records and produces evidence and data, and circulates evidence-based knowledge about certain acts of violence. It is formed and sustained by Enough Project, Google, Trellon, UNITAR (United Nations Operational Satellite Applications Program), the Harvard Humanitarian Initiative, DigitalGlobe, and Not On Our Watch.\(^{10}\) Not On Our Watch that had allotted $750,000 for the launching of the SSP in 2010, is a human rights organization that is founded and sustained by George Clooney, Don Cheadle, Matt Damon, Brad Pitt, Jerry Weintraub (died in July 2015), and David Pressman.\(^{11}\) Although, Not On Our Watch has been renamed The Sentry in early 2019, the concerns remain “… the war criminals most responsible for Africa’s deadliest conflicts and the corrupt transnational networks that profit from them”.\(^{12}\) This change of name comes after the ongoing protests and political shifts in Sudan, resulting in the removal of Omar al-Bashir who had been the President of Sudan for three decades (1989-2019). The cost of SSP as an effective global surveillance infrastructure is exorbitantly high, and as such it is only available to a limited number of people and organizations who can pay for it. Moreover, the advancement and popularity of this masculinist intervention and binary articulation of humanitarianism/violence and its extension to the international realm is connected with the rise of the politics of human rights and protection.\(^{13}\) In a speech at the UN Security Council, organized by the US government in September 2006, Clooney states:

“I am here to represent the voices of the people who cannot speak for themselves. ... In the time we are here today, more women and children will die violently in the Darfur region than in Iraq, Afghanistan, Palestine, Israel or Lebanon. ... In many ways it’s unfair, but it is nevertheless true, that this genocide is on your watch. How you deal with it will be your legacy, your Rwanda, your Cambodia, your Auschwitz” (emphasis added).\(^{14}\)
The repetition of imperial epistemology and sovereignty is what is at stake in who can speak and who is not allowed to. The power to perform, to know and speak for, decide on what must be done, and to define and compare historical violence to justify protection of one human collective is reserved for Clooney’s and/or Hollywood’s celebrity orientalist\(^{15}\) performance and denied to women and children in Darfur, and activists and critics in Sudan.\(^{16}\) Furthermore, except Pressman—who is, since 2014, the United States Ambassador for Special Political Affairs at the United Nations Security Council—all the others are Hollywood actors/celebrities and film producers. While, C. Wright Mills writes celebrities as “The Names that need no further identification. ... [and] the material for the media and communication and entertainment”.\(^{17}\) “We are the antigenocide paparazzi,” George Clooney insists. Although, “we” refers to human celebrities, or “personalities of national glamour,”\(^{18}\) that are entrenched in people’s memories as moving images (Hollywood movies) and reproduced without end by international mass and social/political media, it has entered into relationship and is operating with satellites that are silently circling north and southern Sudan “… to let the world watch to see what happens”.\(^{19}\) The “antigenocide paparazzi” is embedded in an infrastructure that entangles scientists, celebrity bodies, the film industry, neoliberal politics, money, tele-technologies, law, media and a “hegemony of activity and activism”.\(^{20}\)

Satellite imagery that is seen as instant and imperative evidence, guarding “human rights,” and the lives of people who cannot speak for themselves in distant places, is at the heart of this infrastructure. As an “erection toward height”, the satellite, Jacques Derrida writes, “is always the sign of the sovereignty of the sovereign”.\(^{21}\) It does not only exercise space sovereignty, flying over the national sovereign territory of post-colonial nation-states—Sudan and South Sudan—as well as other countries in the continent, but also articulates the need to make known and produce new planetary evidence based on satellite imagery. It places before the world and human eyes what they cannot see on their own, what has been previously impossible to see, and what has ethical, legal, political, and historical value. This planetary mode of instant visual evidence recording is imbued with ethics and politics of humanitarianism and the narrative of life-death, saving human life on earth, involving

\(^{18}\) Ibid., 71.
“demographic power” and “... the power to see everything, to see the whole, having literally, potentially, a right of inspection over everything”.22 “It's not a thing ... it's everything. And you’re part of it,” is inscribed on the World Wide Web of the DigitalGlobe – “a business unit of Maxar Technologies” that provides “commercial satellites, space robots, high resolution Earth observation, and advanced geospatial solutions”.23 As such it is seen as a radical translation of the world, turning “what used to be science fiction” into “reality”.24 As “everything” the DigitalGlobe transcends national and human sovereignty, taking place as human/nonhuman all at once. What is more is that as “the first and only company to deliver true 30cm resolution imagery,” it is inescapable not only for the SSP but for “40 governments” that “trust DigitalGlobe for mission-critical information about the Earth”.25 As the name suggests, it simultaneously connects and transforms national sovereignty politics and law, making the whole globe accessible as evidentiary images that “… empower better decisions.”26 In other words, the DigitalGlobe produces a futuristic visual evidence paradigm that makes visible what is beyond the “common-sense experiences of earthbound creatures,” to borrow from Hanna Arendt.27 Tracing the advance of satellite imagery to the “Cold War space race,” and militarized surveillance, Elizabeth DeLoughrey writes that the satellite produces a certain “vision of the globe” that both connects to and disconnects human eyes from the earth.28 The intervention of the satellite armed with sensors into the everyday human life on the surface of the earth is as much transformative as it is equivalent to “heavenly spies, scanning the earth’s surface so as to gather information hidden even from people on the ground. That process links a synoptic view with probing”. 29 According to J. Hillis Miller, satellites can hardly be confined to the ways in which they divide and shape and shift our bodily and everyday existence, as globalization – economic, cultural, military – is brought into existence and set in motion by tele-technologies – i.e. “telephone, radio, cinema, television, cables, satellites, cell phones, iPods, and, finally, the most powerful of all, the Internet or the World Wide Web”.30 He writes, how the use of Google Earth connects us to the Web by Wild Blue Satellite and thus detaches us from our worldly place as it connects us to a satellite circling the earth: “It makes me more than a little dizzy to look at the image and to think of it, since I seem to be in two places at the same time, in my study and 1,475 feet in

22 Derrida op. cit.
25 Ibid. “About Us, Our Company”.
26 Ibid.
28 DeLoughrey op. cit.
29 Wolfgang Sachs cited in Elizabeth op. cit., 261. See also, Hect op. cit., 143-144.
the air above it, looking down on its roof from above”. 31 Jerry Brotton writes, “Of an estimated 2 billion people currently online globally, more than half a billion have downloaded Google Earth, and the figure continues to rise”. 32 This entanglement that is an attachment to and detachment from the earth in the everyday, our vision of the globe, and globalization is increasingly built upon tele-technologies which “… involve[s] a general break with all sorts of pasts”. 33 In this context, the human individual, modernity, the national and global are entangled wherein surveillance and communication satellites advance the sovereignty of nation-state and at the same time shift the power away from the state to worldwide political, nongovernmental and commercial organizations and scientists and experts. 34 If during the Cold War the satellite was reserved for the modern state and its military operations, it is now commercialized and available for human rights and anti-genocide organizations such as The Sentinel Project, “a Canadian non-profit organization,” operating in Asia, Africa and Middle East. 35 It, too, is unleashed over the earth and narrated as “humanitarian aerospace,” insisting on guarding the lives of women, children and the disabled. This insistence is based on satellite imagery and their translation into unquestionable evidence, making demands on the organization to act responsibly or feel the obligation to protect the Other. The narrative of “democratizing” access to satellite imagery and information, helping “humanity,” assisting “people in developing countries,” and providing evidence-based knowledge about “climate change” is also repeated by a Silicon Valley company called Planet. In a Ted talk 36 in 2014, Will Marshall, co-founder and CEO of Planet, conveys to his audience how the time for old, big, slow and costly satellites are over, and how “you cannot fix what you cannot see”.36

“What we would ideally want is images of the whole planet every day. … if we want to understand it [Earth] much more regularly, we need lots of satellites. … So me and my friends we started Planet Labs to make satellites ultra-compact and small and highly capable. … It is 10 by 10 by 30 centimeters, it weighs four kilograms, and we have stuffed the latest and greatest electronics and sensor system into this little package, so that even though this is really small, it can take pictures 10 times the resolution of the big satellite. And we call this satellite “Dove,” … our [satellites] have a humanitarian mission, so we wanted to call them Doves. … We have launched them. And not just one but many. … we are going to launch more than hundreds of these satellites over the course of the next year (i.e. 2015). It is going to be the largest constellation of satellites in human history. … they are all cameras pointed down, and they slowly scan across as the Earth rotates underneath. The Earth rotates every 24 hours, so we scan every

31 Miller op. cit.
34 Ibid., 194 ff.
point on the planet every 24 hours. ... we want to empower NGOs and companies and scientists and journalists to be able to answer the questions that they have about the planet”.

The increase of satellites in the orbital space imbued with the “rhetoric of modernity,” promising new forms of evidenced-based knowledge necessary for progress, development and to shape and control human actions on earth and to watch the Earth also means more space or satellite debris. Satellites are not “immortal,” they crash, “die,” shatter and become debris, fall out or spin uselessly in the orbit, suggesting unimaginable environmental consequences.

Wrapped in the promise of modernity, SSP’s aim is to obtain evidence by which the perpetrators of genocide or exterminatory violence are held accountable and punished, victims are identified, violence is documented and archived, global politics and law are advanced and peoples’ life chances are increased. To identify the perpetrators/victims and to monitor survival of target populations, to capture imagery, process and produce necessary evidence and proof that would in turn produce certain definitions of violence, for example genocide, and thus enunciate certain punishments would challenge the judicial system and partly imply “... taking the place of the judicial system”. SSP is thus exercising a certain authority based on satellite imagery, its translation into evidence-based knowledge of what happened, is happening or about to happen or will happen if not stopped, and is the infrastructure that circulates this knowledge globally. DigitalGlobe is, then, indispensable to SSP. With their “clear eyes” that “see through smoke and haze”, DigitalGlobe satellites fly over Sudan and South Sudan to witness and to capture images that register evidence of ongoing violence, military activities, mass graves, ruinations and destructions of villages, and visualizes the possibility of future violence. Depending on time and the space to be covered by the satellite image a “single shot” of an area of about 272 square kilometers costs 10,000 USD, and, and a “full strip” image of a 115 kilometer long and 14 kilometer wide area may cost 70,000 USD. The focus on the financial dimension of SSP needs to include how the satellite images lead to the creation of evidence-based knowledge production that in turn forms a web of power relations, which would bring us closer to, but also stretch Michel Foucault’s reflection on power/knowledge.

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40 The Sentinel Project, op. cit.
41 See Time interview with Lars Bromley, a top UN imagery analyst, op. cit.
42 Foucault op. cit.
to image analysts at DigitalGlobe and Enough Project, a human rights branch of the Center for American Progress that has employed analysts from the United Nations Operational Satellite Applications Program and others from the Harvard Humanitarian Initiative. The analysts see the images as a trustworthy “site and document of knowledge production,” and inscribe their meanings into them which specify their evidential qualities and produce reports. The reports, as related writings, are extensions of the tele-technology as they are composed somewhere, made accessible online, and travel across time and space. They are soon to be read as evidence of killings and destructions in distant parts of the world, underscoring the political responsibility to protect. As such the reports are circulated, entering another infrastructure that connects “the press, policymakers, news organizations and a mobile network of activists on Twitter and Facebook” and thereby travel worldwide.

As it is inscribed on SSP’s website, as “our story”: “SSP synthesizes evidence from satellite imagery, data pattern analysis, and ground sourcing to produce reports”. At the hearing mentioned at the beginning of this article, the American citizens learn to think state violence in Sudan through satellite imagery that claims an evidential relationship to a violence that cannot be made known and seen without technoscience. The images that can be seen are thus expected to bring American and global attention to state violence and destruction in Sudan in general. This iterates what Susan Sontag wrote, namely “… the very notion of atrocity, of war crime, is associated with the expectation of photographic evidence”. What is seeable is what the “clear eyes” – cameras – of the DigitalGlobe satellite sees, without regard to historical, political, economic and social context or the original violence. The imagery that comes down to earth from “satellite-eyes [that] are omnipresent and omniscient” and that can be archived and retrieved in turn shapes what Mahmood Mamdani calls “evidence of the eye”– human eyes. The satellite imagery enclosed with a politicized narrative, therefore, becomes much more than just what can be seen. It claims to “bear witness to a state of affairs,” which transforms the human eyes/body into visual witness. Indeed, the SSP infrastructure transforms the camera into a unique digital technology that transcends the boundaries of the nation-state, capturing imagery and/or transmitting evidence that not only translates and globalizes local violence but shifts the

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46 Ibid.
47 Sontag, op. cit., 74.
48 Cf. Mamdani op. cit., 19.
50 Mamdani op. cit., 7.
51 Wolfgang op. cit., 112.
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I cannot tell you how important it is, I think, George [Clooney], for you and John [Prendergast] to have gone over there and brought these images back. And I think, chairman Kerry was right, saying we should play them and have them up on the screen, because, I think, as painful as they are to see them, the thing that this does is allow all of the American people and people around the world to really get engaged with us, and say, we don’t want this to happen again… The idea that Satellite Sentinel could be used by persecutors, I was a former prosecutor so I kind of… rally the idea of having the bad guys that know something is gonna be done to them… Have you visited with prosecutors at The Hague? Are they interested in your technology? Have you talked to them about the kinds of things that, maybe, could be utilized to strengthen cases on those kind of things?

George Clooney: You talk about the Hague. … a second. It [stopping violence] requires constant drip of information. It requires you to keep piling it on. And sometimes that means it is not going to be effective in stopping it, but at the very least it is gonna be used later as evidence in a trial. We would like to use this information at the Security Council, because a lot of the times what happens at the Security Council, someone, we know the players, will veto any raising of the mandate of protection. Because, they’ll say, well this is just rebel infighting. Well, we have imagery that shows, we got images yesterday that show an Antonov flying over the top, plumes of smoke, where it’s bombed innocent villagers. Well that is not rebel infighting. So, our hope is not to just use it at the Hague, but our hope is to just try and use it as something to pry the Security Council towards raising the mandate from six to seven, trying to move that along.

John Prendergast: The current International Criminal Court mandate only involves crimes committed in Darfur, so basically as the arrest warrants have been issued for the three of the key regime leaders, they are greeted internationally with a lot of skepticism. There are still a number of governments that believe a lot of this evidence is manufactured... Part of the purpose of having this Satellite Sentinel Project is to create airtight evidence for future arrest warrants and prosecutions”.

SSP is translated as a political technology able to invert global politics, i.e. potentially transform the veto-system of the UN Security Council. It is described as that which can “create airtight evidence” that has to do with life and death – “We got images yesterday that show an Antonov flying over the top, plumes of smoke, where it’s bombed innocent villagers”, as Clooney asserts.

The satellite imagery is able “to see and make seen” the details of bombing and thus “to make-known to the whole world”\(^\text{53}\) who the victims – innocent villagers – are, and what needs to be done to stop it and how to bring about legal, political and social justice. Clooney holds that knowledge alone cannot force us to action immediately, and that the images and the piling on of information are the making of an evidentiary archive for future trials. Herein, SSP is seen and made-known as the ontological foundation of humanitarian\(^\text{54}\) intervention that points at new and instantaneous modes of political engagement in the face of destruction and violence, rendering the established legal and political practices and processes obsolete. It, therefore, requires global political attention as it is translated to introduce an evidence-based knowledge and politics to the UN Security Council. These unparalleled technoscientific practices and processes are narrated to be unique as they provide evidence of violence that has already taken place, is taking place, about to take place or is yet to take place. It is in this manner that SSP enters global politics, aiming to “… prevent members of the Security Council, chiefly China, from vetoing intervention for lack of proof”.\(^\text{55}\) Thus, the control of making-seen and known goes hand in hand with the purchasing of political power that also demonstrates a future in which there are “existential interests [in] technical images,”\(^\text{56}\) and not least a shift from the state to the techno-rhetoric of modernity or technopolitics of humanitarianism/violence.\(^\text{57}\)

In a special session of the UN Security Council on February 5, 2003, prior to the invasion of Iraq in 2003, Colin Powell, then United States’ secretary of state, had formed his address on the basis of politics, the UN Resolution 1441, and of surveillance satellite imagery as evidence of the Iraqi state’s weapons of mass destruction. The slideshow as an act of manufactured visual evidence “… was a global lie that shows the consequences of coloniality disguised”\(^\text{58}\) by the rhetoric of modernity, promising to save “human life,” and bring well-being and security to everyone on earth.\(^\text{59}\) This was one of those instants where the United States, a sovereign nation-state, not only “bought information from the satellites of worldwide surveillance,” for example DigitalGlobe and GeoEye,\(^\text{60}\) but extended this to “a sensory way of representing the sovereign”\(^\text{61}\) and/or displaying as slideshow the “territorial

\(^{53}\) Cf. Derrida \textit{op. cit.}, 38.

\(^{54}\) Cf. Fadlalla \textit{op. cit.}.

\(^{55}\) Ibid., 15.


\(^{58}\) Mignolo \textit{op. cit.}, 141.


\(^{61}\) Cf. Derrida \textit{op. cit.}, 258, 215.
expansion of empire”. If satellite imagery constituted an important part of the military infrastructure in the Gulf War of 1991, the display of satellite imagery at the UN Security Council marked a global politico-legal shift. As Eduardo Cadava writes, like other modern wars the Iraq war “... depended on the technologies of sight: satellite and aerial photography, light-enhancing television cameras, infrared flashes and sighting devices, thermographic images, and even cameras on warheads”. Satellite imagery is becoming more and more central to the production and circulation of evidence, global ethical, legal and political organizations, humanitarianism, violence and the right to act, but also space debris and ecological harm. At the same time, it renders the struggle “to control the sky with finger and eye: digital systems and virtually immediate panoptical visualization,” an everyday human condition. In fact, SSP, The Sentinel Project and Planet maintain that “the panopticization of the earth – seen, inspected, surveyed, and transported by satellite images,” is necessary to advance and produce evidence-based knowledge to make immediate and right political and legal decisions. In an interview Clooney attempts an analogy, saying, “This is as if this were 1943 and we had a camera inside Auschwitz and we said, ‘O.K., if you guys don’t want to do anything about it, that’s one thing. But you can’t say you did not know’.

In Bilderkrieg (War-Images), Harun Farocki returns to some aerial images of the extermination camps in Auschwitz that the US Air Force reconnaissance photographers had “unintentionally” captured in 1944, and which the image analysts had failed to see. Published almost 34 years later, like Francisco Boix’s photographs of everyday life/death inside the Mauthausen extermination camp, the images are archived as documentary evidence. They show the barracks and gas chambers and other details of the camps but render the human figures in form of pixels, keeping the everyday annihilatory violence at bay.

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68 Time op. cit.


70 Benito Bermejo, Francisco Boix, der Fotograf von Mauthausen, transl. J. Moser-Kroiss (Vienna: Mandelbaum Verlag, 2007).

Farocki’s concern seems to be entangled with Max Horkheimer and Theodor W. Adorno’s reflection on enlightened modernity and systematic violence. Thus, he engages the aporia of die Aufklärung and the aerial images of the extermination camps, and what the images make visible or how history happens in these images. By contrast, Clooney’s translation of the promise of modernity and of the act of filming or being filmed while acting – being and making-seen – suggests that equipped with sensor, the satellite is able to both control, discipline and guard humanity on earth. The speculation has it that an inspecting eye that sees and makes-seen without being seen would have made the Nazis exercise surveillance over, and against, themselves to the extent that Auschwitz had been impossible to think. In addition, Clooney’s translation sets satellites as what Michel Foucault calls “capillary form of existence, the point where power reaches into the very grain of individuals, touches their bodies and inserts itself into their actions and attitudes, their discourses, learning processes and everyday lives”. This capillary power is now entangled with what Sheila Jasanoff reads as “market thinking and neoliberal forms of governance,” “a neoliberal, marketized political order” according to Arjun Appadurai, or neoliberalism as exception, “… reconfiguring relationships between governing and the governed, power and knowledge, and sovereignty and territoriality” as Aihwa Ong discusses. The panopticization of the earth is, however, inscribed not on architecture as it was the case in the eighteenth and nineteenth century, but on satellite imagery, seen as fundamental to disturbing the dearth of humanity in the world and, above all, to the prevention of future genocides.

As one of the great enigmas of our time, modern genocides have turned into central matters of concern of critical inquiry across disciplines and are mostly conceived as one of the dystopian drawbacks of modernity. The systematic and efficient state-sanctioned
annihilation of people and the destruction of their lifeworlds is emblematically translated into genocide as evidence of modernity’s violence. In fact, as modernity’s violence, genocide does not target humans alone – women, children and men, but like war and testing and explosions of nuclear bombs since 1945, it also constitutes violence against the Earth, which is an “infrastructure of life”.

For the last about 25 years, a great share of inter- and transdisciplinary studies on evidence-making has been devoted to the documentation and analysis of acts of genocide. The term genocide is a juridical determination that generally refers to acts of systematic annihilation and destruction of a “particular” human collective. This scholarly endeavor has contributed to a worldwide growth of knowledge that explains both the reasons for the occurrence of past genocides and the ways to prevent any recurrence. In the afterlives of the Holocaust, some studies more specifically explored the roots of why genocide had culminated in the twentieth century. By translating genocide into international law, the 1948 United Nations Genocide Convention also marked a historical shift in the ways nations, states and global politics may deal with genocidal violence. The Genocide Convention is distinguished from crimes against humanity, focusing specifically on “the intent to destroy” as well as on causing serious physical (actus reus) or mental (mens rea) harm to members of a particular group. For the purpose of proving genocide, the Genocide Convention is unambiguous in its insistence on concrete evidence. In other words, it is impossible to deal with genocidal


violence from a legal point of view without instantly turning to the collection and production of evidence which in turn involves the politics of genocide and/or naming. While the imperial annihilatory violence against the Armenians, the Herero and Nama, and the Maji Maji War in Tanzania, among many others, remain to be legally or politically recognized, the endless colonial violence in Palestine, and the future existence of Rohingya in Myanmar and Êzîdîs in Iraq, a country with a history of genocides, seem to be too political to be submitted to international law. For these acts of annihilation to be legally recognized, evidence must take the form of legal procedures within different instances of the judicial system both at the national and international level – for example the International Criminal Court.

On a more general level, evidence today has become fundamental to various spheres of life and to a fully functioning society. The increasing demand for evidenced-based verdicts, evidenced-based policy, digital evidence, evidence of statistical surveys, evidence-based medicine, artistic evidence, photographic evidence, evidenced-based violence, and evidence and (legal) responsibility to mention but a few, is inescapable. As it is outlined in this paper and this issue, evidence is a translation that takes various forms – institutional, visual, documentary, architectural, linguistic, political, algorithmic such as satellite imagery that is itself a network – and is produced through modernity’s infrastructures. The quest for more sophisticated evidence also means legal, political, social and technoscientific shifts that in turn


transforms society and points towards both an imaginary and an unknown future.

Inquiring into making, production and acts of evidence and proof of genocidal violence, the six papers in this issue turn away from satellites in the orbital space, turning to the making and production of evidence of genocide and its trans-formative effects in law, trials, forensic science, media, technoscience, social bonds, politics, museums, the visual, and the imaginary on earth. The issue is committed to exploring the infinite and untranslatable violence of modernity as well as its translatability in specific contexts in Sudan, South Sudan, United States, Colombia, Guatemala, India, Brazil, Poland, Germany and Rwanda. We learn how international law or the UN Genocide Convention and legal evidence have not prevented the recurrence of genocidal violence since the Holocaust, and how evidence as translation becomes urgent, interrupting the untranslatability of genocidal violence. Evidence becomes irreducible to the legal condition to re-member the past or the promise of a world in which life is protected and worth living. The issue takes up the general dilemma between the social and juridico-political necessity to tell true stories about the world and the persistent impossibility of overcoming the fallibility of all human knowledge, when the story is about acts of annihilation.

Regardless of the proliferation, global production, and circulation of both knowledge and normative disambiguation, genocide continues to be committed on the grounds of racial, ethnic, political, religious, national, and cultural identification and the claims of land, soil – for example Rohingyas in Myanmar and Êzîdîs in Iraq. As systematic acts of annihilation and destruction, colonial genocides and the genocides of the twentieth and twenty-first centuries are neither explicable by the action of any single individual or nation-state, nor can their impossible realities be reduced to matters of legal evidence. They rather implicate modernity’s particular form of distributed agency — distributed between politics of nation, race or religion, science and technology, bureaucracy, law, neoliberal politics, capitalist calculations, territorial expansion and particular forms of subject formation. Seeking evidence for one responsible agency seems impossible and entirely misguided.

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Against this backdrop, scholarship within the diverse areas of genocide studies has expanded and interrupted the untranslatability of genocidal violence. As the separate but interconnected studies in this issue demonstrate, translation takes place in various forms that aim at making systematic/genocidal violence comprehensible, something that can be narrated, seen, known, remembered, and legally and ethically defined and condemned that in turn produces and circulates certain interpretations that guarantee their provisional meanings in our everyday and the future world. Herein any rendition of past violence performs an act of translation that acts independently of the past violence.\textsuperscript{88} It is translation that writes\textsuperscript{89} and visualizes, and thus renders public past violence, making it transnational, transgenerational, transitional, transcultural, and global.\textsuperscript{90} But, as is detailed in Fazil Moradi’s contribution, \textit{Un translatable death, evidentiary bodies: after–Auschwitz and Murambi—in translation}, “… translation entails that genocidal violence leaves nothing “original” to go back to”. The untranslatability lies in the destruction of collective memories through the irreversible extermination of the target population in whole or in part – something that remains unthinkable due to the acts of annihilation.\textsuperscript{91} This produces a void that keeps unfolding, shifting, resisting and escaping knowing, and that interrupts any form of judgment as it remains unreadable and inaccessible in the afterlives of genocidal violence. Although actual acts of genocide are unimaginable and, as Giorgio Agamben remarks, “impossible to bear witness to,”\textsuperscript{92} evidence is nevertheless made and produced to legally define and prove

\textsuperscript{92} Agamben \textit{op. cit.}, 13.
Introduction: Tele-evidence – On the Translatability of Modernity’s Violence

The making and production of evidence become essential both to the conduct of the trial of human perpetrators, and to proving the occurrence of genocide in the past and to the prevention of future genocides. In this context, the law produces genocide as merely a human phenomenon – human violence committed against other humans. The modern state and bureaucracy and technologies of violence – weapons – are never considered genocidal.

Evidence becomes a non-human tele-technology that travels in time and space, which in his contribution, Moradi has coined as tele-evidence. It is imagined to make and produce responsible human beings, preventing more human inflicted injustice in the world, and giving birth to a world without human violence. The world that tele-evidence dismantles and the one it assembles, clarifies what it is against, and is thus an inescapable foundation for a non-violent humanity and world. Moreover, as this issue shows, the making and circulation of evidence is impossible to imagine without modernity’s infrastructure, encompassing legitimate institutions, science, technology, bureaucracy, economy, law, national and global politics, photographs, satellite imagery, artistic installations, museums, architecture, literature, survivor and expert testimony, global or local activism, and scholarly writings. And as discussed above, satellite imagery is giving birth to other modes of making and producing of tele-evidence. It is through modernity’s infrastructure that we are expected to have access to, remember and engage justice, recognize vulnerability, condemn the past, and safeguard memory and the future.

With contributions predominantly focusing on the twentieth and twenty-first century, this issue examines concrete acts of tele-evidence that are constitutive of contemporary ways of making known, seen, remembering and denouncing the multiple dimensions of the violence of genocide. In his contribution, Beyond the law: the evidentiary making of the Darfur genocide, Philippe Gout delves into what he calls, “parallel translation processes of indeterminate acts of annihilation” that made the name Darfur global. He examines how the International Criminal Court’s standardized legal regime of evidence-making to prove the genocidal intent of Sudan’s President, Omer al-Bashir, encounters American humanitarian activism’s insistence on its own production of evidence of genocide. While the International

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Criminal Court respects the established norm of individualization of genocidal violence, humanitarian activism disturbs the legal calculation by introducing “facts” based on satellite imagery evidencing genocide committed in Darfur. Law, science, ethics, tele-technologies and humanitarian activism are entangled and become fundamental to how evidence is made, how histories are written; raising questions as to what and whose justice is served in the politics of classifications, selections and omission. Gout also attends to the legal implications of the recent removal of Omer al-Bashir.

Jennifer Trowbridge, in *Do bones speak? forensic scientific translation of mass violence in Colombia*, pays special attention to how translational practices make past violence intelligible. Translation is at work in the forensic pursuit of justice and memory following mass political violence. Jennifer’s encounter with shopkeepers in the beginning of the paper sets off her research trajectory: “Do they [bones] speak all by themselves?” Yet, another one follows, “But there are many things that you all can deduce”. The author follows by saying, “Exactly, you have to interpret the bones”. By virtue of being human remains, bones speak not only as they are embodied in public memory but also through forensic science and anthropology. Jennifer’s examination shows how forensic consolidation of evidence bring about and circulates evidentiary narratives that in turn graft civic lives onto the exhumed bones.

Jo-Marie Burt, *Gender justice in post-conflict Guatemala: the Sepur Zarco sexual violence and sexual slavery trial*, focuses on the evidentiary practices of the landmark Sepur Zarco trial in Guatemala in 2016. Jo-Marie is concerned with how women survivor and expert witness testimonies, forensic evidence, geospatial images, and three-dimensional maps were essential for the court to produce its “legally binding verdict” of systematic rape, slavery and murder in Guatemala in the early 1980s. The trial re-writes memory, engages justice and citizenship, and points at power relationships in postwar Guatemala. As a mode of addressing, the women-survivors’ testimonies fuse evidence and the ethical need to account for what resists language – sexual violence, enslavement and rape. The application of law and the legal verdict seen as the manifestation of *doing justice* and the multiple acts of violence that keep haunting women-survivors’ bodies lives on as an aporia.95

“Nicole Wolf’s *In the wake of Gujarat: the social relations of translation and futurity*, explores the challenges to audio-visual and narratorial testimonies of the genocidal violence committed against the Muslim population in Gujarat in the North Western state of India in 2002. Wolf, writes, “It [the violence of genocide] haunts because of frequent news reporting the lynching of Muslim men, the rape and killings of Muslim women and girls and the attacks on Islamic sites of prayer”. To attend to violence that annihilates as “poetics of evidence,” – artistic grafting of moving images and words – long after its occurrence and in places far away from your dwelling is to not only encounter haunting but to actively engage with *wake work*, as proposed by Christina Sharpe and here thought as translation as social relation. Visual, sonic and haptic sensual poetics as wake work are born out of audio-visual writing of

the acts and violence of genocide. Citizenship, political and judicial practices are undone as “radical solidarity” as well as the quest for justice become urgent, as wake work acknowledges violence as constitutive of democracies.

The concern with historical acts of annihilation is also at the heart of Gustavo Racy and Vinícius Rodrigues’, *Translating slavery: the Valongo Wharf as evidentiary site of “black” genocide and world heritage*. The surprising excavation of Valongo Wharf that had been built in early nineteenth century as a hub in the web of the Transatlantic Slave Trade in Rio de Janeiro demands remembering. The archaeological, ethical and political need to know what happened leads to the formation of a different relation to “slavery”. The national recognition of Valongo Wharf as an *evidentiary site* and its registration as a UNESCO World Heritage Site includes a “total of 1,200,000 archaeological items”. Gustavo and Vinícius elaborate how translational practices of national and global institutions and international law engage the history of enslavement (slavery) and the annihilatory violence committed against Afro-Brazilians, and how Valongo Wharf becomes a site of great significance for the history of slavery and collective memory in Brazil. Similar to the other contributions in this issue, they suggest that if classifying organized violence as “genocide” means insisting on its occurrence in the past, then evidence of genocide is ongoing interruptions.

Finally, Moradi’s contribution engages the question of *After*, translation, tele-evidence and hospitality as “interruption”. He lives through as he submits his eyes/body to seeable, legible and intelligible tele-evidence of “modernity’s infrastructure of annihilation” – Auschwitz in today’s Poland and Murambi in Rwanda. He inquires into how we come to experience the inexplicable death of genocidal violence as a web of translation as tele-evidence that is produced at a certain time in history and travels in time and across epistemological, visual, virtual, political, and geographical borders. As translation, which Moradi writes, “… is not genocidal violence, but the condition of possibility for state sanctioned violence to inhabit the world,” it produces and circulates a dictionary of human condition and an evolving memory.
Beyond the Law: The Evidentiary Making of the Darfur Genocide
Philippe Gout

Abstract: The Darfur genocide is a highly contested legal fact in the context of the International Criminal Court. However, it became an evidenced truth for the international humanitarian community. This paper investigates the parallel translation processes of indeterminate acts of annihilation that occurred in Darfur respectively within the contexts of the ICC and of humanitarian activism. Although humanitarian actors produced evidence of genocide per se, the ICC merely produced evidence of genocidal intent. The ontological closure of the legal context ultimately determines the untranslatability of the humanitarian evidence of genocide into the ICC context, despite the attempts of its former prosecutor.

Keywords: Genocide, Darfur, Translation Theory, International Criminal Court

Introduction

What can confirm that an international crime such as genocide was actually perpetrated? Why was the International Criminal Court (ICC) unsuccessful in proving genocide in Darfur to date? A straightforward legal answer would underline that crimes exist only once a final binding judicial decision has been issued on the matter. The layperson unsatisfied with this answer could ask further why that is so. That is because a crime is factual conduct – performed either by action or omission – criminalized by law, in line with the general principle nullum crimen, nulla poena sine lege. It might then be necessary to specify that the judicial trial is the setting in which both parties debate according to codified proceedings, articulated either in an adversarial or inquisitorial procedural system, and directed at the crafting of weighed and challenged legal facts potentially corresponding to the incriminated conduct. Even more so, it may be necessary to specify that the existence of such legal facts is self-sufficient and valid beyond the realm of legal ontology. If these answers were satisfactory, then governments, inter-state organizations, international NGOs, academics, global media, artists, and public opinion would refrain from alluding to the allegation of genocide in Darfur as a proven truth. The appropriate answer might be found in the way evidence is sourced and recontextualized; a process which I refer to as translation.

To date, the only proven “truth” is that Omar al-Bashir, the recently deposed president of Sudan, has been indicted by the International Criminal Court (the ICC) on three counts of...
genocide established on *prima facie* evidence; and that the pending criminal case is still at the pre-trial stage, preceding the appearance of the indicted president and before the actual trial being held. The Rome Statute defines genocide in terms similar to those of the 1948 United Nations Genocide Convention (article 2). The Statute of the ICC and the Genocide Convention define the concept of genocide as any act “committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group”. These acts can be characterized by: “killing”, “causing serious bodily or mental harm”, “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”, “imposing measures intended to prevent births within the group”, and “forcibly transferring children of the group to another group”.

As the belief that genocide was perpetrated in Darfur grew in various non-legal fora, it correspondingly appeared that the actual criminal case in the ICC lost its momentum. It is therefore important to address the translation process by which a highly challenged criminal fact became an evidenced truth, specifically among the American humanitarian community working on Darfur. This is because the American federal normative framework facilitated the classification of undetermined acts of annihilation into acts of genocide, thus departing from the very strict evidence-making process of criminal proceedings, namely that of the ICC. This normative backdrop facilitated the evidencing of genocide by American humanitarian activists. I group under the latter category, private American institutions whose statutory purpose was either to provide material and logistical assistance to people in need in order to strengthen their basic human rights in times of armed conflicts, or to reflect on the state of these rights through analytical reports. The main object of this contribution is hence to investigate, from a legal science register, the parallel translation processes of indeterminate acts of annihilation within the context of humanitarian activism and within the ICC’s criminal proceedings respectively. The resulting translation differs in the two contexts: American humanitarian actors produced evidence of genocide *per se* whereas the ICC produced evidence of al-Bashir’s genocidal intent only. The secondary yet essential object is to assess the untranslatability, in the ICC context of evidence, of genocide produced by the humanitarian activists. This failed process echoes American unilateralism in the crafting of the globalized register of criminal justice. Although the United-States is not a member of the ICC, the American humanitarian community served as proxy to convey to the ICC a rather

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2 Notwithstanding the horror of the crimes committed in Darfur, the qualification of such crimes as genocide is an outstanding legal problem. The goal here is neither ignore the gravity of the crimes committed in Darfur nor to disqualify those responsible for such crimes, but rather to highlight that the path chosen by the ICC to evidence the crime of genocide is deceptive.

3 The current chief prosecutor of the ICC, Fatou Bensouda, announced in December 2014 that investigations in Darfur were coming to a halt because of the lack of support from the United Nations Security Council and from the United Nations-African Union Mission in Darfur. However, since al-Bashir was deposed in April 2019, the ICC seems to be regaining its strength and requesting al-Bashir’s extradition. Yet, the national criminal investigation al-Bashir is undergoing on charges of corruption prevents this by asserting Sudan’s sovereign jurisdiction over criminal matters. This refusal to comply was made unequivocal when the Transitional Military Council set up after al-Bashir’s deposition publicly stated it wouldn’t hand him over.
large and inclusive American classification of acts of genocide. This raises questions as to what and whose criminal justice the ICC is meant to perform, and about the immunity the United-States secures for itself in the face of the postcolonial instrumental misuse of the institution – an issue that eventually resulted in a confrontation between a large coalition of member states of the ICC and some of the latter’s organs.

