

Season 4, Episode 9 (13 June 2023)

Mini-series

The Revolutionary Potential of Transitional Justice

Transitional Justice, arts and protest in South Sudan

Welcome to Justice Visions. The podcast about everything that is new in the domain of Transitional Justice (TJ). Justice Visions is hosted at the Human Rights Centre of Ghent University. For more information visit JusticeVisions.org.

Tine: Welcome to this new episode of Justice Visions. My name is Tine Destrooper and I'm the regular host of this podcast. And with me as a co-host today is Brigitte Herremans.

Brigitte: Hello Tine.

Tine: And today is actually our fourth episode of a mini-series that takes us back to the revolutionary roots, but also the revolutionary potential of transitional justice.

Brigitte: Yes, And we had some previous episodes on the MENA, Peru and the United States. These are all cases where activists adopt and somehow also reappropriate the tools of the transitional justice toolbox because it's part of their struggle for justice and also their struggle to continue resistance.

Tine: And in this last episode of this mini-series today, we're going to be looking at South Sudan, which might not be the first case that comes to mind for this kind of focus of a miniseries. South Sudan being one of the youngest nations or if not, then the youngest nation in world history, but also a nation that has a history fraught with both violence and civil war, but then also formal and informal attempts at transitional justice to deal with this violence.

Brigitte: Yes, and I think that suits the focus of this mini-series, because we're looking, of course, into resistance, into informal practices and artistic practices, that also advance transitional justice and its revolutionary potential. And that, of course, is something that we want to explore because it hasn't been that much explored, the potential of artistic practices in transitional justice.

Tine: Yes, that's true. We've had a bit of a bias towards artistic practices in this podcast, and I think it is indeed important because of also arts' potential for epistemic resistance and for epistemic contestation.

Brigitte: Yes. And this is a wonderful topic, of course, a topic that we want to further explore with Sayra van den Berg, who is a post-doc researcher at the University of York, who has quite a lot of experience in her PhD research on Sierra Leone and the Truth and Reconciliation Commission and who just came back from South Sudan to do research exactly on the topic of arts and its potential for transitional justice.

Tine: Welcome, Sayra.

Sayra: Thank you so much for having me. It's such a pleasure to be here, especially because of how instrumental both of your work has been in making my own research possible. So this is truly a privilege.

Tine: Thanks for joining us. And actually, Sayra, I want to start with a very broad question, just picking up on that idea of South Sudan being the youngest nation with its 12 years of existence, but actually at the same time already having known well, at least four years of civil war, but then also many other violent episodes. And for our listeners who are not so familiar with the context, could you just maybe start out by saying a bit more about what the nature of that violence is that has plagued South Sudan?

Sayra: It's so important to bring this into a historical perspective as well. So South Sudan is indeed a young country, but it's one with a long history of war and it has experienced three civil wars alongside enduring low level inter-communal violence. So the nature of violence in South Sudan is multilevel, cyclical and successive. Now, with regards to civil war, South Sudan endured two liberation wars against the North before it gained independence in 2011. And the second Sudanese civil war was actually the longest civil war in African history. Now it's during the second Sudanese civil war that the Sudan People's Liberation Movement/Army or the SPLM/A was formed in 1983, and they are the main Southern Sudanese armed group who would later go on to form the volatile government that South Sudan has today. Now, in 2005, the second Sudanese civil war ended and six years later, South Sudan voted for independence in a referendum and the state of South Sudan was officially formed in 2011. Now, at this point, the fragmented leadership of the SPLM/A went from being a rebel movement at the helm of a liberation struggle to the divided government of a new state with a proven track record in militarising ethnic identities within the South. And in 2013, civil war broke out once again, this time within South Sudan, among its leadership around highly contested coup allegations. And so over time and across wars, what was once a liberation struggle in search of an identity shifted to a civil war and the absence of one. And this most recent chapter of civil war that started in 2013 ended in 2020 and involved the signing of two peace agreements, one in 2016 and the revitalized one in 2018. However, volatility, violence and impunity endures, and the sentiment really does prevail that the war is not yet gone.

Brigitte: And there has been a lot of violence, as you just explained. But of course, there have also been attempts to resolve the violence and to initiate transitional justice mechanisms. Could you tell us a bit more about the state of affairs, what these looked like and also where the process is at this moment?

Sayra: So formal transitional justice or TJ commitments in South Sudan are a fairly new addition to the landscape of peacebuilding there. Despite having a much longer history of violence and attempts at peace making, formal TJ measures only entered the scene in 2006, where for the first time ever, TJ commitments were included in a peace agreement. Now, these peace agreements of 2016 and 2018 actually include a whole chapter dedicated to transitional justice. And this is chapter five of the respective peace agreements and they put forward four transitional justice measures. The first being the establishment of a hybrid court that's set to have a mandate beginning in 2013. The second is a truth commission, which is supposed to have a mandate covering human rights abuses occurring from 2005 to the date of the

Agreement. The third is a compensation body dedicated specifically to the issue of reparations. And finally, though often forgotten, are lustration measures which in theory prohibit anybody or any persons indicted by the proposed hybrid court from holding office in the future. Now, of these four commitments to date, none of them has become operational, and the promise of formal TJ remains one on paper only in South Sudan. With that in mind, the Truth Commission is the only measure that's seen any meaningful progress with the establishment of a technical committee to guide its preparations and the completion of national consultations, a final report on this and also draft legislation on the Truth Commission's mandate, which was prepared by civil society and submitted to the government at the end of last year, in 2022.

