

March 2016

Notes from the Field: Monitoring Human Rights Trials: Information Strategies Developed in Argentina's Transitional Justice Process

Lorena Balardini

University of Buenos Aires, lbalardini@derecho.uba.ar

Follow this and additional works at: <https://ir.lib.uwo.ca/tjreview>

<http://dx.doi.org/10.5206/tjr.2016.1.4.7>

Recommended Citation

Balardini, Lorena (2016) "Notes from the Field: Monitoring Human Rights Trials: Information Strategies Developed in Argentina's Transitional Justice Process," *Transitional Justice Review*: Vol. 1 : Iss. 4 , Article 7.

DOI: <http://dx.doi.org/10.5206/tjr.2016.1.4.7>

Available at: <https://ir.lib.uwo.ca/tjreview/vol1/iss4/7>

This Article is brought to you for free and open access by Scholarship@Western. It has been accepted for inclusion in Transitional Justice Review by an authorized editor of Scholarship@Western. For more information, please contact tadam@uwo.ca, wlsadmin@uwo.ca.

Notes from the Field:
Monitoring Human Rights Trials: Information Strategies
Developed in Argentina's Transitional Justice Process

Lorena Balardini, University of Buenos Aires
lbalardini@derecho.uba.ar

Abstract

Although the role of local Human Rights Organizations (HROs) has attracted some attention in the transitional justice literature, this note from the field examines an under-studied HRO strategy: the production and systematization of information. In particular, it focuses on the Center for Legal and Social Studies' (CELS) efforts to promote accountability for the gross human rights violations committed during Argentina's last period of military rule (1976–1983). It argues that the production and systematization of information is foundational for transitional justice advocacy, and CELS' work has influenced Argentina's transitional justice processes and the broader struggle for accountability. The main focus of the note is the use of information for post-transition legal accountability, the purpose of which is to set judging standards and point out difficulties in prosecuting systematic human rights violations. This is addressed by describing a specific information strategy implemented by CELS. This information deals with the status of trials for past human rights violations ongoing throughout Argentina.

Introduction

Argentina's transitional justice experience for the gross human rights violations committed during its last period of military rule (1976–83)

has been extensively explored by scholars and has often been considered “exceptional” for several reasons. First, Argentina is the only country in Latin America, and one of the few in the world, where military high commanders were prosecuted early in the transition.¹ Second, in the three decades following the transition, the country has implemented what can be considered “a full menu” of transitional justice mechanisms: a truth commission, restitution of rights, reparations, criminal and ‘truth’ trials, and lustration.²

To explain the existence of such a remarkable transitional justice approach, scholars have often referred to the important role of local human rights organizations (HROs), and have studied their political actions, such as denunciations and mobilization both

¹ See, among others, Carlos Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996) and Carlos Acuña and Catalina Smulovitz, *¿Ni olvido ni perdón? Derechos Humanos y tensiones cívico-militares en la transición argentina* (Buenos Aires: Centro de Estudios de Estado y Sociedad, 1991).

² Catalina Smulovitz, “The Past Is Never Dead: Accountability and Justice for Past Human Rights Violations in Argentina” in Vesselin Popovski and Mónica Serrano, eds., *After Oppression: Transitional Justice in Latin America and Eastern Europe* (Tokyo: United Nations University Press, 2012).

domestically and transnationally.³ They also have employed legal strategies, lodging cases in local and regional courts.⁴

This note from the field analyzes a different strategy implemented by Argentine HROs, namely *the production and systematization of information*. This underappreciated activity is foundational, and has influenced Argentina's transitional justice process and the broader struggle for accountability. Although the production of information is a central element of transitional justice processes, it has not received adequate attention. Existing studies focus on how HROs use information to create awareness and to publicly

³ For only a partial list of this literature, see Acuña and Smulovitz 1991; Alison Brysk, "From Above and Below: Social Movements, the International System, and Human Rights in Argentina," *Comparative Political Studies* 26.3 (1993): 259-85; Alison Brysk, *The Politics of Human Rights in Argentina: Protest, Change and Democratization* (Stanford: Stanford University Press, 1994); Alyson Brisk, "The Politics of Measurement: Counting the Disappeared in Argentina," *Human Rights Quarterly* 16.4 (1994) 676-92; Alison Brysk, ed., *Globalization and Human Rights* (Berkeley: University of California Press, 2002); Elizabeth Jelin, "La política de la memoria: el movimiento de derechos humanos y la construcción democrática en la Argentina" in Carlos Acuña et al., eds., *Juicios, castigos y memorias. Derechos humanos y justicia en la política argentina* (Buenos Aires: Editores Nueva Visión, 1995); Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (New York: Cornell University Press, 1998).

⁴ See, for example, Jo-Marie Burt, "The New Accountability Agenda in Latin America: The Promise and Perils of Human Rights Prosecutions" in Katherine Hite and Mark Ungar, eds., *Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America* (Washington DC and Baltimore: Woodrow Wilson Centre Press and the John Hopkins University Press, 2012); Cath Collins, *Post-Transitional Justice: Human Rights in Chile and El Salvador* (University Park: Penn State University Press, 2010); Par Engstrom and Gabriel Pereira, "From Amnesty to Accountability: The Ebb and Flow in the Search for Justice in Argentina," in Francesca Lessa and Leigh Payne, eds., *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (New York: Cambridge University Press, 2012); Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W.W. Norton and Co., 2011).

denounce the crimes to obtain condemnation.⁵ Yet few studies analyze the way HROs use it to achieve accountability.

Here, I focus on HROs' data-collection strategies, considered in the context of cooperation and tension between them and state agencies. I argue that data collection first and systematization afterwards were both crucial information strategies in the struggle for the recognition of human rights offences and for them to be considered in the framework of transitional justice mechanisms. In addition, implementing such strategies led to the emergence of an "information policy" that has been an important contribution of the HROs to the transitional justice process. In particular, it allowed human rights violations to be publicly recognized, and to turn them into criminal cases.