The concept of translation used in this contribution is borrowed from the work of Lawrence Venuti (namely his understanding of pragmatist philosopher Charles Peirce) and, later in the text, Donald Davidson. Of paramount importance is Venuti’s dichotomy between an instrumental (empiricist) and a hermeneutic (materialist) model of translation. The former model assumes that “language is direct expression or reference” and sees translation as “the reproduction or transfer of an invariant which the source text contains or causes”. This invariant is described as the “form, meaning or effect” of the source text or the source “token”. The latter hermeneutic model suggests that translation is “... an interpretation of the source [token] whose form, meaning and effect are seen as variable, subject to inevitable transformation” in the translation process.

As a legal concept, genocide is an institution per se, consisting of a crime defined by texts – such as the Genocide Convention and the Rome Statute – and contextualized thanks to their interpretation mechanisms. This legal institution involves proceedings, the triggering of legal regimes of evidencing, the awarding of legal status of perpetrator and victim and regimes of redress and retribution. The existence of such “legal concepts or institutions” stems from legal ontology, where the legal phenomenon appears as a “real” object – rather than a mere logos –expressed in propositional content that amounts to a “standardized terminology”. The “standardized terminology” of international criminal law could stand for the “semantic invariant” specific to the instrumental model of translation. However, Venuti underlines that the transposition of standardized terms from the source token to the translation is “an interpretative choice” of the translator. Therefore, translating acts of annihilation within the ICC’s ontological frame necessarily relies on the hermeneutic model.

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7 Ibid.


9 Carlo Santulli, Le statut international de l’ordre juridique étatique. Étude du traitement du droit interne par le droit international (Paris: Pedone, 2001), 540. According to Santulli, the concept or institution is a legal representation, in the realm of legal ontology, of a given indeterminate “object” – living or thing – resulting in the granting of a determinate legal status and regime (p.30).


11 Ibid.
Conversely, the humanitarian activists assume—though wrongly—12—that their translating process is empiricist, that is—a direct reference, as opposed to an indexical one—thus facilitating the evidencing of genocide. Finally, the failed attempt of the ICC prosecutor to take on the evidence produced by humanitarian actors illustrates the untranslatability of genocidal violence produced by the humanitarian activists in the ICC context.

This untranslatability stems from the failure to fulfill Davidson’s “principle of charity” through which equivalence can be drawn between the concept of genocide in its original and receiving contexts.13 The first corollary of this principle states that the mediators of both contexts of translation would assume that their respective beliefs and interests are intersubjectively bound to each other and objectively anchored in reality. The resulting second corollary states that the mediators of both contexts would presume a resemblance between action and motives for action from each other.14 The ICC—specifically some of its member states—deviated from the second corollary by resisting receiving back the concept of genocide as reshaped by American federal institutions and following humanitarian actors.

Outline

I will first describe how, during the pre-trial phase, genocide was used as a univocal procedural tool. Confronted with the utter lack of evidence, some organs of the ICC—the Office of the Prosecutor (OTP) and the Pre-Trial Chamber—had to resort to criminal facts established by humanitarian activists so as to compel member states to cooperate in the arrest of the indicted President. The hermeneutic translation of these facts led by the two organs consisted in the production, through interpretation, of evidence of al-Bashir’s genocidal intent rather than of genocide per se. The intention of genocide is not an international crime in and of itself. The evidencing of intention is an act of translation taking the form of an arrest warrant (I).

This evidencing was however partly based on another instrumental evidencing process carried out by certain American humanitarian organizations, on the basis of a loose interpretation of genocide by the US federal Congress.15 Following this state of affairs, evidencing of genocide by American humanitarian activists became of paramount importance for the further procedural steps of the prosecution. These humanitarian activists performed what they perceived to be an empirical translation process. In this process, indeterminate acts of annihilation are the invariant “source-meaning”16 reproduced in this humanitarian context into the concept of genocide and are translated into instrumental evidence consisting of new tokens of different forms unrelated to legal ontology. The causal “effect”17 of the translation tokens in the new context is nevertheless similar to that of the ICC—to determine sets of perpetrators and victims and relations of criminal responsibility between them. This is

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12 Ibid., 485-6.
16 Ibid.
17 Ibid
how the indecisive legal evidence for “genocidal intent” turned into definitive humanitarian “evidence of genocide” in Darfur (II). The OTP’s late attempt to expand the effects of this empiricist translation into the context of ICC met with the strong opposition of member states. I will show in the last part that Ocampo fulfilled Davidson’s principle of charity in his interaction with the American humanitarian network, only to see his plan fading in the face of member states’ strong opposition to a key element in the success of this strategy: the extended binding effect of UNSC’s referrals. (III).

The hermeneutic translation: genocide as a procedural tool in the al-Bashir case

Contrary to the International Criminal Tribunal for former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), the ICC has no coercive means of its own to apprehend indicted persons and has to rely on state cooperation. Sudan is not a state party to the ICC and the waiver of immunity for head of states organized by the Rome Statute did not work against al-Bashir until recently, considering he was an elected President meant to represent the nation as a whole and whose immunity is guaranteed under Article 60 of the Sudanese constitution.18 ICC member states are hence under no obligation to apprehend him.19 The OTP and the Pre-Trial Chamber I (hereafter the Chamber) had to find ways to circumvent this statutory pitfall and I will show that the Genocide Convention helped to do so. I shall first describe the Chamber’s sudden interest in genocide regarding al-Bashir. Following Charles S. Pierce’s pragmatic semiotics, an interpretant is “a mediating representation” binding together a “sign” (representatem) to its “object”.20 The variable interpretants bind together unsettled signs and objects. The OTP and the Chamber facilitated the making of an “intertextual and interdiscursive” institutional context in which a chain of “interpretants” and “signs” was directed at bringing the criminal proceedings to the next step, that is: the trial phase.21 In this process the two organs of the ICC had no need to evidence

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18 Article 58 of the Sudanese Constitution states the functions of the head of States, where it does not appear that he is the Commander in Chief of the armed forces unlike in most Republics. However, article 65 of the Constitution, part of the “interim provisions for the presidency of the republic”, categorized the President of Sudan as the “commander-in-chief of the armed forces”. The latter provision fell into disuse after the independence of South Sudan in 2011.

19 It has been argued that member states are under such obligation on the basis of UNSC resolution 1593 of 2005 by which the Darfur situation was referred to the ICC prosecutor. This interpretation is based on the absolute binding legal effect over all UN member states – including Sudan – of the UNSC’s resolutions adopted upon Chapter VII of the UN Charter. Therefore, resolution 1573 would turn the ICC into a kind of de facto subsidiary organ of the UNSC and extend the opposability of the Rome Statute to the Sudan. Yet, this interpretation on the effect of the UNSC referral voluntarily fails to acknowledge the distinction between a criminal case, which rests on the discretion of the prosecution, and the broader criminal situation in which a specific case can be opened, investigated and eventually prosecuted. The UNSC can only refer situations in which crimes listed in the Statute might have been committed (art. 13§b). This implies that the chief prosecutor of the ICC remains free to investigate the referred situation and eventually open and prosecute a specific case (Yee 2009).


21 Lawrence Venuti, “Genealogies of (...), op. cit., 476.
genocide but more modestly tried to evidence the genocidal intent of al-Bashir. As a result, the acts issued by the Chamber indicting al-Bashir for genocide constitute acts of translation – and interpretation – of a source text belonging to another context and whose form, meaning and effect were foreign to criminal processes of indictment.

Welcoming the crime of genocide in the al-Bashir case

On March 4th, 2009 the Chamber issued its “First Decision” on the application for a warrant of arrest and excluded all counts of genocide. Following an appeal requested by the Chief Prosecutor, on February 3rd 2010, the Appeals Chamber reversed the First Decision with regard to the exclusion of counts of genocide “... in view of an erroneous standard of proof” and remanded the substance of the matter back to the Chamber. On July 12th 2010 the Chamber issued a “Second decision” by which it re-examined the remanded matter – namely, al-Bashir’s genocidal intent – in light of a lower standard of proof. The Chamber published straightaway the second arrest warrant containing three counts of genocide. These counts were: 1) genocide by killing, by causing serious bodily or mental harm, 2), by causing serious bodily or mental harm, and 3) by deliberately inflicting on a group conditions of life calculated to bring about its physical destruction in whole or in part.

During the pre-trial phase at the ICC, the sign “genocide” does not yet refer to an ascertained act of annihilation and its guilty party. At this early stage of the criminal proceedings the purpose of an interpretant will be to bind (index) the sign “genocide” – or any statutory crime – to another object that is nothing more than a criminal intent. This specific mediating representation explains why the Appeals Chamber decided to lower the evidentiary threshold in order to pass the pre-trial phase and start the trial. For such a purpose, there is no need to prove criminal intent “beyond reasonable doubts” but merely to assert that there are “reasonable grounds to believe” that the target individual acted on the basis of a criminal intent. This evidencing mechanism merely refers to prima facie genocidal intent – mens rea – to secure indictment and issue arrest warrants, but it does not require evidencing genocide once and for all. It therefore secures indictment while remanding the decision on the guilt of the indicted and on the crafting of legal facts evidencing genocide to a further step of the proceedings. The mediating representation here does not link up the sign “genocide” with an act of annihilation but with a probable criminal intent.

Indictment on the basis of genocide was the only legal means to secure cooperation from member states in the arrest of the Sudanese President. It relates to a 2007 judgment of the International Court of Justice (ICJ) in the case of the Application of the Convention on the Prevention and Punishment of the Crime of Genocide. The ICJ referred therein to article VI of

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22 Appeals Chamber (ICC), Judgement on the appeal of the Prosecutor against the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, 3 February 2010 (ICC-02/05-01/09-OA), §30 & 41.
23 Pre-Trial Chamber I (ICC), Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir, 12 July 2010 (ICC-02/05-01/09), 8.
24 Appeals Chamber (ICC), Judgement on the appeal (...), op. cit., §30.
the Genocide Convention, according to which a competent international criminal tribunal whose jurisdiction is accepted by member states might try any person charged with genocide. The ICJ surmised from this article an obligation for state parties to the Genocide Convention to cooperate in the arrest and transfer of criminals located on their territory to any international criminal tribunal whose jurisdiction is accepted by these states. Sudan is a state party to the Genocide Convention and the aforementioned obligation is hence watching over relations between Sudan and other states party both to the Genocide Convention and the Rome Statute – insofar as al-Bashir happens to be on their territory. On the basis of this reasoning the Second Warrant of Arrest imposes the cooperation of member states in the arrest and transfer of al-Bashir to the ICC. Therefore, the OTP and the Chamber facilitated the making of an “intertextual and interdiscursive” institutional context in which various texts are called upon to stabilize the mediating interpretation of genocide. The Genocide Convention and the related ICJ interpretative judgment are “mediating representation” devices invoked by the ICC organs to assign genocide a procedural object related to the arrest of the indicted person.

Acts of translation: inscribing reported acts of annihilation into evidence for indictment

The Second Decision and arrest warrant stand as acts of interpretation by which humanitarian reporting of acts of annihilation in Darfur are translated into al-Bashir’s specific genocidal intent – dolus specialis – to destroy in whole or in part the Fur, Masalit, and Zaghawa ethnic groups, and finally serves as evidence for indictment.

At the pre-trial phase the OTP didn’t order its own field investigation regardless of the Rome Statute (article 54§2). As a result, the second warrant substantiates its findings on many external source-texts reporting on the humanitarian situation in Darfur between 2003 and 2008. These reports are tokens establishing acts of violence in Darfur. The reports can thus be considered as factually establishing indeterminate acts of annihilation, through field interviews conducted in refugee camps, statistical data, cross-referencing with other reports, or direct and crowdsourced field observation. Although some of these reports relate to a legal register, they are not concerned with categories of international criminal law. Moreover, the two most important reports – those that helped the Chamber establish genocidal intent – are foreign to the legal context and were produced by humanitarian organizations: PHR and HRW. In all these reports, however, acts of violence are ascribed a limited set of signs approaching criminal conduct such as cruel, inhumane and degrading treatment, rape or torture, mass murder or killing and as destruction or privation of property, among other

27 Pre-Trial Chamber I (ICC), Second Warrant (…), op. cit., footnotes 17-18.
things.29 Interestingly the two humanitarian reports have diverging practices as to mediating representation. Although PHR resorts to an instrumental translation to suggest that these signs invariably denote acts of annihilation through the legal interpretant “genocide” (PHR, 1, 3 and 7), the HRW report remains cautious not to infringe upon the interpretative function of criminal tribunals.30

As the acting translator, the Chamber, however, “decontextualized” the humanitarian source-tokens by “dismantling, rearranging and abandoning features of [their] signifying process” so as to ascribe them “meaning, form and effect” specific to the host context.31 References to these humanitarian sources are made not in the operative provisions of the second warrant but in the preceding reasoning part. This stresses that what is to be evidenced in the two contexts is distinct. In the PHR report, genocide worked as an interpretant of reported violent conduct by which acts of annihilation were evidenced. By “inscribing” this interpretant in the warrant, the Chamber downgraded its semiotic value and turned it into a sign.32 The criminal intent became the mediating representation – or the interpretant – of this sign, evidencing or justifying the indictment.33 The second warrant is thus an interpretative act of the various criminal conduct into al-Bashir’s indictment. Especially, the conduct related to forced displacement, and the resettlement of other groups in the taken lands.34

A shaky instrumental translation: The humanitarian evidencing of the Darfur genocide

Given that the ICC context described above interprets genocide as a mechanism for indictment, the presumption of al-Bashir’s criminal intent presupposes the evidencing of the very genocide on which the guilt is supposed to be based. The performance of the ICC organs thus leads back to one question, which is not: “Is al-Bashir guilty of genocide?” but rather: Has genocide been perpetrated in Darfur?” For the Chamber to answer this question al-Bashir first has to stand before the court (articles 61, 63 and 64 of the Rome Statute) and the OTP needs above all to secure member states’ cooperation in his arrest by addressing in priority al-Bashir’s genocidal intent. The OTP and the Chamber are thus trapped in a tautological

29 Physicians for Human Rights, (...), op. cit., 10, 12 and 23; Human Right Watch, Report, Sudan “They Shot Us (...), op. cit., 4-6;
30 Physicians for Human Rights, (...), op. cit., 1, 3 and 7: “the GOS and Janjaweed have created conditions calculated to destroy the non-Arab people of Darfur in contravention of the “Convention on the Prevention and Punishment of the Crime of Genocide”; “Under international law, the fact that most of those forced from their homes did not die does not mitigate the responsibility of the GOS and Janjaweed forces for their genocidal actions”; “PHR called the actions of the perpetrators genocide, and identified indicators of genocide, including consistent patterns of targeting non-Arabs, etc.”. HRW broadly refers to “international crimes” or “crimes in violation of international law”, or the need to bring “crime suspects” before the ICC.
31 Lawrence Venuti, “Genealogies of (...), op. cit., 486.
33 Pre-Trial Chamber I (ICC), Second Warrant (...), op. cit., footnotes 17-18.
34 Ibid.
deadlock, unable to answer either question without referring back to the other one. This situation led the OTP and the Chamber to resort to humanitarian reporting of acts of annihilation in Darfur. This manifested in the second warrant for arrest. The warrant relies explicitly on PHR reporting of genocide conduct in Darfur. However, this finding itself results from an instrumental translation of reported indeterminate acts of annihilation into the source-meaning “genocide”, as broadly characterized by a 2004 resolution of the US Congress.

Though legal in nature, the US federal institutions fulfill a political function. The necessity to distinguish between the evidencing of criminal intent and of genocidal conduct before these institutions is not as critical as at the ICC. Notably, the US Congress facilitated the making of an intertextual and interdiscursive institutional context by which the meaning, form and effect of the concept genocide, as consolidated by the Genocide Convention, were readjusted in the Resolution 467 of July 2004: the meaning was broadened by means of a loose translation in order to encompass a greater number of situations.35 Indeed, the resolution’s recitals 3 to 4 fail to characterize the criminal conduct constituting genocide in Darfur according to the categories of Article 2 of the Convention. In other words, the formal requirements of genocide are not met. Moreover, the same recitals omit to specify the chief charges listed in Article 3 of the Convention. Simply put, the meaning of genocide was muddled, its distinctive features were not met, and its scope was widened to cover a greater number of categories of international crimes. In such a context, genocide comes close to a generic term, synonymous with international crimes and amounting to unspecified mass atrocities in the course of armed conflict. This resolution, though a political act, is a legal text establishing the existence of genocide in Darfur on the basis of the Genocide Convention. It is expressly on the basis of this broadened meaning of genocide, as crafted in the US Congress Resolution 467, that PHR carried out its instrumental translation – that the reported set of signs indexing criminal conduct invariably denote acts of annihilation through the legal interpretant “genocide”. By resorting to PHR’s instrumental translation to issue the second warrant for arrest, the Chamber paved the way for a dialogue with American humanitarian activism.

A network of American humanitarian activists took up this broad interpretation of “genocide” crafted by the US Congress and recontextualized it in the humanitarian context by means of a two-fold translation to affirm the positive answer to the question: “Has genocide been perpetrated in Darfur?” The capacity of this network to emancipate itself from the strict legal concept of genocide results partly from the fact that most of its participating institutions have their head offices in the United States, which is not a member to the ICC. This network was consolidated by a tight and interconnected group of leading interventionists. The sociologist Sara Dezalay offers a striking account of the role of various

members of this network in the evidencing of Darfur genocide. Samantha Power, a former journalist and American lawyer, was the conceptual engineer behind the evidencing model of the Darfur genocide. Samantha Power was awarded the Pulitzer Prize for her book ‘A Problem from Hell: America and the Age of Genocide.’ In this book, published in 2003 with the support of George Soros’ Open Society Institute, Power campaigned for a loose and inclusive understanding of the notion of genocide and incited electoral constituencies to compel American political leaders to embrace humanitarian interventions. She retained some degree of influence over the Clinton, Bush and Obama administrations. Through journal publications she nurtured the political belief that genocide was perpetrated in Darfur. The Pulitzer Prize and the praise published by mainstream magazines – such as Men’s Vogue or The New Yorker – both before and after the issuing of the second arrest warrant for al-Bashir, reinforced her repeated assertion of the Darfur genocide. Power’s policy could not have been achieved without the financial support of George Soros’ funding institutions, John Prendergast’s institutions for implementing the model, and Sam Bell’s student crowdsourcing. The first step carried out by this network was that of the crowdsourced students’ initiative, which took the reins of the hermeneutic translation conducted by Congress and presented it as evidence of genocide in the eyes of the American activist context and the American population at large. The humanitarian organization of John Prendergast furthered this translation by producing additional humanitarian evidence of the Darfur genocide. This is how the legal provisional evidence of “genocidal intent” produced by the ICC was translated into definitive humanitarian “evidence of genocide” in Darfur. This latter evidence was eventually to be made available to the criminal prosecution and specifically to the ICC prosecutor as a means to circumvent the tautological deadlock standing in the way of prosecution.

Crowdsourcing advocacy initiatives as instrumental evidence making

Swarthmore College students Mark Hanis and Sam Bell, the latter a member of Enough Project, initiated the Genocide Intervention Network (GI-Net) in October 2004, in Philadelphia. In line with Samantha Power’s doctrine, GI-Net aimed at “empowering citizens” with adequate tools to support initiatives protecting Darfuri civilians from genocide. This initiative followed the acknowledgment of the Darfur genocide by the US Congress in July, and relied on the same catchall understanding of this category of crime. It is sufficient to mention one crowdsourcing initiative supported by GI-Net called “Students Taking Action

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37 Ibid., at 46.
38 Ibid.
39 Ibid.
Now: Darfur” (STAND), notably supported by *Enough Project*. 41 STAND started as a group of students from Georgetown University to create tools focusing on genocide prevention and campaign against the Darfur genocide. 42 It organized technologies and resources, and offered educational information and advocacy training in order to activate grassroots networks of students. These networks would then be able to lobby their elected officials in the United States, and campaign in their schools, cities or states to end genocide in Darfur and elsewhere. STAND also used innovative media technologies to start campaigns asking the US Government to act against mass atrocities and genocide worldwide. 43 The digital campaigns #EasyAsAPB (APB) and “Less Veto More Action” are good examples of the use of digital technologies for generating political pressure through crowdsourcing. The APB campaign was intended to enable grassroots activists to pressure the American federal agencies to make prevention against genocide a priority.

For its part, the *Save Darfur Coalition*, of which the *Genocide Intervention Network* was a member, was an advocacy organization founded at the CUNY Graduate Center in Manhattan, concomitantly to the adoption of the 2004 US Congress resolution. 44 The coalition initiated a number of crowdsourcing projects to reinforce the conviction that genocide was perpetrated in Darfur. 45 Following Samantha Power’s model, the 1-800-GENOCIDE program was a toll-free number allowing any individual to address elected officials with concerns of genocide in Darfur. This simple crowdsourcing device allowed callers to enter their zip codes with a choice to connect either with their representative, senators or the White House. The selected official would then receive “customized talking points before being connected”. 46 This dialogic mechanism not only created the political need to act against purported genocide in Darfur, it also stabilized the general public’s opinion and reinforced the belief that genocide was actually going on in Darfur. 47 Likewise, the *Save Darfur Coalition* initiated the DarfurScores.org, which was another bottom-up mechanism for pressuring Congress to take action. As David Lanz puts it (2009), the coalition therefore appeared as a “platform through which norm entrepreneurs have promoted their ideas of global governance”, notably regarding criminal justice and the instrumental characterization of genocide. 48 By means of these participatory and bottom-up initiatives every single individual contribution constitutes a token of its own, each reinforcing the conviction that the Darfur

47 It is worth noting that the 1-800-GENOCIDE program played a crucial role in convincing the federal constituency to pass the 2007 Sudan Divestment and Accountability Act following the pressure of 15,000 calls made through this outline at the time. Ibid.
48 David Lanz, « Save Darfur (...) », *op. cit.*, at 670.
genocide is evidenced, in the context of American humanitarian activism.\textsuperscript{49} It is thus important to underline that the translation process indirectly extends to these crowdsourcing activist initiatives. Here again, the instrumental translation process performed by the activists ultimately took the reins of earlier hermeneutic translation conducted by the US federal Congress and aimed at legitimizing the latter’s broadened and loosened meaning of genocide while forcing the legislature to act.

These student initiatives undoubtedly emerged from a sincere commitment to ethical concerns regarding human rights protection. Yet, in the long run, building on the presupposed Darfur genocide – and other presupposed genocides – also allows these initiatives to pragmatically create a new niche by making new technologies indispensable to the evolving practices of human rights protection, and to advance such activist networks into professionalized institutions. The Genocide Intervention Network and the Save Darfur Coalition merged in 2011 into a unique NGO called United to End Genocide.\textsuperscript{50} Therefore, these initiatives search for a role to play in the genocide discourse on Darfur. To that end, these initiatives answer positively to the question: “Has genocide been perpetrated in Darfur?” However, this evidencing process is limited to the United States, foreign to the Rome Statute, where activists had the largest unrestricted freedom to evidence genocide in Darfur in a non-legalistic way by departing from a formal and judicial making of evidence. Besides this, these activist initiatives do not reflect any kind of scientific analysis or expertise conducted within and subject to the critique of an academic format. Here, university and colleges were the location where these initiatives started and from which they departed once they became successful. In this sense, GI-Net and United to End Genocide were not dramatically different from new social media such as Facebook, whose capacity to exponentially reinforce unchallenged political convictions was criticized in the aftermath of the 2016 American presidential elections.\textsuperscript{51}

\textit{Humanitarian instrumental evidencing of the Darfur genocide}

A close collaborator of Samantha Power’s, humanitarian activist John Prendergast, probably best embodies her doctrine.\textsuperscript{52} After coming to the fore under Clinton’s presidency, he joined the International Crisis Group under the Bush administration as the Director for Africa. He managed to mobilize the media, to lobby the two main American political parties, and to gain support from major Hollywood figures in his quest to “end genocide in Darfur”.\textsuperscript{53} After leaving

\textsuperscript{49} GI-Net, Annual Report (2008), \textit{op. cit.}, at 17.
\textsuperscript{52} Ibid., p. 49.
\textsuperscript{53} Don Cheadle & John Prendergast, \textit{Not on Our Watch: The Mission to End Genocide in Darfur and Beyond}, (New York: Hyperion, 2007), 252. On the use of publicity to generate empathy for Darfur in
ICG in 2007 and with support from Soros’ Center for American Progress, he created the Enough Project, the aforementioned organization meant to work as a strategic compass for all the other American institutions sharing the same concern as Prendergast, namely: “to create real consequences for the perpetrators and facilitators of genocide and other mass atrocities (…)”. Relying on a racial discourse to depict the conflict in Darfur, Enough Project repeatedly refers to the Darfur genocide in its reports. Already in 2007, before the issuing of the al-Bashir arrest warrants, several of Enough Project’s reports were focused on genocide, such as: Echoes of Genocide in Darfur and Eastern Chad, or Don’t Quit Now: Bringing the Darfur Genocide to an End. The latter report, published in December 2007, is a call to support the Enough Project initiative in line with traditional political activism. Nowhere in the report did the authors elaborate on the assertion of genocide in Darfur. Instead, the report presumes genocide with statements such as: “[this] represents the first popular movement against a real-time genocide (…)”, or as: “(…) over four years after the [Darfur] genocide began (…)”. Another report of 2014 states the following: “10th year after Darfur’s genocide was recognized, the rhetoric of commitment to the prevention of mass atrocities has never been stronger” (emphasis mine). Quite evidently the reports refer to the assessment of genocide by the aforementioned US Congress Resolution 467. The George W. Bush administration followed suit shortly after in September. The dual nature of the resolution – political and legal – facilitated the recontextualization of genocide in this humanitarian network, where the evidencing of this crime is performed through a translation that ought to be instrumental.

Genocide is the invariant source-meaning crafted by the American federal institutions and reproduced in this humanitarian context in various formal tokens – testimony, forensic or statistical evidence, reports of criminal events, interview, satellite imagery, etc. This invariant source-meaning is the mediating representation that binds together signs – the tokens and their object – to acts of annihilation in Darfur. The strength of the Enough Project rests on its purported transparency in reporting on genocide. The discourse is nevertheless weakened by the fact that it assumes that genocide was somehow proven elsewhere. Enough Project is trapped in a circular reference to evidence. To resolve this hardship, Prendergast, together with his well-known collaborator George Clooney, created the Satellite Sentinel Project in 2010 as a technological advancement in the fight against genocide. The NGO offers its own evidential tokens in the form of satellite imagery of mass atrocities taking place in Sudan. These images and the interpretation given thereof are the tokens evidencing genocide and supporting the discourse articulated by humanitarian institutions such as Enough Project.

The Satellite Sentinel Project (SSP) works on images collected by DigitalGlobe: an
American private company created in 1992 and specialized in spatial imagery. Together, the two institutions select satellite images possibly revealing mass atrocities and corroborate the likelihood of criminal conduct in light of selected grass-roots sources of information. These composite investigations result in the production of findings of mass atrocities. However, considering that the SSP decides what images are selected as well as the source of grass-roots information used to substantiate the findings, the objectivity of the evidence-making process is compromised from the start. The bias is brought to light in an additional and underlying translation process through which the findings of the SSP are made accessible to the larger public in tokens of another sort consisting in newspaper articles or interviews. This is where Prendergast brands its rather neutral findings under the genocide category. The process therefore consists in a translation involving a series of different humanitarian tokens. The first set of tokens is the selected satellite images evidencing mass violence perpetrated in Sudan. A second set of tokens consists of newspaper articles or interviews. The latter are interpretive acts by which the mass violence captured in the images is called genocide, in line with the unspecific definition given by the US Congress. This surely consists in an instrumental translation considering that the source-meaning “genocide” travels unchanged from the context of US federal institutions to a humanitarian one. However, as underlined above, this source-meaning is itself the result of a hermeneutic translation. The decision to call the mass violence evidenced in the satellite imagery a genocide is moreover also an “interpretative choice” by the translators. This two-fold process illustrates Venuti’s argument that there can be no empiricist translation.

Two illustrations of this two-fold process can be given. The New York Times published an article written by the two activists in February 2015 under the headline: “George Clooney on Sudan’s Rape of Darfur”. The article briefly describes the images captured by the SSP and the way crowdsourcing investigations were conducted to corroborate the pertinence of the data. After this, it concludes that the mass rape perpetrated in the Darfur town of Tabit in 2015 falls under the category of “torture rape”, as defined by the jurisprudence of international criminal tribunals. Therefore, the responsible individuals could be indicted and prosecuted under charges of genocide. However, as with the American federal institutions, the authors don’t specify under what charge listed in the Genocide Convention or the Rome Statute this torture rape could be prosecuted as acts of genocide. One can assume that it would be either “Causing serious bodily or mental harm to members of the group” or “forcibly transferring children of the group to another group”. They could just as well have referred to the landmark international jurisprudence on this issue, such as that of Anto Furundžija (ICTY). Accordingly, the legal grounds defining “torture rape” as genocide are missing, which pertains to the loosened understanding of genocide they rely on.

A more striking example is found in an older interview of the two activists published

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58 ICTY, Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-T, Judgement, 10 dec. 1998.
in 2014 by Vice News, a New York based worldwide news channel and website. The paper is published under the headline: “Sudan’s Silent Suffering is Getting Worse”.\(^{59}\) Although the two activists state that they rely on the widely accepted notion of genocide as consecrated in international law, they rather rely on the American Congress’s understanding of it. According to their investigation, the Darfur genocide of the last decade – ascertained only by the Congress resolution to date – is being revivified. On the basis of selected satellite imagery collected in 2011, they assert that militia fighters of Darfur internationally known under the catchall name “Janjaweed” resumed fighting. They specifically state that: “… the Janjaweed are back with a vengeance under the banner of the regime’s newly launched Rapid Support Forces”. The two authors also brush aside the complex and changing ethnic nomenclature of Darfur and conclude in a truistic remark that: “… specific ethnic groups are today being targeted in spectacularly destructive ways in ... Darfur”.\(^{60}\)

Many reports have instead shown that the creation of the Rapid Support Forces (RSF) is evidence that the racial and ethnic – and therefore genocidal – interpretation of the Darfur Conflict of the past decade is off the mark.\(^{61}\) The RSF, a recently created regular force made of border guards and formerly scattered pro-governmental militias that went through regularization, was in large part created as a response to the nationwide rebel coalition initiative of 2011 known as the Sudan Revolutionary Front which united rebels across racial and ethnic lines.\(^{62}\) Originally, the RSF were recruited in Darfur, stationed in Greater Khartoum, and they seasonally attacked the trans-tribal and religious rebels in South Kordofan. After generally failing to put these rebels to flight, RSF troops made their way back to Khartoum through Darfur, where they claimed their dues by burning villages and conducting chaotic atrocities. Arab tribes also suffer from this criminal conduct. Therefore, an analysis of conflict in terms of racial and ethnic categories alone is not sufficient. Besides, it has been documented that the federal government started to recruit militia fighters amongst “African tribes” after 2010.\(^{63}\) These recent changes have raised obstacles to an analysis of the Darfur conflict in terms of genocide.\(^{64}\)

More importantly, the 2014 interview illustrates the possible genocidal conduct of the RSF in Darfur on the basis of satellite images showing the destruction of a village conducted by this paramilitary force. Yet, quite oddly, the SSP’s database describes these images as a


\(^{60}\) Ibid.


\(^{62}\) HSBA, Remote-Control breakdown (…), op. cit., at 5


\(^{64}\) Interview with Jérôme Tubiana (2015).
time-lapse of the destruction of a school at Tilo, east of Kadugli, in South Kordofan State.65
This city is located about 400 miles away from the nearest town of Darfur, known as Adiela
and itself still far away from what could be described as the beginning of the Sahara desert.
Yet the two activists state that: “There, as the Sahara encroaches and climate change presents
grave challenges to survival, a new form of genocide by attrition could unfold as the
government blocks humanitarian aid”. 66 The SSP has hence produced evidence of genocide
on the basis of this geographical vagueness and the poor analytical framework of the Darfur
conflicts. The Genocide Intervention Network and the Save Darfur Coalition reinforce this
watered-down understanding of genocide.

The untranslatability of humanitarian evidence of genocide within the ICC

One should not underestimate the possible evidentiary weight of the humanitarian tokens
described above in criminal proceedings. International criminal tribunals take judicial notice
of such tokens under the label of “facts of common knowledge”. The latter are most often
historical, political, journalistic or even artistic accounts of criminal conduct reported by
victims or individuals who witnessed or observed parts of the events, as expressed in the
tokens they produce. The growing admissibility of such evidence in international criminal
tribunals shows common law lawyers supplant civil law lawyers in their argumentative
jousting in the due process of law. 67 Once a tribunal takes judicial notice of these facts, they
are deemed to be irrefutable evidence. Such evidentiary facts trump the rights of the defense
to cross-examine the pieces of evidence and, ultimately, to benefit from the right to a fair
trial. This circular evidentiary process goes back-and-forth between legal and non-legal
translators in constant patterns of reciprocal referencing. In such practices, the translation
process is meant to be instrumental. The Extraordinary Chambers in the Courts of Cambodia,
the Special Tribunal for Lebanon, the ICTY and the ICTR (article 94 of the respective Rules of
Procedure and Evidence), sometimes after a long hesitation, have all resorted to this legal
technique and so can the ICC (article 69 §6 of the Rome Statute).68

The prosecution engaging in the instrumental translation of genocide

The former Chief Prosecutor of the ICC, Luis Moreno Ocampo, most likely engaged in the
instrumental translation of genocide specifically to facilitate the judicial notice of facts of

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March 2018.
66 George Clooney, John Prendergast, “Sudan’s Silent (...)
67 Denis Alland, « La communauté internationale malade de la peste. Quelques notes conclusives (?)
sur la souveraineté ‘pénale’ de l’État », in Colloque de la SFDI, La souveraineté pénale de l’État au XXIe
siècle (2017), 517.
68 ECCC, Decision on IENG Sary’s Motions Regarding Judicial Notice of Adjudicated facts from Case 001
and Facts of Common Knowledge Being Applied in Case 002, Trial Chamber, 4 April 2011; STL, Motion
Seeking Judicial Notice of Reports of the United Nations International Independent Investigation
Committee and the Fact Finding Mission to Lebanon, Trial Chamber, 8 December 2015.
common knowledge. Ocampo interacted with Prendergast to make the most of the translation process carried out by the humanitarian network resulting in evidence of genocide in Darfur. In this sense, the strong cooperation between Prendergast and the former Chief Prosecutor instead suggests that the humanitarian network complemented the work of the OTP, specifically by answering the question the latter could not address, that is: “Has genocide been perpetrated in Darfur?” The complementarity between the two individuals manifested outside the ICC context, in their common participation in several workshops serving as a platform for the dramatization of their cooperation through reflexive talks, speeches, and improvised photo calls capturing hand shaking and smiles. Enough Project published a series of photographs on its website capturing the complicity between the two individuals and therefore their respective institutions during these workshops. One was taken during a conference hosted by the International Peace Institute in New York and related to the implementation of ICC’s arrest warrants. During this workshop Prendergast stressed the need to support the prosecution’s strategy in securing the arrest of al-Bashir. Another was taken during an award ceremony organized in Los Angeles during which Ocampo and Prendergast were interviewed together on the accomplished work of the ICC and the ways to overcome obstacles.69

These workshops were organized at the end of Ocampo’s mandate to discuss how to improve the work of the ICC in prosecuting genocide. At this point the two characters acted as mediators, implicitly referring to a shared understanding of genocide at the expense of its legal conceptualization. This manifests in the topic of the conferences, by which Prendergast answered the problematized question the Chief Prosecutor could not address in his institutional framework: “Has genocide been perpetrated in Darfur?” They showed a common belief and interest in what stands as genocide as objectively manifested in Darfur. In this process they thus fulfilled the first corollary of Davidson’s principle of charity. By calling to support the OTP in the arrest and prosecution of al-Bashir, Prendergast demonstrated that the two mediators of both contexts assumed similarity of action and of motives for action from each other (second corollary of Davidson’s principle). The success of this translation was guaranteed by Prendergast’s wider activist network, notably by the Genocide Intervention Network and the Save Darfur Coalition.

Failing the principle of charity

This strategy however did not succeed. The main reason is that the ICC apparatus is not only made up of judicial bodies per se, but also of member states and their Assembly. Member states have started to show disapproval for the ICC prosecution policy, mostly concerned with

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Africa at large, as being suffused with colonial thinking. The al-Bashir case in particular is afflicted by a paradox, by which the Prosecution’s evidencing strategy relies on the American unilateral modeling of global criminal justice; a country strongly hostile to the Hague institution and yet seemingly in position to influence the ICC’s prosecution agenda by way of UNSC’s referrals. An explanation for the prosecution’s failure to date is that it never clearly expressed its strategic move based on the Genocide Convention and instead implicitly relied on the highly questionable general binding effect of the UNSC’s 2005 referral. Only if the referral is binding regarding Sudan will the prosecution be entitled to turn to the instrumental translation of genocide provided by the American humanitarian activist network. Yet, the opposition between the judicial bodies and member states comes to light precisely through the tense debate on the legal effect of UNSC’s referrals, revealing the challenge of fulfill Davidson’s principle of charity in the translation of the humanitarian understanding of genocide. It is, for instance, worth looking at the Pre-Trial Chambers’ decisions on the failure of member states, and third-states, to arrest and surrender al-Bashir to the court.

