


Neither prelegal nor nonlegal: Oral memory in troubled times

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Oral testimony, oral tradition and documents, as represented by written accounts of the facts and the material instruments of the acts and the records, are all ways of indirectly accessing the past. In both cases of oral and written records, what is considered 'true' is entirely dependent on the trustworthiness of its source. African societies have been communicating and storing valuable information through memory, murals and rock art paintings since time immemorial. The dominant Western canons have previously classified this memory as prelegal and nonlegal. This study, using a literature review, mainly through previous work of this author, explores oral memory as a trusted record in troubled times. It is concluded that, like digital records, oral memory requires proactive efforts to be preserved, as in both instances the content migrates from one carrier to another. Therefore, oral memory is trustworthy when transmitted in its context. Oral memory, it is argued, perfectly fits the description of a record and thus cannot be classified as either prelegal or nonlegal. The transmitter of information through oral history is no different from other media of records.

Contribution: The study contributes to the ongoing academic discourse of decolonising and Africanising archives. The study is linked to the scope of the journal for advocating the inclusion of silenced voices into the national archival system.

Keywords: oral memory; oral history; archives; records; documents; preservation.

Introduction

During my time in sub-Saharan Africa in the early 1980s, on the day the schools closed, both formative and summative results for all learners in the primary school were announced in front of everyone in the general assembly. When the results were announced, almost everyone in the village knew who the top and slow learners were. If it happened today, 2022, it would be a violation of legislation such as the *Protection of Personal Information Act (Act No. 4 of 2013)*, which requires organisations, including schools, 'to protect personal information of individuals, groups and clients', as we have seen with the nonpublication of matric results on media platforms; the dissemination of learners' personal information would be a contravention of privacy legislation. The results were announced in the general assembly because rural schools had and still have limited resources to capture marks or even produce results in the form of individual transcripts. Even assessments were written on a slate, and after they were graded, the marks were recorded in the register, and the information on the slate was wiped clean, leaving no trail of evidence. There was, however, an element of trust in the teachers that the learners who were present during the announcement would relay the results to their parents. Whilst this process can be authenticated through corroboration, Ngoepe (2020a:314) compares it to the principles of blockchain technology in terms of data authentication. According to Pathak and Bhandari (2018:4), blockchain technology is a 'system of recording information shared amongst a group of people or organisations, which is difficult to hack or change'. In the anecdote above, the learners who attended the assembly could be thought of as a 'chain'. Ngoepe (2020a) contends that the term 'chain' is used in the:

[B]lockchain technology just like in the case of the assembly where learners bear testament to what transpired at school, and thus making it difficult to tell a different story because doing so requires conspiring with all witnesses. (p. 314)

This would be the case with learners who attended the assembly for the announcements of results. No one would dispute the results or proceed on to the next grade level despite knowing full well that he or she had failed. This anecdote demonstrates how oral memory was used unconsciously even as we approached modernity.

Note: Special Collection: Social Memory Studies, sub-edited by Christina Landman (University of South Africa) and Sekgothe Mokgoatšana (University of Limpopo).

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African communities in the periphery of the country had to improvise because of lack of resources. The entire procedure outlined demonstrates how official information is transmitted and authenticated orally. Indeed, African societies have used oral transmission, rock art paintings, murals and other memory practices such as family praises to store and pass on valuable information from generation to generation since time immemorial. As Setumu (2015:35) would attest, African ancestors also left messages and stories in the form of symbols and murals etched on the rocks. Such information on the rocks does not appear to be considered a record by Western standards. One can trace their ancestral roots, for example, through family praises. When narrating the history of the Mamabolo clan in the biography of Ludwick Mamabolo, the champion of the 2012 Comrades Marathon, Ngoepe (2020b:23) indicates that the information was obtained from oral tradition through Benjamin Mamabolo, as well as from family praise, which is also considered a source of information. Lamla (2013:19) also uses family praises in his account of the descendants of Mthinkhulu I.

