

## **Transitional Justice 'From Within': Police, Forensic and Legal Actors Searching for Chile's Disappeared**

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### **Abstract**

This paper offers an empirically grounded, practitioner-focused analysis of the present-day search for Chile's dictatorship-era disappeared. It treats this search as a transitional justice process within which rights and duties around truth, justice, reparations, and guarantees of non-repetition are explicitly or implicitly performed and (re)negotiated by, inter alia, state agents. Drawing on close observation of, and ongoing engagement with, the police, forensic, and legal actors who are most closely involved in this search day to day, it provides insights into how these state actors understand their task, and manage related challenges and professional dilemmas. These include divergence in what is meant, and sought, when the terms 'truth' and 'justice' are used; the effect of generational replacement; and the necessary limits of victim-centredness within a criminal justice frame. Finally, the paper argues for greater attention to this type of closely observed, supply-side analysis of how, and by whom, states' transitional justice duties are actually carried out. This is important, not least because state agents' active choices in dealing with past violations have the potential to shape the forward-looking rights practice of present-day justice systems.

### **Introduction**

This paper is an empirically grounded, practitioner-focused, study of state operatives closely engaged in the present-day search for Chile's dictatorship-era disappeared. This search, currently carried out in a judicial (prosecutorial) frame, is considered here as a transitional justice process, ie, one within which rights and duties around truth, justice, reparations, and guarantees of non-repetition are explicitly or implicitly demanded, fulfilled or denied, performed and (re)negotiated. Transitional justice is portrayed here not as one-off policy formulation, nor as a set of voiced civil society demands, but, instead, as praxis: a dynamic process involving multi-actor interaction and interlocution over time, around specific claims, tasks, and outcomes. Unresolved disappearance has a particular longevity, amplified by the persistent uncertainty that is unique to this crime (Boss, 2002; Castillo, 2013; Lira, 2015). However, many other grave and massive violations also give rise to legacy issues with a long half-life. Consideration of transitional justice challenges should therefore take proper account of this longitudinal nature, complementing accounts of initial transitional bargaining and/or time-limited instances such as truth commissions. Moreover, transitional justice responsibilities are not only the preserve of dedicated state agencies. Regular official services and bodies also play a key role in dealing with the past. Paying attention to mid-level state employees and civil servants, to whom it often falls to implement transitional justice principles, is therefore essential.

This attention complements both the elite-institutional focus common in accounts of early high-level decisionmaking; and victim-centred or grassroots approaches, which highlight the perspectives and demands of victims, relatives, and other civil society groupings. From these necessary and valuable vantage points, transitional justice has been usefully and productively discussed from above and from below (Arthur, 2009; Kritz, 1995; Simić, 2016; McEvoy and McGregor, 2008). This paper suggests that we

might look for additional useful insights ‘from within’, as transitional justice trajectories come to consist of or inhere in routinized state practice, carried out by pre-existing as well as specially-created institutions and services. In the post-transitional period, needs, goals, and demands associated with truth, justice, reparations and guarantees of non-repetition continue to present new challenges to both ordinary and specialised state entities. If political transition moves in a direction that improves overall state performance in the protection and guarantee of human rights, these entities, like the formerly transgressive state of which they form a part, ought to become better disposed than formerly to transitional justice demands. They may come to contain at least some transitional justice-friendly ‘enclaves’ or entrepreneurs. The present paper suggests that such a shift has begun in Chile in relation to the search for the disappeared, and traces its contours.<sup>1</sup>

This focus on transitional justice from within the state has the additional methodological merit of directing attention to often-overlooked actors. In the particular case of Chile’s past enforced disappearances, the relevant personnel are auxiliary justice system actors: detectives, forensic scientists, and lawyers in the state’s employ. Situated between judges, at one end of the criminal justice chain, and victims’ relatives or other casebringers, at the other, a whole host of actors such as these must intervene, and act competently, if any incident is to be successfully investigated and/or prosecuted (Collins, 2010). Attitudes, resources, and technical capacity among such actors can therefore be at least as decisive for transitional justice outcomes as can variables such as external pressure, judicial reform, activist lobbying, system permeability to international law, etc. Through such a lens we see, in other words, how transitional justice is made and remade not only through high level policy decisions, or international court pronouncements, but also in the reflexive practice of mid- and low-level public employees. Interacting with each other; with survivors and relatives; with suspects and perpetrators, and with the general public, these are the individuals who deliver, or not, on states’ duties and rights holders’ entitlements.

Offering a window onto this empirical reality, this paper discusses how the search for the disappeared in Chile is operationalised and understood by key state actors, and how everyday professional dilemmas are vocalised and resolved. The results demonstrate the importance of close attention to experiences on the ground for future thinking about transitional justice design. In particular, the paper problematizes any easy assertion of innate compatibility between central transitional justice precepts, frequently held to be interdependent. We see, for example, how some participation-based understandings of reparation can be inimical to the demands of truth and justice seeking, at least within a criminal justice frame. The paper also highlights how truth and justice imperatives can enter into tension with each other, suggesting a need to re-examine victim centredness, often posited as a meta-goal or central organising principle of TJ design and practice (Robins, 2011; IJTJ, 2016). Examples are offered of how victim-centredness or victim responsiveness may conflict with other goals held to be desirable. These include justice system neutrality,

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<sup>1</sup> Transitional justice-friendly enclaves and entrepreneurs are defined here, respectively, as intra-institutional spaces or individuals that proactively seek to promote action for truth, justice, reparations and/or guarantees of non-repetition with regard to past violence. See Collins (2016a), on accountability entrepreneurship beginning to leach across the non-state/ state boundary in much of present-day Latin America.

the meeting of due process standards, and cultures of technical competence that place a premium on professional detachment.