This opposition reached a dramatic point on two occasions - Initially, when the High Court of Justice in Pretoria failed to arrest al-Bashir and to eventually surrender him to the ICC during his participation in the African Union Summit in South Africa in June 2015. While the South African federal Government obviously opposed the obligation to cooperate with the ICC in the arrest of al-Bashir, the judicial body restored balance by showing the good faith of state institutions and reaffirmed the responsibility of the South African state in the failure to arrest the indicted person. In their procedural performance the state institutions of South Africa resisted the OTP. This opposition was revealed in the later decision of the South African Constitutional Court of March 2016. In this litigation the applicant incidentally asked the court to determine if the UNSC’s referral or the Genocide Convention waived this immunity according to the provisions of the Rome Statute. Although the court found it unnecessary to answer the incidental question, it nonetheless reminded the applicant that the argument of the extendible binding effect of the UNSC referral is “hotly contested” and stressed that the

71 On the fact that Africa was chosen as a playground for the ICC for lack of obstacle from the US, see: Adam Branch, « Dominic Ongwen on Trial: The ICC’s African Dilemmas », *IJTJ* (2017), 30-49, spec. At 37.
72 Between 15 July 2013 and 23 January 2015 only, the Pre-Trial Chamber II issued nineteen decisions related to al-Bashir’s travels, restating states’ obligation to arrest him, with no success to date. ICC-02/05-01/09, *The prosecutor v. Omar Hassan Ahmad Al Bashir*, Situation in Darfur (Sudan), Public Court Records – Pre-Trial Chamber II. <https://www.icc-cpi.int/Pages/crm-refined.aspx?case=ICC-02/05-01/09>, accessed on 15th March 2018.
73 On June 15th, 2015, after the Attorney of the South African Government stated he had reliable information that al-Bashir left the country, the High Court of Justice in Pretoria decided too late that the Government was under an obligation to arrest him.
argument based on the Genocide Convention is rather “limited” and should not receive much attention. After this, the South African State engaged proceedings to repeal its membership to the ICC. In a statement released in October 2016 the South African Justice minister again expressed opposition to the OTP strategy by stating that “ICC’s obligations are inconsistent with domestic laws”. According to some sources, more African states could join the initiative, such as Kenya, Uganda or Namibia.

The highly contentious question of the binding effect of UNSC’s referral was recently decided on by the Appeals Chamber of the ICC confirming Jordan’s non-compliance with the Court’s request to arrest al-Bashir. The appeal filed by the Jordanian government against the Pre-Trial Chamber’s decision was followed by a number of important submissions (notably amicus curiae) by other member states and organizations, such as the African Union, all discussing the extent of the binding effect of UNSC’s referrals. The possibility for the prosecution and the ICC at large to rely on the instrumental translation of genocide performed by American humanitarian activists therefore depends on the capacity of the UNSC’s referral to be accepted in the ICC’s framework as an act of translation. The Appeals Chamber recognised this translation in its judgment in the case of the Jordan Referral, shortly after the deposing of al-Bashir in April 2019. It notably confirmed Jordan’s non-compliance with a debatable newly proclaimed international customary norm rejecting immunity before international tribunals partly on the basis of the UNSC’s referral. The Appeals Chamber moreover took an opposite view to the Pre-Trial Chamber by deciding not to refer the matter of the binding effect of the UNSC’s referrals to the Assembly of States Parties, obstructing any formal objection by member states.

The al-Bashir case appeared to be the seat of an ontological experiment conducted by the OTP. Instead of evidencing genocide in Darfur using his own field investigation methods, the OTP resorted to non-legal actors and their making of evidence of genocide. This choice was motivated by the intention to shortcut the evidencing process by taking judicial notice of non-legal evidence as “facts of common knowledge”. This shift in the making of genocide resulted in a highly unstable translation of what stands as evidence outside legal ontology.

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75 Ibid.
77 Appeals Chamber (ICC), Judgment in the Jordan Referral re Al-Bashir Appeal, 6 May 2019 (ICC-02/05-01/09-OA).
79 Appeals Chamber (ICC), Judgment in the Jordan Referral (...), op. cit., at 5, 52-60 and 66-73.
80 Ibid., at 89-97.
The former chief prosecutor made the bold choice to step outside legal ontology in a postmodern impulse and the Appeals Chamber just decided to follow suit. Acting as a prosecutor, Ocampo made the bet that the law does not have to be seized as a comprehensive ontological object of its own but as a mere *logos* giving way to an empiricist interpretation of social and historical *phenomena*. There would be no real boundary between legal reality and other social realities. This audacious attempt has not been successful to date: al-Bashir still has to be brought before the Court and member states may still oppose the Court in many other ways than by means of the Assembly of State Parties. Considering the forcing through of the Appeals Chamber, it remains difficult for the loose humanitarian evidence of genocide to translate into the criminal proceedings of the ICC. This unsettled situation reflects the failure of the Court to understand that institutional apparatus sometimes impedes ontological choices.

Do Bones Speak? Forensic Scientific Translation of Mass Violence in Colombia
Jennifer Trowbridge

Abstract: This article examines how forensic scientific translations reveal and make comprehensible mass political violence in Colombia. Through the labor of forensic anthropologists, acts of annihilation – unknowable brutality – are transformed into relatable, if partial, evidentiary narratives. This transformation unfolds in several phases, described in detail based on extensive forensic lab ethnography: translating the skeleton, interdisciplinary translation of the dead body, interrelation of evidence, and establishing patterns of violence. Through the translational work of forensic anthropologists, the trope “bones speak” comes to semiotically index the demand of many Colombians to break barriers of silence surrounding brutal acts of political violence that have long plagued the country.

Keywords: Violence, forensic science, forensic anthropology, medical anthropology, STS, translation, human rights, Colombia, Latin America.

“Good morning!” a Colombian shopkeeper greeted me, with a particular attention that I was sure was due to the fact that I was unambiguously gringa, (a woman from the United States). The all-purpose store was on the corner of a pedestrian road in the small riverside town in the northwestern Chocó province, not far from Colombia’s jungle border with Panama. I was there to help locate and dig up the bodies of nearly one hundred people who had been victims of a wartime massacre in 2002. Recognizing me from the day before, the shopkeeper asked with whom I was in town. Clearly I was not there alone – that would be not only strange but also potentially dangerous. “I’m here with the Fiscalía, the [government] forensic team,” I replied. “Do bones really speak?” the shopkeeper then asked suddenly. He smiled and continued, “Do they speak all by themselves?” “Well, not exactly,” I responded, intrigued and a bit surprised. Another shopkeeper joined in. “But there are many things that you all can deduce,” she offered. “Exactly, you have to interpret the bones,” I replied. “This region is one of the worst affected by war,” the first shopkeeper told me, as much for information as a warning. I nodded, thanked them, and headed towards the dock to board the motorboat that would take me, with the rest of the Fiscalía team, down river for that day’s exhumations.

It is commonly said within Colombia, “the entire country is one big mass grave.” This may well be true, given the more than half a century of internal political warfare that has

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plagued it, which in turn has been complicated by and intertwined with drug war violence. But many of the graves resulting from political violence remain clandestine, hidden from public view or official investigation. Between the Colombian state, right-wing paramilitaries, and leftist insurgent groups the Armed Revolutionary Forces of Colombia (FARC) and the National Liberation Army (ELN), official sources report that over 268,000 Colombians were killed and an astonishing 60,630 were “disappeared,” or taken for presumably political reasons never to be heard from again. Right wing paramilitaries have been found responsible for the highest percentages of violence against civilians and some of the most brutal systematic practices of violence. The Colombian state and the FARC have also repeatedly been found responsible for atrocities and violations of human rights.

The notion that bones “speak” – which is to say, once unearthed they have the ability to tell their stories from beyond the grave – highlights the potential of forensic science to aid in criminal investigations of war crimes, by providing material evidence from dead bodies. Yet it also obscures the fact that forensic anthropologists are the agents responsible for “listening to” and interpreting these bones. This article explores how acts of annihilatory mass violence are translated into comprehensible, if partial, narratives through the labor and daily practices of Colombian forensic anthropologists. Anthropologists studying language and science alike have theorized that translational practices inevitably invoke social meanings as they mediate between various realms of knowledge and action. Translation has been described as a “sameness-in-difference”; a necessarily incomplete process of conveying culturally informed meanings, or “semiotic partials”; a mobile process of contextual dis- and re-embedding; and multifaceted transformations that draw on diverse (and often

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4 Centro Nacional de Memoria Histórica (CNMH), “¡Basta Ya! Colombia.”


competing) epistemologies.11

This article argues that Colombian forensic anthropologists transform acts of deadly – and therefore fundamentally unknowable – violence into medicolegal evidentiary narratives by engaging in a variety of translational practices that remain largely-obscured both because they are carried out behind fortified lab walls and because they tend to resist standardization. The resulting evidentiary narratives are generative but also incomplete insofar as they are rigidly shaped and constrained by legal and forensic scientific regulations. The scientific findings to be translated into criminal evidence are only those which the court demands, i.e., the identity of the person and information related to the cause of death. Moreover, even the best forensic methods can never make the experience of a murder truly known. Still, the courtroom-ready criminal evidence that results from forensic scientific translational processes undeniably produces accounts of violence that otherwise would never exist.

Below, I outline four phases of forensic scientific translation with a specific focus on the labor of lab-based anthropologists. I consider forensic scientific translation processes to include a variety of practices, in which forensic anthropologists not only interpret skeletonized remains according to scientific standards and case-specific contexts, but also touch and handle bones, place and re-place them in controlled laboratory environments, negotiate with other specialists, and navigate scientific and legal institutions. Through engagement with these forensic scientific colleagues and dead bodies, forensic anthropologists mediate between unknowable violence and various hierarchized domains of scientific and legal expertise. I focus primarily on forensic anthropologists, but they by no means work alone. They are in regular dialogue with other forensic scientists, including pathologists (forensic doctors), dentists, and geneticists.

This article is based on seventeen months of ethnographic fieldwork on forensic scientific investigations of mass violence in Colombia between 2015 and 2017, where I collaborated with forensic specialists at Colombia’s National Institute for Legal Medicine and Forensic Sciences (INMLCF) for ten months. I chose to work with the anthropologists of the INMLCF because of my own background as a forensic anthropologist in Guatemala, where I investigated war crimes at the Forensic Anthropology Foundation of Guatemala (FAFG) from 2007-2011. There, I was based in the lab but also traveled regularly to assist with forensic archaeological exhumations of the dead and interact with the families of the deceased.

Given my extensive experience in Guatemala, my positionality as an ethnographer in the setting of the forensic anthropology lab in Colombia was complex. I entered the INMLCF with the ability to perform as an “expert”.12 I often found myself formulating my own informed, expert opinions on cases almost inadvertently, even though, due to Colombian legal restrictions, I did not conduct any casework myself. My direct interactions with evidence were limited to assisting anthropologists by cleaning bones, or laying out skeletons in anatomical position on lab tables. Occasionally, I would participate in conversations about how to interpret particular skeletal phenomena – such as the position of the body when struck

by a bullet— with my interlocutors, and in these instances, it is possible that my “expert” status contributed to their analyses.

This “insider” position, as well as my identification with and felt allegiance to the Colombian forensic anthropologists, may have produced biases within my work that skewed towards the experience and opinions of those anthropologists over those of other forensic professionals. On the other hand, the Colombian forensic institutions themselves were new to me, and so the vast majority of my learning at the INMLCF had to do with inter- and intra-institutional politics insofar as they concerned how forensic cases were handled, and how such politics interconnected with the translational practices described below. While I was more attuned than a non-expert would have been to how these dynamics affected forensic practice, the particular aspects of these tensions were specific to the Colombian context, and my analysis of them was not meaningfully swayed by my experiences in Guatemala.13

Mass Violence and Transitional Justice in Colombia

The signing of Peace Accords between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) at the end of 2016 marked a promising turning point toward the end of the longest official civil war of the modern era. The process, however, was quite contentious. The Accords were quietly pushed through the Colombian Congress a few months after the historic rejection of their first iteration in a national plebiscite vote. At the time of this writing, the National Liberation Army (ELN) has yet to demobilize, and large portions of the Accords have been dismantled in highly politicized congressional battles. Colombia continues to find itself in a complex transitional justice process in which murders of labor leaders, social organizers, and human rights defenders are sharply on the rise.14 Moreover, paramilitary successor groups known as “Criminal Bands,” or BACRIM, operate throughout the country, having swiftly filled the gap left by the 2005 paramilitary demobilization process known as the “Justice and Peace” law.15 Paramilitaries have long been denounced as the illegal war machine for the Colombian state, doing the “dirty work” of the Colombian military.16 National and international human rights groups have documented collusion between the state and paramilitaries, particularly in cases of massacres and extrajudicial executions, although the Colombian state continues to resist official recognition of its role in

13 Given the years of experience that I gained working as a forensic anthropologist in Guatemala and my subsequent decision to conduct ethnographic research on the same topic in Colombia, it would certainly be possible to provide some kind of comparative analysis. Unfortunately such an analysis is beyond the scope of this article, but I do acknowledge the rich potential for such analysis in future presentations of this research.
Colombian forensic investigations of wartime violence are distinctive within Latin America because state institutions have claimed their sovereign right to conduct all forensic processes, sidelining most efforts of forensic non-governmental organizations (NGOs). This contrasts with forensic anthropology efforts led by NGOs in neighboring countries, including Argentina, Peru, and Guatemala. Yet as in those countries, Colombian relatives of the dead and disappeared – coming together through human and victims’ rights’ organizations – have long been the driving force behind efforts to propel forward forensic investigations of deaths and disappearances. A large portion of the Peace Accords (Section V, or Punto V) was constructed with the input of a number of these relatives. The Accords promised mostly symbolic reparations to victims of wartime violence, including “indirect victims” such as the families of the disappeared. Parts of Section V responded to relatives’ demands to locate and identify the dead and disappeared, specifically through the creation of a new, independent investigative body, the Unit for the Search of Disappeared Persons (UBPD). Measures to increase the rate and quality of forensic investigations into wartime deaths and disappearances began more than a year before the final signing of the accords, thanks to this agreement. Much of this task fell to institutions of the state, including the INMLCF during my time there.

Translational Practices in Forensic Anthropology

For forensic anthropologists, scientific interpretation is one of the least straightforward aspects of their jobs, and as such it is a common topic of discussion in the lab. To most anthropologists, “interpretation” refers to practices by which they make meaning of qualitative and quantitative data that result from applying various forensic scientific methods to sets of human remains. Interpretation allows forensic scientists – particularly in the lab – to transform amalgamations of data into conclusions that contribute to the overarching medicolegal goals of forensic science: to identify human remains and reconstruct death events. In this conceptualization of interpretation, analytical processes and scientific procedure are foregrounded. Other actions are minimalized or ignored, however, including

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18 Winifred Tate, Counting the Dead: The Culture and Politics of Human Rights Activism in Colombia (Berkeley, Los Angeles & London: University of California Press, 2007).

practices such as touching and manipulating bones within the lab, regular discussions and debates among anthropologists about their cases, and the ways that these professionals mediate the scientific, legal, and institutional logics in which their work is embedded. For this reason, I use “translation” as a term that encapsulates all forensic scientific practices, including but not limited to interpretation. This section illuminates the forensic scientific translation black box by categorizing practices into four phases that form integral parts of the daily work of lab-based forensic anthropologists, with particular emphasis on their casework related to wartime violence. I then demonstrate how specific political structures and tensions in Colombia are simultaneously supporting and hampering such forensic scientific processes.

Forensic translation is unique to every dead body and every death incident. Because of this, techniques for interpretive analysis beyond the level of individual bones or skeletons are rarely written about in the forensic anthropological literature, except in published case examples. Interpretive analyses are so unique and complex that they tend to resist standardization. Clear procedures for interpretive analysis have not been developed because they cannot be applied uniformly to all cases. Interpretive practices involve a degree of subjectivity (always sustained by and within the constraints laid out by the data yielded from applied methods) that renders interpretive processes flexible and variable. All of these factors contribute to making interpretation an obscured part of forensic anthropological analysis.

Despite—or perhaps precisely because of—this apparent obfuscation, the complex nature of interpretative practices ends up generating some of the most common and important discussions within forensic anthropology labs. Such conversations, I contend, are so common that they are vital to forensic anthropology “lab life” and constitute an integral aspect of translation of violence into medicolegal narrative. Like my interlocutors, I have participated in and listened to innumerable interpretive discussions within forensic anthropology labs, which are rarely visible to the external eye. INMLCF forensic anthropologist Maria explained the nature of debates that occur when interpretations of the same osteological phenomenon differ between such specialists:

“Sometimes there is a discrepancy in [our] interpretations from what we [each] observe. Everyone presents their points of view. They defend their points of view. Then it’s the decision of the perito [forensic specialist legally responsible for the case]. They may or may not accept the suggestion of the person who made the correction, because at the end of the day, the person...”

23 To protect all parties involved, this is a pseudonym as are all names used in this article.
who creates the final report [el peritaje] is the one who has to defend their findings in court”. 24

Such interpretive disputes within labs index a scientific environment that tolerates a relative degree of disagreement and ambiguity compared to its courtroom counterpart. As forensic anthropologists finalize their interpretations in legal reports (peritajes), any uncertainty must be expunged or obscured, since what is demanded by the courtroom is a singular scientific “truth” that must be presented as undisputable evidence. Precisely for this reason, the lab – with the social and professional interactions that take place in it – is a critical site of forensic scientific translation.

The following four categories of forensic scientific translational practice take place mostly in the lab. They are organized here from micro to macro in both the anatomical and conceptual sense. They begin with the smallest features that forensic anthropologists analyze in bones – sometimes literally microscopically – and move towards, ultimately, the reconstruction of death events that may constitute acts of mass violence. Later phases of translation consider the potential interrelationship between multiple bodies that may reveal connections between specific crimes and broader patterns of wartime violence. The order of these phases also approximates the chronological order of forensic laboratory procedure, although in practice there is a constant flowing back and forth between each of these phases as they are developed over the course of a given case. These phases include:

1. Translating Bones
2. Translating the Skeleton
3. Interdisciplinary Translation of the Dead Body
4. Translating Context: Interrelating Evidence and Establishing Patterns of Violence

Ultimately, these translational phases constitute and contribute to the production of criminal evidence through forensic scientific, medicolegal practice.

Translating Bones

The first phase, translating bones, occurs as forensic anthropologists examine bones one at a time. This occurs as the skeletonized body is moved into and through the forensic lab. It is meticulously cleaned, laid out in anatomical order on an examining table, and every bone present is labeled with the body’s case number. This set of translational practices considers the dead body as – quite literally – a collection of disjointed anatomical structures, or individual bones. Practices in this realm are based on established forensic anthropological methods, standards, and literature. The application of such methods demand relatively little interpretation since most of them utilize either quantitative procedures based on measurements, or qualitative approaches that require the categorization of specific

24 This and all subsequent interviews were conducted in Spanish and the included quotes are translated by the author.
osteological features. Both quantitative and qualitative methods tend to provide statistical probabilities for the results that they yield. This is especially true in the United States since the 1993 Daubert law that regulated the submission of witness testimony evidence, and a related 2009 federal mandate to demand increased statistical backing for forensic scientific findings to ensure their admissibility as criminal evidence. Other practices at this initial level are purely descriptive with regards to individual bones and the features and anomalies they present, which then provide the bases from which interpretive claims can be made. Ideally, anthropologists create written descriptions of fractures or other abnormalities before drawing any conclusions about what such features might mean, including whether they occurred before, after, or around the time of death. In this phase, each forensic anthropological method and description is applied individually to one bone at a time, and the interpretive labor is minimal.

Translating the Skeleton

The second phase is translating the skeleton, a process in which findings from the first interpretive phase are considered in conjunction with one another. This produces a broader picture of the dead body, both as an individual person to be identified and what the cause of death may have been. Key to this phase is that it considers bones as interrelated parts of a skeletonized dead body as a whole, rather than discrete objects of inquiry. It is precisely for this reason that I utilize “dead body” and “skeletonized remains” in many instances rather than “bones,” because the idea of disassociated bones detracts from the idea that what is being analyzed is in fact a dead person. Concordantly, anthropologist Catalina explained that one must look at “the bone as part of a body, of an organism, as something that is fulfilling a specific function”. Claudia added:

“I think we have to keep in mind that [human bones] are cadavers in a different state than those we see in the autopsy room, but they are cadavers and we have to treat them as such. ...They are skeletonized cadavers, [but] we have to look at them as a whole”.

Within a skeletonized cadaver, individual bones constitute tangible parts of a greater whole. The skeleton is considered complete if all bones are present, but skeletonized remains are also necessarily incomplete since the soft tissues that connect the bones have decomposed. The full structure of the body must be imagined as a whole during examination,


especially when considering how physical marks of bone trauma might have come to be. The rib cage is a particularly good example of this. In the skeletonized body, ribs appear to exist as discrete entities upon which traumas of all kinds—sharp force, blunt force, gunshot wounds, etc.—are frequently observed. But in the live body, the ribs work interdependently with one another, the vertebral column and other hard and soft tissue structures to form the protective, strong yet flexible thoracic (rib) cage. One blow to the rib cage can affect multiple bones at once, thus it would be incorrect to count the number of fractures on the ribs and consider that to be the minimum number of traumatic impacts. Many injuries to ribs have been misinterpreted by forensic anthropologists because of the complex biomechanics of how the rib cage as a whole reacts to traumatic stress.27

Another aspect of this translational phase is the process of interrelating and reconciling results yielded by the application of various quantitative and qualitative forensic anthropological methods applied during the previous phase (individual bone analysis). This involves compiling, comparing, and merging results. This process is sometimes straightforward if, for instance, the age-at-death generated from methods applied to the os coxae (hip and pelvic bones) coincide with those applied to other areas of the skeleton. But often results are more complex. They can conflict with one another, or even more difficult to predict, the application of methods can yield erroneous results if the forensic anthropologist fails to recognize an anomaly on a bone structure routinely utilized for analysis. Skeletal interpretation at this phase is thus crucial to how violence inscribed on particular bodies is translated into medicolegal narrative.

Forensic anthropologists often said that their practices will “give us the truth”. The “truth” is a commonly used term with specific meaning in this context. It implies that “what really happened” that led to the individual’s death was kept hidden by perpetrators and therefore is unknown when the body enters the lab, but that translation processes allow forensic specialists to reveal these clandestine acts of past violence. In other words, for forensic anthropologists, to reveal the “truth” is synonymous with translation practices that produce evidentiary narratives of violent acts.

Interdisciplinary Translation of the Dead Body

The third translational phase is the interdisciplinary translation of the dead body, in which forensic anthropologists participate but do not necessarily lead. At the INMLCF, forensic doctors and dentists are in charge of amalgamating and reconciling findings from each of the forensic specialties that works on a given dead body, in order to identify the dead body and establish the cause of death. The details of this process are similar to what forensic anthropologists do in the previous phase, but here forensic anthropologists collaborate with other specialists as well.

An “interdisciplinary approach” to forensic medicine and forensic science was highly

stressed among higher-ups at the INMLCF. One of the forensic doctors in charge of some of the most politically sensitive cases stated publicly that beginning in 2011, the INMLCF would be implementing an “interdisciplinary forensic approach by pathologists, anthropologists, dentists and geneticists”. Ideally, this meant that these specialists would all work on a body simultaneously with mutual respect for the specific knowledge sets of each discipline. Nevertheless, this model remained the exception rather than the norm in Colombia. Although anthropologists told me that there were increasing instances of interdisciplinary communication, I rarely saw doctors in the anthropology lab. When I asked who makes decisions about identification of bodies, anthropologist Claudia responded, “The doctor. ...Supposedly the ideal [scenario] is that these identification reports are truly interdisciplinary, but in reality it’s the doctor who collects all the information”. Moreover, forensic anthropological final reports were not signed by the anthropologists themselves, but the doctors who oversaw those cases.

This dynamic points to clear performances of expertise within domains of expertise at the INMLCF, in which forensic doctors and dentists are ranked above forensic anthropologists. Forensic geneticists also tend to be considered of higher prestige since DNA identification is widely perceived to be the gold standard for resolving forensic cases, despite its many limitations and inability to function without collaboration with other forensic specialty areas. This results in a degree of tension between the disciplines within the Institute. As Maria explained, “The doctors are the ones who make claims and don’t let the anthropologists [say anything]”. She continued:

“The problem is that here anthropologists have a bad reputation in general, like anthropology is more laid-back. There is this crazy idea that the doctor and even the dentist have a firmer handle on things because they are health sciences and anthropology is not”.

INMLCF forensic anthropologists have extensive training in osteology and biological sciences, but there is a tendency within the Institute to perceive them as having less knowledge than doctors because their training does not involve medical school. Institutionally, then, the specific knowledge sets that anthropology contributes to the forensic process as a whole are implicitly considered of lesser value than those of the medical and genetic disciplines. Furthermore, the anthropologists of the INMLCF have a great deal of exposure to forensic investigations of war crimes, often more than their pathologist counterparts. During my ethnographic research, I noted that at least a third of the members of the INMLCF forensic anthropology team had experience – often extensive – in investigations of human rights violations areas outside Colombia, including in postwar Peru

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and in Bosnia with the International Criminal Tribunal for the former Yugoslavia (ICTY).

The tensions that result from the inequitable assessment of knowledge sets within the Institute ultimately disrupt the ability of all forensic professionals involved to piece together casework in as seamless a manner as they could. Interdisciplinary translation of the dead body was nominally and partially achieved at the INMLCF, but was not as fluid a process as it could potentially be. Many anthropologists told me that it was an improvement to the way the Institute operated just a few decades ago, but it was still far from ideal.

**Translating Context: Interrelating Evidence and Establishing Patterns of Violence**

The fourth and final phase of forensic scientific translation is translating context. This involves a) the comparison of lab results to antemortem information, crime scene findings, and sometimes witness testimony collected from the field, and b) compiling cases to deduce patterns of violence across multiple dead bodies that could constitute human rights violations and war crimes. These subcategories are distinct, but in cases of mass graves – or any case involving more than one individual – they cannot be unpaired. Colombian lab-based forensic anthropologists at the INMLCF regularly expressed great frustration at the scarcity of information that they would receive about the field phase of forensic investigations when they analyzed a body.

Interpreting findings in the lab requires taking into account the context of the crime as it was documented at the recovery scene, or the site where the body was discovered. Lab anthropologists are not typically present at recovery scenes or exhumation sites, and problematically, at the INMLCF they rarely receive all of the contextual crime scene documentation that they need to put cases together in the most comprehensive way possible. On the occasions that I was permitted to see the case files of skeletons that were laid out for analysis in the lab, I was confounded at the sparse antemortem and recovery scene data included. Antemortem data is biological information about the missing or murdered person during life (such as their sex, age, height, and medical history), and is usually recorded by criminal investigators when they conduct interviews with relatives of the missing person. When this information is available in robust form, it allows forensic scientists in the lab to compare antemortem and postmortem data to identify the individual in question. Similarly, the context of the recovery scene discloses the *in situ* locations and positions of bodies, both individually and in relation to one another. These details are important not only so that lab-based anthropologists can better understand how a death happened, but also to problem solve in case there was “commingling,” the intermixing of bones from more than one individual within a grave.

The division of cases among discrete forensic teams – as cases moved from investigative fieldwork to the lab and then back to criminal investigators – created bureaucratic tensions and complicated the already arduous task of integrating findings to reconstruct death events. There was never any official mechanism that allowed or encouraged forensic archaeologists who were at the crime scene, investigators who took testimony in the field, and lab-based forensic anthropologists to come together to discuss
how each of their findings from a single case might be related to one another. The criminal investigators and prosecutors of the Fiscalia, who are not forensic scientists, were left to connect the dots themselves. I consider the lack of integration of forensic scientific findings among diverse areas of expertise to have been the most problematic aspect of forensic investigations in Colombia that I witnessed. It hindered identification processes, resulting in a piling up of unidentified dead bodies in the lab from forensic cases that had yet to be resolved.

Likewise, a “lack of inter-institutional communication” was cited by nearly all anthropologists I spoke with (even those from forensic institutions other than the INMLCF) as one of the most severe problems with forensic investigations in Colombia. Maria of the INMLCF explained:

“There is little inter-institutional coordination and that is very harmful. ...A colleague has cases like that. Cases where she has part, the CTI [of the Fiscalia] has others, the police have another. It’s a problem to have one single case divided among three different entities. ...The way the state is structured is very problematic”.

Moreover, others say that many reports of preliminary investigation into crimes that do end up making it to the lab are inadequate. Speaking about the work of the investigators of the Fiscalia, anthropologist Alejandro said:

“They conduct investigations without [considering] context, without any kind of guidance [from] preliminary [information]. And the thing is that as a country in conflict it is impossible to conduct [these] investigations because they’ll kill you, and that’s the rationale that’s made many people resign themselves to not receiving [case] information, and doing things any old way. And that’s a problem”.

The dangers of conducting forensic investigations are real, especially for the criminal investigators, archaeologists, and anthropologists that conduct exhumations at remote sites across the country. But at the same time, if insufficient information is collected about who the body in question might belong to, how they died, who might have witnessed the death or burial, or what the witnesses have to say, then evidence that might be crucial to identifying the body and reconstructing death events is lost before it is ever collected. Is it worth exhuming if not enough preliminary investigation can be completed to identify dead bodies? Is it better to exhume at the risk of accumulating unidentified bodies, or to leave bodies in the ground until more thorough preliminary investigations can be conducted?

This dilemma is magnified when considering the second aspect of contextual forensic translation: interpretation of multiple dead bodies that could reveal patterns of wartime mass violence. Forensic anthropologist Ililana explained:
“Sometimes cases come in [to the lab] that [don’t appear] to be interrelated, and [it turns out] it was the same [case] and no one is informed of that, like everyone figures out what they have to figure out and that’s that. And the information isn’t handed over in a more organized way, so I think that’s a serious problem because it limits [us] a lot. It limits the case itself, like if you [go] to court and you have ten doctors saying different things about the same case”.

When cases are divided up among different institutions or even among different specialists within the same institution without sharing that information, death events that resulted in multiple victims become exponentially harder – or even impossible – to reconstruct. The separation of corpses discovered at the same recovery site is quite problematic and entirely preventable.

The reluctance or inability of Colombian governmental forensic institutions to search for patterns among distinct cases also prevents forensic science from being able to contribute as much as it can to investigations of human rights violations. During my time in the INMLCF, for instance, three skeletonized corpses were brought in separate cases over the course of a few weeks. Each was assigned to a different forensic anthropologist since the police had recovered the bodies one at a time. But as the anthropologists worked these cases and began talking with one another about them in the lab, it became clear that there was likely a connection between the cases. They had each been found near the same trash dump on the outskirts of Bogota, and each of them had an execution style gunshot wound to the back of the head. Thanks to the active, collaborative lab life of the anthropology team, they flagged these cases as likely related to one another, which shifted the direction of the criminal investigation away from individual murders toward violence likely carried out by a particular group targeting apparently defenseless victims.

The four phases of forensic scientific translation of mass violence that have been outlined here index the potential of forensic sciences to transform not only the what happened of mass violence, but also how distinct acts of violence came to fruition and – perhaps most notably – how they were related to one another in the context of war crimes. Ultimately, forensic scientists have translational potential to work in conjunction with other areas of expertise to expose patterns of war that could reveal human rights violations and even implicate specific armed groups, agencies, or governments in systematic practices of mass violence. Yet in the case of Colombia, the division of cases among agencies and the lack of communicative channels among specialists at different points of the investigative process disrupted and limited the forensic sciences – and forensic anthropology in particular as both a field and lab science – in the scope and impact that they could achieve.

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30 One notable exception is: Helka Quevedo Hidalgo, Textos corporales de la crueldad: Memoria histórica y antropología forense (Bogota, Centro Nacional de Memoria Historica, 2015).
Production of Forensic Science Evidence

The final and culminating stage of forensic scientific translation is the production of evidence, which is the primary legal obligation of the forensic anthropologist. This means not only putting together interpretive findings in the scientific sense, but also the act of transforming the physical, three-dimensional dead body into a written and photographic, two-dimensional documentary account. Documentary evidence stands in for both the dead body and the violence inscribed on it. In other words, this kind of evidence acts as if it is the dead body itself, or perhaps even the violent act that caused the death. This mimetic property of bodily evidence can prove somewhat misleading, but it allows for the preservation of otherwise ephemeral material evidence of violence into the future. This is vitally important in cases of war crimes and mass violence, since it is often not until years or decades after violent acts take place that such crimes are investigated.

Given the co-construction of all forensic sciences and the legal system(s) in which they operate, the constraints of a given legal system limit the types and amount of information that forensic scientists, as expert witnesses, may present as evidence. In order to maintain legitimacy in the eyes of the court, Colombian forensic scientists must write their reports in a strict medicolegal register. Even definitive findings can appear dubious in the sometimes-convoluted scientific terminology that provides probabilities and suggests conclusions rather than definitively states them. For example, forensic genetic (DNA) identification results are always phrased in terms of probabilities and likelihood ratios. As one published INMLCF genetic identification report states:

It is 11,354 times more likely that the individual to whom the skeletal remains belong is the biological son of the [living] individual who provided the [DNA] reference sample, than that it belongs by chance to another member of the population.

To the trained eye, this means that the probability that the body does not belong to the person in question is so low that it is essentially impossible that it is not that person. In

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other words, the DNA test has resulted in positive identification. The cautious medicolegal terminology can be confusing both to lay people and lawyers alike, and creating a dualistic dynamic between expert and non-expert.35

I observed among Colombian forensic anthropologists a generalized high level of concern and even anxiety about the exact ways in which they interpreted and presented findings. Not only would their reports become criminal evidence, they could also be called in to the court as expert witnesses at any time. Many anthropologists reported to me that the first question that any scientist should ask themselves is, “Is it possible that my interpretation is incorrect?” Moreover, there was prevalent worry among forensic anthropologists of “What if I’m wrong?” They were concerned that if they over-stated their interpretations, they could be proved incorrect – or at least not be able to prove their findings correct “beyond reasonable doubt.” According to comments made to me throughout my time in the lab, most considered that it was far better to be conservative in their interpretations rather than risk unintentionally overstating findings and later struggle to back them up if questioned in court.

So how do forensic anthropologists go about making decisions about how far to take interpretations in their daily practices as they translate violence into medicolegal narratives that become evidence? According to some anthropologists at the INMLCF, this is often a matter of how confident the forensic anthropologist in charge of the case feels in defending her interpretations. “It depends on my mood that day,” forensic anthropologist Claudia told me one day, “on how confident I feel”. To be conservative with interpretive practices is to be safe – protective of both one’s professional reputation and perhaps of the case itself. But this type of overly conservative interpretation could, on the other hand, mean providing weaker evidence for court than one actually has on hand. In other words, to under-interpret and to over-interpret the dead body during the process of producing evidence are both potentially dangerous to the case in court. Translational practices and the evidentiary narratives they produce for court are therefore a delicate balance, which accounts for why they are a continuous topic of conversation and negotiation among forensic anthropologists in their daily laboratory practices.

A conservative interpretation of a bone trauma might read something like: “Multiple perimortem fractures were observed in the cranium, possibly caused by a high velocity impact.” A bolder interpretation of the same skull, on the other hand, might read: “The perimortem fracture patterns observed in the cranium suggest that a minimum of one high velocity projectile, such as a bullet, entered, passed through, and exited the cranium, with a trajectory of posterior to anterior (back to front).” In the more conservative interpretation of this example, the anthropologist takes a more descriptive approach and avoids naming a specific injury pattern or stating the trajectory of the penetrating object. Such interpretations are designed to be incontrovertible, but in doing so they often fail to provide much context or detail. The advantage of the second, less conservative description is that it paints a clearer picture of what likely led to the death of the person. And assuming that it is correct – or by

legal standards, defendable – it provides extremely strong evidence to support the established cause of death.

In other words, a less conservative approach to interpretation can be a very powerful tool in reconstructing death events. As one forensic anthropologist explained to me as we walked from the office building to the forensic lab, it’s about doing everything possible to suggest what happened. In other words, one should aim to put together as many pieces as possible given the evidence at hand and presenting them in a way that heavily implies what happened, but without overstating it. The disadvantage of an overstated interpretation is that if it is later revealed that the injury (to follow our previous example) was not in fact a gunshot wound but, say, shrapnel from an explosion, this small error could be challenged in court and cause the legitimacy of the entire forensic report to come into doubt. Once, hovering over a lab table with Maria, I suggested that the fractured fragments of cranium that we were examining between our gloved fingers must have been the result of a gunshot wound due to the patterning of the fractures across the skull. The bone was quite eroded, however, so even though the fracture patterns appeared to me to be unquestionably caused by a high velocity impact, Maria was more cautious. “I wouldn’t defend that in court,” she stated. “But this,” she continued, picking up a small, dense and clearly fractured petrous portion of the temporal bone (which forms the structure for the inner ear), “this I would take to court.”

These anxieties and carefully calculated decisions about what scientific findings to claim as definitive evidence in a given case underscore the notion that the translational concerns of forensic specialists shape criminal evidence. Once evidence is in the hands of the court, law and science encounter one another in a new phase of “legal translation,” in which forensic scientific translations are taken up in the legal arena, and further transformed for criminal proceedings. Legal translation of forensic evidence merits further study, but for our purposes here, it is sufficient to say that forensic scientists are extremely cautious about how they produce and present evidence of death events before permanently turning it over to the criminal justice system. On multiple occasions, I heard anthropologists in the lab say of their own hypotheses, “But what if this gets taken down in court?” The stakes are high for forensic scientific professionals. If the evidence they provide is proved to be (or successfully argued to be) unsustainable, their professional reputations – and even their jobs – are on the line.