Moreover, this note focuses on the uses of information for post-transition *legal accountability*, the purpose of which is to set judicial standards and point out gaps and difficulties in prosecuting gross human rights violations. This is addressed by describing a specific information strategy implemented by one HRO: the Center for Legal and Social Studies (CELS for its Spanish acronym). The information produced by CELS deals with the *status of trials for past human rights violations ongoing throughout the country*. This information strategy corresponds to the current stage of the transitional justice process in Argentina, which the literature has characterized as "post-transition" or "late justice."⁶ Its antecedent is information on crimes, victims, and

⁵ See Brysk, "The Politics of Measurement"; Shayne Weyker, "The Ironies of Information Technology" in Alison Brysk ed., *Globalization and Human Rights* (Berkeley and Los Angeles: University of California Press, 2002); Richard Claude and Thomas Jabine, "Exploring Human Rights Issues with Statistics" in Richard Claude and Thomas Jabine, eds., *Human Rights and Statistics: Getting the Record Straight* (Philadelphia: University of Pennsylvania Press, 1991).

⁶ Post-transitional justice focuses on the continued legal pursuit of justice for past human rights violations in order to dismantle amnesty provisions that prevented criminal judgment. See Collins 2010: 2-3. Among the external phenomena that influenced this process is progress in international human rights law; for further

perpetrators produced by HROs during the dictatorship and the transition.

Information Strategies in Transitional Justice Processes

This note's focus is on a particular kind of information, which has been *systematized* through a series of operations. Michel Foucault defined systematization as a technique for the standardization of records that enables correlating different elements of a phenomenon elaborating series and patterns, and setting standards. He attributes decisive importance in this process to the so-called "small techniques" of notation, registration, and creation of records. Such documentary techniques allow the creation of a "case," a set of circumstances that qualify as facts.⁷ This note presents a thorough description of these "small techniques" deployed by Argentine HROs in the post-transition period.

detail see Leonardo Filippini, "Criminal Prosecution in the Search for Justice," in CELS and ICTJ, eds., *Making Justice: Further Discussions on the Prosecution of Crimes against Humanity in Argentina* (Buenos Aires: Siglo XXI Editores, 2011). Other external phenomena include the "Pinochet effect," which refers to the impact of the detention of Chilean ex-dictator Augusto Pinochet in 1998 in London, and the cases filed overseas against Argentine military personnel based upon universal jurisdiction. See Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (University of Pennsylvania Press, 2005) and Lorena Balardini, "Argentina: the Regional Protagonist," in Elin Skaar, Cath Collins and Jemima Garcia-Godos, eds., *Transitional Justice in Latin America: The Uneven Road from Impunity towards Accountability* (London: Routledge, forthcoming). In this note, I consider Argentina's post-transitional justice period to start with the first judicial decision declaring the amnesty laws unconstitutional in 2001 in the landmark "Simón" case filed by CELS and Grandmothers of Plaza de Mayo. The Supreme Court completely dismantled the juridical effects of amnesty through its final 2005 ruling in the case. See CELS, "Annual Report on Human Rights in Argentina, 2008," (Buenos Aires: Siglo XXI Editores, 2008): 51.

⁷ Michel Foucault, *Vigilar y castigar. Nacimiento de la prisión*. (Buenos Aires: Siglo XXI Editores, 1976): 195-96.

The institutional frame for the deployment of these techniques is either an authoritarian regime that systematically violates human rights or a democratic government during transition/post-transition that faces serious challenges, among them the production of reliable information on past crimes and/or on its own transitional justice policies. NGOs demand tools, methodologies, and specific inputs to monitor state actions and policies. Following Laura Pautassi, incorporating new and better instruments for the measurement of rights constitutes a useful tool for the processes of evaluation and supervision of state human rights obligations.⁸ Damián Loreti and Luis Lozano argue that the “right to information” involves positive state obligations, as it must remove any obstacles for access to produce, preserve, and disseminate information. They highlight that information relating to gross human rights violations should be available for interested parties.⁹ Following Valeria Barbuto, this note reflects upon the production of information on human rights violations as a territory of networking alliances as well as tensions and disputes.¹⁰

The information strategies implemented by Argentine HROs were sustained in exchanges and learning within the framework of *transnational advocacy networks*. Exchanges between these networks’ members consist of a “dense flow of information and services.”¹¹ This

⁸ Laura Pautassi “Indicadores en materia de derechos económicos, sociales y culturales. Más allá de la medición” in Víctor Abramovich and Laura Pautassi, eds., *La medición de derechos en las políticas sociales* (Buenos Aires: Editorial del Puerto, 2010): 5.

⁹ Damián Loreti and Luis Lozano, *El derecho a comunicar. Los conflictos en torno a la libertad de expresión en las sociedades contemporáneas* (Buenos Aires: Siglo XXI Editores, 2014): 253.

¹⁰ Valeria Barbuto “Reflexiones sobre los procesos de documentación de la violencia estatal como estrategia de intervención política y jurídica,” paper presented at the VIII Meeting of Mercosur Anthropology (Buenos Aires, 2009): 14.