### **Methods, Scope and Limitations**

This study is grounded in the author's longstanding engagement with transitional justice in Chile, stretching over more than a decade. This engagement led to the founding, in 2008, of the Transitional Justice Observatory, a university-based research project which has chronicled the emergence and principal characteristics of the truth, justice and reparation environment discussed here.<sup>2</sup> (The project produces termly electronic news bulletins and in-depth annual reports (in Spanish), available via the website of the Human Rights Centre of the Universidad Diego Portales, Santiago de Chile [www.derechoshumanos.udp.cl](http://www.derechoshumanos.udp.cl)). The present paper is also informed by two recent British Academy and British Council supported researcher- practitioner exchanges, focused on present-day responses to enforced disappearance.<sup>3</sup> Much of what is said in the present paper, and all of the featured agencies, also play a part in investigation of other atrocities from the same period. Nonetheless, as we will see, certain aspects of the phenomenon of disappearance draw in a particularly wide range of professionals. The investigation of disappearance also produces unique dilemmas regarding the striking of an appropriate balance between truth, justice, and non-recurrence. Thus, for example, information about the present-day location of missing persons or their remains is sometimes used as a bargaining tool by perpetrators, or may provide incentives for investigators to use punitive or threatening treatment of those who withhold such information. See below

The institutional access that informs this study was unique. The author was given unprecedented opportunity to study the work of Chile's principal police, forensic, and legal agencies engaged with transitional justice accountability. This access, in 2014-15, included: interviews and dialogue with the directors of each institution; field observation of each agency; a three-day inter-agency training symposium; a forensic study visit to the UK, and interviews with selected personnel.<sup>4</sup>

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<sup>2</sup> Represented, inter alia, in termly electronic news bulletins and in-depth annual reports (in Spanish), available via the website of the Human Rights Centre of the Universidad Diego Portales, Santiago de Chile [www.derechoshumanos.udp.cl](http://www.derechoshumanos.udp.cl)

<sup>3</sup> The first, the British Academy International Mobility Grant 'Policing, Forensic and Informational Issues in the Search for Truth and Justice' (2014-15), resulted in the working paper published as Collins, 2016b. The second was a British Council-supported Newton-Picarte Project adjudicated by the Chilean state forensic service, Servicio Medico Legal, SML, in 2016. This involved an eight-month secondment and exchange, including training and consultancy activities by the author in Chile, and exchange visits between investigative and technical forensic personnel from Chile and the UK.

<sup>4</sup> Permission was negotiated in the first instance with the judicial branch, which oversees the work of the detectives and forensic professionals studied. Authorisation to observe the state legal programme, autonomous of judicial supervision, was granted directly. The author thanks all authorities concerned, in particular, then-Supreme Court President Judge Sergio Muñoz. Field diaries were kept, and interview transcripts produced. Some activities also generated rapporteur documents, participant presentations, and other outputs. These are on file with the author, but remain unpublished at institutions' request.

This access, while generous, was of course limited, as are all channels for the gathering of knowledge. Field observation and secondment – totalling around seven calendar weeks – necessarily offered only a snapshot of everyday activities, shaped by parameters including the confidentiality of ongoing investigations. The author accompanied one or more individual staff members from each institution on a whole-day basis for up to 8 days at a time, observing all routine activities: attending court hearings, search site visits and excavations, and interactions with other justice personnel. Professionals’ meetings with relatives or witnesses were subject to specific consent. Interviews with suspects were of course not recorded. Interviewees’ accounts are in general susceptible to the natural human desire to give the best possible account of oneself and/or one’s institution. Nevertheless, all inputs were interpreted and calibrated against the principal researcher’s substantial knowledge of key actors, secondary literature, the country context, and the history of each institution. A bank of key actor interviews, dating back to 2004, was also drawn upon where terms of consent allowed. It is difficult to imagine any practicable method that would have generated a substantively more authentic or more comprehensive picture. Interviewee sampling was purposive, with a mix of genders and length of institutional service particularly highlighted. Some pre-selection by the institution must however be factored in.<sup>5</sup>

The study is grounded in an interpretivist approach, congruent with its declared interest in understanding how social, legal and professional world(s) surrounding responses to enforced disappearance in Chile are made, remade, experienced and described by some of their inhabitants. The aim was to dissect and interrogate an actually-existing transitional justice phenomenon, rather than to test a preformulated hypothesis. This goal, aptly described by Willner (2010) as ‘explication of observable practices’, is commended for its ability to shed light on what Willner calls ‘micro-politics’. Here, then, we might declare our field of interest as the ‘micro-politics of searching’, in relation to Chile’s disappeared. The study’s ambitions with regard to the conclusions drawn are suitably circumscribed in scope. They do not, for example, pursue the fuller theory-generating ambitions towards which grounded theory tends, although future work is proposed to this end.

### **Research questions and process**

The study’s central goal, to discover how the search for Chile’s disappeared is thought of and talked about by the (professional) practitioners most closely concerned with it, produced two broad research questions:

- How do these practitioners perceive and describe the nature and significance of their work?
- How do they experience, understand, and actively manage the principal challenges and interactions that arise in the course of that work?

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<sup>5</sup> Virtually all potential interviewees were contacted directly by the author, from staff lists supplied by their institutions. Negotiation and conduction of interviews was carried out independently, without reporting back to institutions as to acceptance, although police interviews took place on institutional premises. Eight of 18 legal staff; five of 40 detectives; and 14 of 30 forensic operatives were interviewed. Two lawyers, four detectives, and six forensic operatives were observed in the field (all but three of whom were also interviewed). Only one individual, a lawyer, declined interview. No reason was sought or given. Approximately 85 individuals, both including and additional to those interviewed or observed, took part in the aforementioned symposium.

Initial field observation, and preliminary informal interviewing were reflected upon – following grounded theory procedures – inter alia, to delineate areas of interest for formal semi-structured interviewing. Questions focused on the experience of the person within their institution; views as to the social and historical significance of their work on the disappeared; experiences interacting with other agencies, relatives, suspects and the general public; and opinion about laws, norms or precepts governing the performance of these duties. It should be borne in mind, however, that - as is made clear in Scope and Methods - interviewing was not the only source of information. Field diaries, and training and symposium interventions, were also mined. This allowed identification of three major emerging themes running through professionals' experience, practice and self-reflection regarding work about the disappeared. These can be grouped, for purposes of discussion, under three main headings: truth-or-justice matters; generational questions, and limits to victim-centredness.

### **Structure**

The remainder of the paper will, first, briefly sketch the context and history of the search for Chile's disappeared, and outline the structure and specific function of each institution included in the study. (For detail on each institution see Collins (2010) op. cit., and the Universidad Diego Portales' annual Human Rights Report on Chile, versions 2010-2016, available at [www.derechoshumanos.udp.cl](http://www.derechoshumanos.udp.cl) (Spanish only).) Next, it will report on empirical findings and observations regarding the three sets of emerging themes named above. A concluding section revisits the overarching concerns announced at the outset. Finally, the paper briefly reflects on two learning points for transitional justice scholars and practitioners. One, the utility of actor-focused disaggregation of the state, allows us to consider how the lived experiences of public employees in this issue area affect immediate accountability outcomes as well as paying forward into future institutional performance. The other signals the important lessons which can be learnt from listening to professionals placed in roles operationally significant for transitional justice concerns, but who do not see themselves as first and foremost human rights professionals or transitional justice practitioners.