Yet the concern I saw expressed more often than that was that the case itself would be at stake. Many forensic anthropologists felt not only a professional and scientific obligation to their work, but also a moral obligation to the case and the dead body as a person. I observed that forensic anthropologists tended to be quite attentive to the psychological needs of relatives of the deceased to find out the final fate of their loved ones, and for perpetrators of those murders to be brought to justice. Claudia stated that identifying the dead is important because “it gives that person back who they were, their right to have an identity, to be somebody in this world”. Thus it is not only self-preservation that reins forensic anthropologists as they produce evidence. Their scientific translational practices and their reports that transform human remains into criminal evidence are accompanied by a deep concern for moral and criminal justice to be served.

The interrelation of individual cases to reconstruct violent events in Colombia is a task
usually limited to criminal investigators. Forensic anthropologists expressed frustrations to me about producing evidence for court in individual cases without a broader institutional commitment to consideration of how various cases might be connected. Maria suggested that a more integrated scientific and criminal investigative approach could shed light on the larger picture of how forced disappearance – as a particularly insidious form of institutionalized mass violence – has been used by armed actors as a strategy of war. She explained:

“Here [at the INMLCF], we are very limited because we are not [criminal] investigators. ... So you can have a lot of suggestions, a lot of interpretations, but no one is going to know that because that’s not your job, and because everyone’s roles are so hierarchical and so restricted that they can’t exceed [the bounds of] their positions. And in that sense, well, a lot of things could improve if there were better inter-institutional coordination. I am also referring to ‘integrality’ in the sense of figuring out the operative [mechanisms] of forced disappearance at a regional level, at a national level. What are the structures [of the armed groups]? How have their modus operandi varied? And I know that there are many ideas, many suggestions, and many initiatives from peritos [forensic anthropologists] at least, but as a perito, you don’t have time to investigate that, and the fiscales [criminal investigators] are so swamped that they don’t investigate that way. Instead it’s ‘hurry up, find bodies, identify bodies, do exhumations, give the bodies back [to families].’ But in reality that’s not exposing what the purpose of forced disappearance [really] is”.

Forensic anthropologists and other lab-based scientists at the INMLCF are generally prevented from participating in efforts to piece together the bigger picture of mass violence because their roles are limited to working discrete cases in order to produce criminal evidence about individual bodies. Whereas NGOs in Argentina, Peru, and Guatemala encourage a more integrated approach to their investigations, in Colombia, forensic scientific evidence has rarely transcended individual instances of violence to address broader issues of systematic political violence.

Conclusion

If bones can be said to “speak” through the labor of forensic anthropologists and other scientists who give them voice, they do so through particular sets of translational practices and in specific medicolegal registers. The idea of “speaking” also introduces the question of addressivity: who is listening? Forensic scientists are certainly listening, as are the criminal investigators who rely upon forensic scientific translations and their accompanying medicolegal reports. But perhaps more immediately and impactfully, Colombian relatives of the deceased, victims’ and human rights advocates, and the imagined public sphere, like the shopkeepers mentioned in the opening, are eagerly attentive to what forensic science will reveal about people killed in the country’s armed conflict.

To hear what bones have to say implies that locating and unearthing human remains
and analyzing the discovered bones will reveal an otherwise unknowable truth about the violent acts that led to a person’s death. In the context of Colombia, “bones speak” is specifically used as a counterpoint to the silence that acts of political violence instill in the surrounding population, which they maintain for their own survival. Thus as medicolegal narrative accounts of violence come into being, they simultaneously shape the ways in which individuals, communities, and the nation remember such violence. Through the translational work of forensic anthropologists, the trope “bones speak” comes to index the demand of many Colombians to break barriers of silence surrounding brutal acts of political violence that have long plagued the country. Forensic scientific translational practices thus have great influence on how the Colombian nation comes to comprehend and remember the violence that it has undergone.

Forensic evidence making practices, particularly in the context of mass violations of human rights abuse, are complex processes that entail numerous social and political deliberations across various institutions and disciplinary forms of expertise. My research suggests that forensic scientific translation practices, as conducted within their current medicolegal framework in Colombia, are not yet achieving their maximum potential. The division of many forensic cases among different Colombian government agencies results in a silo effect that infringes upon the need for cross-institutional communication. The result of this – intended or not – is a disjuncture in understandings of political violence as systematic practice in Colombia.

Forensic anthropologists, however, are in a unique position to transcend this problem as translators both at the recovery scene and in the lab. Moreover, Colombian anthropologists are exceptionally poised to do so because of their collective experience investigating war crimes around the globe. Given the opportunity to work within more integrated investigative environments in Colombia – as they may well be with the nascent Unit for the Search for Disappeared Persons – they have the potential to reveal broader patterns of violence, greatly increasing the value and impact of this important work.
Gender Justice in Post-Conflict Guatemala: The Sepur Zarco Sexual Violence and Sexual Slavery Trial
Jo-Marie Burt

Abstract: Guatemala is breaking new ground with a series of high-impact war crimes prosecutions. The 2016 Sepur Zarco trial was one such landmark case: it was the first time that Guatemala prosecuted wartime sexual violence, and the first time that a domestic court prosecuted sexual slavery as a crime against humanity. This case also set important precedents in legal and evidentiary practice. Based on my direct observation of the Sepur Zarco case, this paper examines the legal practices that placed the women-survivors, not the defendants, at the forefront of the proceedings, and which proved that the state of Guatemala systematically used sexual violence as a weapon of war against women and as a strategy to control the civilian population. It also examines the evidentiary practices in this case, which allowed not only for a conviction more than 30 years after the crimes, but for a broader understanding of the historical context, including land conflict, that led to the atrocities in Sepur Zarco. By piercing the veil of impunity surrounding wartime atrocities and making visible the faces of the victims —indigenous men and women who have historically been relegated to the margins of Guatemalan society— the Sepur Zarco trial is challenging entrenched narratives of denial that have sustained the power of military officials whose influence continues to shape present-day politics in the Central American nation.

Keywords: sexual violence, sexual slavery, Guatemala, human rights, war crimes, war crimes trials

Introduction: “No one asks about you. You belong to us now.”

The Grandmothers of Sepur Zarco sat in folding chairs behind their team of lawyers in the majestic chamber of the Guatemalan Supreme Court, their faces partially covered with their vibrantly colored handwoven shawls. The Grandmothers, as they are referred to respectfully in Guatemala, are Maya Q’eqchi’ women from the small rural community of Sepur Zarco. They were testifying against two former military officials they accused of being responsible for killing or disappearing their husbands, raping them, often in front of their children, and destroying their homes and crops; and then forcing them into a system of sexual and domestic enslavement at the Sepur Zarco military base. These events took place in 1982, the height of

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Guatemala’s 36-year civil war, the bloodiest of the Central American conflicts: between 1960 and 1996, 200,000 people were killed, 45,000 were forcibly disappeared, and a million were forcibly displaced, the vast majority at the hands of the Guatemalan Army.² For more than three decades, these crimes went unpunished.³

The Sepur Zarco trial began on February 1, 2016. The three-judge panel, presided over by Judge Yassmín Barrios, convened hearings daily over the course of four weeks.⁴ The defendants in the case were two former military officials, retired Lieutenant Colonel Esteelmer Reyes Girón, the commander of the Sepur Zarco military base between its inauguration in 1982 and 1984, and Heriberto Valdez Asig, the chief regional military commissioner as of April 1982. They were charged with crimes against humanity, in the form of sexual violence and domestic and sexual slavery, against 15 Maya Q’eqchi’ women, as well as several counts of homicide and enforced disappearance.

The court heard more than 150 hours of victim testimony, including the harrowing testimonies of 15 Q’eqchi’ women survivors, as well as 16 men from the community. Other eyewitnesses included a former soldier who had been based at Sepur Zarco, an ex-military commissioner, and three former civil patrolmen. More than a dozen expert witnesses also testified, offering important contextual information about the nature of the military’s counter-insurgency strategy, the history of land conflict in Sepur Zarco and the surrounding area, and the use of rape as a weapon of war.

Recognizing the possibility of retraumatizing the women-survivors, the pretrial judge video-recorded their testimonies during evidentiary hearings in 2012 and accepted them as evidence. The women were thus spared having to repeat their testimonies in open court; instead their recorded testimonies were broadcast into the courtroom. On the second day of the trial, however, the first of the Grandmothers called to testify, 75-year-old Petrona Choc Cuc, chose to speak in open court.

Choc Cuc walked toward the witness chair, removed her shawl, and sat down next to an interpreter. In her native Q’eqchi’, she told the three-judge panel that her family fled into the mountains to escape the military attack on her community. She testified that the soldiers pursued them into the mountains, killing her husband. The harsh conditions in the mountains forced her to turn herself and her four children in to the military. “We went to the military

³ This paper is based on my work as an international observer to the Sepur Zarco trial for Open Society Justice Initiative. I am grateful to OSJI for their support for this work and especially thank Eric Witte and Taegin Reisman. I am also grateful to my research associate, Paulo Estrada. My admiration and gratitude to Paula Barrios and Jennifer Bravo of Women Transforming the World (MTM), Ada Valenzuela of the National Union of Guatemalan Women (UNAMG), Susana Navarro of the Community Studies and Psychosocial Action Team (ECAP), and Hilda Pineda of the Attorney General’s Office, who generously shared their knowledge and time; and to the Grandmothers of Sepur Zarco, whose bravery and resilience is an inspiration to women worldwide.
⁴ Judge Barrios gained international attention as the presiding judge of the tribunal that convicted ex-dictator Efraín Ríos Montt of genocide and crimes against humanity in 2013. The verdict was vacated after the Constitutional Court partially suspended the proceedings in what human rights activists claim is an illegal ruling. See Jo-Marie Burt, “From Heaven to Hell in Ten Days: The Genocide Trial in Guatemala,” Journal of Genocide Research 18 (2016) 2-3: 143-169.
base and got on our knees and begged them to forgive us, to not kill us”, she said. The soldiers ordered them to take a shower, she said. “Then a fat man came. He was the first one to rape us. Then other smaller men came and raped us.” Choc Cuc said that she was raped “many times,” as was one of her daughters. With their husbands gone, she and the other women were forced into a system of servitude, doing unpaid labor in shifts at the military base. They were also subjected to systematic sexual violence, perpetrated by individual soldiers and in groups, often at gunpoint. “One of the soldiers told me, ‘No one asks about you anymore, no one cares about you. You belong to us now’.”

The village of Sepur Zarco is nestled in the Polochic Valley in northeastern Guatemala, on the border of the departments of Izabal and Alta Verapaz. Like much of rural Guatemala, land wealth is highly concentrated in this region. Land conflict came to a head in the Polochic Valley in 1978, with peasant organizations demanding the return of their ancestral lands, and local landowners calling on the army to help them stave off growing protests. On May 29, 1978, the military opened fire on a peaceful protest in the plaza of Panzós, killing an estimated 50 people. The Panzós massacre is widely viewed as the opening act of the genocide in Guatemala. Seeking to extend its control of the region, the army established eight military bases in and around the Polochic Valley, some on the estates of local landowners. The Sepur Zarco military base was designated as a “recreation zone,” which an official military document, Plan Victoria 82, describes as places where soldiers could rest between

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6 Victoria Sanford, La Masacre de Panzós: Etnicidad, tierra y violencia en Guatemala (Guatemala City: F&G Editores, 2010).
deployments and “have contact with the feminine sex”.  
Choc Cuc drew a direct line between this historic conflict over land and the physical violence that she, her family, and other members of her community endured at the hands of the army. “We had eight hectares of land,” she told the court. “We grew beans, corn, rice. The big landowners wanted to take our land away.” She and others testified that local landed elites, concerned at the growing organization of indigenous farmers demanding the return of land that had been stolen from them over the years, had called on the military to help them “take care of” the “agitators.” Several witnesses testified that in August 1982, soldiers appeared in the community with lists of names of men who, as members of the Land Committee, were seeking to recover, through legal channels, land they claimed local elites had stolen from them through fraudulent mechanisms and sometimes violence. Soldiers captured and killed or disappeared the peasant leaders, then raped their wives, often in their homes in front of their children, and later burned down their homes and crops. Some

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8 Jo-Marie Burt, op. cit., February 8, 2016.
9 Luz Méndez Gutiérrez and Amanda Carrera Guerra, Mujeres indígenas: clamor por la justicia. Violencia sexual, conflicto armado y despojo violento de tierras (Guatemala City: F&G Editores, 2014).
managed to flee; soldiers persecuted them into the mountains, and many of them eventually turned themselves in to the military.

With their husbands gone and the military in control, the soldiers brought the women to the Sepur Zarco military installation, where they were systematically raped over the next six months. The women were eventually allowed to leave the base, but they were required to report every third day for “shifts” at the base, where soldiers routinely raped them and forced them to cook and wash their uniforms until the base was closed in 1988. Several witnesses reported that one woman, Dominga Cuc, was killed alongside her two small daughters after being repeatedly raped at the base in front of her husband and daughters. The women told the court that they interpreted this as a warning: submit to the military or face a similar fate.\(^\text{10}\)

The strategy of the defense was denial and obfuscation. Lt. Col. Reyes Girón denied being the commander at Sepur Zarco. Valdez Asig denied being chief military commissioner, claiming to have been a mere municipal policeman. Both claimed they had never been to Sepur Zarco. The Guatemalan military, meanwhile, said it had no records of personnel at its installations during this period.\(^\text{11}\) The defense attorneys sought to recuse the judges, a tactic used in other trials, especially the 2013 genocide trial, to delay and obstruct the proceedings. They also disputed the veracity of the women’s testimonies and the corroborating evidence, especially the forensic evidence, but this did not go much beyond rhetorical assertions. Moises Galindo, counsel for Reyes Girón, who also defended former dictator Efraín Ríos Montt, asserted, without offering any proof, the women were prostitutes, not the victims of sexual violence.

Hundreds of people sat in the courtroom on February 26, 2016, waiting for the judges to arrive to deliver the verdict. The defendants and their defense attorneys sat at a long table to the left of the bench. On the other side of the room were the plaintiffs: government prosecutor Hilda Pineda, who headed up the conflict-era cases at the Attorney General’s Office; and co-plaintiffs representing the Grandmothers of Sepur Zarco, Paula Barrios and Jenny Bravo from Women Transforming the World (MTM) and Ada Valenzuela from the National Unity of Guatemalan Women (UNAM-G).

Dozens of women survivors of wartime sexual violence from other regions of the country sat in the courtroom, an expression of solidarity with the Grandmothers of Sepur Zarco. Nobel Peace Laureates Rigoberta Menchú and Jody Williams were also present, as were dozens of high-school children, each holding a single red carnation and hand-made signs that read “#WeAreAllSepurZarco.” When the Grandmothers of Sepur Zarco entered the


courtroom, veiled in their iconic shawls, the crowd burst into applause and began chanting, “Justice, justice!” and “We are all Sepur Zarco!”

The courtroom fell silent as the judges walked in. Before the packed gallery, Judge Barrios began her summary presentation of the verdict:

“Upon examination of the testimonies presented by the victims, this tribunal finds that they were sexually violated by soldiers in the Sepur Zarco military base and that they had no other option but to submit to this mistreatment because physical force was used. We find common denominators in their testimonies: the women’s husbands were forcibly disappeared, meaning they found themselves alone and with no one to protect them. In many cases their children were also victims and in some cases were killed. The harm done to the victims transcended their bodies and their minds because after returning to their homes, after having fled to the mountains to seek refuge, they were completely dispossessed, their community had changed irrevocably; their homes had been destroyed, their animals killed. The women victims were enslaved; they suffered a loss of liberty and were subject to the constant control and domination of the soldiers. They were obligated to take shifts cooking, washing the soldiers’...
clothes, and were repeatedly raped, which caused palpable emotional harm”. The women of Sepur Zarco stood, still veiled in their shawls, and turned to face the public in the crowded gallery. They raised their arms and waved in unison, signaling their satisfaction that justice had, at last, been served.

Barrios stated that the evidence presented during the course of the proceedings, including the testimonies of the women survivors, witnesses and experts, as well as documentary and forensic evidence, led the court to the determination of the command responsibility of the defendants for crimes against humanity in the form of sexual violence and sexual and domestic slavery, for which it sentenced each to 30 years in prison. The court also found Reyes Girón guilty of the murder of Dominga Cuc and her two daughters, sentencing him to an additional 90 years, for a total of 120 years in prison. In the case of Valdez Asig, the court found him responsible for seven counts of enforced disappearance, sentencing him to an additional 210 years, for a total of 240 years in prison.

After Judge Barrios finished reading the verdict, the crowd again erupted in applause. The women of Sepur Zarco stood, still veiled in their shawls, and turned to face the public in the crowded gallery. They raised their arms and waved in unison, signaling their satisfaction that justice had, at last, been served.

The court ordered a series of integral reparations measures that Paula Barrios of MTM considers “transformative” because in addition to addressing the violations of bodily integrity suffered by the women-survivors, they also address the structural conditions that contributed

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13 Ibid.
to their condition of extreme vulnerability, a condition that extends into the present.\textsuperscript{14} The court ordered Reyes Girón and Valdez Asig to pay reparations to the Grandmothers of Sepur Zarco and to the families of Dominga Cuc and the victims of enforced disappearance. In addition, the court ordered the government to reopen the land restitution claims, improve primary school education, build a health clinic and a high school, and provide scholarships for girls and women. It also ordered measures to prevent the recurrence of such abuses, including training the military on women’s human rights and legislation to prevent gender violence. The ruling was widely hailed as a landmark judgment with global significance for the struggle to end violence against women, past and present.\textsuperscript{15}

The Daily Practice of War Crimes Tribunals

The literature on war crimes tribunals holds sharply diverging views of the value of such proceedings for victims, for the broader society, and for writing the history of difficult pasts. Legal scholars have tended to write enthusiastically about the potential of war crimes tribunals for giving voice to victims, for providing legal address to war-time atrocities, and for their broader contributions to rule of law.\textsuperscript{16} Others emphasize the contributions of criminal trials to collective memory.\textsuperscript{17} Scholars writing from a law and society perspective challenged legal approaches to mass atrocity crimes for overlooking the limitations of criminal proceedings, including their inevitable focus on perpetrators, their narrow concern with individual criminal accountability for what are crimes of state, and their need to adhere to strict rules of procedure and law.\textsuperscript{18} Scholars writing in this vein question whether victims benefit from participating in war crimes trials, and suggest that trials are fundamentally at odds with, or incapable of, producing definitive historical records of past events.\textsuperscript{19}

In recent years, new scholarship has emerged that interrogates such dichotomous framings of the meaning and impact of war crimes tribunals. Richard Ashby Wilson, for example, suggests that the relationship between war crimes tribunals and writing history “cannot be characterized by either harmonious accord or inherent contradiction”.\textsuperscript{20} He urges scholars to think about war crimes tribunals as complex social processes, and to study the

\textsuperscript{14} Presentation at the event, The Sepur Zarco Case in Guatemala: Justice for Women Victims of Sexual Violence in Conflict, George Mason University, April 4, 2016.


legal and evidentiary practices of war crimes tribunals. Similar dichotomous thinking plagues the literature assessing what trials mean for victims, with some arguing that victims feel “manipulated” and “silenced” by war crimes tribunals, while others say that victims are largely satisfied with their participation. Both in fact may be true: the legal and evidentiary practices of war crimes tribunals vary greatly; even within specific jurisdictions they may change over time. The question is, how can we better understand the circumstances that produce these diverging outcomes?

As Wilson suggests, one answer is to focus on the daily practice of war crimes tribunals. A close examination of court debates and legal and evidentiary practices can help us understand how courts weigh evidence and made their determinations, how they shape ongoing legal practice, and how, and whether, legal judgments contribute to the historical record. Through ethnographic observation of trials, interviews with and surveys of victims, and close observation of legal and evidentiary practices, we can also better understand the role victims play in war crimes tribunals, the impact and meaning of war crimes tribunals for the victims, for the society, and for broader debates over historical memory.

My own approach is informed by this call to examine the daily practice of war crimes tribunals. For a decade, I have engaged in ethnographic research on domestic war crimes trials in Latin America, primarily Peru and Guatemala. I have monitored and served as an international observer to high-profile trials, including the trials of former Peruvian president Alberto Fujimori and former Guatemalan dictator Efraín Ríos Montt, as well as cases of massacres, enforced disappearance, and sexual violence in both countries. In recent years, I have observed and reported on war crimes trials in Guatemala for International Justice Monitor, including the Sepur Zarco trial. Drawing on my direct observations of the proceedings, review of relevant documents, and interviews with victims, lawyers, prosecutors, and other stakeholders, I make three broad claims about the legal and evidentiary practices of the Sepur Zarco case.

First, the plaintiffs adopted an innovative strategy to prove their case, complementing witness testimony and scientific evidence with expert witnesses who provided crucial historical and sociological context. Experts helped to “weave a web of context,” a phrase Wilson uses to describe the way experts can provide key contextual information related to the case that helps construct a complex explanatory framework for the crimes in question. The court adopted a broad view of the criteria required for the admissibility of expert-witness reports, allowing not only experts on local history, on the Guatemala military, or on rape as a

24 Richard Ashby Wilson, op. cit., 2011:123.
weapon of war, but also experts convened by the plaintiffs to document the long-term effects of state violence suffered by the women and its impact on their communities and culture. Through this combination of witness testimony, physical evidence, and expert reports, the prosecution carefully constructed a coherent and compelling narrative of bodily harm that revealed abhorrent and systematic practices of the Guatemalan army, the effects of those practices on the bodies of the women-survivors, and how state violence contributed to the destruction of Q’eqchi’ social and cultural practices in Sepur Zarco.

Second, I argue that the women-survivors were at the center of these proceedings, challenging the notion that war crimes tribunals necessarily focus on the defendant(s) to the detriment of victims. The women’s testimonies were raw and powerful, commanding national and international media attention. The plaintiffs and the court went to great lengths to guarantee the women’s safety and prevent their retraumatization. Finally, the tribunal gave their testimonies full evidentiary value, which was key to the conviction of the two accused. But the women were not only witnesses. They were also co-plaintiffs, and as such, protagonists in the proceedings, participating actively in building the case with prosecutors and their lawyers. Through their participation as witnesses and co-plaintiffs, the women-survivors were exercising their citizenship rights, rights that had long been denied them, particularly as indigenous Guatemalans, who have historically been marginalized and repressed. The court’s recognition of this marginalization led it to adopt an integral reparations program that seeks to restore their citizenship rights in other arenas including recognition of their land rights, and the rights to education and healthcare. In more than one way, then, the trial has forged a pathway for the Grandmothers of Sepur Zarco from victimhood to citizenship.

Finally, the Sepur Zarco trial has contributed to the rewriting of historical narratives about Guatemala’s recent past in fundamental ways. By “breaking the silence” about the Guatemalan military’s systematic practice of sexual violence, the Grandmothers of Sepur Zarco have destabilized the official narratives of the past that portray the military as having “saved” Guatemala from communist subversion and justifying violence as a necessary means to that end. The evidence presented at the Sepur Zarco trial made visible acts that had remained hidden and denied by the state, including acts of systematic sexual violence, sexual and domestic slavery, and the enforced disappearance of individuals by the military at the behest of rich and powerful landowners to silence their land claims. The Sepur Zarco trial translates acts of extreme violence into a coherent narrative, producing new knowledge about past violence and challenging historical narratives of denial. This process of translation, according to Kaufmann and Rottenburg,25 is potentially transformative in its creation of new language to challenge and transform the narratives that have denied past violence or justified it based on such notions as “national security” or the “fight against communism.” The evidentiary practices of the Sepur Zarco trial produced not only a conviction but new forms of knowledge about mass atrocities that fundamentally challenge denial narratives and create

new tools for rewriting the history of past violence.

The judgment established for the historical record that the Guatemalan military deployed sexual violence against women as a strategy of warfare, both to control local populations and to dehumanize the “enemy”. It revealed that this was strategy was not the result of a few “bad apples” but rather was a carefully designed and planned part of military strategy. The establishment of “recreation zones” where soldiers could rest and “have contact with the feminine sex” were written into military planning documents. The women were forced to take contraceptive pills or injections to prevent them from becoming pregnant, further evidence of the systematic nature of the crimes against the women of Sepur Zarco. The systematic plan to enslave the women of Sepur Zarco revealed that military strategies were informed by a construct of masculinity that sees women as subordinate to men and existing for the sole purpose of serving and pleasuring men. The testimonies of the Grandmothers of Sepur Zarco, and the judgment handed down in this case, are contributing to a reconfiguration of historical memory in a country in which the official narratives of denial continue to circulate and in which many of those directly involved in such violence remain at the center of political and economic power.

In the next section, I discuss the systematic nature of sexual violence within the Guatemalan Army’s genocidal counterinsurgency policy and the institutionalized impunity that for years shielded those responsible for these atrocities from punishment. I then outline the changes that began to take place that have propelled criminal investigations in these cases forward. Next, based on my in situ observation of the Sepur Zarco trial as well as interviews with key stakeholders in the case, including prosecutors, lawyers, and victims associations, I analyze the evidentiary practices deployed in war crimes prosecutions in Guatemala and the importance of such practices both for achieving justice via a public trial and a criminal conviction; for its broader impact on construction of historical memory of the armed conflict; and for forging a path from victimhood to citizenship.

Genocide and Impunity in Guatemala

In 1996, the State of Guatemala and the Guatemala National Revolutionary Unity (URNG) signed a UN-brokered Peace Accord that brought an end to a brutal 36-year internal armed conflict. As part of the peace agreement, the UN established the Commission for Historical Clarification (hereafter, CEH) to investigate the nature and consequences of the violence. The CEH’s 1999 report examines the historical and structural factors contributing to the violence, most notably the historic racism to which the indigenous majority had been subjected since colonial times. The CEH noted that during the conflict the distinction between combatant and non-combatant was not respected, resulting in the killing of unarmed civilians, including women, children, members of the church, and indigenous leaders. An estimated 200,000 people were killed, 45,000 were forcibly disappeared, and a million were driven from their
homes. Ninety-three percent of abuses were committed by government forces, three percent by the guerrillas, and four percent was undetermined. The CEH documented 626 massacres and found that at least 400 mostly rural indigenous villages were completely destroyed in the course of state-sponsored counterinsurgency operations. It also found that 83 percent of victims were indigenous Maya, which led to its conclusion that the Guatemalan state had committed “acts of genocide” in four regions of the country between 1981 and 1983. In addition to widespread massacres, government forces were responsible for widespread and systematic sexual violence against women.

For decades the perpetrators of these abuses enjoyed near-total impunity. There is a broad consensus in the academic literature as well as among human rights practitioners that institutionalized impunity has engendered an epidemic of violence in postwar Guatemala, which has one of the highest rates of homicide in the world, including exceptionally high rates of femicide. In this context, denial narratives have flourished, portraying the conflict as one in which the army “saved” the country from international communism and justifies any violations as a necessary means to that end.

But this has begun to change. Between 2008 and 2018, 33 military officials, soldiers, and paramilitaries have been convicted for some of the worst massacres of the 1980s, as well as for cases of enforced disappearance and sexual violence. More than a dozen officials await trial, and government prosecutors are investigating dozens of other cases. Among those convicted and awaiting trial are senior military officials previously thought to be untouchable, including former Army Chief of Staff Lucas García and former Chief of Military Intelligence Manuel Callejas y Callejas.

This progress in bringing war crimes to trial is the result of a constellation of factors. Most important is, without doubt, the determined activism of the survivors and families of victims who have persisted, against all odds, in their search for truth and justice, and the accompaniment of human rights organizations. When the halls of justice in Guatemala remained shuttered, victims and their lawyers brought their cases to the Inter-American System of Human Rights. The Inter-American Court for Human Rights has handed down more than a dozen judgments condemning the State of Guatemala for grave violations of human rights and ordered the investigation, prosecution and punishment of those responsible,

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29 Myrna Mack Foundation, Apuntes sobre los engranajes de la impunidad en casos de violaciones a los derechos humanos en Guatemala (Guatemala City, 2004).
31 This is drawn from and elaborated further in Burt, “From Heaven to Hell in Ten Days: The Genocide Trial in Guatemala,” op. cit., 2016.
generating international pressure on the domestic justice system.\textsuperscript{32} In rulings handed down in 2009 and 2010, the Criminal Chamber of the Guatemalan Supreme Court of Justice determined that Inter-American Court judgments are “self-executing”, establishing a new legal framework for the prosecution of war-time human rights cases in Guatemala.\textsuperscript{33}

Also important was the rise of new leadership of Guatemala’s legal institutions. Reform-minded attorneys general, including Amílcar Velásquez Zárate (2008-2010), Claudia Paz y Paz (2010-2014) and Thelma Aldana (2014-2018), brought new energy and determination to investigating war crimes cases. Under Paz y Paz, new investigative units were set up and new protocols were established to prioritize and expedite these cases. Prosecutors received special training in international human rights law and were encouraged to collaborate with civil society organizations that had for years been documenting rights violations and working with survivors and families of victims.\textsuperscript{34} Thus, a new generation of prosecutors gained the tools and the experience necessary to successfully prosecute complex grave crimes cases.

The UN-sponsored International Commission Against Impunity in Guatemala (CICIG), created in 2007, has also been critical to this process of institutional strengthening of Guatemalan legal institutions. The CICIG’s mandate focuses on current cases of organized crime and corruption and not wartime human rights violations. But by strengthening the Attorney General’s Office investigative capacity to conduct complex criminal investigations and its overall autonomy, it has bolstered its ability to prosecute war crimes as well. The CICIG also worked with the Attorney General’s Office to build effective victim and witness protection programs. The CICIG has also helped strengthen judicial independence, particularly through its support for the creation of the high-risk courts, which were established to provide greater safety for judges as well as witnesses, prosecutors and lawyers, in complex cases including organized crime and corruption. With greater security, judges have more space to assert their independence, and have done so in a series of high-profile organized crime and grave crimes cases. The changes have generated a new sense of citizen confidence in legal institutions and the rule of law. Since their creation in 2009, virtually all human rights cases have been adjudicated in the high-risk courts.\textsuperscript{35}

The Sepur Zarco Trial

In the early 2000s, three organizations, the MTM, the UNAMG, and the Community Studies

\textsuperscript{32} María Marín Quintana, Guatemala. Cumplimiento de las decisiones del Sistema Interamericano de Derechos Humanos: desafíos en materia de justicia (San José, Costa Rica: Fundación CEJIL Mesoamérica, 2016).

\textsuperscript{33} Ibid.

\textsuperscript{34} Interview, Claudia Paz y Paz, Washington, D.C., February 6, 2015.

and Psychosocial Action Team (ECAP), began working with wartime survivors of sexual violence in Sepur Zarco. Their early interventions focused on repairing the physical and psychological damage experienced by the women survivors. Working with the women and their families and communities, social psychologists and other professionals developed individual and collective strategies to help the women overcome their feelings of stigma and fear and to share their experiences. Many of the women did not speak about what had happened to them with each other, let alone with their families or others in their community. This was a first step to “breaking the silence” that often surrounds sexual violence.

In March 2010, these organizations founded the Alliance Breaking Silence and Impunity with the objective of making visible the sexual violence to which women were subjected in war and peacetime. In coordination with other groups, the Alliance organized the first Tribunal of Conscience on Sexual Violence Against Women during the Internal Armed Conflict. Indigenous women from several regions of the country publicly testified about the systematic sexual violence they endured at the hands of the military during the internal armed conflict. Alliance members point to this event as a watershed moment for the women-survivors of Sepur Zarco. It gave them insight into the power of testimony both for individual transformation and for broader societal change. It also strengthened their resolve to pursue justice in their case in a court of law. All the same, the Alliance continued its community-level support work in Sepur Zarco.

In September 2011, the Alliance filed a complaint on behalf of the women-survivors at a court in Puerto Barrios, Izabal. The case was assigned to the Human Rights Unit of the Attorney General’s Office. In 2012, investigators conducted exhumations, locating the remains of 51 individuals. Seven of those were positively identified, including the husband of Rosa Tiul, a complainant in the case.

The Supreme Court of Justice approved the prosecutor’s request to transfer the case to a high-risk court in Guatemala City. In September 2012, Judge Miguel Ángel Gálvez of High Risk Court “B” presided over the evidentiary hearings and heard the testimonies of 15 women survivors. As the case moved forward, the women decided to create the Jalok U Collective—which means “transformation” in Q’eqchi’—and petitioned to be co-plaintiffs in the case.

On June 14, 2014, retired Lt. Col. Reyes Girón and former chief military commissioner Valdez Asig were arrested in the case. They were charged with multiple acts in violation of international law, including sexual violence, sexual slavery and domestic slavery, against the Maya Q’eqchi’ women, as well as several counts of homicide and enforced disappearance. In June 2015, Judge Gálvez determined that there was sufficient evidence to initiate proceedings against the two defendants, and the case was remanded to the High Risk Tribunal A trial court.

36 Ibid.
37 Interview, Paula Barrios, Guatemala City, 1 October 2015.
39 Interview, Paula Barrios, Guatemala City, 1 October 2015.
Survivor Testimonies: “Do you want to live or die?”

Fifteen women survivors of sexual violence and domestic and sexual slavery testified in the Sepur Zarco case. As noted previously, only Petrona Choc Cuc testified in open court; the other women’s previously recorded testimonies were projected on a large screen in the courtroom. The prosecutor’s office had petitioned Judge Gálvez to video-record the women’s testimonies during the evidentiary phase so that they could be broadcast during the trial phase, thereby ensuring that the women did not have to testify again in open court. 40 This measure was intended to mitigate the retraumatization of the women-survivors. It also ensured that if any of the women were unable to testify during the trial court due to illness or death, their testimonies would still be incorporated into the proceedings. Judge Gálvez granted the motion, setting a precedent for future prosecutions of sexual violence cases. In fact, one of the women-survivors, Magdalena Pop, died shortly after giving her testimony in 2012, but it was nevertheless heard during the trial court and became part of the court record.

Speaking in their native Q’eqchi’, with an interpreter translating into Spanish, the women described what happen to them and their families after the military entered their community in 1982. Soldiers arrived with lists containing the names of several men, who were killed or disappeared. Soldiers raped many of the women and girls, often in their own homes, then burned down their houses and crops. The soldiers forced the women to the Sepur Zarco military base, where they were held for six months as sexual and domestic slaves. Others initially escaped by fleeing to the mountains. But because the conditions were harsh and the

40 Interview, Hilda Pineda, Attorney General’s Office, Guatemala City, 26 October 2016.
military continued to persecute them, they turned themselves in to the military, and were also then forced into sexual and domestic servitude.

Cecilia Caal told the court that on August 25, 1982, soldiers detained her husband, along with 17 other men, then raped her in her home, in front of her children. “The [soldiers] tied me up while two others were standing guard,” she said. “They had weapons”. Caal said she was pregnant at the time of the rape, which caused her to suffer a miscarriage. Soldiers then set her house on fire and forced her to go with them to the Sepur Zarco military base. Vicenta Coy Pop testified that after soldiers killed her husband, they forced her into the military base, where they raped her repeatedly and, for the next six months, forced her into sexual and domestic servitude. “When they raped me, they put a rifle on my chest and asked me, ‘Do you want to live or die?’ Then they spread my legs. There were many soldiers there”.41 Caal told the court that after about six months she and the other women were allowed to leave the military base but were required to report for work shifts every three days. During their shifts, they were repeatedly raped, and were forced to cook and do laundry. “Every time I went to the base,” she said, “the [soldiers] raped me, every three days”.42

Demecia Yat de Xol told the court that her husband was a member of the Land Committee and was among the 18 men captured by soldiers on August 25, 1982. “The landowners gave the military a list of names of men to disappear. They said we were troublemakers.” Yat went to the military base to find him. “The [soldiers] told me that if I continued looking for him, I was asking for them to do something to me as well”. Soldiers burned down her house and crops and stole her livestock, then forced her to live at the military base, where she was raped repeatedly, causing her to miscarry. The military commissioners told her that it was the women’s duty to let soldiers rape them.43

In her recorded testimony, Magdalena Pop, told the court that soldiers detained her husband along with another community leader. Pop died shortly after giving her pretrial testimony in 2012. “Your husband isn’t coming back,” they taunted her. “The soldiers raped me in the Sepur Zarco military base. I was held there for three months. They told me, ‘no one is going to come looking for you’”.44

Rosa Tiul testified that soldiers took her husband away and repeatedly raped her and the other women, even as they forced them to cook and clean for them. “If we said no, that we didn’t want to, they would have killed us. I was afraid they would kill me,” she said. At the base, she said, there were rooms where they would take the women to rape them. “Sometimes there were three, four, or even five of them”. After she was allowed to leave the military base, Tiul said sometimes soldiers would come to her house and rape her. “They told me if I didn’t let them [rape me] they would kill me. Sometimes they tied me down and put a

43 Ibid.
44 Ibid.
rifle on my chest”, she said. “One time I got so upset I went to speak to the lieutenant [Reyes Girón] to complain. He said maybe I liked it, maybe it was my fault the [soldiers] had gotten used to it.” She continued: “They treated us like animals. It was so painful. They did this to me because I was alone”. Tiul also noted that while the women were forced to cook for the soldiers, their children often went hungry. Tiul testified that the remains of her husband, Sebastian Coc, were exhumed from the Tinajas military base in 2012.45

Several of the survivor-witnesses identified the defendants. Margarita Chub and Carmen Xol both testified that Valdez Asig was with the soldiers when they detained their husbands on August 25, 1982. Chub said that Valdez Asig had a list of names of community leaders, all of whom were taken away by the soldiers. She also testified that she saw Reyes Girón at the military base, and that he was the commander. Both Chub and Xol said that they, like the other women, were taken to the military base, where they were repeatedly raped and forced into sexual and domestic servitude. Xol, Yat and Coy Pop all testified that soldiers gave them contraceptive injections. “All of this was because of the struggle for land,” said Xol. “[My husband’s] blood was spilled over the land”. 46

Other Witness Testimony: “What did my wife and daughters do to deserve this?