¹¹ Kathryn Sikkink, “The Emergence, Evolution, and Effectiveness of the Human Rights Network in Latin America,” in Elizabeth Jelin and Eric Hershberg, eds.,

occurs through exchanges of reports, which are intended to influence, using international partnerships, domestic politics. This is what Margaret Keck and Kathryn Sikkink have called the *boomerang pattern*, in which local organizations generate a change in the policy of their own state by working with international partners who exert pressure. These authors developed a typology of tactics that networks use in their efforts to persuade society; among them there are *information politics*, or the ability to quickly and credibly generate politically usable information and move it where it has more impact.¹²

As part of these networks, HROs' role in information politics is crucial. They serve as alternative sources of information, especially when a state is charged in the public sphere with systematic human rights violations.¹³ Human Rights Information and Documentation Systems (HURIDOCS) has argued that information is essential for the protection and promotion of human rights:

There is need to promote the work of documentation, organization and classification of data; this way, essential elements to make decisions promptly are provided. Documentation must be oriented to action, to the needs of its users. This work involves increasing access to sources of information, adopting modern classification systems that take the advances of computer science and establishing expedited channels to disseminate the information.¹⁴

Information flows in these networks include claims and testimonies of crimes. HROs' emphasis on collecting testimonies that

Constructing Democracy: Human Rights, Citizenship and Society in Latin America (Boulder: Westview Press, 1996): 73.

¹² Keck and Sikkink 1998: 12-13, 16.

¹³ *Ibid.*, 19.

¹⁴ HURIDOCS, "Encuesta sobre la Disponibilidad de información y documentación de derechos humanos en América Latina y el Caribe" (Roma: 1983): 110.

document repression serve a legal function and promote an interpretation of what happened during illegal repression. Testimonies help to establish a pattern of state responsibility, strengthening HROs' claim for accountability.¹⁵ As part of information politics, activists who use testimonies frame them simply, because their purpose is to persuade people and stimulate them to act. When the purpose is to build a case to obtain legal accountability, however, Keck and Sikkink caution that there are several layers of prior mediation/translation performed on the information. Systematization is the tool for this. However, they argue that HROs legitimize the use of information from testimonies, supplementing it with technical and statistical information: what they consider "a two-level approach" as part of the effort to make a more precise description of the facts.¹⁶ Dorothy Thomas has described this as "human rights methodology," which is based on producing credible, well-documented information to promote change.¹⁷ "The message matters," says Alison Brysk.¹⁸ HROs' ability to succeed in their accountability goals is related to the content of the complaints. In terms of the information they produce, Argentine HROs provide coherence and credibility. The "internationalization" of their information contributed to the construction of this credibility and somehow also to the protection of organizations during the authoritarian period.

Shayne Weyker claims that "well-researched, professionally presented, truthful and factual information, turned out quickly enough to be passed on to the right people at the right time" produces results for HROs.¹⁹ They use factual information to reach international audiences and challenge local institutions. Brysk argues that, as long as

¹⁵ Brysk, "The Politics of Measurement": 14-15.

¹⁶ Keck and Sikkink 1998: 19.

¹⁷ Dorothy Thomas, "Holding Governments Accountable by Public Pressure," in Joanna Kerr ed., *Ours by Right: Women's Rights as Human Rights* (London: Zed Books, 1993): 83.

¹⁸ Brysk, "The Politics of Measurement": 13.

¹⁹ Weyker 2002: 116-17.

the state cannot monopolize information and legitimacy, organizations and social movements gain power by projecting “cognitive and affective” information to form international alliances. This distinction between two types of information can be useful to understand the production of information by HROs in Argentina. It allows glimpsing an informal “division of labor” between different organizations around the production of information between: a) Information as “political theater”: affective information to create public awareness of the crimes; and b) “Documentation”: cognitive information that gives an understanding of the extension, details, and mechanics of the problem, needed to take policy decisions.²⁰

Examples of the first type of information are the strategies deployed by relatives’ organizations. They issue press reports and articles in national and international media and letters to well-known actors in politics, religion, and culture to denounce crimes. This type of information strategy seeks to create an emotional impact by appealing to symbols and resources linked to the affection and the impact of repression in families.²¹ The information that can be framed in Brysk’s “cognitive” category is the type on which this note will focus because it corresponds to the monitoring and systematization strategies. Systematization contributes to the identification of repressive patterns, which are crucial for the construction of criminal cases.

However, it is important to add two other key elements. First, Weyker’s concept of “computerization” is important. Information lies at the heart of what HROs do, and technological advances allow them to manage it more effectively. The first real strength of information technology for HROs is that computers improve the ability to marshal facts (cognitive information) on their side into a persuasive, logical argument. Information technology speeds up, enlarges the scale, and

²⁰ Brysk 1993: 264.

²¹ This type of information has been collected from the Mothers of Plaza de Mayo’s historical archive.

improves the quality of information collection and processing by HROs.²² The novelty of the computer in the history of these techniques is that it facilitates the exteriorization of human beings' mental faculties for information processing.²³ A final important element is the production of statistics. Richard Claude and Thomas Jabine argue that those who work in the human rights field know that fixing the responsibility for violations requires an assessment of how, how much, and why human freedoms are in danger. Regarding human rights data, statistics can make the difference. They intend to "set the record straight," which is of primary importance in the human rights field. These authors bring an interesting approach; they believe that HRO/NGO reports do not always provide systematic or comprehensive data. However, they point out that they provide monitoring.²⁴ Human rights monitoring is able to track changes in policy when there are quantifiable standards by which to present the data.

Information and Transitional Justice in Argentina

The systematic repression perpetrated during the last dictatorship in Argentina established a complex social environment in which several HROs were active. Some of these groups existed before the conflict emerged; others were formed by families during the escalation of violence. This way, the fight for human rights became an important social movement.²⁵ CELS has played a critical role in HROs' post-transitional information strategies. It was created in mid-1979 by a group of parents of disappeared people. However, the organization did

²² Weyker 2002: 115-18.

²³ Alain Supiot, *Homo juridicus. Ensayo sobre la función antropológica del derecho* (Buenos Aires: Siglo XXI editors, 2007): 170.

²⁴ Claude and Jabine 1991: 5-7,16.