### **The search for the disappeared in Chile**

Victims of enforced disappearance make up around 1,200 of a total of 3,216 presently acknowledged victims of state-sponsored death and disappearance during the 1973-1990 Chilean military dictatorship. Over 1,000 victims remain missing; meaning that their fate and/or current whereabouts are unknown. Most were disappeared between 1973 and 1978. The remains of many who had been secretly executed were unearthed and reburied or destroyed by the regime in 1978, and/or again in the late 1980s, in efforts to increase deniability and entrench impunity. After the 1990 transition, therefore, although the country's first truth commission<sup>6</sup> documented the practice and produced a list of victims, there was little success in discovering remains. The only state agency tasked with actively searching for the disappeared was the Human Rights Programme (henceforth 'Programa') of the Interior Ministry, created as a followup to the truth commission. The Programa's main functions were administrative: it was not allowed to press for criminal investigations. Its initial legal basis mandated it to seek 'present whereabouts and circumstances surrounding death or disappearance', carefully specifying that 'under no circumstances' was it to 'make

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<sup>6</sup> The Comisión Nacional de Verdad y Reconciliación, popularly known as the Rettig Commission (1990-91).

pronouncements about responsibilities (...) attributable to individuals' (Law 19.123 of 1992 arts. 2.2 and 4, author's translation). Although many disappearances had already given rise to legal complaints from relatives and human rights organisations, a 1978 blanket amnesty law continued to ensure that these lay dormant.

It was not until 1998 that the judicial branch began to wake from its long lethargy and inaction. Existing criminal complaints were reinvigorated, and new ones lodged. Ex-dictator Augusto Pinochet was arrested in London, in October 1998 (Roht-Arriaza, 2005; Hilbink, 2007). This produced a final attempt to resolve the question of the disappeared in a non-judicial mode. A roundtable of Armed Forces representatives, Church people and some human rights lawyers was convened, in the year 2000, supposedly to locate the remaining disappeared by guaranteeing informants anonymity and confidentiality. Results were however sparse and inaccurate. The judicial branch responded proactively, designating special judges to investigate death and disappearance cases with an eye to possible criminal sanction. Disappearance cases featured prominently, as the argument for their exemption from amnesty was particularly strong: they were treated as ongoing crimes, still in commission after the April 1978 cutoff date of the law. Disappearances had also long been socially constructed as the most emblematic or heinous dictatorship crime. Former military and secret police agents began to be charged and sentenced, and some remains came to light.

#### **Institutions involved in investigating disappearance**

The aforementioned judicial turn foregrounded the work of the three institutions analysed in this study: the Policía de Investigaciones (PDI), Chile's non-uniformed (detective) policing agency; the state forensic and coroner's service, Servicio Medico Legal (SML); and the Programa de Derechos Humanos, mentioned above. In relation to past violations, the first two work exclusively to judicial order, while the third is today known principally for its role in pressing criminal cases before the courts.<sup>7</sup> In the inquisitorial, judge-driven criminal justice system within which investigations of dictatorship-era disappearances take place, day to day investigative, exhumation, and identification work is carried out by PDI and SML personnel, working to explicit judicial instructions. PDI detectives collect testimony and other evidence from witnesses, suspects and documentary sources, and carry out detentions. The SML is the only agency authorised nationally to certify deaths and their causes. In cases for past violations the judiciary typically orders SML personnel to search for, excavate, exhume, and identify remains; corroborate cause of death (eg by reassessing autopsy reports and other documentation from the period), and/or provide evaluations of perpetrators' fitness for interrogation and prosecution. Programa lawyers meanwhile act in effect as adjunct special prosecutors before the court: they can request investigative procedures, suggest that particular witnesses or perpetrators be questioned, and petition for charges to be preferred. Their role and powers are similar to those of a private human rights lawyer acting for a family, although Programa lawyers receive state remuneration, and can access Rettig Commission records and other official sources (eg the civil registry). They also increasingly see themselves as operating in fulfilment of the state's duty to prosecute, rather than principally responding to relatives' express wishes (see below). As of mid-2016, the Programa had 18 criminal lawyers and one civil lawyer on staff. The specialist units of the PDI and

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<sup>7</sup> The Programa also has a social work arm and an office supporting memorialisation ([www.ddhh.gov.cl](http://www.ddhh.gov.cl)). Legal advice services to relatives were strengthened after the 2000 roundtable. Subsequently (from 2009), it acquired the authority to act in its own right, initiating cases without needing relatives' authorisation.

SML that deal with cases related to past violations (see below) had, respectively, around 45 and 30 individuals dedicated full-time to this work, including operational and administrative staff.

Whereas the Programa is an ad-hoc, transitional justice-related creation, the PDI and SML both have a long pre-transition history. Each has a chequered past in terms of its own direct involvement in dictatorship-era repression, and levels of trust from victims' relatives were therefore initially understandably low. Yet each agency is indispensable if a criminal investigation is to reach a successful conclusion. Both created specialised in-house units, over the course of the 1990s or 2000s, for human rights-related casework. The decision to segregate this work was driven by the desire to maximise its transparency and neutrality in the eyes of the public, relatives and survivors. The strategy was also a partial acknowledgement that unreconstructed attitudes of tolerance or support for past state terror persisted amongst some personnel. (Sources: interviews with personnel and with current and former service heads, 2009, 2019, and 2015-16.) Accordingly the SML set up a dedicated human rights section, known since 2010 as the Unidad Especial de Identificación Forense, UEIF (Servicio Médico Legal, 2010). The PDI adapted and expanded a small internal affairs unit, known colloquially as *Departamento Quinto*, originally founded in the early 1990s. These agencies have each gone through a series of subsequent modifications.

The PDI's specialist detectives are assigned, in teams, to each of the dozen or so human rights case judges who are responsible, nationwide, for investigating dictatorship-era deaths, disappearances or torture. The SML's 30 professionals include anthropologists, archaeologists and a photographer - who carry out fieldwork - plus administrative, laboratory and information technology staff who deal with desk-bound tasks. Today, any specialist judge investigating a past disappearance will work closely with PDI detectives. He or she will be frequently petitioned by Programa lawyers, operating for the state, but often in concert with private lawyers representing relatives. If evidence recovery or analysis requires technical expertise, including identifications, the SML will be brought in.

A final contextual factor, essential to understanding the present-day SML, relates to a major internal reorganization which took place in the mid-2000s. The trigger was the discovery that a series of identifications made in the mid-1990s, using since-superseded techniques, had been inaccurate. The effect on families, and on the credibility of the existing unit, was devastating (Madariaga and Brinkmann, 2006). In response, the SML was brought under the supervision of a new national director; himself a survivor of dictatorship-era detention and torture. This characteristic earned him certain standing and credibility with the human rights community, but the suspicion and enmity of accused perpetrators and their lawyers, an issue which will be returned to in the due process considerations discussed below. Under the new dispensation, strenuous attempts were made to rebuild bridges with relatives. The unit was rebranded and re-staffed, often with younger professionals, to signal a break from association with past errors.