In addition to the 15 women survivors, 16 men from Sepur Zarco testified in the trial. Some testified that they were abused by soldiers, and others said they were forced to build the military base. They testified about the systematic rape and enslavement of the women at Sepur Zarco. They also corroborated the women’s testimony about the land conflict that was at the root of the military repression. Other witnesses included three former civil patrolmen, an ex-soldier, and a former military commissioner, the latter two as protected witnesses.

Rogelio Hüitz Chon testified that he was 12 when he was detained and tortured at the military base. “I was a prisoner at Sepur Zarco, and I have the scars to prove it,” he said, raising his shirt to show the judges the scars on his torso and where his ribs had been broken as a result of the beatings and torture he endured. He identified Valdez Asig, and said he was responsible for the disappearance of his father. “This didn’t happen only to my father,” he added. “It happened to many people. [Valdez Asig] had a lot of power in Panzós.” Chen also identified Reyes Girón as the commander of Sepur Zarco. He told the judges that he wanted justice, adding: “If they offer you money, do not accept it”.47

Domingo Chub Pop told the court that his father was one of the community leaders and was among those disappeared by the military. He testified that the military forced him and other men from Sepur Zarco to participate in the civil defense patrols (PACs). They were forced to patrol around the military base in shifts. “We had to follow the soldiers’ orders”, he

Chub Pop recalled an incident in which soldiers tossed a grenade into a pit in the Sepur Zarco military base where detainees were held, killing several of them. He also testified that soldiers killed a woman named Dominga, along with her two daughters.

Dominga Cuc’s husband, Santiago Itzep, testified that he, his wife and daughters had been detained and brought to the military base. Soldiers accused him of collaborating with guerrillas and began beating him. He denied their accusations. They then began raping his wife in front of him and their daughters. “I couldn’t do anything,” he told the court, “because there was a soldier guarding me…. What did my wife and daughters do to deserve this?” Cuc’s mother, Julia Cuc Choc, also testified. During one of her many trips to the military base to find out what had happened to her daughter and granddaughters, a civil patrolman told her that they had been killed.

A former military commissioner, a soldier, and three civil patrolmen provided important corroborating evidence. Each of them identified Reyes Girón as the commander of the Sepur Zarco military base, and they all confirmed that the women were regularly raped and forced to work at the base. They also corroborated specific incidents. Former military commissioner Miguel Ángel Caal testified that Santiago Itzep, his wife Dominga Cuc and their daughters were detained in response to the death of a soldier, and that she was raped and killed by patrolmen. Caal also testified that he had witnessed Reyes Girón order soldiers to gang-rape a woman for sport.

Agustín Chen, who was forced by soldiers to organize and participate in the civil defense patrols, testified that he was punished when he failed to capture Manuel Cuc, a community leader from Semococh the military believed was providing food to the guerrillas. Chen confirmed that Manuel Cuc was detained in August 1982, corroborating his wife’s testimony identifying Valdez Asig as the man who detained her husband and two sons.

Forensic Experts: Physical Evidence of the Crimes at Sepur Zarco

Forensic anthropologists and archaeologists from the Forensic Anthropology Foundation of Guatemala (FAFG) testified about the exhumations that the Attorney General’s Office asked them to conduct in 2011 and 2012 and the physical evidence they uncovered in the course of their work. The FAFG is a scientific organization that has been working for more than two missing from the period of the internal armed conflict. The organization collects ante- and

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50 Ibid.
51 Ibid.
52 Ibid.
post-mortem data, interviews families of victims, and employs a series of scientific methods decades to locate and identify individuals who were forcibly disappeared or are otherwise to identify mass graves, conduct exhumations, and uses DNA testing and other mechanisms to identify the bodies so that they can be returned to their families for burial. FAFG has a long-standing agreement with the Attorney General’s Office of Guatemala to assist in the search for the missing and has exhumed more than 8,000 human remains.

In 2012, FAFG investigators found 51 human remains in 13 different gravesites at the former Tinajas military base, in Senahú, Alta Verapaz. The FAFG expert testified that some of the bodies were lying face-down, others face-up, which is common in mass killings. The bodies showed signs of severe trauma, including bullet wounds and cuts that were the result of large sharp objects, such as machetes or axes, and several had ropes tied around their wrists, ankles and necks. Because there was no protective covering on the bodies, the bones were very badly deteriorated; as a result, investigators were able to positively identify only seven of the remains. One of those identified was Sebastián Coc, the husband of Rosa Tiul, one of the claimants in the case. Investigators also identified the remains of Dominga Cuc, but the remains of her daughters were not found, only their undergarments. Because of their young age, he said, their bones were not fully formed and open court. On the morning of February 9, dozens of sealed boxes were spread across the floor of the courtroom. Each box contained the remains of a single victim. The court ordered each of the boxes opened and the remains were laid out on a platform where defense lawyers scrutinized them. This caused great emotional impact, particularly for the women-survivors, who later told me they said prayers the entire time the remains were on display to protect the souls of the dead.54

54 Ibid.
Expert Witnesses: “Weaving the Web of Context”

The prosecution called a dozen or so experts from different professions and disciplines to provide crucial historical context on the Sepur Zarco case. Richard Ashby Wilson has referred to the potentially positive role that expert witnesses, including historians, sociologists, and other professionals, can play in criminal trials, “weaving the web of context” to help the tribunal better understand critical aspects of the case. The prosecution masterfully deployed expert witnesses to that end. Expert witnesses provided crucial contextual information about the history of land conflict in the Polochic Valley; about the structure, organization and doctrine of the Guatemalan Army and its counter-insurgency strategy; and about the strategic use of rape as a weapon of war. Other experts presented the findings of their research conducted specifically for this case. Here I highlight some of the most compelling expert witness testimonies to elucidate the way they

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helped “weave the web of context” in the Sepur Zarco trial, and how this contributed decisively to a fuller understanding of the historical context, the specific crimes at Sepur Zarco, and the motives that gave rise to them.

Historian Juan Carlos Peláez Villalobos testified about the trajectory of land conflicts in the Polochic Valley, where the Sepur Zarco military base was located. Peláez Villalobos explained that this territory historically belonged to the Maya Q’eqchi’ but was lost over the years through fraud and violence. In the early 1980s, local community leaders were pursuing legal channels to recover titles to their land. Local land owners, concerned that the history of fraud and violence that led to their acquisition of the Q’eqchi’ community lands would be revealed, called upon the military to eliminate the community leaders. Peláez Villalobos explained that the sexual violation of women and the enslavement of indigenous peoples was an intrinsic aspect of this historical process of land dispossession:

The indigenous people and the peasants were not considered to be human beings; they were viewed exclusively as farmhands to work the fields. As for the women, they were completely subordinated to the will of the landowner.57

Héctor Rosada Granados, a Guatemalan social scientist, former peace negotiator for the government, and expert in military affairs, testified about the history and development of the armed conflict, focusing on the period between 1981 and 1983, which “gave birth to the vision of total destruction: genocide”. 58 According to Rosada Granados, Firmaez 83, a plan conceived by the military junta in 1982, outlined the military’s strategy to control the civilian population following the classic counterinsurgency doctrine of “draining the sea”—elimination of the civilian population—“so the fish, the guerrillas, could not survive”. 59

Turning to the specific case of Sepur Zarco, Rosada Granados explained that what happened in the Polochic Valley and surrounding areas reflected the tight interlacing of the interests of landed elites and the Guatemalan state. The efforts by the Land Committee to recover the community’s historic lands was viewed not only as a challenge to the power of local landed elites, but to the stability of the state itself. Rosada Granadas testified that the military arbitrarily applied the concept of “internal enemy” to indigenous Q’eqchi’ communities in Sepur Zarco in order to justify state violence against them, even though there was no guerrilla presence in the area.60 The military deployed violence strategically and with the intention of generating terror in order to establish absolute control over the civilian population. The chief military commissioners were agents of military intelligence tasked with supervising and controlling the other military commissioners and the civil defense patrols, as well as a network

59 Ibid.
60 Ibid.
of collaborators and informants. The chief military commissioner also oversaw the women’s work at the military base.

Forensic architect Elisa Gabriela Mendoza García presented geospatial images and a three-dimensional map of the community of Sepur Zarco to demonstrate how the military base was organized and its location in relation to other relevant landmarks. “What happened in the kitchen or surrounding areas of the military base was visible and audible because of its location in the middle of Sepur Zarco,” the expert said. Given its architectural structure and location, Mendoza testified that it was impossible for the officials in charge of the base not to know that the women being held there were being subjected to repeated acts of sexual violence.

**Rape as a Weapon of War: Guilt, Trauma and “Social Death”**

Experts on gender, trauma, and racism who conducted interviews with the women-survivors, testified about the impact of the violence on the women-survivors, their families, and their community. Social psychologist Monica Pinzón stated the women suffered a “devastating” attack against their bodies, minds, and sexuality, which constitutes the core of individual and collective identity. The sexual violence exercised against the women resulted in physical pain, humiliation, and deep-seated feelings of guilt and worthlessness. Two had miscarriages as a result of the rapes. The women suffered post-traumatic stress disorder, which manifested itself in a variety of ways, including flashbacks, violent dreams, fear of new sexual assaults, and feelings of disassociation and listlessness, among others. This was exacerbated by the loss of their husbands and in some cases their children. The inability to give their family members who remained disappeared a proper burial remains a source of anguish. Pinzón said that the women felt extreme guilt for having sexual relations with men who were not their husbands, and felt permanently fearful (*susto*), which is common in cases of extreme trauma. Several of the women reported that their children witnessed the sexual assaults and suffered permanent psychological harm. Forensic psychiatrist and physician Karen Peña Juarez of the National Institute of Forensic Anthropology (INACIF) told the court that the women displayed physical ailments associated with torture and extensive sexual violence as well as psychological trauma. “These are not normal life experiences”, she said. “These are traumatic experiences, and because they are catastrophic, they can cause irreversible damage to the victim’s psyche”.

Pinzón and anthropologist Irma Alicia Velásquez Nimatuj testified that the sexual violence suffered by the women, combined with loss of their husbands and in some cases of their children and the destruction of their homes, disrupted the social cohesion of their community and their ability to sustain their culture and traditions: “a fundamental part of the Q’eqchi’ culture was destroyed”.

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Figure 8: A Mayan altar outside the courtroom during the Sepur Zarco trial. The sign reads “Women have the right to a fair trial.” Photo by author.
Two experts on gender and gender violence also testified, Rita Laura Segato, a feminist anthropologist at the University of Brasilia, and Paloma Soria, a lawyer with Women’s Link Worldwide. Segato explained that the attack against the indigenous women of Sepur Zarco, their sexual and domestic enslavement, and the sexual assaults against them, were all part of a war strategy. “The desecration of the women’s bodies and their reduction to utter destitution were military objectives”, she stated. The violence deployed against women was part of the army’s strategy to punish the men for their activism and to destroy the community. It also served to strengthen the fraternity among the rank-and-file soldiers. With their husbands gone, the sexual violence against the women became routinized. As a result, the women were stigmatized and isolated from the rest of the community, leading them to experience what Segato called a “social death”.63

Soria testified that sexual violence in contexts of conflict constitutes a human rights violation and a war crime, while domestic and sexual enslavement are crimes against humanity. Sexual violence is exercised when an individual is forced to engage in sexual activity, whether penetration is involved or not. In contexts of extreme repression, as was the case in Sepur Zarco, coercion is a constant, as women are stripped of any possibility of giving consent in such circumstances. Soria noted that the CEH found that sexual violence was part of the military’s “strategic plan”. She also discussed Plan Victoria 82, a military document which mandates the creation of “recreational areas” in which soldiers engaged in the organized rape of women, which was euphemistically referred to as “contact with the female sex”. This illustrated that what happened at Sepur Zarco was not an anomaly, but part of the military’s overall strategic plan to defeat the insurgency and maintain social control.64

The Defense

The main arguments of the defense were to deny that the defendants had any involvement in Sepur Zarco; to accuse the women-survivors of lying or, alternatively, of being “prostitutes”; and to challenge the forensic evidence by arguing, without providing any proof, that the “chain of custody” had been violated. The defense proposed some 20 witnesses. In the end, only eight testified in court; the defense withdrew the others, primarily because they “could not be located”.65

Former army specialist Julio César López Ligorría, who was responsible for the distribution of food and other supplies to the military installations in Cobán, including the Tinajas military base, said that he had no knowledge of women working or being assaulted in the military bases. However, the witness could provide no written evidence to substantiate his claims, nor could he remember the name of the officials in charge; and when pressed,
stated that he never visited the Sepur Zarco military base.

Several witnesses testified that Valdez Asig was a municipal police officer in Panzós and did not have knowledge that he was chief military commissioner. The remaining defense witnesses focused on the exemplary conduct and good reputation of the defendants and did not present any evidence to dispute the central facts of the case.

The Judgment: Guilty as Charged

On 26 February 2016, after four weeks of public hearings, Presiding Judge Yassmín Barrios read aloud a summary of the 512-page verdict. She stated that, upon careful review of the evidence, including expert testimony, official documents, forensic evidence, and especially the testimonies of the women survivors, the tribunal had reached the unanimous decision that the defendants Esteelmer Reyes Girón and Heriberto Valdez Asig were guilty of crimes against humanity in the form of sexual violence, sexual and domestic servitude, and humiliating and degrading treatment; murder; and enforced disappearance; and sentenced them to 120 and 240 years respectively. This followed international precedent, established in the 1998 Rome Statute, which states that “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparative gravity” constitute crimes against humanity “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. Here I highlight key aspects of the court’s verdict.

Judge Barrios noted that the tribunal’s judgment was based primarily on the individual testimonies of the women-survivors of Sepur Zarco, which were credible, consistent, and formed the basis for reconstructing the events:

The judges of this tribunal firmly believe the testimonies of the women who were sexually violated in Sepur Zarco... The Sepur Zarco case demonstrates the cruel and ignoble treatment to which the women were subjected. They were obligated by soldiers in the military base to endure constant sexual violation. They were subjected to sexual violations on an ongoing basis and were also subjected to domestic slavery.... When they gave their statements, the women broke down in tears, expressing their pain, sadness, loneliness and helplessness, not only because of what happened at that time, but also because of their impotence before the armed men who changed the course of their lives, without concern for the consequences of their actions.

This is important because historically women’s testimonies about sexual violence have

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been called into question, dismissed, or rejected as not true or unprovable. Giving evidentiary value to the women-survivors’ testimonies is also in accordance with international precedent. The rules of evidence of the International Criminal Court (ICC) establish that in cases of sexual violence, victim testimony constitutes *prima facie* evidence: “Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence”.

Judge Barrios referred to the testimony of each of the women-survivors, weaving together a narrative of what happened in Sepur Zarco and how it affected the women as well as the broader community. For example, she referred to the testimony of Magdalena Pop, who passed away of cervical cancer shortly after testifying before Judge Gálvez in the pretrial evidentiary hearing:

> Sobbing as she testified, Magdalena Pop recounted how she was subjected to extreme forms of sexual violence. She said that she trembled with fear each time she was required to go to the military base to fulfill her ‘shift’ because she knew what the soldiers would do to her.

Barrios affirmed that the contraceptive medicines the soldiers forcibly applied to the women were evidence of a systematic plan to rape the women over long periods of time. The tribunal highlighted the cruelty exercised by the military in forcibly displacing families from their homes and the impact this had on children, many of whom died while seeking refuge in the mountains.

The court also noted the broader context in which the sexual violations and the domestic and sexual servitude of the women took place. The testimonies of the women-survivors, several men from Sepur Zarco, and the expert witnesses established that the underlying motive of the military violence was conflict over land:

> In the context of the ongoing counterinsurgency in Guatemala, to accuse someone of being an ‘internal enemy’ was tantamount to a death sentence. The underlying motive for identifying some people in Sepur Zarco as the ‘internal enemy’ was that the *finqueros* were angry about the community efforts to reclaim their historic territories. As a result, the *finqueros* accused community organizers of participating in or providing support to the guerrilla. These accusations were presented to the local military

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69 This is true in peace and war-time, of course. See Jelke Boesten, *Sexual Violence in War and Peace: Gender, Power, and Post-Conflict Justice in Peru* (New York: Palgrave, 2014) and Sanford, *op. cit.*, 2016.


71 Ibid.
commissioners, who then proceeded to persecute those leaders because of their presumed connection to the guerrilla.  

The court stated that the testimonial evidence reveals the military’s *modus operandi* in Sepur Zarco: first, the military killed or forcibly disappeared the men who were active in the efforts to reclaim community land; then their wives were systematically raped by soldiers; then their homes and belongings were destroyed. In many cases entire families were forced to flee into the mountains to seek shelter; many, especially children, died of hunger and cold. Those men who were not disappeared were forcibly recruited in the civil defense patrols, and the military incited a permanent confrontation between the patrol members and the community as a way of maintaining social control. Because of their husbands’ absence, the women were isolated and unprotected, making it viable for the soldiers to systematically rape the women over such an extended period of time.

The court drew on Segato’s expert testimony to find that the systematic rape of the women of Sepur Zarco was not primarily a sexual act but was rather a weapon of war designed to destroy not just the bodies of the victims, but the broader body politic. Judge Barrios asserted that women are carriers of life, and “the assault against women’s bodies constituted a way of ensuring that the women could not reproduce life in their community”. The women were isolated and stigmatized by the community, who referred to them as “the soldiers’ women,” producing their “social death.” The court cited this and the expert testimony of Velásquez Nimatuj to find that the sexual violence deployed by soldiers against the women was profoundly destructive of community relations and had a devastating impact on Q’eqchi’

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72 Ibid.
73 Ibid.
The tribunal acknowledged the women’s courage for coming forward to testify and speak publicly about the multiple sexual violations to which they were subjected. Toward the end of her presentation Judge Barrios noted that the verdict was not only about past abuses but also about present social relations:

Acknowledging the truth helps to heal the wounds of the past. The application of justice is a right of the victims and contributes to strengthening the rule of law in our country and makes us all understand that these types of crimes should not be repeated.74

Regarding the criminal liability of the defendants, the court found that the evidence demonstrated that Valdez Asig was the chief military commissioner; that he identified the community leaders of Sepur Zarco who were then detained and disappeared; that he participated directly in the detention of those leaders; and that he was fully aware of, and helped facilitate, the sexual and domestic enslavement of the women at the Sepur Zarco military base. The court found that Lt. Col. Reyes Girón was the commander of the Sepur Zarco military base between 1982 and 1984, and was also aware of the abuses there, including the sexual violation and sexual and domestic enslavement of the women complainants. The court stated that it was not plausible for the accused to claim that the rape and enslavement of the women occurred without their knowledge and consent.75 Within the military institution, a commanding officer cannot claim ignorance if he has the obligation of exercising control over his subordinates. As head of the base, Reyes Girón was responsible for the actions of his troops and necessarily had knowledge of what occurred inside the military base. The court referred to the forensic architect’s expert report to further support the finding that it was impossible for the commanding officers to be unaware that the women at the military base were being subjected to repeated acts of sexual violence over the course of several years.76

The court determined that the rape and enslavement of the women of Sepur Zarco constitute illicit acts as outlined in Article 378 of the Guatemalan Penal Code, thus constituting crimes in Guatemalan law. The court determined that these acts also constitute crimes against humanity, as outlined in Common Article 3 of the Geneva Conventions, which prohibits attacks upon and the cruel and degrading treatment of civilian populations. This determination was based on the Constitution of Guatemala, which establishes the primacy of human rights treaties and conventions. The court imposed the maximum sentence of 30 years in prison for each of the accused for crimes against humanity in the modality of sexual violence, sexual and domestic slavery, and cruel and degrading treatment.77

74 Ibid.
77 Ibid.
Figure 10: The defendants: Valdez Asig, far left, and Estelmer Reyes Girón, far right. Photo by author.
In addition to these charges, the court convicted the defendants on charges of homicide and enforced disappearance. The court invoked the doctrine of superior responsibility to condemn Reyes Girón for the murder of Dominga Cuc and her daughters, sentencing him to 30 years for each count, elevating his sentence to 120 years. The court found Valdez Asig responsible for seven counts of enforced disappearance, which is a crime as outlined in Article 201 of the Guatemalan Penal Code, imposing a sentence of 30 years for each count, resulting in a total prison sentence of 240 years. The tribunal affirmed the widely accepted international jurisprudence that considers that enforced disappearance is a continuous crime.

Exercising their due process rights, the defendants appealed the verdict. An appellate court unanimously ratified the judgment in July 2017.78

From Victimhood to Citizenship: “We are no longer afraid”

The evidentiary practices in the Sepur Zarco case were constructed from the bottom up. A coalition of civil society organizations, the Alliance Breaking Silence and Impunity, worked with the women of Sepur Zarco at the individual, familial, and community level, addressing some of their most pressing needs, including physical and psychological assistance. As they began talking more openly about what happened to them, the women overcame their fear and isolation. Socializing the extreme violence and mistreatment they suffered helped them find ways to talk about what happened with their families and the broader community. This “everyday work of repair,” to borrow Veena Das’ phrase, was crucial to building trust among the women themselves, and then among their families and other members of the community.79 This began to break down the social stigma of being a victim of sexual violence and laid the groundwork for broad community support of the women’s pursuit of justice in court.

The evidentiary practices of the Sepur Zarco trial placed the women-survivors at the center of the proceedings, in contrast to conventional wisdom that perpetrators are always the focus of war crimes tribunals. Their testimonies were central to the proceedings and captivated the nation, and indeed, the world. Their participation as co-plaintiffs in the case gave them a protagonistic role in the justice process. By bringing a complaint against senior military officials, by testifying about the atrocities they endured, by demanding redress from the state, the Grandmothers of Sepur Zarco have reclaimed their rights as citizens. That is not to say that the conviction magically inverts power group relations—far from it—but, by establishing indigenous Maya as protagonists in a criminal proceeding challenging state practices, it establishes them as full-fledged members of the nation, and therefore as citizens.

deserving of rights, a category previously denied to them.

The Sepur Zarco trial achieved a rare conviction for sexual violence and domestic and sexual enslavement. Central to this was the testimonies of the women-survivors, who provided harrowing details of their experiences of rape, enslavement, pain and humiliation. The court recognized the credibility of the women’s testimonies, giving them evidentiary value that was central to the conviction of the two accused. For years the women of Sepur Zarco were shunned as the “soldiers' women,” implying a level of consent that is at odds with what actually happened. The verdict recognizes the credibility of the women-survivors’ testimonies and sets the record straight: The women of Sepur Zarco were the victims of a system of military control in which they were subordinated and had no power to consent or refuse the orders of the soldiers they interacted with on a daily basis.

The tribunal’s judgment not only determined the guilt of the accused. From the fragments of evidence presented in these proceedings, it constructed a coherent narrative that translates acts of mass violence and atrocity into a more comprehensive understanding of how state violence operated, what motivated it, and how it impacted individuals, communities, and the broader society. The military deployed violence against indigenous communities they viewed as coterminous with the guerrilla insurgent groups—“the internal enemy” that had to be “annihilated” in order to save the country from the “communist menace”— and because they were viewed as disposable bodies when they interfered with the landed oligarchy’s continued enjoyment of power and privilege. The extreme violence deployed against the women of Sepur Zarco was part of a war strategy designed to control the population and eliminate any possibility of resistance. Through this process of translation and re-signification, the Sepur Zarco judgment has made visible state practices of extreme violence against indigenous women into a more nuanced and comprehensive narrative that embeds this gender-based violence into a broader strategy of military persecution against...
indigenous populations and about how conflicts over land fueled violence in Guatemala.

The public airing of atrocities, as occurred in the Sepur Zarco trial, contributes to the rewriting of the official narratives of denial and forgetting. The media—even the more conservative outlets such as Prensa Libre—widely covered the dramatic hearings unfolding in the Supreme Court building, though its protagonists were poor indigenous women from a remote rural area that few middle-class Guatemalans had ever heard of. This has helped reconfigure the positionality of Mayan women in the public imaginary. As one observer noted: “Something changed after the women survivors testified. The media could not remain silent about what was happening in the courtroom. And it was impossible for broad sectors of society not to empathize with their pain and courage”.

Not only was the silence broken, but new spaces were created to discuss the crimes of the past and the proper way to acknowledge the suffering experienced by victims. This was evident at a workshop I attended in Guatemala City just after the verdict with the women-survivors of Sepur Zarco and four other regions of the country. The women of Sepur Zarco discussed the importance of testifying for them:

When we started our group, it wasn’t easy to get everyone to participate in meetings and share our testimonies. After giving our testimony, it’s as if we have wings. We are no longer afraid.

We no longer feel shame. We have the right to participate and tell the world about what happened to us and to ask for justice.

Before I was afraid and ashamed to say what happened to me. But it’s the men who did this to us who should feel shame. Now I feel like a leader because I’m no longer afraid and I have the strength to continue fighting.

Other woman emphasized that the judgment is important because it acknowledges the violations suffered by indigenous women, and because it has helped make new generations aware of this painful past:

Those of us who come from other communities feel closely identified with the women of Sepur Zarco because we know how difficult the trial was. We know that Valdez Asig caused them much harm; my father was imprisoned a long time because of him. We thank the women of Sepur Zarco because we now have a judgment.

80 Unless otherwise indicated, all quotes in this section are based on the author’s notes at the Encuentro de Mujeres Sobrevivientes de Violencia Sexual durante el Conflicto Armado Interno, Guatemala City 9-11 Marzo 2019.
The judgment is a recognition of what happened in the communities during the armed conflict. Through the radio coverage, even the children are learning about what happened back then.

Several of the women-survivors said that though testifying was not easy, they were motivated to do so to stop sexual violence against women now and in the future:

This is what we are fighting for, so that the things that we suffered never happen again. We have been fighting for justice for many years. We know the process is not easy, speaking about what we suffered is not easy.

What we want, and what we asked for before the court, is to ensure that what we suffered doesn’t happen ever again; to ensure that our grandchildren don’t suffer the way we did.

Finally, the Sepur Zarco case has also inspired other survivors of sexual violence to pursue their claims in court:

I felt very happy on the 26th because the defendants were convicted. I felt as if I were the one who had walked this path. But there are many others who are still free. As women we have to continue the struggle for justice with our time and our testimony.

Emma Molina Theissen, who was a 21-year-old political activist in 1981 when she was illegally detained by the military, interrogated, tortured, and gang-raped by soldiers, told me that for years she had no hope in the possibility of justice, but after hearing about the Sepur Zarco case, she was inspired to bring her case to court:

Learning about the Sepur Zarco case changed my heart, because they suffered the same thing I did. They suffered for much longer than I did, and they had the courage and the strength to testify in court... I thought, if they could do it, so could I, and that changed me completely.\(^{81}\)

In May 2018, four senior military officials, including the powerful former Army Chief of Staff Benedicto Lucas Garcia, were found guilty of crimes against humanity and aggravated sexual assault against Emma, and for the enforced disappearance of her 14-year-old brother, Marco Antonio.\(^{82}\) Another trial, for crimes against humanity and aggravated sexual assault

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81 Author interview, Emma Molina Theissen, Guatemala City, March 7, 2018.
against 30 Maya Achi women, is pending of this writing. This demonstrative effect of war crimes trials reveals their potentially transformative nature.

We should not downplay the tensions and limitations of war crimes trials, but nor can we ignore their transformative potential, for victims, their families and communities, and for the broader society. Impunity remains a daunting challenge in postwar Guatemala. And yet, war crimes trials are helping survivors overcome fear and silence and inspiring others to pursue truth and justice. They are making visible the extent to which state violence affected indigenous Mayan communities, as well as the gendered impact of the systematic use of rape as a weapon of war. Guatemala’s war crimes tribunals are generating new practices within the justice system. They are inspiring other atrocity victims to pursue their cases in court. Finally, they are helping rewrite the historical memory of Guatemala’s recent past, by contributing to the construction of counter-narratives that fundamentally challenge the entrenched narratives of official denial and the system of institutionalized impunity that has been its mainstay for so long.

In the Wake of Gujarat: The Social Relations of Translation and Futurity
Nicole Wolf

**Abstract:** The temporal and political intervention of wake work (Sharpe 2016) as an analytic to think the present of anti-blackness through the history of slavery, is ‘translated’ to address the 2002 Gujarat genocide as an interminable event shaping the present. Re-visiting the poetics of evidence in Amar Kanwar’s *Lightening Testimonies* (2007) and *A Night of Prophecy* (2002)—via a refusal operative as documentary event and rupture—as wake work, I ask if translation—as heterogeneous address and social relation (Sakai 1997)—can propagate a future politics of radical solidarity, from the anachronicity of genocidal violence, bypassing the sovereignty and violence of modern democratic citizenry.

What must first of all be responded to seems to be the question of how translation structures the situation in which it is performed: what sort of social relation is translation in the first place?

The ongoing state-sanctioned legal and extralegal murders of Black people are normative and, for this so-called democracy, necessary; it is the ground we walk on. And that it is the ground lays out that, and perhaps how, we might begin to live in relation to this requirement for our death. What kinds of possibilities for rupture might open up? What happens if we proceed as if we know this, antiblackness, to be the ground on which we stand, the ground from which we attempt to speak, for instance, an “I” or a “we” who know, an “I” or a “we” who care?

If the Indian army has impunity and the militant cannot be questioned and if the attacker disappears and the family withdraws support and the judge is a puppet

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and the medical report is unavailable
and the witness is gagged
and the survivor falls silent
Then, can the location present itself in court?
And if so, which court can it be?4

A haunting, a requirement and a premonition

The pogrom in Gujarat in 2002, that is to say the genocidal violence against the Muslim population that unfolded in different urban and rural places across Gujarat, the North Western state of India, between 28 February and May 2002, has stayed with me ever since. It haunts the social and political landscape of India and beyond. It haunts because it is still disputed and justice has only been reached in very few cases while evidence has failed in most. It haunts because of frequent news reporting the lynching of Muslim men, the rape and killings of Muslim women and girls and the attacks on Islamic sites of prayer. It haunts through the visibility of urban segregation and economic divides and the quotidian experiences of discrimination shared by Muslim citizens of India. It troubles political and judicial practice, because many recognize that the non-attainment of justice for the victims of Gujarat is part if not the condition of the very system within which many try painstakingly and necessarily to attain that justice. The pogrom in Gujarat also haunts as “anti-Muslim practices and beliefs have come to the fore as one of the dominant forms of racism marking our contemporary era”.5 Thus, more than haunting, anti-Muslim practices and beliefs as forms of racism appear as a requirement of the democracies I live in, we live in; “it is the ground we walk on”.6 In this way Gujarat troubles thought, in the present and for our future and this is the reason I revisit it.

Christina Sharpe’s In the Wake: On Blackness and Being (2016) has been a crucial inspiration to return to the pogrom of Gujarat and with it to re-engage with three documentary events that followed in its aftermath: Lightening Testimonies7 (2007) and A Night of Prophecy8 (2002) by Amar Kanwar and a third, very different, documentary event constituted as radical refusal. Those three documentary events confront, each in their own mode of response, the fallibility of evidence in front of the certifying institutions of modernity,9 in front of diverse publics and in front of what Amar Kanwar recently called “us

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4 Excerpt from Amar Kanwar, Lightening Testimonies, 8-channel video installation. 32min. 31sec. (India, 2007).
6 Sharpe, op. cit.
7 Lightening Testimonies was first shown at Documenta XII in 2008 and subsequently in many different group exhibitions, part of solo shows and in Museums internationally, including recently at Tate Modern (April 2018), testifying to the continued relevance of this seminal work.
8 Amar Kanwar, A Night of Prophecy. Digital Video. 77min. (India, 2002).
In the Wake of Gujarat: The Social Relations of Translation and Futurity

good people”. 10 I argue that they do so by refusal of evidence as truth production designed for a sovereign instance—may this be a nation state, a judiciary, a majoritarian citizenry, the normative—while still speaking to it. Rather, their expansion of Evidence through the poetic, i.e. their ciné-poetic translations of genocidal violence being Acts of Evidence, operate with and constitute wake work. Wake work—the sociality, care work, consciousness and politics it affords—arises precisely from and stays with the interminability that marks genocidal violence, violence that seeks to annihilate a people and violence that maims a people. 11 Wake work does not seek memorials or a coming to terms with, but modes of being that cause constant ruptures to remedial closure. 12 Gujarat hereby becomes a significant historical touchstone while a linear thinking through time and history is destabilized and the violence of Gujarat thought anachronistically. 13 Hence, I revisit the social, corporeal and economic deaths Gujarat inflicted and inflicts through the practice of wake work and in order to think Acts of Evidence for a present and future politics and sociality. At stake is futurity, consciousness in solidarity.

Wake work for poetics/politics of relation

A reprise and an elaboration: wakes are processes; through them we think about the dead and about our relations to them; they are rituals through which to enact grief and memory. Wakes allow those among the living to mourn the passing of the dead through ritual; they are the watching of relatives and friends beside the body of the deceased from death to burial and the accompanying drinking, feasting, and other observances, a watching practiced as a religious observance. But wakes are also “the track left on the water’s surface by a ship; the disturbance caused by a body swimming, or one that is moved, in water; the air currents behind a body in flight; a region of disturbed flow; in the line of sight of (an observed object); and (something) in the line of recoil of (a gun)”; finally, wake means being awake and, also, consciousness. 14

In the following I propose to think translation as wake work via a practice of translation itself. I deploy translation as relation and a form of ‘address’ between instances of wake work.

12 Cf. Introduction of this issue, p21.
13 Cf. Saidiya Hartman, “Venus in Two Acts,” Small Axe 26 (2008) 12: 1-14. This anachronicity is inspired by Hartmann’s thinking the archive of slavery, its wide glaring gaps and silences, anachronically, “to imagine a free state, not as the time before captivity or slavery, but rather as the anticipated future of this writing” (4).
14 Sharpe, op. cit., 21.
And I regard audio-visual practices, first their refusal and then essayistic documentary works, as translations of genocidal violence in the way that they address and create social relations to that violence. I take inspiration from Naoki Sakai’s proposal towards translation as social relation and heterolingual address ‘that structure the situation in which it is performed’, where “every utterance can fail to communicate because heterogeneity is inherent in any medium, linguistic or otherwise”. I hence read the documentary events I cite here as translations, as heterolingual forms of address and social relations where no closure of the translational process is assumed, but which structure the situation in which they are performed, becoming locus of critical thought, wake work as consciousness.

Sakai’s translation theory supports an understanding of documentary works as themselves constituted through social relations, in their process of making and in how they address diverse spectators. Advancing translation as heterolingual address amongst non-aggregate communities rather than as a transference from one homolingual community/speaker to another homogeneous community/speaker, resonates with Amar Kanwar’s reflections on communications through film, whereby for Sakai “‘addressing’ is anterior to ‘communication’”: If you’re able to see the complex inner diversity and heterogeneity within individuals and therefore in audiences, then you’re able to see the many dimensions of communication itself. Film is an unbelievable medium—you can do what you want with sound, music, ambience, image and color. You find that when you start putting these together it is possible to create a constellation of experiences that have the capability to relate with the multiplicity of life and audiences and eventually the multiplicity of the maker as well.

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15 Sakai, op. cit., 1-17.
16 Ibid., 8.
18 Sakai, op. cit., 4.
Against analogies

. . . it is also my hope that the praxis of the wake and wake work might have enough capaciousness to travel and do work that I have not here been able to imagine or anticipate.²⁰

I read the above as an invitation but I do this with precaution. I do not see my work as a comparison of violent histories or creating analogies. I also do this with an awareness that I write as a white European scholar, as a foreigner to Black being writing/translating from the outside, and that Sharpe’s claim for and elaboration of Black consciousness and thought through, very specifically, the afterlives of slavery and from the ground of antiblackness, weaving the personal with the broader political, cannot, must not, be co-opted. That is to say that this article is driven by the urgent need to think socialities, relationalities, forms and modes of collectivities, rather than prescribed or thought possible within the given “schemas of configuration”²¹ we live in but by way of considering the limits as well as possible openings for socialities and solidarity, when this can only be done through the structure of violence.

Ariella Azoulay’s²² political ontology of documentary photography, and I would argue this for moving image works as well, propounds other forms of social and political relations via a citizenry of photography. The political relations arising through this citizenry have the potential to ignore the sovereign instance, that is to say they open the possibility for relationalities conceived beyond the state, beyond the court, beyond majoritarian citizenry, beyond—I would extend the argument—what Bakhtin calls the “superaddressee”.²³

Can we think of wake work-in-solidarity through poetics of evidence translating violence anachronistically?