These types of information sources are veiled but considered records from the African perspective, although Western constructs define a 'record' differently. Hence, the Western epistemology regards oral memory as 'prelegal, nonlegal or even barbaric' (Lamla 2013:19). Western canons consider a record to appear in the four media as also propagated by archival legislation in South Africa, i.e., in paper, electronic, microfilm and audiovisual formats. The Western canon should not be set up as universally true or valid, and one's stance should not be based on the need to engage with the Western canon first, before we can move on to something secondary and local, such as the African. As Ngoepe (2019:150) has observed, 'these premises set by Western civilisation can limit the ability to deal with cultural memory holistically' and furthermore can obscure and diminish the validity and value of precolonial memory practices and traces, especially in countries that have seen a sustained attempt to control and even eradicate native cultures. However, in various parts of the world such as Australia and Canada, indigenous people are reasserting the primacy of their own archival practices and archives. For example, Hodge, Nantel and Trainor (2022) argue that:

[T]he 2015 Truth and Reconciliation Calls to Action and the subsequent response work by the Steering Committee on Canada's Archives indicate that the profession is necessarily evolving with the aim of an inclusive, community-based approach to archival appraisal and practice. (p. 1)

This situation also rings true in African countries such as South Africa, especially with regard to archival holdings that include previously marginalised communities. Bhebhe and Ngoepe (2021a:60) contend that South Africa is one of the few African countries with an active oral history association that helps to set the agenda for oral memory in the country to build an inclusive archive. Therefore, it is appropriate to ask how oral memory can be trusted, sustained and practised in troubled times.

Oral memory has primarily been used in Africa and elsewhere, especially in countries such as Canada and Australia, to bring an 'indigenous knowledge system into the Western-dominant archival dialogue' (Ngoepe 2020a:308). Nevertheless, in South Africa, Zimbabwe, Botswana and other sub-Saharan African countries, oral memory is often regarded as secondary to archives and at times as a factor working against proper records management practices (Archival Platform 2015). Most often, people believe that truth can only be found in written presentation, ignoring the fact that oral history and other forms of recording can also provide indirect access to the past (Ngoepe 2020a:303). This article challenges these assumptions, demonstrating that what is considered truth in both recorded form and indigenous memory practices is entirely dependent on the trust of the source. Even in the African traditions, as in the case of disruptive technology such as blockchain, a witness is always required to bear testament to any cultural activity that has been performed. For example, as Ngoepe (2020a:310) would attest, a delegate cannot pay a dowry without witnesses. As mentioned earlier in the introduction, the school results were announced in front of learners to serve as witnesses to one another. This opinion piece discusses the following topics: is oral memory prelegal and nonlegal; is oral memory relevant to the current situation; does the Fourth Industrial Revolution (4IR) herald new opportunities for oral memory; how is oral memory disrupted and what is the future of oral memory?

Contextual setting

In order to understand the importance of oral memory, both in its present context as an archive and in what it purports in the future, especially in South Africa, one needs to first comprehend its historical footing. Oral memory has been relied upon since time immemorial, as the need for recollection occurs naturally in any person, community, institution or country. The first people to keep an oral record are remembrances. According to Duranti (1994:83), the 'remembrances were trusted with the responsibility of remembering contracts, laws, rules and sanctions'. Thereafter, such memories were transmitted orally to juniors or other people through recitation. Ngoepe (2012:44) provides an example of the 'ancient traders between sailors and merchants who relied heavily on the remembrances whose tasks were to memorise the contours of the ships and contracts'. Once contracts had been agreed upon orally, the sailors would go around the oceans to buy goods and return months later. When the time for exchange came, the remembrances would be summoned for recollection of memories to identify the merchant vessels. Perhaps one should not go any further than the Gospel of Luke 1:14, where Luke makes a disclaimer in his introductory chapter that the Gospel was written from second-hand information narrated by eyewitnesses. Even the first book of the Bible was based on oral history, as Moses, to whom the chronicle is attributed, was not yet born when the events in Genesis unfolded. However, it should be noted that there is an argument that

the Pentateuch was written not by Moses but by Ezra, the priest in Babylonian Exile, using Moses' notes.

According to Katuu (2003:83), 'transcribing oral history into a written record compromises its characteristics in the same way as one prints an e-mail which affects the evidential weight'. Put differently by Ngoepe (2020a:309) as converting 'oral memory into written records', such memory loses its 'saltiness (oralness)' and is no longer oral memory once converted. Therefore, Masuku and Pasipamire (2014:118) equate oral memory to an ecosystem which preserves itself naturally and does not require conversion. Ngoepe and Setumu (2016:29), on the other hand, support 'the conversion of oral memory for the purpose of preservation'. However, these authors recommend that communities preserve their own history in a traditional formal manner, as has been done through the Blouberg-Makgabeng-Senwabarwana (BMS) heritage project for recording traditional music and also preserving other forms of intangible and tangible heritage resources in the BMS area, such as stories, histories, old village settlements, old missionary buildings, rock art paintings, archaeological sites and water holes. As Ngoepe (2020a:309) would concur, letting oral history to preserve itself organically may result in problems such as the griots or the carriers of oral memory changing the narratives. Oral memory faces the same challenges as recorded information, as it may have diverse narratives and interpretations of past events. This is often seen in disputes for kingship.