### **Emerging themes: Truth and Justice; Intergenerationality, and the Limits of Victim-Centredness**

The following sections explore three key themes which emerged strongly from observation and interviews. Each illustrates a distinct set of challenges posed when detectives, lawyers, and forensic

agents mediate between, and communicate with, judges, relatives, witnesses, perpetrators and/or the public. Each is rich and complex enough to merit further research.

### **Truth and Justice**

The first issue relates to the precise meaning of, and interplay between, the imperatives of truth and justice: both in general, and in specific relation to the disappeared. As regards the general discussion, international human rights framings often assert that relatives and/or society as a whole have a 'right to truth' regarding atrocity crimes. The Inter-American human rights system has been particularly robust in also constructing what is in effect a 'right to justice' – framed as remedy – that must also contemplate prosecution and/or proportionate sanctions.<sup>8</sup> Yet it is rarer to see consideration of exactly how truth, or justice, should be defined and operationalised; and whether, if at all, their pursuit is compatible (Accatino and Collins, 2016; IACHR, 2014; Bissett, 2012; Darcy and Schabas, 2004). Truth commissions, for example, can produce information, but are rarely directly connected to punishment. It is questionable whether the Inter-American system, at least, would therefore judge them to be sufficient to fulfil state duties, and relatives' entitlements, in this respect. Conversely, as we will see below, the truths that justice systems produce in the course of prosecution may be evaluated from other vantage points as somehow deficient, insufficient, or even unwelcome.

Alongside these general observations on the nature of judicial truth, moreover, sits an additional conundrum: what, exactly, are the particular truth(s) to be elucidated around enforced disappearance? This apparently deceptively simple question requires a nuanced answer. The chain of events surrounding enforced disappearance typically consists, for Chile, in some combination of: kidnapping, by often unidentified agents; clandestine imprisonment; killing;<sup>9</sup> secret disposal of remains; later unearthing and reburial. Many individuals and institutions intervened. A subsequent investigation focused only on the initial crime (disappearance, prosecuted as kidnap) may therefore be successful, by its own lights, without discovering information about the present location of remains (Observatorio JT, 2016; and Collins, Working Paper 2016, op. cit.).

Are justice processes for the disappeared denatured, or devalued, if they do not find remains? One detective acknowledged that a case which ended in this way, even if with sentences, would feel incomplete, describing the missing element as 'a truth deficit'. It is not entirely clear whether finding remains is a truth challenge, a justice challenge, or something else besides. Sometimes judicial truth is established about the fate of a victim who is not located or not recoverable. Do families welcome the resolution of doubt, without the accompanying 'consolation' of being able to reclaim their loved one? The moment when a person's death is considered proven – with or without recovery of remains - may quite

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<sup>8</sup> Regarding both the right to truth and the right to justice, see IACHR (2014). For discussions of these in the specific context of disappearance see Dulitzky (2017), Giourgou (2013), Claude (2010), the Inter-American Convention on Forced Disappearance of Persons, and its later counterpart the International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>9</sup> The presumption of death in relation to enforced disappearance is enormously problematic, but is unfortunately not possible to completely avoid for purposes of the present discussion.



understandably be experienced by professionals as an achievement to be celebrated. This same moment may however be the end of a family's secret hopes.

If investigation, identification and return are valued solely in terms of relatives' experience, then, the picture may be a chequered one. The notion of a societal right to truth, discussed above, and the settled view that criminal justice is served for collective, not only individual, ends nonetheless point to the legitimacy of a collective accounting whose frame of reference is larger than that of the family. This assertion may be less controversial than it appears. At a January 2017 Santiago public seminar, visiting speakers were taken aback to hear opinions from the floor that 'the disappeared is not an issue for families to resolve'; or 'relatives are not the main actors'. Their assumption was that those expressing such sentiments were professionals involved in search: in fact, both were active memory site association leaders, with still-disappeared relatives. Their views de-privatise the issue by underlining state and shared societal responsibility. They can also usefully question whether and why family ties are always to be given preference over political or other elective affiliations of a disappeared person.

All of the institutions included in this study are part of a broader social accounting, as auxiliary justice system operatives who contribute to criminal investigation of past disappearances, whether under judicial supervision or (in the case of the Programa) autonomously of it. Nonetheless, in spontaneous mention, and in response to the open question 'How would you characterise the importance of your work?', interviewees mentioned 'truth' almost four times as often as they invoked the term 'justice'. At the same time, many were quite dismissive of administrative bodies such as truth commissions, of which Chile has had two. (The Rettig commission, already mentioned, and the later 'Valech Commission' (2004/5 and 2011), focused on survived torture and disappearance (see Collins 2016)). The resolution of this apparent paradox lies partly in further interrogating the senses in which the term 'truth' is being utilised.

The notion of 'judicial truth' was often invoked by interviewees when pressed to explain what a criminal investigation could add to knowledge of an episode already narrated by a truth commission, as most currently-acknowledged disappearance cases in Chile have been. A few replies made reference to previously undiscovered information, or the imposition of criminal sanctions, viewing the two endeavours as separate but not inherently in tension. In one formulation, 'the Truth Commissions establish historical truth but we add the judicial truth'. Most replies however challenged not only the completeness but also the status of administratively-produced accounts: 'our job is to establish the incontrovertible truth, the judicial truth. Those other versions don't really count'... '[A]s police, we have the really authentic version, because our investigations are factual, objective'... '[J]udicial truth is a particular type of truth'.<sup>10</sup> These responses, all from detectives, are of course correct insofar as 'judicial truth' has quite specific, and rightly exceptionally demanding, thresholds of proof and standards of validity. These are particularly rigid and

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<sup>10</sup> Here, and throughout, quotations are drawn from interviews carried out in Santiago, by the author and other team members of the Observatorio de Justicia Transicional of the Universidad Diego Portales, between December 2014 and August 2015. Exact attributions and dating of each separate citation have been avoided as they negatively affect readability and/or where they would also render specific interviewees identifiable in ways that contravene individually-negotiated terms of consent. Transcripts are however on file with the author. Further details can be supplied on well-reasoned request, within the ethical parameters of agreed consent.

explicit, moreover, in this documentation-based, civil law, system in which the judge is trier of both fact and law.<sup>11</sup>