²⁵ See, among the extensive literature that covers this subject, Ludmila Da Silva Catela, *No habrá flores en las tumbas del pasado. La experiencia de reconstrucción del mundo de los familiares de desaparecidos*. (Buenos Aires: Ediciones Al Margen, 2001): 65-66; Jelin 1995: 105; Brysk, *The Politics of Human Rights in Argentina*: 45-49.

not base its identity on this condition, but rather on its professionalism and its founders' legal background. It also sought to reproduce the pragmatic and professional manner of international entities, especially regarding its work with information. According to CELS, "a testimony or complaint was not enough; systematic documentation work was needed with permanent contact with these international institutions to be able to call attention to the serious violations to human rights that were being carried out in Argentina."²⁶

CELS and other Argentine HROs have been pioneers in the use of information strategies. They have designed tools ranging from the simplest or "artisanal" to the most methodologically sophisticated in order to produce reliable data supportive of their demands for accountability. The dictatorship had kidnapped, tortured, murdered, and disappeared its political opponents. Legal accountability for these crimes was a primary objective during and after the transition. Here, it is important to highlight that the legal field and the set of rules established by it are an important influence on the strategies designed by HROs in the pursuit of accountability.²⁷ Legal professionals also had a clear influence on CELS' strategies analyzed here.

HROs' systematization strategies have evolved over time. During military rule, in the context of the 1979 visit of the Inter-American Commission on Human Rights (IACHR) to the country, HROs emphasized *the production of repressive patterns* that reflected regularities in the cases. It was the first effort to move from the

²⁶ Comisión Provincial de la Memoria, *Historia de Organismos de Derechos Humanos - 25 años de Resistencia*. Dossier 4: Centro de Estudios Legales y Sociales (Buenos Aires: No Date).

²⁷ Pierre Bourdieu defines the juridical field as "the site of a competition for monopoly of the right to determine the law. Within this field there occurs a confrontation among actors possessing a technical competence which is inevitably social and which consists essentially in the socially recognized capacity to interpret a corpus of texts sanctifying a correct or legitimized vision of the social world." See Pierre Bourdieu, "The Force of Law: Towards a Sociology of the Juridical Field," *Hastings Law Journal* 38 (1987): 805-53.

documentation and gathering of information to the systematization of testimonies, even before the possibility of using technological tools. All these elements were included in a “secret” report that the organizations delivered to the IACHR.²⁸ During the transition, *building legal cases to be brought to the courts, and the search for the truth* drove the strategy. In 1983, HROs formed the “Technical Commission for Data Collection” to pool all the information from their archives and to put together cases in a complete fashion in order to deliver all the information to the newly elected government. Settling a legal case implies defining the circumstances of the repressive act, as well as identifying possible perpetrators. The database of the Technical Commission was ahead of its time because it provided the unique opportunity to relate repressive acts with responsible parties and locate them within the military chain of command. The commission prepared a report for the newly-elected Congress and shared the database with the National Commission on the Disappearance of Persons’ (Spanish acronym CONADEP) Documentation and Data Processing unit.²⁹ After the Full Stop and Due Obedience laws put a halt to criminal cases, HROs produced *statistics on “people no longer prosecuted”* to highlight the injustice of amnesty and to hopefully rejuvenate the criminal justice process.³⁰ During the post-transition phase, there were changes in information strategies. After the reopening of criminal cases for

²⁸ Unfortunately, all the copies are lost; research was based on a draft found in CELS’ archives and in an interview with the only living person who was involved. Author interview with Noemi Labruno, president of Asamblea Permanente por los Derechos Humanos (APDH) Neuquén and former member of CELS, 29 January 2014. All author interviews were conducted in Buenos Aires.

²⁹ The report was delivered on 2 August 1984. A draft of the report was also found in CELS’ archives. Author interviews with Rafael Mazzella, computer expert from the Technical Commission, 28 March 2014 and with Daniel Salvador, secretary of Documentation and Data Processing from CONADEP, 26 November 2014.

³⁰ This was published in the booklet “Guilty for society, unpunished by the law” in 1988. The perpetrators are not referred to as “acquitted” or “amnestied” but as “no longer being prosecuted” (*desprocesados*, in Spanish), as a sign of protest.

dictatorship-era human rights violations, HROs focused on bringing cases to courts throughout the country. The cases were based upon information produced in the framework of transitional justice mechanisms during the transition. This way, during the post-transition period, HROs focused on the production of monitoring information, as will be described next.

“Measuring Justice”: Databases for Monitoring Human Rights Trials

This section focuses on CELS’ human rights trials monitoring. During the transition, CELS reinforced its international position, not only in the search for solidarity as during the conflict, but also through the search for funds. Access to economic resources allowed it to form paid technical teams early in the transition, which distinguishes it from other HROs that had serious financial problems.³¹ Today, it is one of the most professionalized Argentine HROs and is identified as “the technical arm of the human rights movement.”³² This condition has allowed it to become an important player during discussions by relevant state actors.

The implementation of the monitoring strategy cannot be understood as a linear process. The needs of information and the accountability purposes have changed since 2001 and this has influenced not only the methodologies but also the “uses” of the information produced. Three types of information use can be identified in the post-transition period:

³¹ “At the beginning of transition we started to have financial problems. Most donors had withdrawn their help; we never had enough money and survived out of volunteers.” Author interview with Bella Frizman, vice-president of APDH, 12 November 2014.

³² Author interview with Noemi Labrune. This aspect was also mentioned in interviews with Bella Frizman and Estela de Carlotto, president of Grandmothers of Plaza de Mayo, 17 February 2014.

- 1) Information to legitimate the trials, at the very beginning of the process (2001-2006);
- 2) Information to set legal standards, when criminal investigations were finally active (2007-2008); and
- 3) Information to identify gaps in the judicial framework for trying these cases and support state agencies in charge of the trials (2009-today).

Each is discussed in more detail below.