The problem

Since South Africa attained democracy 28 years ago, the archival landscape has remained unchanged, as it is still Western-dominated with little or no Africanisation of archives. It reminds me of the Nollywood movies from Nigeria, where at the beginning of the movie they show a dog, and 20 years later, the same dog is still there unchanged. True to the statement of the archival luminary Ketelaar (1992) to the audience of archivists in South Africa, 'what is left in the aftermath of the revolution often bears a resemblance to the past'. Indeed, archival holdings in South Africa still reflect apartheid and colonialism (Archival Platform 2015). As things change, it is the more they remain the same. As Ngoepe (2020a:308) would attest, capturing memories in the democratic South Africa still focuses on elite members of society as a struggle of heroes whilst neglecting the marginalised communities and thus 'perpetuating the view that the memories that are worth preserving are for those in power'. This is also emphasised by Harris (2015) when arguing that 'projects for recording memories in South Africa are not guided by national strategies or plans but rather political agendas of those who are in charge in a particular period'. Indeed, such activities or events are often conceptualised to meet immediate needs. As a result, the products of such memory projects are not accessible to the public. For example, think of the tapes and videos for oral history projects that are stored in boxes at the National Film, Video and Sound Archives. The relevant question would be from the son of a carpenter from Bethlehem: why light a lamp

and cover it with a bowl? Instead, you should set it on a lampstand, where it gives light to all in the house. These audiovisual records, which are by-products of oral memory, should instead be catalogued and made available to the public.

As observed by Tough (2012:245), scholars are articulating criticisms of the persistent colonial archives in almost all African countries. Such critics propagate oral memory programmes to bridge the gaps created by colonialism and apartheid in South Africa. In his book *Ghosts of Archive*, Harris (2020) calls for capturing of ancestral voices in the archives to fill the void created by the colonial and apartheid governments. This way the archival system will also cater for the marginalised and muted voices. Mostly, the established Western archiving system as applied in South Africa caters only to the elite and those who are in power. This is perpetuated even in the democratic South Africa, as Bhebhe and Ngoepe (2021b) argue that even in a critical emancipatory environment there is elitism. This situation is best described simply by Ngoepe, Maluleka and Shekgola (2021:26) through the experience of the schools they visited for a storytelling community engagement project, where primary school learners were unable to take part freely as teachers frequently interrupted them and spoke on their behalf. In this regard, Ngoepe et al. (2021:26) report an incident where learners were shy or unwilling to participate in storytelling competition as teachers would interrupt them when they narrated stories. This is a continuation of elitism in a critical emancipatory environment as alluded by Bhebhe and Ngoepe (2021b).

Is oral memory prelegal and nonlegal?

Having discussed the issues in the preceding sections, one can ask if oral memory is prelegal and nonlegal. When civilised Europe colonised Africa, 'the continent was seen as a clean slate' (Lamla 2013:19). However, the Western world failed to recognise that Africans' political, cultural and social interaction model was oral in nature and valued the art of dialogue highly. This included all walks of life from resolving disputes, astrology, storytelling, training and exchanging various types of messages to birth and death announcements. Because of the colonisers' perspective on oral memory, it was classified as 'prelegal and nonlegal'. Duranti (1994:83) defines prelegal as 'an era before the rule and law were established, especially with reference to the uncivilised world', whilst nonlegal is referred to as 'not related to the law or qualifying for or phrased in the manner of the law'. Only the laws of Western civilisation was considered legal and recognised as universally true. In this regard, oral memory was cast aside and not given time and space to develop, although it is not limited by space as is recorded information. As a result, colonial institutions have perpetuated their own prejudices against non-Western worldviews in order to mobilise public memory in support of ongoing colonialism.