One might expect this implicit distinction between judicial and other social truths, and the explicit valuation of knowledge produced by one's own profession as a superior basis for the former, to appear at least as strongly among forensic scientists. Thus for example Moon (2013) discusses 'scientist' assertions of the superiority of forensic regimes, while Schwartz-Marin and Cruz-Santiago (2016) document relatives' challenges to them. One operative did suggest that 'we offer scientifically tested data... technical information that is turned into judicial truths by the judge'. In general, however, there was a noticeable emphasis on measured claim-making, and what can best be described as professional humility, amongst SML personnel in this study. Interviewees, staff in the field, and presenters at the abovementioned training symposium, invariably used the language of probability, percentages, and non-exclusionary results, rather than certainty or incontrovertibility, when discussing identifications and other test outcomes. Each of the archaeologists, anthropologists and technicians interviewed meanwhile valued their work principally as offering peace of mind to relatives, with one seeing it as a duty directly to the victim herself ('to give her back her right to a story with a proper ending'). Only three (of 10) made mention of the utility of their work to the judge or the courts (in response to a question about how they would characterise the specific importance or contribution of the work of their unit or institution).

This strikingly humanistic, non-technical approach to valuing a primarily scientific, contribution proceeds partly from the recent history of the SML, standing as a testament to awareness of the need to revert past errors by cultivating civic confidence, rather than just technical improvement. In the words of the team's administrator, herself the relative of a disappeared person: 'we set about re-establishing the bond of trust with relatives, society, and the state that was broken back in 2006, when the [identification] errors came to light'. This learning process cannot, however, fully eliminate tensions between scientific, judicial, and social or psychosocial imperatives in the work of forensic personnel on human rights cases (Rosenblatt, 2015). Judges and other lay figures often fail to correctly understand scientific paradigms. The former have been known to order excavations in unlikely or unsafe sites, under impossible weather conditions, or on the basis of somewhat flimsy verbal testimony. Excavations may be abandoned prematurely, or prolonged unreasonably, by judges impatient for results, or who have an insufficient grasp of site survey principles. Staff in the field may be asked to receive relatives at search sites, or facilitate their presence when a victim or a deceased family member is to be exhumed.<sup>12</sup> While most personnel seemed genuinely welcoming of this, difficulties do arise: 'we're told to keep in touch with them through the whole process... but the overseas lab results can take two years. How many ways can you say 'there's no news'?'

News, even when it comes, may be ethically troublesome: 'you take samples and it's obvious the genetic relationships aren't as they've been told to you... so there's some family secret about paternity, but that's

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<sup>11</sup> See Accatino and Collins, *op. cit.*, on the relationship between truth and evidence in domestic human rights case trials under civil law systems, in Chile and elsewhere. More generally, see Wilson (2011), or Cassese (2013), on contrasting evidentiary protocols and truth-producing practices in inquisitorial, and adversarial, approaches to international criminal justice.

<sup>12</sup> Victims of extrajudicial execution are sometimes exhumed to corroborate identity or cause of death. Relatives are sometimes exhumed to obtain reference samples for comparison of DNA profiles.

none of our business'. Even less contentious information discovered in the field cannot strictly speaking be transmitted directly to relatives, as judges are its only authorised recipients: 'you might have them sitting right there, but you're not supposed to tell them anything important until you've notified the judge'.

Many of the mentioned difficulties proceed from the judicially- controlled nature of forensic work in Chile around this issue. Thus most can be managed down to the status of minor inconveniences if judges are willing to defer to technical expertise, and cultivate cordial relationships with relatives. While this is not unknown, deeper and wider understanding of how scientific evidence is produced and interpreted would clearly help. Judges are not the only culprits: the author directly observed and was frequently told about tensions between technicians who excavate sites, and detective or uniformed police who accompany them. Part security guards, part guarantors of evidence, police officers spending long days at potential exhumation sites, often in inhospitable areas, can become understandably bored and/or resentful. When also observing efforts by on-site forensic teams (currently usually led by a young woman) to assert authority over subcontractors, or advise the judge on the best use of time and resources, some become positively restive. For example, at the week-long site dig I observed, a predominantly female forensic team was supervised by an older, male, judge and accompanied by an exclusively male detective team. Two of the detectives repeatedly expressed (to me) their disapproval of the team leader's dissection of – and implied dissent from – the judge's instructions: 'well, she's right actually, but you shouldn't contradict judges, even if they get their facts wrong: it's not her place'. Tensions also sometimes arise with the police service's own criminalistics staff.

More serious impediments can arise when deference to relatives' wishes interferes with hard-won technical improvements. At the training symposium mentioned above it transpired that a dataset of reference samples, taken before the 2006 discovery of past errors, has been basically decommissioned, at the insistence of relatives' associations. Opinions differed as to whether there was a genuine evidentiary or scientific question mark surrounding the samples, but this was clearly a moot point: 'relatives, not scientists, are now deciding how we do the science'. This is a problem on at least two fronts. Relatives are no better placed than other non-experts to assess underlying scientific issues. Neither do Chile's organised relatives' associations represent all families of the disappeared. One might furthermore question whether relatives are, anyway, the only actor with a legitimate stake in the resolution of disappearance.

This sensitive terrain concerning the ownership and moral arbitrage of victims and the crimes committed against them is also inhabited by Programa staff, interacting with relatives, or lawyers representing them, at court hearings and liaising about cases. This liaison generates dilemmas about how to deal with inconvenient truths, and whether or how to proceed when relatives are reluctant. One senior Programa figure observed that lawyers acting privately 'have discretion to tailor what they tell families, take their feelings into consideration... [but] We have to act in strict adherence [*apego*] to (...) the state's duty to prosecute and produce truth. We can't hide or ignore relevant things just because they're inconvenient or hurtful'.

While Programa lawyers were clear about the need to empathise with and respect relatives, one long-serving lawyer observed: 'we aren't representing the family, and that gives us a certain freedom of action

(...) we don't absolutely need their consent'. Recent years have also seen a more proactive approach to publicity. As the then-director noted: 'these cases have a social relevance, beyond the immediate circle of families... the public needs to know about them (...) we have to make our work visible'. Here we see an increasingly self-confident assertion of the importance of accountability to society as a whole, and a strong albeit ultimately empirically untested belief in the exemplary, preventive (dissuasive) and truth-producing potential of the justice process.

In sum, while the notion of judicial truth is clearly an orienting factor in the discursive self-understanding of Chile's state forensic scientists, lawyers, and detectives, the experience of seeing truth, specifically truth-for-justice, production up close has generated a range of personal, professional, ethical and epistemological challenges which defy easy resolution. Naming and exploring the multiple investigative, scientific, judicial and affective understandings of truth that are in play and at stake whenever search, identification and prosecution are discussed may lead us to explore more purposefully than before what mix of truth-telling and justice-producing avenues, or combination(s) of humanitarian and accountability-framed modes of search for the disappeared, can produce optimal results in a given setting.