Information to Legitimate the Trials (2001-2006)

CELS began to gather information on the criminal cases for the dictatorship-era human rights offences after the first ruling in the “Simón” case in 2001. Víctor Abramovich, former CELS executive director, remembers that there was a general sensation within the government that the trials were as “destabilizing” as during the transition. Against this backdrop, CELS recognized the necessity of producing information to grant the effort legitimacy, as part of the accountability process. As Abramovich noted:

During the year 2002 began the discussion about the reopening of the trials. Government was concerned they were going to involve 5,000 active military, causing institutional destabilization. For us then it was important to decrease the fear that the reopening of the trials was going to generate a scenario of lack of governability... the information at that moment was part of the debate of the establishment of the trials policy agenda.³³

The first use of information was to enable trials to move forward, or, as Abramovich says, “in order to be able to open up for

³³ Author interview with Víctor Abramovich, former executive director of CELS (2001-2005), 10 February 2014.

debate whether or not to prosecute with certain information.”³⁴ CELS’ goal at this stage was to promote debate on the legitimacy of trial-reopening by centering the discussion on what impact they would have, how many trials there would be, how much time the prosecution would require, and who would be investigated. This information came from the judiciary, the institution in charge of carrying out the prosecution, and it was not easily accessible to HROs, which at this stage had few allies in the judicial branch.³⁵ CELS had been fighting to dismantle the amnesty in legal venues, and appeared to be the best-positioned organization for the job. The differences from the production of information during the transition were evident. As Carolina Varsky noted, “Data had to reflect how many people could be on trial, not how many people were responsible for State Terrorism. This information could only be obtained by an organization working in the courts.”³⁶

CELS then began to compile information about the trials in which it acted as plaintiff.³⁷ Natalia Federman, at that time a CELS lawyer, was in charge of keeping this record. She pointed out the complexity of accessing information and the technological problems faced.³⁸ The first registry was an Excel spreadsheet, a sample of which is presented in Figure 1. In it were listed the names of the accused, the

³⁴ Ibid.

³⁵ Offences against human rights are dealt with in the federal justice system, which oversees major and complex crimes. Cases may be heard at four levels: first instance courts, appeal courts (FCAs), a “Court of Cassation” (an intermediate review body, only for criminal cases, that provides a second level of appeal convictions or acquittals), and the Supreme Court, which is the definitive instance. The charges brought are those specified in the Argentine criminal code, as in the *Juntas* trial.

³⁶ Author interview with Carolina Varsky, former Litigation director of CELS, 12 February 2014.

³⁷ During the post-transitional justice process, many HROs have acted as “plaintiff,” a status the current Criminal Procedural Code (sanctioned in 1991) assigns to accusations made by individuals or private organizations. This was not available during the transition period.

³⁸ Author interview with Natalia Federman, former CELS’ lawyer, 10 February 2014.

cases in which they were involved, and the status of the legal proceedings. The information was then matched up with data collected in previous years such as the branch of the armed forces or unit of the security services to which the accused belonged; the clandestine detention center where they acted; as well as their nicknames, military ranks, and other items that HROs had systematized during the transition.

A	B	C	D	E	F	G	H	I
Apellido	Nombre	Situación	causa 1	causa 2	causa 3	causa 4	causa 5	
1	Abene	se solicitó indagatoria	Camilo, Fausto Augusto y otros a desparecidos, forzados (Formosa)					
2	Adria	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
3	Accasta	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
4	Accasta	se solicitó indagatoria	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
5	Accasta	se solicitó indagatoria	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
6	Acosta	Hptal. Militar	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
7	Acosta	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
8	Aebi	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
9	Aebi	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
10	Aebi	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
11	Aebi	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
12	Alías	prisión domiciliar	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
13	Albomoz	prisión domiciliar	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
14	Albomoz	prisión domiciliar	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
15	Albomoz	prisión domiciliar	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
16	Albomoz	prisión domiciliar	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
17	Albomoz	prisión domiciliar	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
18	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
19	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
20	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
21	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
22	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
23	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
24	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
25	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
26	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
27	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
28	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
29	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
30	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
31	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
32	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
33	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					
34	Alvarez	detenido	Excmo. Sr. Fiscal General de la Nación (Córdoba) (Expte. n° 10326)					

Figure 1: Excel Spreadsheet with Information about the Accused and the Status of Legal Proceedings (CELS Information, 2003)³⁹

³⁹ Columns refer to (from left to right): Last name, name, legal status, case 1 to 5. Source: Natalia Federman.

Information as Standard Setting (2007-2008)

This information strengthened the transitional justice process. At the beginning of 2007, the three branches of government generally supported criminal prosecution. Cases were soon active throughout the country. However, there was a lack of reliable official information with respect to case policy.⁴⁰

The concern was no longer “how many?” but rather “how?” In other words, the emphasis shifted to the quality of the trials. CELS’ interest was not only the trials’ mere existence, but also whether they complied with certain prosecution standards. In particular, CELS was concerned with the amount of time the judiciary was taking to investigate the cases. In light of this, CELS began work on a statistical methodology to monitor the concrete problems of the trials and to propose a set of standards for their judgment, and design legal public policy strategies.⁴¹

In this “second moment” of CELS trial monitoring work, the first need was to design a national record. Through a network of contacts, CELS managed to gather information on trials from all over the country. Then, a set of three databases was created to measure the development of the trials, ranging from the progress of each investigation to the changes in the procedural status of the accused.⁴² Each one of these databases has its own criteria for selection and loading of information, as well as specific variables:

- Database of defendants: it gathers information on those people who are presumed to have committed human rights violations

⁴⁰ Cath Collins, Lorena Balardini, and Jo-Marie Burt, “Mapping Perpetrator Prosecutions in Latin America,” *The International Journal for Transitional Justice* 7:1 (2013): 8-28.