Wake work advances thought and practice to think and be with interminable violence, it underscores interminability, it does not seek closure, no “resolution” through mourning, but “being in the wake as a form of consciousness”.²⁴ Wake work is manifold, as Sharpe evokes. The documentary events I revisit here carefully negotiate the simultaneous necessity and fallibility to create and hereby offer politically effective evidence. What I see as their wake

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²⁰ Sharpe, op. cit., 22.
²¹ Sakai, op. cit., 3.
²² Ariella Azoulay, The Civil Contract of Photography (New York: Zone Books, 2008). To elaborate on how Azoulay’s proposal must be re-read for moving image and the audio-visual is beyond the scope of this paper.
work comprises repetition and observation, time and listening, waiting and watching, weaving and drawing, standing in line for a family portrait, sitting by the fire and being-with lightening, but also the currents in water, in air, in light or darkness—also poetry and songs.

“I prefer not to”—Refusal as documentary event

What struck me as a particularly potent though unruly documentary event during and after the pogrom in Gujarat had unfolded between February and May 2002, were reactions that I came to understand as a conceptual pause. Not a failure to respond but a refusal as an anagrammatical moment and hereby founding a significant rupture.

The anti-Muslim violence in Gujarat erupted, and continued over several months, while I was in India for a longer research period. This research comprised ongoing conversations with documentary filmmakers whose work was political, and partly activist, as in critical of supremacist politics, addressing past and present injustices against minorities, with many of my interlocutors engaged in feminist politics. The documentary languages deployed were varied, from talking head to essayistic to performative and playing with fiction, activist and experimental; none with an illusion of image, or sounds, being the “duplicate of a thing”.

From late February 2002 onwards almost every conversation I had with filmmakers eventually led to “Gujarat”. Editing sessions and rough-cut screenings were interrupted by experiences of people coming back from relief camps or fact-finding commissions and by reflections on what might be necessary activist and possible filmic responses. “Gujarat” was ever present. Importantly, the carnage was the first communal violence extensively investigated through audio-visual media, and “remains to date the only, state-sponsored genocidal violence against a part of the domestic population on a global scale that was broadcast live, 24x7, over several weeks to national audiences by uncensored, commercially competing TV stations from the same country.”

25 I am consciously not citing the 27th February 2002 as the defined starting point of the pogrom to not follow a narrative which is until now disputed, namely the revenge narrative which takes the burning of the Sabarmati express train at Godhra as the initiator of the then ensuing violence across Gujarat. This disputed narrative undermines evidence towards the systemic and pre-planned attack on Muslim households and shops by evoking a spontaneous outbreak that could not be controlled. See Britta Ohm, “Live-Reporting and Democracy: The Non-Publishable Crime of the Televised anti-Muslim Violence in Gujarat 2002,” Vision 2025. Socio Economic Inequalities. Why does India’s economic Growth Need an Inclusive Agenda, ed. A. Ullah Khan and A. A. Akhtar (New Delhi: Institute of Objective Studies, 2018), 91-100, (92).


27 See Nicole Wolf, 2013. Kya Hua is Shahar Ko? / What Has Happened to This City? History, Context and Reflections on Re-screening a Political Film, a twenty two page booklet for DVD edition of Kya Hua is Shahar Ko? (D. Dhanraj 1986), (Berlin: Filmgalerie 451, 2013). Kya Hua is Shahar Ko? became the only state independent documentation of the 1984 Hyderabad Hindu-Muslim riots, which recorded politicians on both sides inciting the violence for elections purposes. Next to the cameraperson Navroze Contractor only two cameras were present, one owned by the police and one by the only National Television Channel existent at the time (cf. Wolf, op. cit., 19.

28 Ohm, op. cit. 92.
TV stations broadcasted witness accounts and victim testimonies and while couching these within news report formats, seemed to step into at least some of the hitherto independent political filmmaking practices by being present while violence occurred, taking account of ‘ordinary’ people, revealing and presenting perpetrators, collecting and producing evidence, using the camera as a “testimonial apparatus”. What is now widely acknowledged and very much part of our current global media and political landscapes was then much less pronounced: the widespread knowledge about the systemic and pre-planned nature of the violence did not lead to persecutions of culprit politicians and other citizens. What is more, it did not hinder the democratic re-election of the responsible state chief minister Narendra Modi a few months after (December 2002) and his election as prime minister in 2014. It did not hinder many filed cases being closed again, by either the victims due to fear, the police or the court, due to ‘incongruent evidence’, while at the same time news of systematic violence continued to be broadcast and the public display of violence, through video and later mobile phones, operated as trophy.

The urgency to stress the singularity of the event, i.e. the need to narrativize it as not being “just another riot” was glaring. The fragility of evidence turned into facing an almost absolute lack of evidence’s efficacy in front of the law while mainstream media had turned into a quasi-state-critical platform. All of this led to a condensation and heightened urgency of questions towards the communicative potentials of the kinds of languages that had previously been sought to translate/address violence through audio-visual narratives and poetics.

Thus when in conversations we addressed the urgency to react, I often encountered a pause that came to resemble Bartleby’s “I would prefer not to”—Herman Melville’s scrivener figure who responds with this line when asked by his employer to copy a letter during his working hours. The decisions to not make images that were familiar and expected within a given logic of practices where victims and activist filmmakers were already prescribed.

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29 For an extensive discussion of the medium specificity of testimonies in diverse documentary film formats, see Bhaskar Sarkar and Janet Walker, Documentary Testimonies: Global Archives of Suffering (New York: Routledge, 2010).

30 On 27th April 2009 the Supreme Court ordered a Special Investigation Team (SIT) to probe into the role of 63 top BJP politicians, IAS and IPS officers in Gujarat, including Narendra Modi. This was preceded by an SIT ordered in 2008 to look into nine incidents of violent attacks against the Gujarati Muslim population in 2002 as well as campaigns against Narendra Modi running for prime minister in national level for the Lok Sabha elections in May 2009. See e.g. “Gujarat on Trial,” Communalism Combat, 15 (2009) 140, available at <https://www.sabrangindia.in/content/gujarat-trial>, accessed July 20, 2018. Charges were dropped on 26th December 2013.

31 For a more detailed analysis of this ‘success’ and ‘failure of TV publicness, see Ohm, op. cit.

32 This was also connected to the specific history of documentary filmmaking in India and a felt stagnation concerning the relation between the image and the political following a legacy of state independent revolutionary cinema that had from the mid-1970s born new film forms closely related to political movement building. See: Nicole Wolf, “Foundations, movements and dissonant images: documentary film and its ambivalent relation to the nation state.” In: K. Moti Gokulsing & Wimal Dissanayake (eds), Routledge Handbook on Indian Cinema (London: Routledge, 2013), 360-373.

33 Herman Melville, Bartleby, the Scrivener. A story of Wall Street (Dodo Press, 2006 [1853]).
in their film and political subject position, with their social and political relations pre-constituted, became aligned with a radical refusal, a refusal of a presumed logic of actions and relations in a given "schema of configuration". The "I prefer not to," an often also silent refusal to create ciné-testimonies or other audio-visual evidence that would capture the violence that occurred, created a necessary rupture. It resembled Bartleby's speaking through not speaking, "... as if he had said everything and exhausted language at the same time". Bartleby's "formula 'disconnects' words and things, words and actions, but also speech acts and words—it severs language from all reference...". "I prefer not to" "... will also send language itself into flight, it will open up a zone of indetermination or indiscernibility in which neither words nor characters can be distinguished".

While the decision to not depict violence has a long and varied history and is much discussed in documentary and visual cultures theory contexts, I evoke Bartleby to stress how Gujarat thwarted a common sense of how image and sound could signify as evidence or could communicate experiences of violence to create a rupture in the daily logic of things. What I see as actively refused here is what Sakai calls the "homolingual address [that] assumes the normalcy of reciprocal and transparent communication in a homogeneous medium". The refusal augmented an indiscernibility of genocidal violence, not by lack, as failure or not knowing how to, but as a refusal of the given state of order, a refusal of normalcy, a refusal certainly to produce pre-given narratives (including the narratives of revenge). A refusal to produce evidence as truth production for the seeking of justice within the given judicial system, for a national and international public that was either not able to see or for whom this did not disturb the norm.

What is more, the refusal seemed absolutely necessary to articulate Gujarat as singular event, for it not to be "just another riot", to create a rupture in a narrative of continuous riots between two equal communities. In this way, I argue, the rupture allows one to see Gujarat as part of a democracy conditioned by its violence, with no assumable instance of justice to be called on. The refusal, the anagrammatical, must thus be prolonged as an extended turbulence while new translations must be practiced that can think relations and modes of address otherwise.

The refusal to make images led for some to initiate diverse other practices instigating new relations, through setting up nationwide email lists amongst independent

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35 Deleuze op. cit., 73f.
36 Cf. Ibid., 76.
37 See e.g. Frances Guerin, On not Looking: The Paradox of Contemporary Visual Culture (London: Routledge, 2015)
38 Sakai, op. cit., 8.
39 See footnote 24.
40 My argument does not counter the fact that over time many documentary films were made about Gujarat, but stresses a parallel mode of addressing the productivity that characterised the immediate post-Gujarat moment.
filmmakers, city groups that organized anti-communal workshops in schools, the founding of the shared footage project (its material now accessible through pad.ma) and other activities that significantly paved the way for the collective resistance that ensued later against state censorship in 2004 under the initiative Vikalp—Films for Freedom.

What practices of organizing ourselves might constitute wake work?

“... the air current behind a body in flight”—wake work time images in **Lightening Testimonies**

How can narrative embody life in words and at the same time respect what we cannot know? How does one listen for the groans and cries, the undecipherable songs, the crackle of fire in the cane fields, the laments for the dead, and the shouts of victory, and then assign words to all of it? Is it possible to construct a story from “the locus of impossible speech” or resurrect lives from the ruins? Can beauty provide an antidote to dishonor, and love a way to “exhume buried cries” and reanimate the dead?

The incessant work of women’s activist groups brought to public knowledge the extent and brutality of sexual assaults on Muslim women during the first days of the Gujarat carnage. While sexual violence against the women of a community were well known in the history of India and is part of warfare and a marker of genocidal violence internationally, Kanwar recounted that the news of sexual assaults being followed by celebrations, the accumulation of stories of public sexual attacks orchestrated as spectacles, triggered the making of **Lightening Testimonies**, which “… throw[s] the nation up into air in order to re-imagine it”.

Spread over 8 screens for the video installation format and, to an extent, narrated historically during the 113 minutes of the single screen version, **Lightening Testimonies** accounts for the numerous cases of rape and sexual violence during the time of partition in 1947, the partition that created Bangladesh in 1971, during the conflict in Kashmir since the 1980s, in Gujarat in 2002, against Dalit women, against women in military occupied Manipur and Nagaland. Rather than linearity **Lightening Testimonies** (LT) creates however another temporality; rather than analogies it attends to and evokes singularity; rather than an enumeration it paints sexual violence as the very condition of a democratic nation state.

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41 See information on the Shared Footage Project and most of its video material at <pad.ma>, accessed July 20, 2018.
43 Hartman, *op. cit.*, 3.
44 Apart from shorter meetings and email conversations I had two extensive conversations with Amar Kanwar on 2nd and 3rd December 2010, focused on **Lightening Testimonies**. Kanwar’s first response to Gujarat, following an invitation to present his work in Gujarat itself, was a short, silent and quiet film – **To Remember**, video, 8min. (India 2003) -filmed entirely inside the Gandhi memorial Museum in New Delhi.
Precisely through this and through the women who have come to understand the requirement of the violence against them, LT evokes a consciousness, a form of being, through this violence and despite of it.

I argue that through its particular film-essay style and through the documentary mode research process preceding the screen presence, the film and the installation—though editorially in different ways—crafts images as Acts of Evidence through and as wake work. Their ensuing poetics of temporarities and relations translates forms of being through and despite of violence and offers new social and political relations in turn.

What characterises many essay films and what attains a particular political urgency also for Kanwar’s work is a meticulous stress on needing to look again. “If violence continues, does it mean we are not seeing it?” As discussed earlier, Gujarat “disconnected” words and things—events and images—, it “severed [words] from all references” and LT practices persuasively how a “remembered image” might “gain new hold on our lives”.

The carefully edited image work strikes me as aligned with “... a method that reckons with the fissures, gaps, and interstices that emerge when we refuse to accept the ‘truth’ of images and archives the state seeks to proffer through its production of subjects posed to produce particular ‘types’ of regulated and regulatable subjects”.

The first two minutes of the two-hour film version and the two-minute sequence that regularly aligns all eight screens of the video installation include images that become key citations guiding the viewer through the entire moving image work: Close ups of an orange tree and a tree with bright red leaves that later appear as witnesses of the brutal sexual assault on Mangyangkokla, in February 24th 1957 in Ungma village of Nagaland, by Indian army soldiers. A brief glance of a black and white photograph followed by a woman weaving with bright red thread, evoking the red sarong, the Luingamla Kashan, designed and crafted to commemorate the death of Luingamla, the 17-year old Manipuri girl assaulted and murdered by the Indian army. Then black and white archival footage from the time of the Partition of 1947: a woman in a white Salwar Kameez is being helped onto the overcrowded train by passengers sitting on the roof, stretching their hands out towards her—an image that has become iconic, both as an image of the overcrowded train (transporting refugees between India and the new nation Pakistan) and as an image of a rescue that for many was ambivalent. The footage is slowed down, accentuating this rescue gesture.

The contemplative ambience is enhanced through reoccurring instrumental sound, like a connective bass, Kanwar’s voiceover as well as some testimonies spoken by women. Those off-screen voices oscillate between being parallel to the image and in direct relation to it. “Does the truth need a memorial image”, is one of the guiding questions of LT and its overall form supports Laura Rascaroli’s elaboration on the essay film as a form of thought.

Kanwar builds the narrative and poetic imagery of LT upon and from the image of the

46 Amar Kanwar in conversation with author, see FN 41.
woman who is helped onto the train, which soon after, in the early part of the film, is elaborated on as a massive rescue operation for the so-called “abducted woman”, led by Mridula Sarabhai. This means that alongside sequences that fill the screen with rolling lists of names or locations where sexual violence occurred, Kanwar attends to the stories of individual women. Rather than a gesture of rescue he described the research process as needing to understand and ultimately desiring to create images that could support seeing differently.

A long process of moving from one context to the next only if some form of understanding was found that could lead to finding a poetics that would translate the kind of thought that was shared, is tangible in an immensely detailed attention to each knowable detail of a story of violence as well as the commitment and time given to each scene of crime and the wake work that allows it to remain. Hereby each episode anchors its narrative in different modes of audio-visual telling, with only very few ‘ciné-testimonies’ spoken directly into the camera and only one media image that partly reveals a violated female body. Each violent episode creates another “testimonial apparatus”, fills the screen in different ways. LT often presents the image itself as if on stage or in a court, installed within the frame, or through delicate drawings and sketching of outlines of female bodies (by Sherna Dastur), through quiet observations of mundane street scenes, through conversations, through voiceover, through scrolls of texts and names. The necessity to produce evidence, the fragility of its efficacy and the need to look otherwise locates witnessing and evidence in manifold locations, in hilly landscapes, in a tarmac road, a window, in craft practices, in trees, in color, in rain.

Each part thus relates to us as viewer through different forms of address in image, sound and through the cognitive and affective space that is created. Each violent act is translated otherwise by LT not settling into one way of speaking, one way of translating living with violence into images. What this creates is a sense of a continuous search for singularly possible translations of violence into poetic Acts of Evidence. But more than expanding evidence as truth production through a performative understanding of evidence, I argue that LT relates to plentiful practices of wake work and translates those wake works, with care, into audio-visual language, often offering “beauty as an antidote to dishonor”, making the installation and the film an experience of being “in the wake”:

The Adivasis who gave shelter and clothes to Bilkees—the young pregnant Muslim woman who was the only one of her family to survive the attack by men shouting

50 The sending back of Hindu women to India and Muslim women to Pakistan became a question of national pride on the part of both countries that thus got built on the struggle over the female body. Sarkar, Walker, op. cit., 1-35. Sarkar and Walker refer to Michael Chanan’s term ciné-testimonio when addressing documentary testimonies in the Latin American context of political struggles. P. 9. McLear, ibid.
anti-Muslim slogans—left a shrine with clay pots and flags at the location of crime, as “they, too, cannot forget” (voice over Amar Kanwar).

A stupa is built in Nagpur to commemorate the rape and killing of Dalit women.

The Luingamla Kashan (sarong) is woven in red to symbolize Luingamla’s blood that must have been boiling, as she was known to be brave. The woven design was sought as to recite beauty, dignity, defense, journeys back and forth to seek justice and indicate the place of the court. The weaver, her sister, expressed that she wanted to weave into the cloth every aspect of the crime and that she wanted to make it as beautiful as she could for it to be a strong symbol. It is unremittingly worn by women in Manipur.

Luingamla’s extended family gathers in contemplative silence and stillness for a family portrait.

Meaghan Morris stresses that for Sakai, translation as a social practice is “a practice always in some way carried out in the company of others and structuring the situation in which it is performed”.53

A description that strongly reminds me of Kanwar’s elaboration on the process of preparing for the sequence which shows first the Mother of Luingamla seated in her kitchen in front of many empty chairs, as if addressing a big crowd holding a wake, and then a slow camera pan moving from one family member to the next and ending in a wide angle family portrait. Kanwar narrated how if he was to explain how these images came about, he would have to start at least 6 months before, the extended period of time that was involved in meeting the mother, in preparation of the actual shooting. When the small film team arrived, Luingamla’s entire extended family was unexpectedly present, well dressed to pay respect to Luingamla. Images of co-appearance, of stillness, of each family member looking straight into the camera are taken to respect their being in the wake.

What does that image evidence? What does it translate?

The reoccurring image of the orange tree and the tree with bright red leaves was taken far up in the hills in Nagaland. Behind it, “structuring” it, is time, is time involved in getting to a location far up in the hills through various different means of transport including walking, behind it, is being “in the company of others,” is the work of research, of being present, being in the wake. An image as a condensation of wake work, translated as heterogeneous address “without either an assurance of immediate apprehension or an expectation of uniform response”.54

“As always everybody knew” (voice-over Amar Kanwar).

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54 Sakai, op. cit., 4.
The repetition and accumulation of stories of sexual assault on women show these violent acts as giving “the nation its coherence”. *Lightening Testimonies* hereby “proceed[s] as if we know this”\(^5\) and brings about a consciousness that recognizes this violence, including the systematic violence against women during the pogrom in Gujarat, not as exceptional anomalies but a ground from which we must now attempt to speak. It visits past violent acts not to finally find closure but to provide a space for an ongoing process from the grounds of the violence that “give the nation its coherence,” as the “underbelly”, of democracy I would add.\(^6\)

What develops out of this knowing is indeed a way of speaking, of shouting: *Lightening Testimonies* culminates in a rupture of this very coherence by leading into narratives of resistance and possibly a gesture towards futurity. Twelve Manipuri mothers stand outside the Indian Army Camp, following the court’s closure, i.e. denial, of a rape case. They are naked and they scream in protest: “Rape us, kill us, we are all Manipuri mothers.”\(^7\) They defy the norms of political action and the pattern of how female bodies are violated and then rescued as well as the normalcy of how female bodies are present in the public sphere. In this powerful act of protest, Manipuri women reclaim their bodies, their bodies and voices demonstrating a radical disrespect for the protocols of how to relate to a sovereign, a ruling power. An act that goes beyond the seeking of justice through certifying institutions but that also posits another form of relation between those standing on the ground from which their bodies are perceived as property.

The delineated relations between acts of violence as sexual assaults and the wake work which makes them interminable and structures thought, a different way of being as a “striving for futurity”,\(^8\) do not form a homogeneous We. The relational space created by the installation offers each spectator multiple positions of attentive looking and looking again, staying with the dead, and relating, “in the wake”. Its mode of address, I would argue, is heterolingual, informed by “a will to communicate de-spite an acute awareness of how difficult it is”.\(^9\)

*In this non-aggregate community, can one strive for the futurity of solidarity because togetherness is not grounded on any common homogeneity?*

\(^5\) Sharpe, *op. cit.*, 7.


\(^7\) Based on Mahasweta Devi’s story *Draupadi*, which tells of the rebellion of the Naxalite couple Dulna and Draupadi, later directed by Heisnam Kanhaiyalal and performed by Heisnam Sabitri, through one of the first scenes of female actor naked on stage. The described protest is included in *LT* through pre-recorded footage. See also Madhusree Dutta’s *Scribbles on Akka*, 35mm, 60min (India, 2000) where Heisnam Sabitri’s decision to perform naked originated; a lineage of images of the female body which deserves closer attention.

\(^8\) Campt, *op. cit.*, 11.

\(^9\) Sakai, *op. cit.*, 7. See also Christi Merrill, Intimate Interrogations. The literary Grammar of Communal violence, in: Moradi, Buchenhorst and Six-Hohenbalken, *op. cit.*, 11-25. Merrill elaborates, with Sakai, on the “mortal divisions” manifest in language and via her own translation practice argues for an ethics of translation which implicates itself in these divisions and inscribed violences (*ibid.*, 24).
A Night of Prophecy—for non-aggregate communities

The civil contract of photography assumes that, at least in principle, the governed possess a certain power to suspend the gesture of the sovereign power seeking to totally dominate the relations between us, dividing us as governed into citizens and noncitizens thus making disappear the violation of our citizenship. ... Being governed along with and beside individuals who are not citizens also causes damage to the seemingly whole, unimpaired citizenship of the citizens who are recognized as such. No attempt is implied here to claim symmetry between populations of citizens and noncitizens or to lay a foundation for their comparison. Rather, this is an attempt to rethink the political space of governed populations and to reformulate the boundaries of citizenship as distinct from the nation and the market whose dual rationale constantly threatens to subjugate it.  

A Night of Prophecy “throws the nation up into air” by annotating its history of violence through poetry and songs of protest and resistance. Moving between the urban space of Mumbai, rural locations in Maharashtra and Telangana, between Nagaland, Manipur and Kashmir, A Night of Prophecy creates another cinematic zone of attentive looking and listening. Similar to LT there is an underlying style through a camera work focused on details in often domestic spaces, connecting the intimate to the public, and nevertheless each song, each poem is again given a singular audio-visual space, avoiding a formula while creating recognizable traces—a piece of cloth, a rock, the strike of an oar, a baby hammock, a singer’s voice. In addition to the editorial interweaving of contexts through images, songs at times travel over. A sense of simultaneity is created that carefully evokes relations rather than prescribing these. There is no explanatory voiceover and the viewer is left with listening and watching and crafting their own connections, every time we watch and relate. An archive of anger, protest and resistance as well as suffering is created through the collection of songs and poetry whereby a strong sense of suffering violence and injustice and speaking out against it at the same time is attained. Again, the connecting tissue of being through and despite of violence arises. On the one hand does the focus on domestic spaces and the dedication and craft of the singer or poet not allow songs and poetry to become abstract or detached while on the other hand the thought and consciousness that the film advances is structural violence as the condition of this democracy.

Translation is an instance of “continuity in discontinuity” and a poetic social practice that institutes a relation at the site of incommensurability.

The possibility I see in A Night of Prophecy and which hereby extends Lightening Testimonies, even though it is chronologically situated earlier in 2002, is the framework of the nation—as a governing body defining citizenship but also a majoritarian instance—being pushed away further, even if it is not completely undone.

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60 Azoulay, op. cit., 23f.
Any utterance always has an addressee . . . whose responsive understanding the author of the speech work seeks and surpasses. . . . But in addition to this addressee (the second party), the author of the utterance, with a greater or lesser awareness, presupposes a higher superaddressee (third), whose absolutely just responsive under-standing is presumed, either in some metaphysical distance or in distant historical time . . . . In various ages and with various understandings of the world, this superaddressee and his ideally true responsive understanding assume various ideological expressions (God, absolute truth, the court of dispassionate human conscience, the people, the court of history, science, and so forth). 62

With Azoulay’s proposal for a citizenship through photography and via the above insertion of Bakhtin into Sakai’s understanding of translation as heterogeneous address, I see both Lightening Testimonies and A Night of Prophecy as cinematic spaces for thinking relations anew, namely thinking social and political relations between citizens where citizenship is deterritorialized, 63 not for symmetry but to assert a certain power where the superaddressee can and must be ignored for the thought and practice of sociality otherwise.

This calls for a constant refusal of the “homolinguistic address, the experience of not comprehending another’s enunciation or of the other miscomprehending your verbal delivery [being] grasped immediately as an experience of understanding the experience of not comprehending” 64 as well as a refusal to address “the superaddressee [as] a privileged site of ideology and ideological battles.” 65

“Which court can it be?”—wake work as new sociality for future solidarity

Citizens cannot be equally governed if they are governed with others who are not governed as equals. 66

A reiteration and open process: If we think translation as social relation or even regard translation as a field of social practices engaged with relationality, invested in social relation through forms of address, then the continuous challenge of translating violence and in particular translating genocidal violence, into evidence, can be thought, must be thought, as an ongoing process of being embedded in and thinking through relationality, which is to say it becomes a mode of consciousness. That is to say a mode of being in sociality through interminable violence, through violence of a past that doesn’t cease to be. If we think the translation of violence against a community of people with the aim of annihilating or maiming those people, into audio-visual evidence, into poetic Acts of Evidence, than a practice of filmmaking that is constituted through and becomes social relation itself-rather than

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63 Azoulay, op. cit., 25.
64 Sakai, op. cit., 6.
65 Buden, Nowotny, et al., op. cit., 205.
66 Azoulay, op. cit., 25.
representation of, or proof of a “truth”—then those ciné-poetic practices take part in creating fields of practice and thought through which modes of being after genocidal violence are upheld, constantly renewed, gesturing futurity.

The images of art do not supply weapons for battles. They help sketch new configurations of what can be seen, what can be said and what can be thought and, consequently, a new landscape of the possible. But they do so on condition that their meaning or effect is not anticipated.67

In this way we might think of *Lightening Testimonies* and *A Night of Prophecy*, of their temporalities and non-aggregate communities, as sketching new configurations, not only of what can be seen and what can be thought, but also of social relations, within the works themselves and beyond and through the works in each instance of viewing. We could thus think of the installation of *LT* as the very court, or rather a people’s tribunal with no superadressee, with no instance that defines the truth of evidence or any outcome. The space of the installation but also each cinematic space, whether in dark rooms or public open air sites, is then a space of listening, of watching; not one of understanding as closure, as empathy, as melancholia or as seeking ourselves in redemption, but as a practice of social relation that is continuous, a form of justice that is worked out in process, not by a sovereign, but by the constant re-telling of stories that speak of violence, to stay “in the wake”.

Hartmann and Wilderson cite Fanon’s *The Wretched of the Earth*, where he refers to settler colonialism as “… a splinter to the heart of the world” that “puts the settler out of the picture”.68 I have here tried to address, to translate, to make interminable the splinter that Gujarat can, I think, signify. I am doing this from the situated knowledge of a former colonial power and one marked by current Islamophobic practices and ideologies, “out of the picture” while not “equally governed”. The need to make Gujarat anachronistic, to think it as present and beyond its direct time and place of crime, is hereby thought together with and for imagining radically other forms of sociality, of past and future narratives; new socialities that seek to acknowledge the albeit differently protected grounds we stand on while acknowledging the structural prohibition (rather than merely a willful refusal) against whites being the allies of blacks.69

The uncommon, the heterolingual, the dissensus, the interminable, the evidential acts need to be worked with, despite of and because they might not prevent further genocidal violence. Doing wake work, doing allied wake work might thus support those invaluable efforts that continue to seek justice through the frameworks of the legal and the court, but might also open paths for new socialities and solidarities, if we keep translating “despite an acute awareness of how difficult it is.”

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67 Rancière, *op. cit.*, 103.
68 Hartman and Wilderson, *op. cit.*, 187.
69 Ibid., 189-90.
I think it's the difference between those who wanted to aid the newly freed to fit into the social order and those who had a vision of black freedom that was about transforming the social order, about the promise of the revolution.70

The “I” or the “we” who know, the “I” or the “we” who cares must therefore think, act, relate, continuously translate, outside this ‘structural prohibition,’ for Acts of Evidence as wake work to think a future politics of radical solidarity, from the anachronicity of genocidal violence while exceeding the sovereignty and violence of modern democratic citizenry.

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70 Ibid., 195.
Translating Slavery: The Valongo Wharf as Evidentiary Site of “Black” Genocide and World Heritage
Gustavo Racy and Vinícius Rodrigues Alvim Amaral

Abstract: This article tackles the translation chain of the Valongo Wharf in Rio de Janeiro. An important site related to the African Diaspora, it was acknowledged as a world heritage site by UNESCO in 2017. Departing from the disparity between UNESCO’s and the Brazilian National Institute of Historical and Artistic Patrimony’s (IPHAN), understanding of the outstanding value of the site, the article will reflect on the translational processes around the re-discovery and recognition of the Valongo Wharf, highlighting its historical importance, based on an underlying acceptance of the site as an evidentiary site of African diaspora and the genocide of Afro-Brazilians.

Keywords: Valongo Wharf; Evidentiary site; Genocide; African Diaspora; UNESCO; IPHAN.

Introduction

Brazil is a country marked by the consequences of colonialism. Slavery, of both natives and Africans, left wounds in the country’s history which persist today. Portuguese colonialism in America is often disguised under the myth of a softer, more passive type of patriarchal regime in comparison to the neighboring Spanish colonies. Nonetheless, according to Florestan Fernandes, the Portuguese regime set the structure of an economy in which primitive accumulation was based on the appropriation of the physical capital of the slave. Although a mixed-race country both culturally and ethnically, Brazil is far from being the sort of docile, racism-free society as imagined by many. On the contrary, in 2017, the Institute of Applied Economic Research (IPEA) and the Brazilian Forum of Public Security (FBSP) published an updated “Atlas of Violence,” covering a ten-year period from 2005 until 2015. In the analysis of the data administered by the Ministry of Health, it was observed that in 2015 alone, 59.080 homicides occurred in the country. Between 2005 and 2015, 318.000 youth were murdered. While there was a reduction of 12.2% on the homicide rate on non-black people, the homicide
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rate on black people increased to 18.2%. “Of every 100 people that suffer homicide in Brazil, 71 are black”. Also, it is estimated that the black citizen has a 23.5% higher chance of being murdered than the citizen of another skin color, “setting aside the effects of age, sex, schooling, civil state and area of residence.”

The evidence gathered in this research, over a ten-year span, suggests that the increasing rates of homicide perpetrated against the black population are connected, beyond socio-economic variables, to racism. The data thus proves — with considerable delay — the claims that have been made by the black population of Brazil and called general attention to the quotidien of such a large portion of the country’s population. The reality, in numbers, is that every 23 minutes, a young black person is murdered in Brazil. To the Black Movement — that is, the ensemble of minority movements representative of Black Brazilians — this number is the expression of an ongoing genocidal process perpetrated against Brazilians of African descent; a genocide that is parasitical to the racist structures of a country sustained historically by slavery.

In the last half-decade, there has been productive discussion and activities happening around a heritage site of great significance for the history of slavery in Brazil. In 2011, with the urban restoration project of Porto Maravilha, in Rio de Janeiro, excavations led to the re-discovery of Valongo Wharf, the disembarkment point of the most extensive contingent of Africans in the Americas. The actual whereabouts of the Wharf were known and under the protection of the Service for National Historical and Artistic Patrimony (SPHAN, now known as the Institute for National Historical and Artist Patrimony – IPHAN), since 1983. However, the Wharf itself was put under state protection as a site of cultural relevance for the African legacy of the country only in 2011. Considering the relevance of the Valongo Wharf for Brazilian history, the IPHAN was able to propose the site for inclusion in UNESCO’s world heritage list, a proposal accepted in 2017. However, despite the success of the proposal, the relevant report of the World Heritage Convention shows that, of the two criteria under which the IPHAN described the Wharf as being of Outstanding Universal Value, only one was recognized. According to this discrepancy, even though the report recognizes the Wharf’s connection with tradition, it does not recognize it as a site bearing testimony to a specific civilization.

Departing from a historical contextualization of the Valongo Wharf, this article will

4 Ibid., 32.
5 Ibid. However, in 2011, the IPEA had already published another report, in which it became clear that the average schooling of the “black” population was of 6.8-7.8 years, compared to 8.8-9.7 years of “white” people. Cf. IPEA, Retrato das Desigualdades de Gênero e Raça, available at <http://www.ipea.gov.br/retrato/>, accessed on March 24th, 2018.
tackle the translational processes related to the site as an evidentiary site of a genocidal process. To accomplish this, the article is divided into four sections. First, it will briefly address the meaning of genocide and scholarly claims of a genocide perpetrated against black Brazilians. Second, it will explore the historical relevance of the Valongo Wharf. It will then address the discrepancy between both processes of recognition of the site, and address how, in IPHAN’s understanding, the Wharf translates and makes evident the genocidal character of transatlantic slavery. Finally, it will conclude with a reflection on the value of the Wharf and the ongoing translation provided by current practices and interventions. With that, the article is expected to raise awareness of the Valongo Wharf specifically, and the need to understand how it might translate the experiences of a population subject to constant marginalization.

“Lemkin’s word”: the genocide of Black People

According to Adam Jones, “the roots of genocide are lost in distant millennia.”7 In other words, as a phenomenon based on social difference and systematic execution of the subject deemed different, genocide is not a recent happening. Generating “a primordial sense of in-group versus out-group”8 has apparently always been a characteristic of the human condition, starting from the identification of the social self in the self-denomination of communities. From the foundational stories of the Old Testament to the Peloponnesian War and the Roman siege of Carthage, history has long provided us with accounts of mass murders fueled by the pursuit of wealth and power, as well as cultural beliefs.9 The term genocide was only coined after World War Two by the Polish-Jewish jurist Raphael Lemkin who, after years of campaigning and having documented the Nazi “Final Solution” in Europe, “waged a successful campaign to persuade the United Nations to draft a convention against genocide.”10

As Jones recalls, there are two developments through which “Lemkin’s word” resonates today: first, the adoption of Convention on the Prevention and Punishment of the Crime of Genocide by the United Nations in 1948; and second, the development of comparative genocide studies in academia, beginning in the 1970s. The existence of a theoretical debate over genocide throughout the last forty to fifty years shows that despite the legal definition of the term through the UN Genocide Convention, the concept of genocide is still an object of dispute both in academia and civil society movements. Although the focus of this article is to show how activists and the UNESCO frame and act over a specific historical site, and not to prove whether slavery was a genocide or not, it is important to take a step back and present the reader with some of the tensions that orbit the concept of genocide, broadening the meaning of the term so that the local, native context of Brazilian reality may be better understood within the context of genocide studies.

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8 Ibid., 4.
10 Jones, op. cit., 8.
According to the UN Genocide Convention, “genocide” is defined ‘by many acts . . . committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group’. Such acts may consist of:

1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group;
5. Forcibly transferring children of the group to another group;

This list, whose groundings can be traced back to Lemkin’s *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, published in the United States in 1944 – 4 years before the UN Convention – allows one to approach genocide in a wider manner, so as not to forcibly equate the practices that unfold in the Brazilian colonial context all the way up to the present moment, but to compare the juridical concept established by the UN with that made by the Black Movement.

In this context, the American sociologist Janet Abu-Lughod suggests that social-historical narratives ought to be conceived in an anti-Eurocentric and imaginative manner, valuing a personal vision inspired by eccentricity and idiosyncrasy.¹¹ This way, while accepting the international community’s definition of genocide as a legal and strategic instrument which may condemn and avoid genocidal episodes, it is necessary also to refuse the idea of neutrality suggested by documents and regulations that are pretentiously universal. In Lemkin’s *Axis Rule in Occupied Europe*, particularly in chapter 9, the author explains that genocide must be considered as a composed and multiple phenomenon, i.e., a coordinated plan of different actions designed to destroy the essential elements of a community. Such actions may not necessarily imply mass killing. They can be incremental, related to cultural, political, social, legal, intellectual, spiritual, economical, biological, physiological, religious and moral aspects. Lemkin himself, this way, provides a multifaceted definition of genocide that carries, in its genesis, a concern with the honour and dignity of different people and the future of humankind as a global community. That explain Lemkin’s understanding of genocide as a two-phase phenomenon:

one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor’s own nationals.¹²

This definition is useful to reflect upon the process of African colonization throughout the fifteenth century, tracing a path to the colonization of the Americas and, consequently, to slavery in the black Atlantic.

Between the end of World War II and the 1948 UN Convention, Lemkin was working on a book meant to tell the history of genocide. The manuscript, which remained unfinished until the author’s death in 1959, would give continuity to the pre-established relation between colonization and genocide, approaching the colonization process of the Americas by the Spanish, and, later, the English and the French.13 14 There, genocide comes forth as the result of a special form of relationship with territories disputed between majorities and minorities, with mechanisms of conquest and control, or with possible foreign occupation. Commenting on Lemkin’s unfinished work, A. Dirk Moses highlights the author’s careful thought on the modalities of genocide in situations in which the Europeans were in lesser number compared to the autochthon groups.

It must be clarified here that subjected groups may be a majority controlled by a powerful minority as in the case in colonial societies. If the majority cannot be absorbed by ruling minority and is considered a threat to the minority’s power, genocide is sometimes the result.15

The existence of an intrinsic relation between genocide and colonization helps us understand how its traces show up in the processes of colonialism and slavery in Brazilian society, as well as how they are translated through the disinterment of the Valongo Wharf in Rio de Janeiro.