### **Intergenerationality among professionals with transitional justice-related functions**

Generational replacement and its effects have been studied in relation to victims and survivors,<sup>13</sup> but less often in relation to justice system professionals. Anyone involved with transitional justice in post-authoritarian Latin America will however have seen significant visible change and renewal, over the past decade, in state as well as nonstate organisations directly or indirectly concerned with accountability (Collins, forthcoming and 2016a). Lifecycles, retirement, and professional advancement, inter alia, have seen some familiar faces leave the scene and be replaced. This section discusses in turn, the motivators, and disincentives that affect younger professionals beginning work in the three agencies; and self-reports of how age and/or length of service affect everyday interactions.

Study participants mentioned a range of issues affecting younger professionals (30 or under).<sup>14</sup> One set relate to career considerations, including future employment prospects. A second set have to do with treatment by peers, relatives, and suspects. Regarding learning opportunities, younger detectives tended to feel that apprehensions about limited technical challenges, or lack of excitement, had not been borne out: 'when you're training, everyone wants to go into homicide, or the drugs squad... they think human rights isn't street enough (*'tiene poca calle'*). [But actually] you learn a lot from cold cases – photo aging technology; how to track someone down from a 30 year old address... it turns you into a great detective'. Other apprehensions turn on the unit's association with Internal Affairs. Policing one's own is rarely the quickest route to popularity in any police service. For this researcher, however, it is striking to see signs of a notable volte-face in this regard. Two senior unit detectives interviewed in 2004-5 mentioned locker-

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<sup>13</sup> See the extensive 'postmemory' literature that grew up around holocaust studies, and now has Latin American variants and exponents dealing, inter alia, with second and third generations justice activism, identity, memory politics and networking strategies as well as more therapeutically-focused discussions of the 'intergenerational transmission of harm'.

<sup>14</sup> 'Participants' refers to interviewees, those observed, heads of service, and symposium attendees, as set out above. New staff arrive at the SML and Programa in response to advertised vacancies. Detectives can, strictly speaking, be simply designated, but most today arrive having requested a brigade posting.

room parlance portraying human rights case detectives as 'bad' internal affairs, and their corruption-busting peers as 'good'. By 2015-16, while the language was still current, all who mentioned it were adamant that the connotation had been reversed, suggesting that institutional culture has become better disposed towards past case work.

Three younger detectives mentioned the moral rehabilitation of their own service as a motivator: 'the country needs decent police. When we arrest these old guys [former police], but treat them well, it's a way of bringing home to them how wrong it was, what they did.' This behaviour, undoubtedly desirable for guarantees of non-repetition, has potential truth and justice costs: 'there are disappeared [people] who we're never going to recover because we respect perpetrators, allow them to keep silence'. Only older interviewees connected decent treatment to a certain lingering empathy: 'there's always going to be that respect for an ex-colleague', although a younger woman officer acknowledged 'you do sometimes think 'well in another era, that could have been me''. Such reflections could perhaps be harnessed for peer-to-peer human rights training within institutions, which might have higher credibility coming from those with in-service credentials. The same officer pointed to this possible paying forward: 'you take all of this with you, whatever you go on to do in the police'.

The question of positive benefits for future professional life, individual and collective, is also relevant for young human rights lawyers at the Programa. The transferability of the specific litigation skillset they acquire is narrowed by the fact that the inquisitorial criminal justice system is now virtually obsolete. Meanwhile, Chile's wider legal profession has traditionally been conservative, pro bono human rights lawyering is relatively unknown, and past case accountability is far from universally popular. This line of work is therefore unlikely to be regarded by future potential employers as a plus, or at least, as a harmless sign of youthful altruism. Younger Programa lawyers interviewed accordingly saw their future either in Chile's incipient state human rights institutionality, or as part of regional or international networks of human rights professionals. This suggests a move to create one's own supportive peer and reference group, beyond the boundaries of traditional institutional or vocational affiliations.

Some Programa professionals adduced direct personal experiences as motivation (two of the under-30 cohort are direct family members of victims, and in general, the relative-survivor-professional boundary is more porous than can be fully discussed here). Most of the younger lawyer cohort however cited personal idealism, rather than family background or ideological/ party political affiliation. Those few who are connected to the overlapping categories of left-wing politics or direct dictatorship-era victimhood find this can positively affect their acceptance among relatives and survivors. The same attributes, if known, can conversely produce suspicion and complaint from suspects or defence lawyers. One former detective reminisced about a formal complaint accusing him of 'fomenting class warfare', after he tried to persuade former conscripts to abandon their code of silence protecting superior officers.

In the aforementioned example, the detective's supposed ideological motive was a figment of military imagination. Where it is not, the line between providing relatives with understanding and support, and maintaining appropriate professional distance and neutrality, can be a fine one. At a closed meeting convened by this author, one survivor, complainant in a torture case, upbraided the then national director of the SML: 'I get summoned to [your] service to be examined like some zoo specimen... You were there; you were detained, you know what they did - why don't you just tell them?'. In fact, the director's

practice, precisely because he was a survivor, had been to recuse himself from direct unit case work. His efforts to improve treatment of relatives, witnesses and survivors were carried out at arm's length, taking pains not to transgress parameters of legal and scientific neutrality. To do otherwise might be viewed positively from within a reparation paradigm, but could lead to justice setbacks.

Interviews, observation, and casual conversation with professionals of all levels in each service showed that younger staff members frequently found their age commented upon, usually by relatives or suspects. The tenor of the comments was however notably varied. Youth among police detectives was treated by some relatives as a synonym for lack of knowledge, but was also positively valued as ruling out personal involvement in repression. Perpetrators meanwhile quickly abandoned attempts to intimidate young officers with their fearsome past reputations, discovering that the question 'Don't you know who I am?' increasingly elicited a simple, factual, 'no'. Only forensic staff felt their youth was always viewed positively. At least two contributory factors probably operate: relative youth, in a highly technical field, is seen as a guarantor of up to date expertise. There is moreover a (correct) prevailing perception that now-superseded techniques produced the historical identification errors discussed above. Thus youth places SML staff on the right side of two before-and-after divides. These are demonstrably not the same people who closed morgue gates to desperate relatives after the coup; nor are they those whose previous work had to be rectified leading to the traumatic reclaiming, by the state, of remains already handed over.