Despite being classified as prelegal and nonlegal, Westerners have surpassed us in incorporating oral history into school and university curricula, as well as other aspects of life. This is currently taking place in Canada through the Truth and Reconciliation Commission (TRC), Australia and the United States of America as they attempt to accommodate indigenous peoples. For example, the Canadian Society of Archivists will host a conference in 2022 focused on confronting and rethinking traditional Western theories on memory work in order to forge a path of solidarity through oral memory. In contrast, I believe that some establishments have taken us one step forward, whilst others have taken us five steps back. In the words of Wole Soyinka, it is as if we are on a journey to Mandeland, a journey where one never reaches the destination. We should harness the power of archives and memory to evolve into something new. Archives are repositories that can aid in the shaping of public and community memory. As argued by Weiss (2009), the situation, as in other fields, will be highly likely to lead to those previously in support of oral memory becoming record gate-crashers whilst those declared prelegal and nonlegal become gatekeepers.

Ngoepe and Saurombe (2021:54) indicate that there have been attempts in South Africa, as far back as 1998, for curriculum reform in schools to include oral history. It is also emphasised by Lekgwathi (2014) that there is a growing need to use oral history in schools with the aim of reconstructing and recovering previously muted voices. As a result, the Oral History Association of South Africa is also making progress in this area. This is an extraordinary renaissance and opportunity to transform archival holdings by correcting biases in archival repositories, assisting in the discovery of previously unknown written documents and opening new areas of inquiry (Lekgwathi 2014). Ngoepe (2019:166) further shows the importance of oral memory by indicating that 'the TRC process in South Africa was mainly based on oral evidence of both the victims, witnesses and perpetrators of apartheid era'. This in turn highlights the importance of memory in healing processes and nation-building. Indeed, the TRC relied heavily on oral memory, as did the Zondo Commission on State Capture (2018–2022). Once such memory is captured, Hatang (2000) recommends that:

[I]t should be reflected in the catalogues that the narratives in the archive's repository are not the only copies, but also [make] an attribution to the provenance of the stories to the original sources. (p. 29)

However, as much as oral memory is not viewed by this author as prelegal or nonlegal, it is not immune to the disruptions that are happening in the world.

Disruptions

Disruption is an event, activity or process causing a disturbance or a problem. As Rogers (2017) observed, disruption is on people's minds, as well as within the archival and oral history fields. The disruptions that affect the work of memory professionals arise from the ubiquitous and rapid

proliferation of technology, especially those technologies that heralded the 4IR. The world is ravaged by the COVID-19 pandemic and disrupted by the 4IR, which also heralded the post-truth era (Ngoepe 2021:1). We should know that disruptions brought by technological proliferation or pandemics are not new, hence the rabbi from the book of wisdom, Ecclesiastes 3:15, reckons that 'whatever is has already been'. Therefore, we have to look back in order to move forward. We should take the cue and know that the issues we are facing with archives and oral history are not new. They have been here in the past; they are here now in the present and they will be with us in the future. We should remember that recorded information exists in order to overcome the weaknesses of human memory. Ngoepe (2020a:308) provides an example of producing minutes of the meeting which are first deliberated orally before a consensus is reached, resulting in the captured minutes. This implies that information is first conveyed orally before it is converted to other formats such as paper or digital. Just because it is not written does not mean it does not exist, or just because it is written does not make it true. As Rogers (2017) argues:

[D]isruptive technologies that drive the fourth industrial revolution have changed the way we communicate, allowing near-instant communication across international and national boundaries – and not just communication, like the telephone, but recorded communication – as everything done with the gadgets leaves [an] audit trail. (n.p.)

This kind of disruption demands control as it creates tension. Rogers (2017), when addressing the South African Society of Archivists audience, contends that control is exercised through policy and legislative framework, as well as procedures, standards and codes of ethics. Indeed, a code of ethics is necessary as part of professional identity. However, the relevant question is whether they are adequate in the 4IR and during the COVID-19 pandemic to meet the social and technological trials. For example, if we have a robot as a security guard and there is a coding error and it starts shooting at people, who would be blamed?

Numerous studies on the conversion from oral memory to other formats contend that once converted, stories become static and no longer fluid and evolving when they are (re) narrated. The fluidity of oral memory makes it a 'liquid communication medium'. Mosweu and Ngoepe (2019:53) define liquid communication as 'content that can easily flow backward and forward between involved parties such as SMS, social media content and e-mails as these are not restricted by time or space'. One can argue that oral memory is the same, as it is shared from one person to another, who may in turn retell the narrative in a variety of ways. The main issue with liquid communication is that it can appear in one instant and then vanish in the next. If such content is not properly captured as a record, it may be lost, jeopardising the cultural and documentary heritage of the country. As a result, measures need be put in place to ensure that the story's core message is not lost even when it is retold.