Another salient aspect that permeates genocidal practices, and that has been explored by scholars, is the relation between genocide, colonization and racism. If colonization is not necessarily motivated by racism, we can nonetheless ask which racist conceptions permeate the occupation, legislation and socialization of colonial forces in relation to colonized subjects? When Lothar Von Trotha, commander of the German Imperial Army, was put in charge of the German Colony of Southwest Africa, present-day Namibia, to substitute Theodor Leutwein, a more moderate commander who failed to pacify the conflict between colonizers and Hereros, he provided rich analytical toolsthat allow us to approach the racist element of colonial processes in relation to genocide. Von Trotha’s words speak for themselves.

14 It is interesting to notice the overall absence of approach to Portuguese colonialism in America. We believe this may happen for two important reasons: first the tendency to undermine Portuguese autonomy vis-à-vis Spain, and second, the general acceptance of the Lusotropicalist hypothesis that Portuguese colonialism was somehow more docile in comparison to that of other European empires.
My exact knowledge of many Central-African tribes Bantus and others, has shown me the convincing necessity that the negro doesn’t submit to contracts but only to raw violence ... This uprising (of the Herero) is and remains the beginning of a racial fight. I know enough tribes in Africa. They all resemble each other as that they only shrink back from violence. The exercise of violence with crass terrorism and with cruelty is my policy. I annihilate the rebellious tribes with streams of blood and with streams of money. Only on this seed can something new emerge which will remain.  

These ideas mirror the well-known nineteenth-century scientific racism developed in Europe, as well as a broader conception of racism defended by Portuguese historian Francisco Bethencourt, which permeates the worldview of individuals and of the State throughout colonialism and colonization. This racism is interestingly tackled by John Docker as he establishes and analyses the concept of genocide in relation to Lemkin’s work. At its heart, this refers to the intense debate with intellectuals and activists on the topic of black genocide in which Lemkin was involved after the war. To sum up, in 1951, an anti-lynching petition entitled “We Charge Genocide” was forwarded to the UN Secretariat in New York by Paul Robeson, actor, singer and black activist. Soon after, the same petition was forwarded to the UN General Assembly in Paris by one of its main authors, the black activist and leader of the United States Communist Party, William L. Patterson. The petition, which denounced the abuses perpetrated by the Jim Crow laws, accused the United States of perpetrating a genocide against its black population, highlighting, specifically, articles II and II of the 1948 UN Genocide Convention.

Lemkin’s response to the accusation was extremely hostile and he engaged in a public discussion with Patterson. In December 1951, Lemkin declared to the New York Times that the action of black activists was but a manoeuvre to deviate attention away from true crimes of genocide that were occurring against Estonians, Latvians, Lithuanian, Poles and other Soviet-subjugated people, accusing Patterson and Robeson of being unpatriotic elements, in

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17 In the introduction to Racisms: from the Crusades to the Twentieth Century, the author declares the following: This represents a departure from the largely consensual view that the theory of races preceded racism. It also challenges recent revisionist scholarship, which traces the invention of racism back to classical antiquity. It rejects the idea of racism as innate phenomenon shared by all humankind. I argue that particular configurations of racism can only be explained by research into historical conjunctions, which need to be compared and studied in the long term. Racism is relational and changes over time; it cannot be fully understood through the segmented study of short periods of time, specific regions, or well-known victims – for instance, black people or Jews.

The notion of racism I will use in this book – prejudice concerning ethnic descent coupled with discriminatory action – provides the basis for this long-term approach, enabling us to chart its different forms, continuities, discontinuities, and transformations. Francisco Bethencourt. Racisms: from the Crusades to the Twentieth Century (Princeton; Oxford: Princeton University Press, 2013), 1-2.
favour of foreign power. Essentially, Lemkin considered African Americans to be subject to racism, but not victims of intentional destruction or annihilation, even within a structure of racial segregation. Beyond the technical aspects that ground the juridical definition of genocide, and through which Lemkin refused to acknowledge the genocide of African-Americans, the issue shows how problematic and unspecific the concept of genocide is, especially when transposed to contexts other than from that in which it was coined.

This detour helps us understand why and how the claim of a genocide underway in Brazil by African-Brazilians is formed and legitimised. From the nineteenth century onwards, especially from the proclamation of the republic in Brazil in 1889, different eugenic policies were applied with scholarly grounding. Article 138 of the 1934 Constitution, for instance, stipulates as a duty to stimulate eugenic education. When the overall ideology did not proclaim that interracial marriages should be avoided, they stimulated it, only to guarantee the progressive whitening of the Brazilian population. The same was done elsewhere throughout the Americas, and the surpassing of Lemkin’s concept of genocide through the analysis of different social contexts is already a well-established matter. In short, although more detailed and specialised reflection should be set forth in order to provide a consistent argument on the genocidal character of the violence perpetrated throughout history over the African-Brazilian population, the argument of this article departs from this claim, in order to show how, in the process of revival of the Valongo Wharf, it comes as no surprise that the transatlantic slavery is deemed a genocide, first of all, by the descendants of those forcibly transferred from their homeland.

As Abdias Nascimento has discussed in his seminal essay, O Genocídio do Negro Brasileiro (Brazil, mixture or massacre? Essay on the genocide of a Black people), genocidal strategies have long been repeated in Brazilian social structure. These strategies are inherently tied to the genesis of patriarchal Brazilian society, through which the black individual was brought into the white home, the women taking care of the household and serving as wet nurses, and the men guaranteeing the material means necessary for the reproduction of the economy. In the peculiar formation of Brazilian society, the violent means that reproduced a radically uneven reality were masked under the specific forms that sociability took within the country. The constant sexual exploitation of the African woman took the shape of love stories between benevolent slave-owners and their slaves, who now ceased being a possession and were assigned, in a Romantic narrative, the status of autonomous individuals. This exploitation left as its legacy, for instance, the “Brazilian mulata”, dressed in carnival costumes and representing the image of the Brazilian woman abroad, sexualized, exoticized and objectified.

A similar phenomenon was repeated with the male body, used extensively by a regime that did not recognize such a body as a human being during the wars against the Dutch in the seventeenth century and against Paraguay in the nineteenth century. The abolition of slavery

in 1888 did little, according to Abdias Nascimento,\textsuperscript{19} to solve the question. Instead, it rid former slave-owners, as well as the state and the church, from responsibility for the subjects which had, until then, been their property. In this process, the nineteenth century was a period central to the maintenance of social inequality and racial exclusion. The development of modern social science, with its positivist evolutionism, imported from France, justified the situation of the black population in Brazil based on an ontological status of barbarism, which would have been inherited from the Africans. This understanding delegated responsibility for the precariousness of the black population to this same population, as if the reason for their social disadvantage was their fault. Language, in this sense, played a significant part as a narrative resource on the origins and development of Brazilian society. Not only was the black person minimized in it, but they were also denied recognition as they were increasingly turned into the Other as someone who “is not part of human society,”\textsuperscript{20} or, we must add, who only becomes a part of it through concession.

If one sets out to understand the reproduction of racism in Brazil from an everyday vernacular level up to the very political structure which reproduces exclusion and inequality, then Abdias Nascimento,\textsuperscript{21} Florestan Fernandes,\textsuperscript{22} Joel Rufino,\textsuperscript{23} and even Gilberto Freyre\textsuperscript{24} (whose school of thought helped fuel the idea of Brazilian racial democracy), and current scholars like Lilia Moritz Schwarcz\textsuperscript{25} and Magali da Silva Almeida\textsuperscript{26} may provide a general outline of understanding. According to these authors, the past of the slavery regime left an open wound at the heart of Brazilian society by maintaining the same subjects that formed (and still forms) the backbone of the country’s production of wealth in a continuous situation of exclusion. The suggestion that slavery and the diaspora consisted of a genocidal regime is not surprising. As it will be shown in the following section, the case of Valongo Wharf bears witness to and provides evidence of slavery having consisted of systematic destruction and killing of the members of a group – originally several but put under the same rubric of “the” black African – by several strategies.

For all effects, “testimony” and “evidence” will be used here on a vernacular level, just as in IPHAN’s and UNESCO’s dossiers. They stand for material proofs of some sort, connected to past or current history, happenings, civilization, and so forth. This vernacular understanding is better grasped in relation to their translational character, which will be explored in the next section. In the case of the Wharf, the testimonies and evidence related

\textsuperscript{21} Nascimento, \textit{op. cit.}
\textsuperscript{23} Joel Rufino dos Santos, \textit{A Escravidão no Brasil} (São Paulo: Melhoramentos, 2013).
\textsuperscript{24} Gilberto Freyre, O Escravo nos Anúncios de Jornais Brasileiros do Século XIX (São Paulo: Global Editora, 2012).
\textsuperscript{25} Lilia Moritz Schwarcz, Nem Preto nem Branco, muito pelo contrário. Cor e Raça na sociabilidade Brasileira (São Paulo: editora Claro Enigma, 2012).
to the overarching area where the site is located, range from the archaeological material found to the cultural reminiscences safeguarded by the Valongo population or compiled through IPHAN’s work. It is difficult, thus, to narrow evidence and testimonies down to a couple of specific acts. Rather, the re-discovery of the Wharf must be accepted, itself, as an evidentiary act, as should the happenings which have unfolded since the discovery. This way, the Wharf is seen as a catalyst of the several types of testimonies and evidence of slavery as both a genocidal and a founding process of Brazilian society. In this context, it is precisely the grassroots, “on the ground” work between IPHAN and activist groups, that allows the Valongo Wharf to be once more approached, now through an alternative narrative that, thanks to pressure mounted by the Black Movement(s) and the intellectual and political concern of the IPHAN of giving voice to marginalized groups, provides a new perspective to the history and meaning of Transatlantic Slavery that takes into account the current reality of the country, especially in relation to the demands and claims of those who continue to be directly affected by the nation’s past.

The Valongo Wharf: transatlantic slave traffic’s largest arrival port

In the words of Abdias Nascimento, “in Brazil, it is slavery that defines the quality, the extent, and the intensity of the physical and spiritual relations of the children of the three continents that met each other in the country.”\(^{27}\) The relations between the European, the native and the African is, according to the author, defined by the social structure built upon the economic foundation of the country that was laid by the exploitation of forced labor. Similarly, Florestan Fernandes\(^{28}\) argues that the forms of slavery which the country endured, altered not only history but “the relations of production, the stratification of society and the articulation of the ‘races’ contained in the different poles of slavery domination.”\(^{29}\) For over three centuries, Brazil would receive contingents of enslaved Africans, trafficked over the Atlantic to sustain the economic backbone of the colony and, later, the Empire. As David Eltis\(^{30}\) recalls, the transatlantic slave trade caused the most massive forced displacement of people in history. Rio de Janeiro’s port zone was the center through which most enslaved Africans would pass, either remaining in the country or being transposed to other territories. The port zone of Valongo in central Rio received over seven hundred thousand Africans within the final decades of Atlantic trafficking alone. Founded in 1565, Rio de Janeiro became the capital of the Vice-Royalty of Brazil in 1763, and seat of the Crown between 1808 and 1821, after which, with the country’s Independence in 1822, it became the capital of the Empire of Brazil. Especially with the transposition of the Court from 1808 onwards, Rio became the core of Portuguese-Brazilian society, now fundamentally changed both regarding its political

\(^{27}\) Nascimento, op. cit., 48.
\(^{28}\) Fernandes, op. cit.
\(^{29}\) Ibid.
function— it officially ceased being a colony – and infrastructure. As the seat of one of the vastest empires of the epoch, there was a demand for the expansion of the city in all its aspects. The renewal of business between the Court and pre-established slave traders in both Brazil and Africa (Allada, Dahomey, Ngoio)\(^3\) intensified the slave market in the city which, for its geographical position, was already an important port.

Located in Valongo Beach, the Valongo Wharf was built in 1811. Of the 40% of Africans that were taken off their native lands by force and landed in Brazil, 60% are estimated to have passed through the Valongo Wharf. “Besides being an entry point of enslaved Africans ... embarkment destined to other parts of South America also passed through Rio, which became a point of connection between the routes of the African diaspora in the continent”.\(^3\)

The Valongo Wharf was the core of transatlantic slave traffic, especially in the first three decades of the nineteenth century, until in 1831 trafficking was forbidden by law due to British pressure. Although British rule was solemnly dismissed, the Wharf lost its function as


the primary trafficking hub of enslaved people. In 1843, it was renovated and covered over, giving way to a new wharf, named Empress Wharf, which was destined to receive the future Empress of Brazil. With the coming of the twentieth century, the Empress Wharf was also erased, over which the Jornal do Comércio Square was then built. The region around the old Wharf, however, remained inhabited by a majority black population, for the area was not comprised solely of the Wharf itself, but also of the contiguous complex of institutions devoted to the slave trade: houses of refuge for the brethren of African faiths, but also the lazaretto, the Pretos Novos Cemetery, and the marooned community of Pedra do Sal.

Throughout the history of Brazil, many testimonies have been made as to the social reality of the country’s civilization. Traditionally, and especially with the arrival of the Court, Brazil had been visited by foreigners, usually traders or cultural emissaries, from France to Germany, England to the Netherlands, always under the specter of exoticism and mystery. From the sixteenth century onwards, that is, from the foundation of the country on European standards, many artists from the European courts came to portray Brazil. Albert Eckhout, George Marcgraf, Jean de Léry, and later, Johann Moritz Rugendas and Jean-Baptiste
Debret\textsuperscript{33} fed the European imagination, avid for plants, animals, landscapes and for the habits of the “savage” natives. On this matter, Debret himself even provided a drawing of a slave “Boutique” on Valongo (figure 1). Likewise, Rugendas and Laurent Deroy captured the atmosphere of both the slave trade and the social life of the Africans brought to Brazil (figure 2).

Despite the physical and symbolic interring of the Valongo Wharf, the memory of slavery in Brazil remained. As IPHAN states,

\begin{quote}
this memory is revealed in the narratives of the descendants of formerly enslaved people, in the religious practices, in the celebration of festivities, in the body practices ... in the songs and poems that gave new meaning to the remembrance and narratives, as well as in the struggle of disadvantaged popular groups – mostly black.\textsuperscript{34}
\end{quote}

Ultimately, the region where the Valongo Wharf is situated came to be known, in the nineteenth century, as “black city” (\textit{cidade negra}), a place where run-away slaves could find protection. “In these places, sociability networks were created by the black population, contributing to the creation of a territory marked by African heritage”.\textsuperscript{35} Thus, by a mere historical review, it becomes clear that the Valongo Wharf and its surrounding region was, and is, a focal point in the history of Brazil. From there, enslaved Africans would arrive, destined to remain in Brazil, or to be transported elsewhere in the Americas, bringing with them their languages, customs, and ways of being that slowly, and marginally, were integrated into Brazilian society, due to the slaves’ immense ability for survival. It is important to highlight that, although more than any other country, Brazil is believed to be a society freed of racism and racial prejudice given its particular miscegenation, the fact that the culture of the Africans – religions, vernacular, and social norms in general – survived is tightly connected to the particularity of Portuguese colonialism. The Portuguese used miscegenation, marked by systematic rape and fetishization of the African woman, as a means to create a purportedly docile colonial regime. Ultimately, miscegenation, although existing, was also a way of lessening the racial conflicts in favor of a hegemonic class.\textsuperscript{36} This historical awareness over the importance of the Valongo Wharf could only emerge in a new way when, in 2011, the urban renovation program set forth by Rio de Janeiro’s municipal government led to the process that eventually led to the Valongo Wharf entering the list of UNESCO’s World Heritage Sites.

\begin{itemize}
\item\textsuperscript{33} Cf. Stancy Leys Stepan, \textit{Picturing Tropical Nature} (London: Reaktion Books, 2001); Rebecca Parker Brienen, \textit{Visions of Savage Paradise: Albert Eckhout, Court Painter in Colonial Dutch Brazil} (Amsterdam: Amsterdam University Press, 2006).
\item\textsuperscript{34} IPHAN, \textit{op. cit.}, 2016.
\item\textsuperscript{35} IPHAN, \textit{Proposta de Inscrição do Sítio Arqueológico Cais do Valongo na Lista do Patrimônio Mundial} (Brasília: Instituto do Patrimônio Histórico e Artístico Nacional, 2016), 92.
\end{itemize}
The meaning of the Valongo Wharf: IPHAN and UNESCO

The process of proposing the Valongo Wharf as a UNESCO World Heritage site began with the renewal of the port zone of Rio de Janeiro for the 2016 Olympics. Thanks to the vast amount of historical documentation, the Valongo Wharf was known to be in the area where the works were to take place. Although it was not possible to know its precise location, Federal Laws and Municipal Decree guaranteed that the area should be put under IPHAN’s responsibility, as they made urban development works mandatorily subject to archaeological research. Thanks to this legal procedure, the archaeologists slowly started finding indications of what was once either the Valongo or the Empress Wharf. Initially, there were some doubts about the findings, since it was not known if the building of the Empress Wharf had merely covered or in fact replaced and destroyed the previous site. In total, 110 sectors and six trenches were excavated in Jornal do Comércio Square alone, and both wharves, were discovered, one on top of the other. Giving preference to the Valongo Wharf, the IPHAN soon started working on recognition beyond the national level. In January 2016, the IPHAN published a proposal for the inclusion of the Valongo Wharf on the UNESCO’s World Heritage list. The 443-page document consisted of an extensive account of the archaeological and historical works related to the re-discovery of the Wharf following the demands and premises of the World Heritage Convention (WHC).

The WHC originated in 1972, grounded in the recognition that “cultural and natural heritage is among the priceless and irreplaceable assets, not only of each nation, but of humanity as a whole”.

The international community represented by the member states of UNESCO adopted the WHC with the goal of setting premises and plans for “the identification, protection, conservation, presentation and transmission” of the world’s cultural and natural patrimony.

The convention, provided with an own fund, is based on a set of strategic objectives (referred to as “the 5 Cs”, named after of the objectives: Credibility, Conservation, Capacity-building, Communication and Communities), establishing the norms for the recognition of a cultural and natural heritage site. To be recognized, the site should be under the responsibility of a UNESCO member state and respond to UNESCO’s objectives, through which it is put under the care of the international community. As such, the WHC is the main supranational strategic agreement on global cultural heritage, with 193 signatory countries as of the writing of this article. In 2017, during the WHC’s 41st session in Krakow, the Valongo Wharf was recognized and inscribed in the World Heritage List according to criterion 6 (out of 10) of the WHC, which stands for being “directly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance”.

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38 Ibid., 10.
preferably “used in conjunction with other criteria”, a suggestion followed by the IPHAN, which originally inscribed the site by both criterion 6 and 3, which stands for bearing “a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared”. Unless there is any misinformation between the published versions of both the IPHAN proposal dossier and the WHC’s 41st session report, then the recognition of Valongo Wharf as World Heritage was not attained by the possibility of the site referring a testimony over a civilization either alive or disappeared. This way, it is possible to observe a discrepancy between IPHAN’s and UNESCO’s understanding of the criteria through which the Valongo Wharf would be considered of outstanding universal value.

For Brazil, represented through IPHAN, the Valongo Wharf should be recognized not only by its association with living traditions, belief, ideas, and so forth but by its evidentiary character. For IPHAN, in other words, the Valongo Wharf should be recognized for more than its symbolic character, its association with tradition, or its historical uniqueness. In fact, what the Wharf provides is evidence of continuity between a series of historical events and current communities. As the largest site related to the African diaspora in the Americas, the Wharf, through its process of re-discovery and disinterment, provides evidence of the genesis of a specific socio-economic structure that relates, also, to an area beyond that in which it is located. As the IPHAN dossier states, the Valongo Wharf constitutes an evidentiary site “in which materiality is condensed in living memory, an example of the arrival and fixation of Africans this side of the Atlantic”. This evidence is more than explicit in the findings of the archaeological research. Discovered under the ruins of the Empress Wharf, the researchers found in the Valongo Wharf a total of 1,200,000 archaeological items connected to the African diaspora, mostly apotropaic items. The symbolism of such findings says much about the relevance of the site.

It is important to recall that African religions were central to the maintenance of African cultures in the country. African languages, used mainly in liturgies, influenced Brazilian Portuguese, just as religious cuisine, musical rhythms and clothing became part of popular Brazilian culture. In a context in which it was necessary to build a collective identity as a response to miscegenation and possible de-characterization of ethnic groups, the division between “nations” – assumed by Europeans to designate different autochthone groups – united different African ethnicities in the same religious and familiar space. Strategically inserted in the quotidian of the communities, these nations gave a new dimension to and amplified the specific ethnic dislocation of the individuals towards a general ethnic understanding exemplified in the Ketu, Jeje and Angola nations. Bearing this in mind, the 2,000 glass beads, corals (believed to have magical healing properties), crystals, and rings

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41 Ibid.
42 Ibid.
43 IPHAN, Sítio Arqueológico Cais do Valongo. Proposta de Inscrição na Lista do Patrimônio Mundial (Brasília, 2016), 12.
44 “Ketu” refers to religious practices of West Africa, specifically the Yoruba, also known as Nago. Whereas Jeje and Angola refer to the practices of old Dahomey (current Benin), speakers of Ewe-Fon, and to the speakers of Bantu languages in Central Africa, respectively.
made of vegetable fibers (a unique finding to Brazil), gain evidentiary status of the many autochthone groups translocated to the Americas. We may add to these findings the many “figas” (amulets carved in different materials and used for protection against bad-luck and envy), pipes of different typologies, decorative bones and teeth, amulets, bracelets, earrings and pendants (mostly of copper), of different African origins found in the excavations.

As the archaeological research showed, the artifacts discovered testified and provided evidence not necessarily of activities related to port labor, but mostly to the “urban practices connected to that region of the city ... Testifying, above all, the encounter between diverse African cultures that did not necessarily have direct contact in its continent of origin”. With the passing of time, despite the prohibition of trafficking and even after the covering of the wharf and the abolition of slavery, the Valongo region did not lose its connection to the black population. It was there, for instance, that André Rebouças, a black abolitionist, son of the only African-Brazilian to become councilor of the Empire, established the Pedro II Docks, a modern coffee warehouse, built opposite to the historical site of the Wharf, adding to the area yet another symbolic value in relation to slavery. Later, in the twentieth century, the religious temples of the Valongo similarly became a place of arrival and refuge for the descendants of African slaves that arrived from other parts of the country, especially from Bahia. Again, religion played an important part as a means of organization and resistance. It is worth remembering how the 1835 Malés Revolt began from within the Zogodô Bogum Malé Rundó Candomblé yard, where the money meant to help revolutionaries was hidden. It was also in the Valongo region that, in the early twentieth century, samba appeared, in communal parties and gatherings, as well as the first Carnival association. Importantly, however, at this moment in history – the late nineteenth and early twentieth century – African heritage was not seen as a cause for pride. Quite the opposite: under the dominant eugenic perspective, African culture was deemed savage or primitive, and the republican governments persecuted cultural manifestations of African origin, treating them as a police matter. This way, finally, the Valongo region “constituted itself as a black stronghold, with cultural and religious practices that were grounded on communitarian liaisons of long duration based on the memory of slavery and African ancestry”.

What we propose here is that the continuity, throughout different historical moments, of cultural practices related to the African diaspora within the Valongo area, forms not only evidence and testimonies of slavery, but a translational process of a continuous history of marginalization. Such a process began with the forced transposition of aboriginal cultures which, mixed and created anew, developed into a different civilization. Despite the genocidal structure of slavery, the traditions transposed to Brazil managed to survive through different strategies, and even created something new. In Brazil, it seems safe to say that the understanding of slavery as genocide is unquestionable within the Black Movement, although only partially accepted as such by a large sum of the population, especially its white parcel. It seems, indeed, that the translation of the Valongo and its national and global recognition as

45 IPHAN, op. cit., 2016, 80.
46 Ibid., 106.
a unique evidentiary site for transatlantic slavery as a genocidal episode, is at the heart of IPHAN’s practices. It is on these terms that the comparative analysis of the Valongo site seems to have been made, based not only on seeing it as a strategic site in the Transatlantic slave trade but also as a site that must be recognized as bearing the memorial and material traces of “the pain and the fear of the human beings that passed through them, as well as their capacity for surviving”. As such the comparative analysis related the Valongo to various other sites both in Africa and in the Americas, such as the Old City and the historical center of Ribeira Velha (Cape Verde), the fortress of Ghana, the Stone Town of Zanzibar (Tanzania), Aaprapasit Ghat and Le Morne (Mauritius), Island of Moçambique, and the Isle of Gorée (Senegal), Bridgetown (Barbados), Habana Vieja (Cuba), Sans Souci Palace (Haiti), Salvador and São Luís (Brazil).

If, on the one hand, IPHAN set forth a comparative analysis consisting of localities testifying the European presence in Africa and the places of the arrival of Africans in the New Continent, on the other hand, the Institute was also aware of a highly necessary comparison with two other World Heritage Sites: Auschwitz-Birkenau and Robben Island. According to the IPHAN, the connection between the three evidentiary sites – as World Heritage Sites – exists in that they all bear witness to the strength of the human spirit to resist appalling conditions of adversity. As slavery may be defined by the “non-recognition of the person as human being, once it starts being treated as a commodity,” Robben Island, Auschwitz-Birkenau and the Valongo Wharf are connected, according to IPHAN, through the ethos of “violence and dehumanization”. This translation insists on the acknowledgment of Valongo Wharf exclusively as an evidentiary site testifying (following the terminology used by IPHAN), to the reality of the nineteenth century. In connection to the Holocaust in Europe and Apartheid in South Africa, the Wharf bears witness to the reality of the recent past. Perhaps more importantly, it testifies to the continued relevance of this reality in the present, as it presents the evidence of slavery to the lives of the descendants of the enslaved African populations and Brazilian society in general.

Underlying our interpretation of IPHAN’s rendering of the Wharf is the acknowledgment, although not explicitly declared by the institution, of the creation of the African diaspora as an event that is of a genocidal character. As the archaeological findings promoted a new understanding of the different autochthonous groups debarked at the Wharf, it similarly promoted a new understanding of the whole area of the Valongo and of the process through which this area acquired an essentially Afro-Brazilian identity. From a historiographical and archaeological angle, the discovery of the Wharf brought in new material for understanding the undisclosed process of racial prejudice, exclusion, and exploitation in Brazil, thus adding to the claims for the acknowledgment of an ongoing genocide perpetrated against black Brazilians. This understanding becomes clear, for

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47 Ibid., 125.
50 Ibid.
instance, in Tania Andrade Lima’s\textsuperscript{51} declaring of the work done by IPHAN as consisting of a socio-political action. According to her, IPHAN’s central objective is to dignify and bring to light that which “in the past was pretended to be interred and hidden, presenting its evidence to current societies so that they can revive this past and find new ways to deal with it”.\textsuperscript{52} In this particular case, it is also a matter of acknowledging the fact that, in regard to the Transatlantic slave trade, the evidence goes beyond material and written cultures, as the “history of African slavery in the Americas remains a past that makes itself present until our current days, even if it was attempted to distort history, silence the written references or raise new constructions over its material bases”.\textsuperscript{53} The Valongo Wharf translates, thus, the suffering connected to the most extensive forced migration process in history, which has been pointed out by the Black Movement of Brazil, as indeed a genocidal process.

**Translating the evidence of the African diaspora**

As Roberta Guimarães Sampaio\textsuperscript{54} recalls, until the beginning of its renovation, “Rio de Janeiro’s Port Zone was predominantly classified by the city’s moral geography as a region of prostitution, drug traffic, and favelas”.\textsuperscript{55} The memory connected to the region was, in this way, one of marginality. The fact that the region was given attention once more with the process of the re-discovery of the Valongo Wharf (and, parallel to it, the landmarking of the Pedra do Sal Maroon Community as an Afro-Brazilian historic and religious monument) must be approached beyond the official, written accounts of documentation and research. Although the archaeological work that led to the re-discovery of the Wharf was a central element in the acknowledgment of the site as one of outstanding value, as the site became open to the public, the practices and interventions surrounding it are the acts that set forth a new signification of the Wharf. Looking into the uses of the site and the population’s relation to it in both a banal and extraordinary sense turns the Wharf into at once an evidentiary site, a national memorial site, a world heritage site and an important historical testimony of the heritage to the African diaspora. This implies that the Valongo Wharf is a site where a translational process is put into motion. “Translation,” in this case, stands for a productive activity that renders “past annihilatory violence narratable, hearable, readable, and seeable”.\textsuperscript{56} To be able to be at the Wharf, to see it, hear it, feel the spatial dimension of the site, adds to the intellectual experience of getting to know and becoming aware of the Wharf’s importance. As both experiences overlap and translate each other, they also translate the


\textsuperscript{52} Ibid., 181

\textsuperscript{53} IPHAN, \textit{op. cit.}, 2016, 142.


\textsuperscript{55} Roberta Guimarães Sampaio. \textit{op. cit.}, 2013, 210.

experience of a history that, so far, in the context of the Brazilian State’s institutional violence, has only been told through and as resistance. Despite the need for a continuous investigation, the Wharf became a site for interventions on behalf of artistic, activist and educational groups, which allows us to reflect on the processes through which the Wharf is translated from a historical site to an evidentiary site of genocide. This expresses the act of translation as one related “to displacement, drift, invention, and mediation”.\textsuperscript{57} It is a process through which a cultural, historical, social phenomenon is set in motion and travels, carrying with it an overall universe of meaning to which it may relate.

As stated implicitly by the IPHAN, the evidential character of the Valongo Wharf serves as an excellent point of departure for reflection on the construction of memory as well as its translation. We may say, for all effects and purposes, that a first translation of the Wharf was the onset set in motion by the archaeological work of IPHAN vis-à-vis the processes of recognition of IPHAN itself and the UNESCO. The negotiation between the judgments over the outstanding character of the site translated the social and knowledge structures in dialogue for the recognition of the Wharf as an evidence of a genocidal process. Different cases of translation are those of actual, material intervention on the site, once it was disinterred and liberated for the public. The translation chain of the Valongo Wharf is relevant, in this sense, as it is of historical and political importance. Such importance was made clear from the onset of IPHAN’s archaeological inquiry which, understood as a socio-political intervention, invited different institutions to join them in the translatability of the site. Working as an intermediary, the Pretos Novos Institute reached out to different organizations on a federal, state, and municipal level. On March 17, 2011, the representatives of the Palmares Foundation, of the State Council for the Rights of the Black Population (CEDINE), and members of the Pretos Novos Institute visited Valongo. Upon recognition of the importance of the site, the representatives drafted a document entitled \textit{Carta do Valongo} (Valongo Letter), proposing the creation of the African Diaspora Memorial. A second episode, recalled by Tania Andrade Lima,\textsuperscript{58} took place when members of the Incubadora Afrobrasileira group, an “organization created in 2004 with the goal of developing the economic protagonism of the black population”\textsuperscript{59} spontaneously visited the site, speaking with the archaeological personnel. These episodes led, in 2011, to an event, organized by the Palmares Foundation, in which the Valongo Wharf came to the attention of both national and international organizations and personalities, like the Inter-American Development Bank, the UNESCO, Her Royal Highness, the Princess of Lagos Erelu Abiola Dosonmu, Erelu Kuti IV; Wole Soyinka, Nobel Laureate of Literature; Elisée Soumonni, of the University of Benin, Paul Lovejoy, from the University of York (Canada), and many more.

On the basis of this 2011 meeting it was decided that the Valongo would be the site for a religious ceremony in honor of the seventh day of death of Abdias Nascimento, which was repeated on the one-year anniversary of the death of the writer, politician, poet, activist,

\textsuperscript{58} Andrade Lima, \textit{op. cit.}, 2013.
\textsuperscript{59} \textit{Ibid.}, 191.
playwright, actor, and professor. This second event expanded IPHAN’s initiative in inviting religious authorities, specifically of religions of African origin, to visit the disinterred site. Four religious authorities were consulted, and it became clear, through an interpretation of the inventory of the artifacts discovered, that the Wharf had also been a site where, originally, African religious practices took place “at least one hundred years before what is proclaimed”. In the same year, during the Black Consciousness Week, the municipal government approved the creation of the Historical and Archaeological Circuit for the Celebration of African Heritage, inaugurated in 2012, when the ialorixás (the priestesses of the religions of African matrix) washed the stones of the Wharf (figure 3), joined by the Afoxé Filhos de Gandhi group, in a religious gesture praising their ancestors. This religious ceremony was repeated in 2014, in praise of the centennial of Abdias Nascimento and, the same year, the Valongo was the location of an event entitled “African Heritage – Urban interventions on the path to the Port”, organized by director Zózimo Bulbul, to whom the 2014 event was dedicated and which included theatrical performances (figure 4).

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60 Ibid., 198.
As Fazil Moradi, Maria Six-Hohenbalken, and Ralph Buchenhorst⁶² observe, the aftermath of genocides is not necessarily restricted only to those who survived it. Memory is a social process and, thus, it is an ongoing construction negotiated between members of different communities. In the case of the Valongo Wharf, the aftermath is directly connected to the lived experience of the descendants of slaves. In a country that consistently marginalizes and condemns its black population to violent death, as the data presented in the introduction of this article shows, the remembrance of its slavery past is a direct connection to survival practices of the ancestors. Their celebration is a ritual binding of centuries-old struggles for freedom. Seen this way, the Valongo Wharf is a stage of narrative, of multisensory, aesthetic and political translation of the experience of marginalization. It is not only an evidentiary site itself, but a continuous provider of evidence, as long as civil society intervenes, addresses it and occupies it. The examples given above and illustrated by the images exemplify how this translation occurs. However, it may also occur indirectly, through academic research, or audio-visual reproduction, for instance, as far as it allows the past, in this case, to take “place in the present, [becoming] a field of endless translational practices”.⁶³

Finally, the re-discovery of the Valongo Wharf represents the importance of the colonial slavery regime as it translates the reality faced by those who suffered the most, as

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⁶³ Ibid., 5.
well as their descendants. This translational process has been in some ways always present, as the region surrounding the Wharf remained predominantly of African Brazilian cultural matrix safeguarding religious cults, cuisine, language, arts, and different forms of customs of African origin. But the work done by IPHAN gave way to a different material and institutional type of translation, as it not only brought the Wharf back into public view, but also put it under national care and turned it into a global memory. The revelation of the Wharf represented the material and symbolic revelation of Brazilian history, and the findings translate the histories of autochthonous African groups who mingled to add to the formation of a new national culture. Add to that the happenings, interventions and experiences of being on the Wharf, the actual human component was also allowed to be translated. As actors, capoeira practitioners, religious authorities and the population in general experience the site, we are provided with a translation of the suffering inflicted by slavery. Furthermore, as many of these practices, especially religious ones, link past to present, we are given evidence of the cosmogonies and epistemologies of Africa and its descendants who have been silenced for so long. Perhaps through these simultaneous and multiple processes of translation we may be able, at last, to start dealing with the “pharisaic confusion” denounced by Florestan Fernandes,\(^\text{64}\) that makes us believe that in Brazil, “black” and “brown” have opportunities equal to those of the “white” population. After all, the

Brazilian standard of social relation ... was built by slavery society, that is, to keep the “Negro” subject to the “white”. While this pattern of social relation is not abolished, the economic, social and political distance between “black” and “white” will be large.\(^\text{65}\)


\(^{65}\) idem, 172.
In our world of technological change and translational practices, we are observing multiple and widespread access to the violence of “the past”. In this paper, I focus on how translation is the condition of possibility for “genocidal violence” to inhabit the world and live on. Translation, I argue, entangles hospitality, opens up the past, and put us in touch with the untranslatable death that gives way to an undeterminable future. Against this backdrop, I assess how science and technology, politics and law, photographs, people, language, modernity’s infrastructure of annihilation, and evidentiary institutions institute and conserve tele-evidence that becomes central to political, national and global memory of genocide.

**The open gate of Auschwitz–Birkenau**

On the morning of December 16, 2017, we were walking the distance that separated Museum Auschwitz (former Nazi extermination camp I) from Auschwitz–Birkenau Memorial and Museum (former Nazi extermination camp II). I ended up being the last person to cross the gate of the Auschwitz–Birkenau Memorial and Museum without noticing it. Suddenly I realized that I was standing in front of the final stop of all arriving trains. The tour guides would take the visitors to this final stop before starting the tour, telling them all about the selection process performed by Nazi doctors. The doctors, as one said, determined “on this very spot who was capable of working and staying alive and who had to be sent to the gas chambers”. Listening to this vivid and embodied narrative, I looked back to the entrance gate. It was open, but the other one for the train tracks was closed. People were crossing it all the time, some arriving, others departing. I saw my two friends touching the fence on the right-hand side of the gate next to reconstructed blocks of barracks. Without thinking, I walked immediately towards them. Before entering the first barrack with an open door, a photograph strategically positioned next to the fence and portraying human beings digging a drainage ditch got our attention and imagination. They were among those who had been subjected to death by working. One after the other, we entered the wooden barrack. There were two enlarged photographs that transformed the entire barrack by evidencing how human beings had been forced to survive or witness each other’s death there. Some of the people in the photographs were looking right at the camera – and thus at all the three of us. Standing in the presence of these photographs that were placed before our eyes, and radically

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interrupted, our bodies were also standing before or in the presence of the future. They are still in the world, share the space with us, and open up an untranslatable past to the here and yet there. As visual or demonstrative evidence, the photographs, together with all other material and architectural evidence such as the crematorium were supposed to be destroyed in early 1945. The exhibited photographs in the barracks, and others found among the ruins in front of gas chambers II and III, were printed copies of the Auschwitz Album. Lilly Jacob-Zelmanovi Meier, a survivor of Auschwitz, had found and preserved the album, containing, amongst many others, her own and her family’s photographs. It would later be used as visual evidence at the Frankfurt Auschwitz Trial. When Simon Wiesenthal – who convinces Lilly to archive the album at Yad Vashem Archives in Israel – asks, how can you live with something like that? Lilly responds, I could not live without it. Today both the album, which Lilly saw as “my own album, our album, everybody’s album” and which has also survived her death, and its computerized database are preserved at Yad Vashem. The album is by now at once historical and visual evidence, and national, transnational and global memory, recording what otherwise would be impossible to see. The advanced tele-technology has already disseminated copies of the photographs in the Auschwitz album worldwide.