Newer lawyers felt their relative youth to be on balance an initial handicap, unless they could lay claim to some relevant political or biological affiliation. Here a specific, though not unique, feature of Chile's human rights history may be relevant. The Vicaría de la Solidaridad, Chile's pre-eminent rights defence organisation during the long years of the regime, operated under the auspices of the Catholic Church and cultivated an apolitical, legally-framed strategy (see the recent documentary film 'Habeas Corpus' (2014), dir. Sebastián Moreno and Claudia Barril). The Vicaría will be forever associated in collective memory with the human rights lawyers who became its best-known public face.<sup>15</sup> Much-loved by relatives and survivors' associations, the iconic elder statesmen<sup>16</sup> of this group are often feted at commemoration ceremonies. Human rights lawyers therefore have a particular place in relatives' affections, and emotional bonds were formed on both sides. The introduction of new faces to this community, employed by the state to boot, can therefore provoke suspicion. Lawyers joining the Programa during Chile's only right wing presidency to date since transition (2010-2014) found themselves particularly disadvantaged. The simultaneous re-orientation of the service, away from the language of victims' interests toward that of state prosecutorial duties, increased a sense of abandonment on the part of some families.

The main lesson here is that the optimal profile of services dealing with search and identification services is intimately bound up with each setting's history of repression and human rights defence. What is yet again strongly evidenced, however, is the potential tension between victim-driven – or, by proxy, relative-driven – considerations, and the dictates of professional expertise, modernisation and renewal. Newer

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<sup>15</sup> See, inter alia, the recent documentary film 'Habeas Corpus' (2014, dir. Sebastián Moreno and Claudia Barril).

<sup>16</sup> Few women are as widely recognised, though some, including Carmen Hertz (wife of a disappeared man) and Rosemarie Bornand, played key roles. The gender dynamics of leadership in the clerically-led Vicaría were the mirror image of those in relatives' associations, almost invariably headed by women.

lawyers may know more about international law; newer technicians, about mitochondrial DNA. The emotional benefits for relatives of being surrounded by familiar faces who know their story, or indeed the investigative advantages of in-depth, first-hand knowledge of historic cases, may however pull in the opposite directions when staffing decisions are being made. A senior Programa figure discussed, for instance, the recent hiring of an elderly ex-Vicaría lawyer: 'he's not really able to keep up a full caseload... but he's an icon, a figurehead - not just for relatives - he inspires the younger lawyers too'. Such considerations shade into our final set of observations, regarding compatibility between victim-centred processes and technical/ professional standards.

### **Victim-centredness**

In the case of disappearance and other types of absent victimhood – such as extrajudicial execution – relatives usually become the proxy for the victim. Rights to truth, justice, reparations, participation etc are generally treated as inhering directly in the most immediate family circle, although as we have already signalled above, this is not without its difficulties. One of the detectives interviewed had a relatively unusual background, in social work. She nonetheless felt this had been an excellent preparation for her current work, not only nor even principally in relation to interpersonal skills but because, she observed, 'I know how to do social science research, construct methodological frameworks...' – necessary, in her view, for investigating systematicity in state terror crimes. Her colleagues nevertheless perceived her background and utility in different terms. Asked how they dealt with relatives, witnesses or survivors expressing strong emotions, most responded that they would call on female colleagues, particularly if sexual violence was at issue.<sup>17</sup> Thus sensitivity and in-service learning can enter into tension. The assumption that female staff are solely, uniquely or particularly qualified to deal with emotive issues is questionable. Even where it is founded – as in the case of the officer with social work training – and/or accords with witness preferences, to make it a rule is to prevent this expertise from being acquired and infused throughout the service.

Police observed and interviewed were the least likely overall to use affective or emotional language to describe their relationships with relatives. This may be because police interaction with relatives is often in the latter's capacity as witnesses. Reticence also comes from relatives, with most officers well aware that 'for some families, it's a struggle just to have a policeman in the house ... it brings it all back'.<sup>18</sup> However detectives are also, of the three services, the one that spends most time with suspects and perpetrators. Does this counterbalance empathy with relatives? Is it possible or desirable that investigators aim to develop even-handed (lack of) affect with suspects and relatives alike? Some officers did express limited sympathy for elderly suspects, including those they clearly believed were guilty: 'you see terrible sights .... People destroyed, alcoholic, the family turned against them'.

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<sup>17</sup> While detectives' work on disappearance cases is the focus of this study, most also work on survived torture cases. Relatives and witnesses are, also, often themselves survivors.

<sup>18</sup> Strikingly, at the training symposium given by the present author, several younger policemen brought up a pressing dilemma: given what relatives had been through, at the hands of the state, was it acceptable for them, as police officers, to object when verbally or physically ill-treated by a distraught relative?

When dealing with atrocity crimes that states are expected to unequivocally repudiate; and interacting with notorious perpetrators, the presumption of innocence almost becomes a fiction. Whether it is appropriate for investigators to cultivate warmer relationships with one party than another remains, nonetheless, unclear. Reparatory principles, like victim-sensitive criminal justice theories, may recommend that victims or relatives be believed, and allowed to meaningfully participate. What, however, of due process or evidentiary limits? Relatives and survivors may wish to reclaim a former detention centre as a memory space: investigators, to preserve it as a reconstructed crime scene. When a search site unearths remains, family members may wish to handle and/or cherish the recovered artefacts, but scientific protocols may require that they be bagged and removed as evidence. Involvement in court proceedings may expose relatives to threats or intimidation, and/or may genuinely compromise case integrity. A senior Programa lawyer adduced the example of a relative who repeatedly demanded access to a portion of the case file embargoed by the judge, citing her 'right to the truth'. Aware that she meant to make the contents public, and that to do so would risk the case being thrown out, he refused.

The necessary limits of participation, and the (in)compatibilities between rights to truth, justice, reparations and due process are therefore tested every day in search, identification and prosecution dynamics. Anyone familiar with the history of the justice struggle knows that present-day prosecutions would not even exist were it not for the stubborn persistence of relatives and their supporters. This helps explain why relatives may become particularly exercised when higher order goals or procedural rules are invoked as taking precedence. The sense of dispossession that can result should not be underestimated. Young professionals, in particular, are seen as having come late to the party, reaping the rewards of groundwork laid by others. One partial resolution is to recall that successful criminal prosecution is often a shared goal. The state's responsibility to block due process infractions can therefore be viewed less as high-handed imperiousness and more as a duty of care to prevent self-defeating behaviour by those invested in prosecutorial success. However the state may also have to arbitrate genuine rights clashes between relatives, such as where one family's refusal to consent to testing or exhumation blocks the possibility of another family's wait being brought to an end. Thus when the state overrules (some) relatives, or takes a possibly unpopular line, it is not always pursuing illegitimate ends even from within the victim-centred paradigm.