Now, two things are worth noting about this specifically. The first being that while national consultations are now finished, they weren't actually able to fully complete their original mandate of travelling to all states in South Sudan, and they also didn't receive the promised financing to consult with refugee populations in neighbouring states. Secondly, the draft Truth Commission legislation prepared by civil society and submitted to the Government actually exceeds the mandate of the Truth Commission's technical committee, and this shows the commitment of this group of advocates to doing what they can to seeing transitional justice become operational. Now, more recently, in fact, in April of this year, 2023, the UN Commission on Human Rights in South Sudan released a report called *State of Impunity*, and it describes the prevailing climate of impunity and ongoing human rights abuses in South Sudan as a central factor in why the country remains trapped in cycles of violence. It describes the pace of transitional justice as woefully slow, and it calls for the urgent implementation of Chapter five commitments. Following from this, last month, in May of 2023, the Ministry of Justice in South Sudan organised a three-day conference on the topic of transitional justice mechanisms in the country, which had a very specific focus on the Truth Commission and the reparations mechanisms promised in Chapter five. But quite conspicuously it very explicitly did not mention the Hybrid Court or lustration measures also promised. So that's where we are today, not very far.

Tine: Would you argue that that fact that where TJ, in South Sudan is today, the fact that that's been a parcours with so many challenges? Does that also mean that people have given up on this whole idea of transitional justice altogether, or is it still very much a mobilising discourse?

Sayra: That is an excellent point. And what I notice it is that there is very much hope and appetite for transitional justice in South Sudan, but this sentiment is equally matched by the realisation that currently it remains a naive hope to think that it will become operational while the current regime maintains its grip on power. So there is absolutely a desire and a demand for transitional justice, but it is simultaneously tethered by the realities of knowing what is not possible at the moment.

Brigitte: When talking about hope, we can look at the arts, of course. And I was wondering about your article for the [Leuven Transitional Justice blog](#), you talk about the nexus between artistic practices and justice. Could you maybe shed a light on this boom of artistic practices that also deal with certain aspects of the domain of justice? How did your research look into these practices?

Sayra: In that respect, I think that the increasing recognition of the TJ value of the arts is really drawing our attention to these spaces as both a creative response to formal TJ failures and restrictions, but it's also recognising their intrinsic value and existence as embedded spaces of transformation. And that's very much what I see happening in these artistic spaces in South Sudan. So in South Sudan, artist activists describe to me how leveraging the arts as sites of truth telling, of reconciliation, of resistance and accountability lets them bypass the tremendous restrictions placed on conventional spaces of freedom of expression and assembly. So in an environment where the space for public debate has virtually disappeared, the arts instead are offering a creative channel for grassroots activism. Now, also, beyond being merely a creative or a consequentialist response to the shrinking space for conventional civil society, the arts are very much an embedded and an accessible space for communication with a very deep history as part of the local cultural ecology of communication in South Sudan. So activists describe to me how using art to mobilise calls for transformation is able to cross cultural, linguistic and socio-economic barriers among a very diverse, fragmented and highly illiterate population. It offers a common language through which to channel calls for transformation. So in that sense, when it comes to whether these artistic spaces are a form of protest, yes, they absolutely are. Though, to me in conversation. They're more often described using the language of transformation, and at times they're calling for reconciliation. At other times it's resistance and often it's accountability. But they're all unified within the shared call to action against ongoing impunity, corruption and divisiveness.

Tine: This is really interesting for me, Sayra, especially the way in which you're talking about how people described their own practice. And you, too, I think in your in your blog, you describe these as 'unconventional spaces of transitional justice'. And so I've been wondering, as you were speaking, whether artists and I think you call them artist activists, they themselves do they use that language of transitional justice? Do they use that rhetoric? And if so, is it more as a means of rejecting it, or is it indeed as something that they embrace or that they try to re-signify? Because I'm wondering, what does that do for their struggle when they use that terminology of transitional justice despite that relative failure that you were just describing?