Stepping in, stepping out, touching the barracks, the fence, the very act of seeing the copies of these photographs shot between May and June 1944, walking between them, and then the attempt to imagine and understand Auschwitz–Birkenau were as much a chain of interruptions as “embodiments-in-motion”. Our bodies became inseparable from the visibility of what is now named Auschwitz–Birkenau Memorial and Museum, an evidentiary institution. “The visible,” writes Maurice Merleau-Ponty, “is what is seized upon with the eyes”. Seeing as body sign was how we got shivers down our spines, and how the

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photographs and the ruins entered our memories without invitation. Walking along, Thomas would occasionally take out his smartphone to get online in Auschwitz, travel between different websites, and retrieve and read information in both German and English to inform us about certain instants and places. These practices of getting online and offline, gathering and reading or sharing Auschwitz as information in that particular space and time would have been impossible without Wi-Fi, a global infrastructure, and the technologies of the Internet. We would combine this online information with what we remembered from stories that we had heard and our individual readings, visits to other concentration camps in Germany, and works of art, memorials, and documentary films that we had seen. Auschwitz as something readable embedded in the Internet and digital media technologies changes meaning, is transformed, and changed our ways of seeing, knowing and remembering.

The city of Oświęcim (Auschwitz in German) has undergone profound changes since 1945. Step by step, it has once again become a civic space with restaurants facing the entrance to the Auschwitz Museum, and recently-built houses and playgrounds facing the open gate of Auschwitz–Birkenau. Auschwitz III-Monowitz, the forced labor sub-camp of the IG Farbenindustrie A.G., is no longer on the visitor’s list. The name “Auschwitz–Birkenau” has come to exclusively refer to one of several tourist sites to be visited from the city of Kraków in Poland. While the tourist office of the city and some of the kiosks promise daily tours for 99 Polish zloty, the Kraków App or mobile application provides several options ranging from six to nine hours of touring places. The nine-hour tour is entitled “Auschwitz-Birkenau Tour from Krakow and Evening Klezmer Music Concert with Dinner” for USD 77. According to the Auschwitz-Birkenau website, “2.1 million” people visited the Museum in 2017, “50 thousand more than in 2016”. By the hundreds the visitors walk among the physical evidence – decaying barracks and other buildings, ruins of the gas chambers, photographs, monuments, de-electrified barbed wire fences, and the very geographical space wherein the camp as an infrastructure of annihilation was once constructed – which they never cease to embody and turn into digital images that they can circulate and to which they can return anytime and anywhere.

Auschwitz as a paradigmatic part of the Holocaust becomes a site of scientific inquiries, filmic translation such as “Holocaust,” and the politics of the Holocaust in late 1960s and 1970s connected with the history and future of Palestine. This historic shift embodied
Auschwitz in words and images. The mass of globally circulating publications and images in turn continues to constantly write and shape how we attend to, experience/embody, remember, and perceive what remains ethnographically inaccessible. The workings and inescapable effects of scientific practices, technologies, and global media have given birth to an Auschwitz to be looked at by any visitor from anywhere as something Other or foreign to the visitor’s everyday life or to be examined, among others, by scholars, artists, filmmakers, and journalists from anywhere. Auschwitz, to paraphrase Lilly Meier, has become my Auschwitz, our Auschwitz, everybody’s Auschwitz.

As extermination camps, Auschwitz itself presents a radical shift as modernity’s infrastructure of annihilation and irredeemable destructions. In other words, Auschwitz was originally designed to be annihilatory. It involved advanced science and tele-technologies, modern state, bureaucracy, economy, politics, rule of law, and both disciplined and organized human beings as killing units. By contrast, Auschwitz as populated barracks, gas chambers, crematory, Zyklon B, furnaces, electrified fences illuminated with lights at night, watch towers, machine guns, commandants, adjutants, SS dogs, Schutzstaffel (SS)-Totenkopfverbände, Sonderkommandos, Erkennungsdienst, daily torture, medical experimentation, starvation, forced labor, forced abortion, sterilization, brothel, and public hangings and executions is nowhere to be seen today. Yet, this radical absence does not govern the ways in which we experience and embody Auschwitz as translations. The concern here is that Auschwitz as original genocidal violence is neither accessible nor available to words, art or aesthetics and will, therefore, remain untranslatable. Thus my application of translation follows that genocidal violence leaves nothing “original” to go back to, which would, as Walter Benjamin writes, “... contain the law governing the translation: its translatability”. For Benjamin translation involves überleben, survival, and fortleben,

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continuing to live or living on of the original. He writes, “... a translation issues from the original – not so much from its life as from its afterlife.” By contrast, translation of genocidal violence does not relate to an original the way translation from one language to another language may do. It points to the commonality of human concern with memory that is an existential condition to human life and collectivity, and highlights the weight of evidence, legal and otherwise, as productive writing and living on of national and global memory of Auschwitz and Murambi that I engage in this paper-translation.

What I have already started with, and will continue in what follows, is rather the concern with how translation writes and is fundamental to the living on of what it puts us in touch with, i.e. genocidal violence, how human relation to it is never bilateral, how it only takes place in the after and travels across time and space and is as much about the past as the future, how it globalizes or denationalizes memory, and how it is always marked by untranslatability.

This paper is thus not a return to the demand for pure description, analytical reflection or scientific explanation that would prescribe a fixed understanding of what is called Auschwitz, Murambi or genocide. The term or the name genocide is Raphael Lemkin’s translation for what he called the “civilized” world, and is by now a recognized international legal definition that possesses an irreducible evidence of systematic violence, produces fixed meaning, and shapes experiences and memories worldwide. In today’s global setting the term/name institutes the particularity of “race, ethnicity, religion, and nationality,” and at the same time disseminates the knowledge that the world cannot afford genocide many more times. Thus, as tele-evidence, it travels as it is deemed to have the capacity to capture what the modern nation-state has proven to be capable of, and is as such repeated across time and space. Since this repetition involves a juridical discourse that “… includes a whole set of rules and applications of rules, that is to say, a technology,” genocide as tele-evidence is also a tele-technology that is produced at a certain moment but travels in time and space and is fundamental to the living on of politics as well as memories of genocidal violence.

My concern in this paper is that translation is a turn to language, traveling narratives, tele-technologies, science, politics and law, testimony and evidence, evidentiary institutions,
and exhibition of human remains and photographs. As such translation is not genocidal violence, but the condition of possibility for state sanctioned violence to inhabit the world, rendering it readable, knowable, seeable, and memorable. As I outline above and in the main body of this paper, my concern is not comparison of violence but translation that institutes and circulates tele-evidence in various forms. I understand translation to also introduce hospitality as hosting and at the same time being held hostage by translation of that which is radically absent or as instant interruption that is both “inconceivable and incomprehensible”.

“Auschwitz and After”

Auschwitz became the “paradigm” of annihilatory violence and the articulation of all Nazi extermination camps only after Auschwitz, in the late 1960s. After is the time and space of translation from which Auschwitz arrives as the name and reading of untranslatable acts of annihilation. Theodor W. Adorno writes, “I have no wish to soften the saying that to write lyric poetry after Auschwitz is barbaric” (emphasis mine). He reads and engages Jean-Paul Sartre by quoting a character in his play Mort Sans Sepulture, “Is there any meaning in life when men exist who beat people until the bones break in their bodies?” and writes that this “… is also the question whether any art now has a right to exist”. His analytical reflection and reference to Sartre’s literary work marks his avowal of the enigma at the heart of translatability after Auschwitz, and not after the colonial genocides or the transatlantic human/slave trade. Adorno considers work of art as the other of reality and thus cultural translation to be a commitment to aesthetic objectification and as such transformative, making Auschwitz appear as or disappear with literature or artwork altogether. He writes, “When even genocide becomes cultural property in committed literature, it becomes easier to continue complying with the culture that gave rise to the murder”.

34 Adorno, op. cit., 188.
Adorno’s critique of how “… the traditions of philosophy, of art, and of the enlightening sciences”\(^\text{38}\) could allow Auschwitz to happen is directly connected to an unequivocal explanation that without modernity or the individual indifference or coldness of bourgeois subjectivity, “… there could have been no Auschwitz”.\(^\text{39}\) Artworks as cultural artefacts and bourgeois society are inseparably entwined. Yet, Adorno’s account of “… the dialectic of culture and barbarism. To write poetry after Auschwitz is barbaric”\(^\text{40}\) does not totally negate the inescapability of aesthetic and artistic translatability. He was already immersed in translational practices and rather concerned that the aesthetic and artistic translation produces an “echo of suffering” and “diminishes it”\(^\text{41}\) at the same time. In other words, Auschwitz is at once open to translation and “forbids” it\(^\text{42}\) — it is as much untranslatable as it disappears with translation.

Writing against Adorno’s “expression,” Jacques Rancière argues “… after Auschwitz, to show Auschwitz, art is the only thing possible, because art always entails the presence of absence; because it is the very job of art to reveal something that is invisible, through the controlled power of words and images”.\(^\text{43}\) Such position proceeds through the transformation of Auschwitz into words and images, which then preserve and institute Auschwitz, going back and forth between unrepeatable and distant acts of annihilation on the one hand and art and aesthetic practices on the other. The ethical dimension of words and images is the possibility of future memory and of linking or putting us in touch with\(^\text{44}\) the radically absent violence. It interrupts us as it puts us in touch with the violence that it writes, opens up, and changes into traveling words or images that act independently of Auschwitz as original violence.\(^\text{45}\)

Yet, Adorno’s return to the expression in *Negative Dialectics* is marked by the urgency of ethics of translation as well as the fact that the question of untranslatability has not made


\(^{42}\) Adorno, *op. cit.*, 2003, 252.


him stop thinking about Auschwitz. He writes, “Perennial suffering has as much right to expression as a tortured man has to scream; hence it may have been wrong to say that after Auschwitz you could no longer write poems”.46 Adorno continues his seemingly speculative phenomenology, “… it is not wrong to raise the less cultural question whether after Auschwitz you can go on living – especially whether one who escaped by accident, one who by rights should have been killed, may go on living”.47 If work of art as fully cultural is capable of turning Auschwitz into knowledge and aesthetic object, the possibility of living on in the after as “less cultural” also underlines translational practices – e.g., the survivor’s right to language, expression, that is fundamental to testimony and to proof. Adorno’s speculation pays little attention to how those who, unlike him, were living with, and seeing what was happening to them and their individual bodies in Auschwitz experience questions of translatability, e.g. writing poetry. Auschwitz and the after take yet other turns as we attend to survivors and the extermination camps in Auschwitz, and to other writers. In fact, Maurice Blanchot writes that the survival of the survivor “is no longer life,” but “… the attestation that the good that is life … has undergone the decisive blow that leaves nothing intact”.48 Auschwitz did not rest on universal humanity but on annihilation, “dying together,”49 and complete disappearance of human lives and bodies.50 It was the manifestation of a systematic annihilation of a “common political space,”51 or offering hospitality that rests outside of right, law and duty, welcoming and hosting “the Other” without imposing any conditions.52

Bodies were evidence subjected to endless disappearance and came to be read as evidence in the after. Except for “non-Jewish German prisoners,” Primo Levi, who physically survived Auschwitz, writes,53 all prisoners had a number tattooed onto their arm. An “indelible mark,” Levi continues, the tattoo was an “autochthonous Auschwitzian invention” and, as such, the “sentence written on the flesh”.54 In the after, however, the invention of the tattooed arm becomes the survivor’s evidence and at the same time proof of being in the presence of Auschwitz and a witness of the impossible.55 This, in turn, makes the survivor’s body the impossible proof and turns their testimony into evidence of having survived the impossible. For the survivors of Auschwitz to show the indelible mark – tattooed number –

47 Ibid., 363. (emphasis mine).
54 Ibid., 95.
on their bodies and to testify meant to be alive, but also to confide in language and thus engage translation.

How language is called upon to put the memories of the everyday in Auschwitz to work is manifest in, amongst many others, Charlotte Delbo’s memories, plays, and poetry as well as Primo Levi’s memories. Auschwitz et après (Auschwitz and After), as the title of Delbo’s trilogy, takes place in Delbo and Levi’s respective autobiographical writings in ways that produce the survivor as someone here and yet there, in the interstices between but also beyond the ones annihilated and those living. Their particular narrative technique does not only make them visible as writers and poets, but also bears the commitment to expressing or turning the “unthinkable” and the “inexplicable,” as Delbo puts it, into the thinkable and explicable only in the after. Delbo explains, “… if the women who died had required those who returned to account for what had taken place, they would be unable to do so”. She insists, “Actually I did not say anything to myself … I thought of nothing. I felt nothing. I was a skeleton of cold … everything there [Auschwitz] is inexplicable”. According to Delbo, thinking, speaking, or writing about Auschwitz cannot be Auschwitz, and one is not able to imagine oneself as the women who died there. Auschwitz are instants that we here can never translate and, as such, remains both foreign and heterogeneous to what language allows in the after. Yet, we are given over to the experience of “dying a living death,” as we read, imag(in)ing and seeing ourselves already dead while reading Auschwitz and After – after the women who died there.

Therefore, the reflections and memories of mass death mobilized by language, which in turn mobilizes Auschwitz, are passed on with “the mark of untranslatability on it, in the bound book” Auschwitz and After that we can touch, read and see with our eyes and hold in our hands. The book of poems and memoirs takes place as an ethical translation or hospitality, hosting testimonies and/or memories of unthinkable death. What happens is that the act of reading the book, in turn, interrupts as it holds hostage the reader, across time and space. As translation Auschwitz and After writes as it renders the past readable which marks its living on in the infinite after, while at the same time evidencing the linguistic act of hosting and sharing the Otherness or foreignness of Auschwitz as unthinkably inexplicable – untranslatable.

59 Delbo, op. cit., 65.
60 Ibid., 65, 276. (my emphasis).
An untranslatable secret

The narrator-witness in Maurice Blanchot’s *The Instant of My Death*, a literary fiction set in 1944, tells of a dead end that the Nazis are faced with, to which they, in turn, expose a young man and his entire family. A “Nazi lieutenant” convoyed by a liquidating force knocks the door of a château. The château is located in Nazi-occupied France. Believing the one knocking to be a guest in need of help, a young man opens the door.

“Everyone outside.”
A Nazi lieutenant . . . made the oldest people exit first, and then two young women.
“Outside, outside.”

The unexpected arrival turns into an outside trial to judge whether the occupant of the château should cohabit the earth. The lieutenant’s translation of the casings and bullets found around the house in a war-torn area as evidence in a trial renders the “less” young man an accused without the possibility to prove himself innocent.

The lieutenant choked in a bizarre language. And putting the casings, the bullets, a grenade under the nose of the man already less young... he distinctly shouted: “This is what you have come to.”

“This is what you have come to,” is a verdict that places the young man before a firing squad, awaiting but the instant of the order to shoot. Knowing that this is the dead end of his life on earth, the young man does not want his family to witness what is about to happen, and begs the Nazi lieutenant:

At least have my family go inside.

He is the only man left, and the family of all women – aunt, mother, sister, and sister-in-law – is about to witness his execution. This instant is interrupted. The lieutenant’s attention is drawn to a nearby battle which makes him disappear from the scene. One of the executioners approaches the young man to tell him who they are and tells him without speaking “to disappear”. The young man wanes with a “feeling of extraordinary lightness,” only to find himself in a faraway and dense forest where the trees become his host and ultimate shield. Death, we read, is prevented by “death itself – and perhaps the error of

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65 Blanchot, *op. cit.*, 5.

66 Ibid.
Suddenly he witnesses the compound set on fire, descending into ash, and three young men – sons of farmers – slaughtered. Although the château is left undisturbed, the world transforms into an unlivable world, evidencing a long devastating war. Yet the instant of lightness – “... at the moment when the shooting was no longer but to come” – obfuscates the descent into the everyday. It never leaves his survival – no longer life anymore – and remains untranslatable: “There remained, ... the feeling of lightness that I would not know how to translate: freed from life?” Not only is the instant unavailable to words and thus nothing to be captured in language, it is untranslatable. This questioning of the epistemological foundation of knowing and a strict claim to truth is also unfolded in the act of remembering and testifying.

Narrator-witness: “In his place, I will not try to analyze”.69

According to Jacques Derrida, the title The Instant of My Death “… promises us a narrative or a testimony – signed by someone who tells us in many ways and according to every possible tense: I am dead, or I will be dead in an instant, or an instant ago I was going to be dead”.70 Death is a common human condition to which one cannot return or testify. In this context, therefore, there is neither a post-death instant where one can testify to one’s own experience of death, nor a shred of evidence to prove the existence of life after death. It is what Derrida reads as an “unexperienced experience” – i.e., death can neither be experienced nor happen twice. The narrator-witness takes the reader beyond the collection of incontestable evidence to prove what is about to unfurl in an instant, “a death without death and thus a life without life”.72 This neither/nor evolves as an insistence on untranslatability of a death that is not death and thus the limit of literature and autobiographical fiction but also phenomenology.73 In other words, The Instant of My Death narrates how certain death cannot fully arrive in the here and now, how it cannot be rendered knowable and completely comprehended, how it does not end with survival, and how it cannot be undone by evidence or any testimony of fiction.

In Vicious Circles, Blanchot writes, “… in my opinion – and in a way different from the one that led Adorno to decide with absolute correctness – I will say there can be no fiction-story about Auschwitz.74 This conclusion falls in line with the thought that as annihilation leaves nothing intact, “all narration, even all poetry” becomes a thing without “foundation”.75

67 Ibid., 3.
68 Ibid., 8–9.
69 Blanchot, op. cit., 5.
71 Ibid., 47.
73 Ibid.
74 Blanchot, op. cit., 1985, 68.
75 Ibid.
Like Adorno, this does not stop him from writing literary fiction, which changes with Derrida’s testimony. On July 20, 1994, Derrida receives a letter from Maurice Blanchot in which Blanchot enunciates, “July 20. Fifty years ago, I knew the happiness of nearly being shot to death”. Derrida asserts, “Like this sentence, this letter does not belong to what we call literature. It testifies … to the reality of the event that seems to form the referent of this literary narrative entitled The Instant of My Death and published as literary fiction”.77

The fiction as a traveling translation as an “intimate act of reading, surrendering,” and seeing, embeds the reader in “real human experiences,” violence, and an “interruption of time and history” that unfolds in the course of reading, even though it does not take place in the everyday reality of the reader. The instant is a secret reserved to the one who testifies, and from which fiction develops as translation. Herein, experience starts from translation of a secret instant that goes back fifty years, to a specific historical context that is distinct from that written and narrated experience, without which there would be no The Instant of My Death. The literary fiction is not the instant that it creates as much as death is not a word or an object in Blanchot’s possession. Blanchot, suggests that fiction and, in effect, language cannot claim the ability of reaching some universal truth about death within a particular historical context that profoundly displaces the common binary understanding of life/death as it leaves nothing intact.

Furthermore, echoing Omar Khayyām81 (1048-1124), while offering an intimate reading of “genocide against the Tutsi” in 1994, Véronique Tadjo writes, “None among us” has ever returned from death to testify to how the dead are.82

Evidentiary bodies

In order to survive absolute physical extermination, around fifty thousand Tutsi people try to hide in churches and whatever places they think will host and protect them. As Rwanda’s churches are entangled in all the violence, many have become sites of massacres. People resort to seeking refuge in the classrooms of the Murambi technical school in Gikongoro Province in southern Rwanda. While “Hutu” is made a body radically distinct from “Tutsi,” as organized killing units, the mobilized Hutus hunt and kill the Tutsi wherever they find them in Rwanda. The political inscription of difference is constantly communicated through the

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77 Ibid.
78 Cf. Spivak, op. cit. 201.
80 Ibid., 30.
81 Omar Khayyām, Rubáiyát of Omay Khayyám, transl. E. FitzGerlad (Oxford University Press, 2010 [1859]).
Rwandan radio station *Radio Télévision Libre des Mille Collines*, which mobilizes and integrates Hutu civilians. “The French military would protect you in Murambi,” they keep hearing from officials, the police, and priests in the area. Instead the secret plan appears to gather the Tutsi at the school to conclude their collective annihilation once and for all. A coordinated plan to cleanse the whole area of the Tutsi, leaving no one to testify, is already underway. Like the rest of the country, the whole area is enmeshed in such violence as the population could never have imagined before.

The everyday reality of collective lives is unexpectedly interrupted. Being human and certain neighborly ethics that once formed the foundations of life and neighborhood relations no longer ensure either coexistence or the life of the Tutsi population. Killing the Tutsi has become an everyday reality. Although the technical school is under construction, it turns into a space that incarcerates everybody within its walls. This means that those inside the few separate rooms with tiny walls are made homeless and robbed of everything in the world. They are left without food and drinking water for days. Death begins inscribing itself and has already interrupted the history of the country, converting Rwanda into a foreign land that does not welcome the Tutsi and Hutu opponents.

The inescapable fear of death, sleep deprivation, and suffering from hunger have transformed them into weak and exhausted bodies. The initial waves of the massacre are answered with collective resistance. By now it has become clear that Murambi is a place where the collective life of the Tutsi is at stake. The arrival of the armed Interahamwe – a Hutu paramilitary organization for killing Tutsi – on April 21, 1994, between 3 a.m. and 12 p.m., marks the actual beginning of the massacre. It is a day unlike any other. Interahamwe do not care about whether the human target is a pregnant woman or a child. They kill with bullets whenever necessary and hack people to death with machetes. The massacre would have been a difficult feat without the *Radio Télévision Libre des Mille Collines*, weapons and machetes – the technologies of killing. The dead corpses are later buried in shallow mass graves. This attempt of deliberately destroying any trace of evidence and testimony of what happened fails as some manage to escape and others among those massacred survive and escape. Thirty-four people survive. Some of the survivors’ testimonies are now digitized and can be accessed at the Murambi Genocide Memorial Center as well as the website of the Genocide Archive of Rwanda.

Spread all over Rwanda and different parts of the world by now, I heard this narrative mainly during my first visit on September 26, 2012, but also when I returned in 2013, 2016, and September 2018. In this paper it also includes references that point us to other articulations that have multiplied and set the narrative into motion in the world. The woman working at the memorial center and in charge of guiding the visitors, who had already embodied the narrative explains what had come to pass between April 18-22, 1994. It is September 26, 2012, we are engaged in conversation as we walk towards the blocks of classrooms where people had once sought refuge.

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84 des Forges, *op. cit.*
What happened in Murambi is at this moment – eighteen years after – made “fictional” in ethnographic manner. The massacre is embodied in a narrative that fictionalizes the massacre, making it knowable and understandable in a broader sense. Like Delbo and Blanchot, Richard Rechtman asserts that the instant of exterminatory violence, when both the past and the future disappear and the present become timeless, is fictionalized as embodied in a narrative created “after the fact”. The narrative conserves and, at the same time, institutes what happened. The narrative, as Toni Morrison writes, “... is radical, creating us at the very moment it is being created”. Against this backdrop, narrating or testifying in order to tell a story also means creating a space of memory that involves what is legally inscribed as “material evidence” of genocide in Rwanda. The narration creates a public and political space, making it understandable by assimilating the past in the everyday. In doing so, it transforms the past to the extent that it “will never be the same”.

Eighteen years after the massacre, my visit marks a descent into the Murambi massacre as an embodied narrative and as embodied in a narrative and material/physical evidence that persistently makes it congruent with the here and yet there. The website of the Murambi Genocide Memorial refers to April 21, 1995 as the date the memorial center was established. She, the guide, tells me that survivors exhumed the bodies, thousands were buried, and that the government of Rwanda opened the doors of the halls filled with exhumed human bodies to the public on April 7, 1996. The Murambi technical school that was turned into a site of extermination and mass grave is now preserved as a national memorial based on physical evidence or, what I call, evidentiary bodies. Evidentiary bodies include mummified bodies, human remains, bloodstained clothes, archival photographs, digitized survivor testimonies, and Murambi as a site of both modern massacre and museum. The conservation effort is constitutive of new practices and relations that not only render the ethnographic evidence of genocide public but also produce knowledge about it. Article 52 of Rwanda’s Constitution inscribes the preservation of the memorial sites of the “genocide against the Tutsi,” as penned in the Preamble, as the duty of the state and “everyone”.

We are walking towards what had once been ground-level buildings for classrooms that now host evidentiary bodies from the genocidal massacre. I would not know this, as it is my first visit. As a guide, she wants me to bear witness to the massacre in such a way that it

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87 Ibid. See also, Delbo, op. cit., 65, 276; Blanchot, op. cit., 1985, 65.
92 Genocide Archive of Rwanda, op. cit.
structures the visit and entangles it in a repeatable and understandable narration. Suddenly we stop before an open door to an old classroom:

They are here to tell you and the rest of the world that what happened in Murambi is real. Do not photograph or touch them.

The door is open, so I step in. She stays behind, outside. At this moment, I am cut off from the world. I stand face to face with what evades words or linguistic naming and artistic imagination. All I can see are white mummified bodies captivating my eyes and my whole body. I stand before actual yet dead bodies laid out on wooden panels and inhale the invisible and unimpeachable particles or dust moving in the air. The room itself is a world of infinite silence, but with the capacity for confirming, repeating, and conveying the embodied narrative. The modified and preserved white bodies neither ask, “What is your name? Where are you from? What brought you here?” nor do they make the massacre of April 21, 1994 accessible in any way. I am expected to stand before physical evidence, seeing how death can no longer happen to the bodies that interrupted my world, and would remain in me as images. I also bear witness to what happens after the massacre, especially to those who are “... absolutely without defense, disarmed,” and in the hands, of the post-genocide state and the global politics of memory, dead. Although I had already carried out six months of anthropological inquiry on al-Anfāl genocide (1987-1991) in the Kurdistan Region of Iraq, I leave the room without having a single thought of whether there is something to be interpreted, heard, or whether the unassimilable white bodies need to be exposed or to remain unknown. I am completely empty and unable to imagine myself as any of the bodies without names or faces. The white bodies have disappeared in the politics of numerical evidence, “50,000 Tutsis were murdered in Murambi.” Their existence as individual human beings, identities, and family and collective memory are completely erased. They are conserved with powdered lime which has transformed them into white bodies as never before witnessed in human history. Stepping into the room means crossing an unmarked border between the everyday and the worldliness of the white bodies that would not leave one uninterrupted.

There are six single-story classroom buildings, each with six classrooms, and each of them turned into an indefinite home for white mummified bodies and human skeletons. We walk into two other rooms, one hosting human skeletons and the other white mummified bodies. They are there to be seen and continue their existence with the established and guiding narrative that produces them as physical evidence, which in turn confines their past and future existence to the genocide against the Tutsi. We pass the other rooms, just looking inside from the door, and arrive at what had once been turned into a mass grave. “This is where the French soldiers built a volleyball court and played. They tried to hide the mass

95 Derrida, op. cit., 2010, 126.
grave,”96 she tells me. The embodied narrative produces an ontological difference between the massacre as a thing of the past, Hutu/Tutsi, and the here and now. It ethnicizes genocide and overlooks Rwanda’s colonial history of racialization that produced ethnically divided memories among the Hutu, Tutsi, and Twa, and the role of the modern state and global politics.97

The visible and immobile mummified bodies and the open mass graves of human remains no longer belong to themselves or their families and are not granted burial. Emmanuel Murangira, with a scar of shrapnel from a hand grenade on the left side of his forehead, is one of the four impossible survivors.98 According to his testimony that has survived his death in 2011, the lack of identification, the complete annihilation of some families, and financial conditions are among the reasons why the families who had survived could not exhume the bodies, transport them to their villages, and bury them.99 He is also convinced that the number of those massacred ranges from “50,000 to 60,000” people. Although Emmanuel’s position cannot be easily explained, being a survivor also means being with multiple losses and sharing the everyday with the dead.100 His entire family had been exterminated during the genocidal violence. According to Véronique Tadjo, in Rwanda the survivors talk to their lost loved ones and carry them within themselves.101 The relationship is not empirical and its meaning in the world of the one who has survived is irreducible to language or the linear time – past, present, future. It helps people who have survived to work through the everyday difficulties in their lives, and it is a social life in which they participate. The relationships with the dead involve an “exchange for assistance or protection,” in the everyday life.102 The obligation to think of the dead occupies an integral space within Rwandan cosmology as well as the ordinary world of the survivors.

As a place where unidentified bodies and remains of the dead are conserved as the foundation of national memory, Murambi represents a legal and political turn as well as

96 See also Boubacar Boris Diop, Murambi: The Book of Bones, transl. F. McLaughlin (Bloomington, IN: Indiana University Press, 2006), 177; Tadjo, op. cit., 21.
99 Susan E. Cook, “The Politics of Preservation in Rwanda,” Genocide in Cambodia and Rwanda: New Perspectives, ed. S. E. Cook (London and New York: Routledge, 2017 [2006]), 281-299, (288). Susan writes that even though Emmanuel guides her and the other four visitors, including her two-year old son, through the classrooms of the Murambi, he is unwilling to provide her with the information she needs.
100 Cf. Moradi, op. cit.
101 Tadjo, op. cit., 51-58.
translation of the global infrastructure of memory after the genocide in Rwanda. “Remains of genocide victims which were formerly buried shall be transferred to genocide memorial sites and cemeteries as provided for by ... Law ..., upon the initiative of the relatives or upon consultation with the District administration”. Some of the mummified bodies have been found elsewhere and are now on display in Murambi which is encircled with a fence, separating it from the population that inhabit the land around it. While the former Rwandan state transformed these bodies into sites of difference and rendered them killable, the post-genocide legal and political translations defer this very difference into an unknown future while rendering the bodies and Murambi as genosites. Murambi takes place as a modern evidentiary institution that stages the genocide against the Tutsi for the nation to imagine both its descent and its future. At the same time, it becomes the place where the massacre is received as an international crime, and where the post-genocide nation and everyone should return to learn about how, where and what “actually happened”. Similar genos-sites and/or evidentiary institutions are established throughout the country: e.g. Kigali Genocide Memorial (Gisozi); Nyamata Church Genocide Memorial; Nyarubuye Church Memorial; Ntarama Church Genocide Memorial; and Bisesero Genocide Memorial.

### Tele-evidence

In Rwanda, the question of conservation is linked to the narrative of living together again and/or reconciliation, re-making the nation, remembering together, and the prevention of future genocides, or “Never Again” as first articulated after the Holocaust. The conservation of evidentiary bodies is, therefore, as much a question of traveling translation as it is of the past and future of the nation in Rwanda. Moreover, it has become the concern of the Rwandan state and its politics of difference, forensic science, and digital technology. The Kigali Genocide Memorial (KGM) has a “world-class digital archive preserving memory for generations”. It provides a collection of documents, archival photographs, audiovisual survivor and perpetrator testimonies, audio cassette tapes, an interactive map, the human remains of “250,000” people, Gardens of Reflection, human skulls on display, the Wall of Names, mass graves, a website that contracts time and space, and a library as well as an education center. It has also an amphitheater where theatrical plays about the genocide are

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108 Ibid. The number appears each time one visits the website, which multiplies the dead.
performed during the annual commemoration. The website of the KGM enfolds the genocide against the Tutsi as well as all memorials and museums, and participates in the image flows that uphold and disseminate the memory of genocide in full view of the global/local public eye. As a result, genocide moves into the realm of the visual and virtual. The KGM’s infrastructure of memory includes providing everyday tours through the three permanent exhibitions, including photographic exhibitions of genocides, Namibian, Armenian, Cambodian, Bosnian, and the Holocaust. Just as with the museums mentioned above and the website, KGM as an actual place also institutes certain modes of remembering that produces Tutsi as victim and Hutu as perpetrator, and internationalizes the memory while conserving and circulating multiplied evidence of the genocide against Tutsi worldwide.109

The legal, political, and tele-technological translation is unprecedented in Rwandan history, bringing all evidentiary institutions, the archive and its digitalization, the websites, and the annual commemoration under state jurisdiction. This evolving politics, which is essentially global, has transformed the national government into an “archontic power,” embroiling the “power of consignation”.110 As such, the government is entrenched in practices of gathering evidentiary bodies, classifying and assigning residence, and centralizing memory as well as acting in public.111 It is concerned with the use of forensic science in the conservation of exhibited evidentiary bodies that in turn expose the political translation, and shows how the national memory of the genocide is dependent on unidentified human remains, and how it is made empirically knowable. This turn towards the past as a turn towards the future of political, national and global memory involves an international network.

Aegis Trust, an international organization for the prevention of crimes against humanity and genocide,112 has taken the question of preservation and national memory in Rwanda to a global level that has in turn turned Aegis Trust global. It operates the UK Holocaust Centre in Nottinghamshire, which a delegation from Rwanda visited before the KGM was built and opened in 2004. Aegis Trust has been involved in the construction of monuments and museums, including KGM, the preservation of sites of annihilation and evidentiary bodies, the digitization of evidence of genocide, and education since early 2000. Moreover, it has been engaged in translation practices linking the infrastructure of memory in Rwanda to that of the Holocaust and beyond.113

The CEO of Aegis, James Smith, has argued that science and technology has key role to play in halting the mummified bodies’ natural disappearance into dust.114 This is where law

110 Ibid., 3.
113 See Dumas and Korman, op. cit., I – XV.
and the court, which Cornelia Vismann calls a “translation machine,”\textsuperscript{115} are no longer necessary to confirm and produce evidence and preside over public and historical truth.\textsuperscript{116} The collaboration between Aegis Trust, the National Commission for the Fight Against Genocide in Rwanda, the International Forensic Centre of Excellence, and Cranfield University and its department of forensic sciences was expected to result in the establishment of a mobile laboratory in the UK to be stationed in Murambi. It is to preserve evidence, the unidentified bodies “... by placing them in hermetically sealed compartments which should ‘last more than 150 years without any deterioration’”.\textsuperscript{117} This radical change also suggests how the future memory of a nation is designed with traveling translation of global memory, how it becomes a work of science, technology, and politics, and how it descends into the everyday as both actual and virtual, and here and yet there all at once.

When I arrived once more in an afternoon of January 2016, I found that all the rooms with mummified bodies were closed and the windows covered. The doors of the rooms filled with bloodstained clothes of those massacred were also closed to the world. A group of people were renovating a building at the heart of the memorial. While looking at the workers, a young boy, standing next to me, told me, “a conference hall”. There was no sign of the mobile laboratory. “It remains to arrive,” I thought. Again, in late September 2018, I saw that the renovation of the building had come to an end. The name “Conservation Hall” followed by “genocide victims’ bodies and their cloths at the time of killing,” was inscribed on a “tombstone” and placed close to the entrance. The Hall is now waiting, as I was told by the male guide, for the “conservation technology” to rather arrive from Germany’s Institute of Legal Medicine in Hamburg in collaboration with the State Office for Preservation of Historic Monuments in Hannover.\textsuperscript{118} The conservation hall is expected to open to the public in 2019, during the \textit{Kwibuka 25} – 25 annual remembrance of the genocide.\textsuperscript{119}

Back in 2016, together with the young boy, we walked to the main museum building, to embodiments-in-motion without asking each other questions. It has four exhibitions, starting with a visualized chronology of genocidal violence against the Tutsi, the organization of the 1994 genocide, involving the silence of the United Nations, and a big picture of the current president of Rwanda, Paul Kagame, in his military dress, representing the resistance


\textsuperscript{116} Cf. Schuppli, \textit{op. cit.}

\textsuperscript{117} Korman, \textit{op. cit.}, 213.


\textsuperscript{119} On March 9, 2019, flying with RwandAir from Johannesburg, South Africa, to Kigali the capital of Rwanda I could see a picture of the “flames of remembrance” with “Rwanda: 25th Commemoration of the Genocide against the Tutsi. Remembering the past, rebuilding the future,” on the cover of the RwandAir Inzozi Magazine. The fragments that follows under that title in the magazine (pp. 24-26) are both in English and French, writing 1957 as the date of the “ideology of genocide against the Tutsi,” the genocide committed by “Hutu extremists” against Tutsi as an “ethnic group,” and that the genocide happened under the UN watch. The magazine \textit{travels} both with RwandAir and online, see \texttt{https://issuu.com/inzoji/docs/inzozi_march___may_2019_online}, accessed on March 15, 2019.

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of the Rwandan Patriotic Front, followed by archival photographs of both perpetrators and victims and burial chambers. Although they cannot lend a face to the unidentified bodies on display, the photographs are there to “furnish [visual] evidence” and to be seen together with other evidentiary bodies. In Murambi, they claim the visual capacity to translate the lost human lives and worlds, to present the “truth” to what happened, and to actually be in the world and intervene ethically, legally, and politically. On its website the museum offers a virtual tour, explanation, and various digitized survivor testimonies that like the photographs break with context as they roam the Internet.

120 See the website of Genocide Archive of Rwanda, op. cit.