⁴¹ CELS, “Annual Report on Human Rights in Argentina, 2012,” (Buenos Aires: Siglo XXI Editores, 2012): 53-54.

⁴² The information in the databases is based on the CELS working paper “Manual for the statistical records of active cases and those accused for crimes against humanity in Argentina,” drafted in March 2008 and updated in August 2011.

during the last dictatorship and are being investigated in a criminal case. They can be either members of the armed forces or security services that existed at the moment of the events or civilians.

- Database of active cases: it records all the active criminal cases for dictatorship-era human rights crimes in the country.
- Database of people convicted: this includes details about the convictions (prison sentences, crimes charged, and type of responsibility of each defendant in them).

Each of these databases was designed to measure the trials' outcomes, i.e. how many cases in which procedural status; how long were the proceedings taking by province; etc. The design of the variables and the monitoring system was based on the Criminal Procedural Code, which establishes different stages of investigation, and estimates times for each stage. Figure 2 provides an example of the information collected for these purposes.

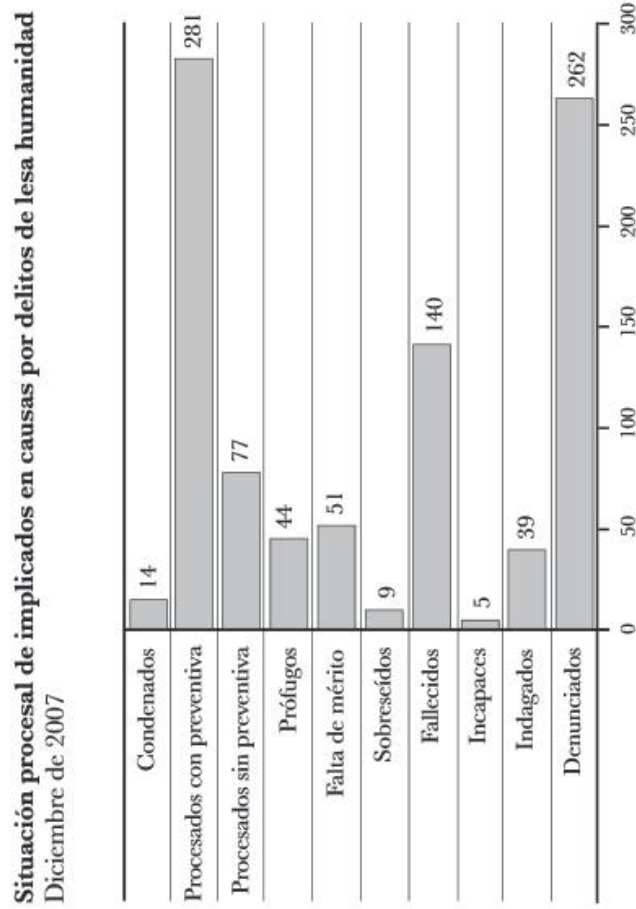


Figure 2: Defendants’ Procedural Status (Argentina, December 2007)⁴³

⁴³ Categories are those of the criminal process: convicted, prosecuted (with or without pre-trial detention), fugitives, lack of probable cause, and reported, among

Information to Identify Gaps and Advocate for Change (2009-Present)

This led to a third moment regarding trials' information. It was aimed at investigating the gaps in the judicial institutional framework for trying these types of complex cases and advocating for change.

The criminal process model experienced difficulties in adapting to the investigation of systematic human rights violations. Data began to show significant delays in the carrying out of trials. During 2006 and 2007, only two trials per year took place, in which 14 accused were convicted. However, in the same period, over 200 open cases and more than 700 accused were recorded. At this trial pace, it would be impossible to carry out trials within a reasonable time.⁴⁴

This problem was not entirely due to court delays. The organization of the trials in several jurisdictions initially involved a small number of victims and accused. CELS used the term "trickle-down prosecution" to describe situations in which each complaint of a victim was equivalent to one legal case against one or two defendants without seeking common patterns among them.⁴⁵ This form of organization was a result of the structure of the federal judiciary and the usual criminal investigation. However, it multiplied cases (as opposed to the *Juntas* trial, which implied the formation of a centralized case structure thereby providing enormous capacity to concentrate information). In the post-transition period, courts and prosecutors in each jurisdiction were in charge of receiving requests for investigation and re-opening cases, which produced dispersion and made reconstruction difficult. This initial form of fragmented investigation

others. At that time, no defendants had been acquitted. See more statistics examples at www.cels.org.ar/blogs/estadisticas/. Source: CELS 2008.

⁴⁴ *Ibid.*, 55-56.

⁴⁵ CELS, "Annual Report on Human Rights in Argentina, 2008 and 2009," (Buenos Aires: Siglo XXI Editores, 2009).

led to an inefficient use of judicial resources and did not take into account the systematic nature of the crimes.⁴⁶

In this complicated scenario, information was used to influence the state and promote improvements in the process. The Argentine government and the judiciary had not made the decision to carry out a strategic plan of prosecution or of monitoring the trials' outcomes. This is why CELS presented a series of requests to the three branches of government that included the creation of agencies that would be responsible for public policies related to the criminal prosecution of dictatorship-era crimes. Among the functions or tasks that they should have had was the production of official information about the progress of trials that would complement the monitoring carried out by CELS.

The proposed state agencies were the Unit for Coordinating and Monitoring Cases for Human Rights Violations Committed under State Terrorism, at the Attorney General's Office (hereinafter Coordination Unit); a "Truth and Justice" program reporting directly to the executive branch, supposedly to implement a nationwide Witness Protection Program and carry out risk assessments of each trial; and a special unit of the Supreme Court,⁴⁷ which was set up to improve the transparency of the process by communicating trial outcomes.⁴⁸

Of those institutions, the one that took the prerogative to produce information was the Coordination Unit. Since its creation, this agency has developed a registry of those accused in cases for these crimes, and has developed organizational strategies on the trials throughout the country. As Alberto Saavedra, a member of the Unit, notes:

⁴⁶ CELS, "Annual Report on Human Rights in Argentina, 2012," (Buenos Aires: Siglo XXI Editores, 2012): 57.