The advantage of oral history is that the storyteller retains control over his story even after it has been narrated. The griot can still narrate the story to others at his own pace, resulting in many copies that are not identical because the people in the audience can also (re)narrate the same story in a slightly different way. This also brings up the question of ownership. Oral history, like open-source software, allows stories to be 'copylefted'. Ngoepe (2015:1911) defines copyleft as a 'legal arrangement that allows software or artistic work to be freely used, modified and distributed on the condition that anything derived from it is subject to the same conditions'. In this regard, the product is made free in the sense that it is placed in the public domain 'uncopyrighted' and thus 'copylefted' during the process (Ngoepe 2015:191). This can also be extended to oral memory.

Josias (2011:96) views recorded information as not having the same impact as those who are witnesses to what happened. This is also the case with the court system in South Africa, as it relies more on the oral testimony of those who have first-hand experience than records. Oral memory will stand the test of time because it is always green, and it grows anew every time it is narrated, because the narrator can modify the narrative. Unlike digital records, it does not have complicated mechanics. As Duranti (1994:84) observed, the 'human voice, with all of its cadence, nuance and emotion', is capable of conveying far more than the written page. When it comes to oral memory, according to Ngoepe (2020a:315), 'there is an opportunity to question why the story is told, who the narrator is, the place and time where it is narrated'. Oral memory gives the voiceless a voice, but we should be cognisant that elitism exists even in critical emancipatory movements.

Conclusion and way forward

Based on the foregoing discussions, it can be concluded that oral memory is neither prelegal nor nonlegal. It is therefore necessary for archival scholars and practitioners to revisit the definition of a record so that it is extended to include memory, murals, rock art paintings and other objects. This method would cover the definition of a record in the African context, especially memories which do not fit the Western epistemology of records. Similar to records, especially in digital format, oral memory preservation requires proactive efforts, i.e., migration from one carrier to another. Therefore, oral memory perfectly fits the description of a record. If oral memories are included in the definition of archives in legislation, it may offer an opportunity not to be missed to Africanise archives. As Ngoepe (2020a:115) would attest, in the African context, both a written record and oral history are used to complement each other for evidence purposes. Furthermore, the court system relies more on oral testimony in some of the cases. This has also been demonstrated during the Zondo Commission on State Capture in South Africa, which took place between 2018 and 2021, with the final report released in 2022.

This study calls universities to revise the curriculum and introduce programmes in indigenous knowledge systems

with oral history as one of the modules and methods. OHASA can support such initiatives through the creation of standards (both for the Council on Higher Education and the South African Bureau of Standards). The National Archives of South Africa should revisit and update the National Register of Oral Sources to ensure that all oral memory projects in South Africa are captured.

Rather than focusing on decolonisation, perhaps we should consider starting with a clean slate and focus on Africanisation. Decolonisation would otherwise mean we are focusing on standards set by the West. We should rather, through the government, focus on a 30-year experimental programme where indigenous schools are established with a full IKS programme from astrology to medicine, with the learners starting at Grade R, sponsored by the government over a period of time from primary school to secondary school to tertiary level until placement in the workplace. As we are now living in a scientifically authenticated world, with disruptive technologies driving the 4IR, perhaps oral memory practitioners should also consider involving themselves in international projects such as the one by InterPARES AI 4.0 to determine the following:

- Which artificial intelligence (AI) technologies can be used to acquire and capture oral memory?
- How can these AI technologies be used to process acquired audiovisuals?
- How AI can be used to establish links between oral histories and recordings over time?

This should be done taking into consideration that the moment oral sources are captured by whatever gadget or means, they cease to be oral. However, archival repositories are charged with the mandate of collecting oral memories; when they do so, it is necessary to use disruptive technologies. Finally, the overview given in this paper has obvious limitations which include only using sources from scientific publications and anecdotal evidence. Therefore, future studies on the legality of oral memory should consider using oral sources for comparison and validation.

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Competing interests

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Author's contributions

M.N. is the sole author of this article.

Ethical considerations

The low-risk ethical clearance application was reviewed and approved by the Department of Information Science

Research Ethics Committee in line with the University of South Africa's Policy on Research Ethics and the standard operating procedures on research risk assessment (No. 2021/07_CREC_CHS_2021), also approving participants' names to be publicised as the study also gives recognition to the historical unsung athletes.

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Data availability

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Disclaimer

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