Sayra: Yeah, no, absolutely. So I'll start by saying that the artists that I have the real privilege of working with while they do frame their art activism in the language of justice, they very much don't use the language of transitional justice specifically. And this really highlights the limiting dangers of the vocabulary of transitional justice and human rights more broadly. But it also really draws our attention to the very real difference between the practice and the mechanisms of transitional justice. So it means that even though these artistic spaces very clearly embody the goals of transitional justice, serving as sites of testimony, calling for reconciliation and accountability and creating spaces and opportunities for dialogue, they don't get recognised as spaces of transitional justice, even by the artist-authors of these spaces themselves. And as a result, they operate very much in isolation from the formal transitional justice advocacy community in South Sudan. So while overall there is, as I said earlier, a really positive outlook towards the idea of formal transitional justice in South Sudan, it's seen as something separated from the rest of the activism space there. And this separation of artistic activism from the formal TJ advocacy community is absolutely, I would say, a limiting force for both spaces. And I think that each would benefit from dialogue with the other, you know, because challenges of accessibility and inclusivity are an enduring concern among formal transitional

justice advocates, which are precisely what these artistic spaces offer. So the failure among artists activists to self-identify as transitional justice actors or spaces, and the failure to be recognised as such by the transitional justice advocacy community, siloes or separates communities that actually share common goals and whose work and reach would be enhanced through dialogue. And all of this is to say that while I don't necessarily think that there is an intrinsic benefit in adopting the language of transitional justice for these artistic spaces, I do think that there's a very real relational benefit to being a part of this wider transitional justice community that using that language grants access to.

Brigitte: Yes, on the other hand, they do maybe not use the language of transitional justice mechanisms as such, but when you look into the examples that you've also been giving in your article, there's one song *Hagiqqa*, truth. So it refers to truth telling. There's another song that you refer to about disappearances. So they do refer in informal practices to very formal mechanisms. So my question is, do they need to reappropriate that language, because actually they are involved in truth-seeking and memorialisation without calling it this way. So is it really siloed or is it just complimentary?

Sayra: That's an excellent point. And in many ways, the answer is that it's both, you know, because while these spaces are very much complementary, they do continue to exist in separation of each other. And this is where the limitation lies and this is the benefit of using the language of transitional justice to create a space for these communities to form a dialogue with one another, which is what's currently missing, precisely because these artistic practices don't get that recognition. So while using or adopting the language of transitional justice wouldn't enhance the legitimacy or the credibility or the validity of these practices because that's already there, it's embedded within them. It does offer a route to community building. And by community, I mean the larger transitional justice advocacy community in South Sudan that struggles with precisely those avenues of reach and accessibility that the arts are able to offer meaningful and fruitful solutions to.

Tine: Thank you. And I maybe want to just pick up on that point to maybe ask you a question that we ask of all our interviewees towards the end of the interview, because you're pointing out that that value of art in terms of access and also inclusivity. But are there other ways in which you feel mainstream or formal transitional justice processes or mechanisms could learn from these artistic engagements with justice or de facto with transitional justice processes? And whether you think that there is potential for innovation or forum for learning on the side of these more formal TJ mechanisms from the artistic practices that you're observing?

Sayra: Yes, I think that mainstream or formal transitional justice can learn a great deal from these artistic spaces. Fundamentally, these spaces express transitional justice hopes as they are locally defined, demanded and desired. They allow us to apply that desire-centred research framework when we when we engage with them. And this is an Indigenous research tool that was developed by Eve Tuck that I draw a lot of inspiration from in my own collaborations with artists in South Sudan. And it allows us to expand the typically western gaze of transitional justice beyond its formal mandates and towards a decolonial and desire-centred gaze that centres both the dignity and the agency of conflict affected populations. So I think that there's a great deal of untapped potential in bringing visual, artistic and cultural heritage

practices into conversation with transitional justice goals. And I think to that end, the increasingly critical turn in scholarship around formal mechanisms of transitional justice is a call to action for all of us in this incredibly fluid and evolving field of research, to locate the practice of transitional justice in the spaces where its goals are centralised and not merely within a rather static and narrow set of formal mechanisms. So the big innovation or moment of rupture that I feel that we are on the precipice of right now is a fundamental recasting of not what transitional justice is, but where it takes place. And the most important question then becomes how can we support, grow and translate these spaces into bigger, inclusive and concretely meaningful transitional justice efforts? Now, when it comes to the power of art and arts-based research in transitional justice, there's a great quote that I like to paraphrase from Maria Popova from her book *Figuring*, which isn't actually an academic text. And that just goes to show how inspiration and insight can exist in unconventional spaces. And in this book, her book *Figuring*, which is a very beautiful history of love, queerness and science, she writes that "this is the power of art, the power to relate to the world and each other with more integrity, more curiosity and more wholeheartedness."

Tine: Thank you so much, Sayra. And you see us giggling because we actually have a copy of *Figuring* lying here just beside us, and we will definitely link to it in the show notes.

Sayra: How nice! This is serendipity!

Tine: We're also a big fan of it, so thanks so much for that. I think that's a very nice note to wrap up on. And we'll not only link to that, but we will also link to some of these artistic practices that you were mentioning in the show notes so that people can also see what we were talking about, because some of these are really very much worthwhile engaging with. So I'm just going to thank you, Sayra, for sharing these insights and these reflections with us and for our listeners later this month we have the last episode of this season coming up, which will be a throwback with a special guest. So do find us again on your regular platforms two weeks from now.

Sayra: Wonderful. Thank you so much for having me.

Tine: Thanks a lot, Sayra.