⁴⁷ See www.cij.gov.ar.

⁴⁸ See "Action lines to strengthen the process of seeking truth and justice," CELS, 2007. Available from <http://www.cels.org.ar/common/documentos/actionlines.pdf>

The Unit has become a reference; it is a centralized point for the information. In this sense, I believe we have responded to a need, that was to simplify access to information... I believe that, in these cases, that are highly sensitive and have a large social impact, society had the possibility to control the actors and their performance with respect to the cases.⁴⁹

The institutional framework was complete in 2009, when an inter-branch commission, comprising representatives of the executive, the legislature, and the Public Prosecutor's Office was created. It was an effort to strengthen links between state bodies working on the trials. However, some believe it did not produce a clearly positive impact on the trials.⁵⁰

These efforts culminated in the Court of Cassation's establishment of a set of practical rules to accelerate trials, prevent unnecessary delays, and regulate the production of evidence, particularly witness treatment in February 2012.⁵¹ These rules have had some interesting effects on the trials. For instance, the amount of time taken to read the accusations was reduced by almost two-thirds. In addition, video-conferencing was admitted as a valid way of hearing testimonies from witnesses who live abroad. Also, some special procedures were implemented so that victims and perpetrators would not have to share court facilities. At the same time, defendants usually presented claims against the rules, which typically delayed court

⁴⁹ Author interview with Alberto Saavedra, member of the Coordination Unit, now named as Crimes Against Humanity Prosecutorial Unit, 12 February 2014.

⁵⁰ Author interview with Pablo Parenti, former coordinator of the Coordination Unit, 23 November 2012. Parenti argues that it was actually a space for debate but that it was very hermetic (it was hard for non-state actors to bring their demands) and that it was very difficult to schedule meetings regularly in order to have sustained and regular discussions.

⁵¹ Resolution 1/12 of the Court of Cassation, March 2012.

procedures. Nevertheless, judges have consistently denied these claims and confirmed the constitutionality of the rules.⁵²

Remaining Challenges

Notwithstanding these advances, the information arena was, and continues to be, a field of dispute among the actors involved. An interesting aspect of this is the resistance to the production of information from an internal legal culture perspective of the legal field.⁵³ This includes the complexity of incorporating routines of systematization and information production into the everyday-work of the courts.

When the Coordination Unit was created, the Attorney General obliged federal prosecutors to report the progress of all cases in their jurisdiction on a monthly basis. According to Pablo Parenti, who was appointed as coordinator of the Unit, an Excel sheet was attached to this resolution with specific “fields”: province, court, case number, prosecutor involved, subject of the case, and status of proceedings. However, Parenti mentioned that this did not imply the development of a methodology, information routine, or any training experience: “All of this was done in a very home-made fashion: a few people that worked in the prosecutor’s offices did it without any help from any IT or statistics professional.”⁵⁴ For Parenti, in addition to the methodological problems, the biggest challenge was to incorporate the information tasks into the various judicial offices:

⁵² Author interviews with Carolina Varsky and Pablo Parenti.

⁵³ Laurence Friedman and Rogelio Pérez Perdomo define legal culture as the “group of attitudes, ideas, expectations and values of people about their legal system.” There is an internal and an external legal culture; the former relating to the norms and practices of legal officers, lawyers and jurists. See Laurence Friedman and Rogelio Pérez Perdomo, *Legal Culture in the Age of Globalization: Latin America and Latin Europe* (Stanford: Stanford University Press, 2003): 2.

⁵⁴ Interview with Pablo Parenti.

We had to get the prosecutors to comply with producing reports, something that is not within common judicial practice. When one asks for this type of information, what is in play is not only that you are creating additional work for an office, but also we are asking them for a tool that, afterwards, is useful for controlling their work: I think this was the most sensitive part.⁵⁵

On the other hand, those interviewed expressed frustration that the bureaucratic structure of the Attorney General's Office prevented incorporating the necessary methodologies for the systematization task, which was an obstacle for the work. In the Unit, multiple Excel spreadsheets were used at least up to December 2014, thereby complicating the possibility of statistical analysis and reducing the efficiency of information production. As Saavedra notes, "We have a frankly very defective tool. What we ended up doing was to print and paste the pages into a long sausage [sic] and we shouted out the names.... We have not been able to overcome this, despite having made various attempts."⁵⁶

Another important aspect was the lack of cooperation between the actors involved in the production of information about the trials. If the Coordination Unit had access to privileged and reliable information, and CELS had certain methodological innovations, closer collaboration between the two would have been advisable. Although this happened in the first couple of years after the creation of the Unit, later on it ceased. In the words of Carolina Varsky, there was a type of "inexplicable underhanded competition."⁵⁷

In addition, available data do not allow for measuring the universe of victims whose cases are being investigated in the framework of these trials. Up to December 2015, there is no official or unofficial data on how many cases of victims have been prosecuted,

⁵⁵ Ibid.

⁵⁶ Interview with Alberto Saavedra.

⁵⁷ Interview with Carolina Varsky.

how many have had a judgment, conviction, or acquittal, how many of those cases are victims recognized in CONADEP's records, or how many cases of state-recognized victims have not been criminally investigated yet. This lack of data prevents the actors involved in trial-monitoring from designing a clear indicator of effective access to justice for the victims.

Finally, an issue that needs further analysis is the slow-down in the pace of trial proceedings during 2015. There are many trials that have been active for the past three years, such as the mega cases called "*ESMA unificada*" and "Operation Condor" in Buenos Aires and "*La Perla*" in Córdoba. However, the number of hearings per week as well as the duration of each hearing has fallen significantly. Some actors involved in the trials argue the justice process is beginning to show a kind of "exhaustion" after ten years of criminal prosecution,⁵⁸ while others believe the changes in broader politics may be influencing the judges' behavior (i.e. the presidential campaign and recent change of government).⁵⁹ It remains to be seen how persistent this trend will be.

Conclusion

This note from the field is part of a more extensive research project that intends to build knowledge on the problems that arise when trying to systematically measure gross human rights violations during transitions. Measurement systems seem to offer a clear opportunity to build the facts and to support transitional justice mechanisms. All policy decisions relating to human rights violations usually derive from data: defining, identifying, and counting victims and perpetrators and clarifying which facts constitute crimes are the baseline to measure the phenomenon.

Information has been a key element in HROs' efforts to influence public policies locally, to seek international support, and to

⁵⁸ Ibid.

⁵⁹ Author interview with Ana Oberlin, former Legal Director of the National Human Rights Secretary (2011-2015), 17 September 2015.

achieve accountability. However, information strategies also are shaped by debates and disputes among stakeholders as to who measures, why, and how. Overall, there are serious shortcomings in the techniques and methodologies implemented, particularly by state agencies.

During the post-transition period, the return of criminal prosecution has taken center stage. Regarding information politics, this process is the heir to the strategies implemented during the transition. At least in its beginning, the information used to put together the cases is the one designed at that time. However, the challenge for the production of information in this stage will not be the search for patterns or the building of cases. Rather, as the justice process extends over time (contrary to the abrupt end to criminal proceedings during the transition), *the information has to be able to reflect the “treatment” that the justice system gives to the case, and its effects on legal accountability.* This way, the information during the post-transition phase not only contributes to continuing to file cases in the courts, but also raises questions about the justice system’s handling of these cases. Information also provides tools to legal professionals, within the framework of the internal legal culture, to monitor judicial practices that enable the definition of legal strategies.

The key variable explaining why some HROs continued to provide a strong documentary focus of research and systematization while others gradually abandoned it is *professionalization*. Its effects are determinant in understanding how CELS was able to persist in its task of systematization, by using it as the basis for its accountability struggle. The production of information is a key advocacy element and it is clearly affected by professionalization: it implied gradually losing the “artisanal” component and giving space to information technologies. This is the framework in which CELS databases are developed. Of course, they were implemented in several ways, which cannot be fully reconstructed here. Nevertheless, their most visible and, until now, most influential aspect has been the possibility of

monitoring judicial actors, identifying the deficiencies and obstacles of trial proceedings, and using data to formulate public policies for trial-progress. Another important effect of this information production was the publicity of the proceedings, as it stimulated journalistic coverage of the cases. Trial information is currently “used” not only by journalists, but by anyone interested in Argentina’s criminal justice process.

This case also reveals the tensions between the state and civil society. Information production has been one of the state’s weaknesses regarding its strategic planning and methodology. The information production experience of the Coordination Unit in the Attorney General’s Office has not been explored much by academic literature, as it deals with a process that is still ongoing. From what was analyzed by this research, there appears to be some tension between the demands of civil society and the Unit. The clearest source of tension is that, while both took up trial monitoring, CELS did so in order to have a tool for controlling and monitoring state’s actions, while the Unit sought to be the official producer of information on the subject. Friction emerged because the two were engaged in competition instead of cooperation. There are clear benefits to having the Attorney General’s Office—which is independent of the three branches of the government—monitor and evaluate the justice process. But it continues to be worrisome that the state’s bureaucratic mindset prevents it from operating as effectively as civil society, despite facing far fewer obstacles. This way, privileged access to the information, such as a state institution has, is not a real advantage since there is no efficient methodology implemented.

Furthermore, information production during the post-transition period has helped to identify problematic aspects of the administration of justice, i.e. the organization of cases, the optimization of the proceeding times, and the need to create agencies or designate new judges and prosecutors to conduct the trials. Many of the organizational problems still remain after almost ten years of

sustained trials. As of December 2015, there are more than 500 active cases still awaiting trial throughout the country while the process' rhythm begins to slow down.⁶⁰

To conclude, there remains a large gap between the amount of information produced and the number of victims whose cases have been taken to the courts in the post-transition period. These aspects are related to a general problem of victim's records in Argentina. Nearly 9,000 disappearances were recorded by CONADEP, and other state agencies have made adjustments and added new data since.⁶¹ However, the state has not cross-referenced different records in order to obtain an official reliable figure of the number of victims. This aspect of the information is the clearest weakness in terms of systemization of information related to the phenomenon of grave human rights violations and its treatment by the truth and justice mechanisms in the framework of the accountability processes.

⁶⁰ According to information from the Prosecutorial Unit for Crimes Against Humanity available from <http://www.fiscales.gob.ar/lesa-humanidad/wp-content/uploads/sites/4/2015/06/20150612-Informe-Procuradur%C3%ADa-de-Cr%C3%ADmenes-contra-la-Humanidad.pdf>

⁶¹ On 11 December 2015 the Unified Registry of state terrorism's victims published a report on the official recognized victims. They acknowledge 7,018 victims of enforced disappearance and 1,613 victims of homicide: 8,631 victims in total. However, the report does not explain the adjustments made to CONADEP's data, and states that there are another 3,000 victims of kidnapping and torture not considered in the figures, and thus they believe this number to be "incomplete." They clarify that there are other records (such as the reparations' one and information from the trials) that they have not considered and that is the reason they are leaving this important amount of cases out. This needs further and deeper study, but a first assessment shows it is not very reliable data. The report is available at <http://www.jus.gob.ar/derechoshumanos/areas-tematicas/ruvte.aspx>.