The state-sponsored nature of the current process is, moreover, for some, an essential part of its symbolic weight and preventive (reforming) nature: 'the same state that did the disappearing... is the one that has to put it right'. Crudely put, atrocity crime investigations become both a learning and a testing ground for new rule of law standards. These standards must, however, be proof against accusations of bias, which means they cannot always fulfil requirements to be particularly sensitive to relatives' needs. An SML psychologist ventured the view that 'we don't have, we shouldn't have, a special protocol for dealing with relatives [of the disappeared]'. Her view was rather that the service should adopt a rights-based model, seeking not to deliver uniform treatment, but to deliver the same level of rights entitlements to all groups, based on needs. These groups include defendants, however, which does in practice, present difficulties. The work of the arm of the service that certifies defendants' fitness to be questioned or imprisoned has repeatedly been challenged on all sides – accused of undue leniency, and undue harshness. It is in the contradiction between one relative's needs and rights and those of another, however, that the Panglossian scenario breaks down most completely. A forensic expert painted the following picture:



'you're at a graveside, with relatives, opening up a grave to bury some recovered fragments. The elderly mother's there. She feels as though it's finally over, she can finally rest in the knowledge that every part of her son has come home. And as you go to place the fragments, you see that one of the phalanges is repeated – it's the same as one already there. Something's wrong, another mistake. If you tell her, all that trust you've spent months, years, building up will be gone forever. She'll never get over it. So do you just go ahead, and say nothing? If you do – well, whose is it really? Maybe some family who's never heard anything, never found anything. What about their peace of mind, their rights? You have to come down on the side of the truth, professional standards, your duty to science....'

Vocational protocols can, then, operate as ultimate arbiters of otherwise intractable moral and professional conundrums for those who work, in effect, as transitional justice operatives. Such protocols are however shaped and changed by exposure to relatives, and to other professionals' operating assumptions. Introducing transitional justice framings and formulations, including victim-centredness, can help bring these arbitration and shaping processes into sharper focus. They do not, however, offer a trump card. Rather, the outworkings of the transitional justice rights matrix themselves throw up implicit incompatibilities between rights claims. Informed choices and accommodations must be made on the ground.

### **Conclusions**

This section considers the implications of what has emerged for reflections about truth and justice; the effect of intergenerationality; and the pros and cons of victim-centred transitional justice, all as related to the performance of transitional justice-relevant functions within the state around enforced disappearance.

Regarding truth, we have seen how the elongated chain of events surrounding enforced disappearance creates challenges for the production and accommodation of truth claims. Since truth claims are essentially socially constructed, the status of 'facticity' is arguably conferred, rather than inherent. The harnessing of scientific and investigative truth claims for a truth and justice process therefore involves at least three sets of necessary accommodation between paradigms. First, forensic science turns natural science to the service of judicial processes. This demands the translation of investigative actions and procedures into the language of evidentiary value and judicial certainty. Social consequences then follow. Social actors' trust in scientific and legal outcomes requires a separate set of accommodations. Social actors' stake in the process is increasingly expressed in a rights framing, asserting society's – primarily, relatives' – right to truth.

Interviews and observation have shown that the truth(s) established around search and identification, like their consequences, are regularly controverted or judged insufficient. A putative duty to be responsive to relatives can meanwhile conflict with investigative procedure or professional protocol. Beliefs about the source of the truth imperative are key. If truth is not solely or principally for the benefit of relatives, but a broader social duty, decisions may be different. Where truth production by the state is seen as having additional value - repairing state credibility, and enhancing overall justice system claims to objectivity, transparency and efficacy- self censorship or respectful silence become difficult to justify. Overall, the need to manage expectations in the particular sense of more openly contrasting the

understandings of truth and justice that each relevant actor brings to the table is suggested. This in turn requires the active construction of spaces of ongoing interaction, beyond occasional graveside, laboratory and courtroom encounters. For instance, asked to identify a best-practice example of achievement, most participants cited an ongoing multi-institutional forum convened around a particularly challenging mass grave site known as 'Patio 29'. Reintroducing intergenerational considerations, its largely youthful members moreover named 'Whatsapp' as the principal reason for its success: 'we can communicate even when the boss won't let us leave the office: get things sorted between ourselves, then organise the paperwork later'.

Across institutions, personnel interviewed tended to manifest one of three relatively consistent orientations towards their work. These were, respectively: use of transitional justice or rights language as a frame; use of more general professional terminology; or personal sympathy or empathy, usually toward relatives. What, beyond semantics, might change if the transitional justice/ human rights framing became more prevalent, eg through ongoing training and socialisation? One might speculate that explicitly naming and discussing truth, reparations and guarantees of non-repetition as additional expectations attached to the justice process around enforced disappearance could encourage more widespread acknowledgment of the contradictions and tensions discussed above. It could lead to questions about the aptitude or sufficiency of the criminal justice process to deliver in all four areas, something which might fuel consideration of the need for additional, non-judicial modes or entities of search, separating the 'ameliorative' and 'adjudicative' functions that Moon (2016) ascribes to forensic practice.

This surmise is informed anecdotally by the fact that after the training symposium described above, a high proportion of the 80-plus participants valued the opportunity to name and explore their experiences from within a transitional justice framing. To be described positively as potential guarantors of transitional justice principles, and to be asked what insights they could offer to that end, was seen as respectful of their professional expertise. Some contrasted it with previous training, which had (they felt) been unduly restricted to legalistic human rights codes, presented as demands, limitations or correctives to their existing modes of work. Specifically, acknowledgment of latent contradictions within the transitional justice rights matrix, and between it and other legitimate criminal justice principles, allowed professionals to present multiple practice-based examples of experiencing and resolving such dilemmas in the field.

The flexibility and hybridisation required for such creative problem-solving often requires negotiation with other actors. Another aspect of the training particularly positively evaluated was, precisely, exercises asking participants to imaginatively inhabit the identity of another participating profession (thus detectives were asked to list the priorities of forensic practitioners, etc.). This again suggests potential gains from consciously fomenting exchange amongst auxiliary justice system professionals. There are, however, potential pitfalls. If these detectives, scientists or lawyers come to find common ground or validation principally or only with each other, and/or in the company of relatives and activists from the non-state side of the divide, there is a risk that their institutions will be the poorer for it. Enclave-based accountability with an exclusivist culture would have little chance of transcendence beyond the bounds of the historical case universe, representing a missed opportunity to improve wider rights awareness and forward-looking prevention within operationally relevant institutions.

Moreover, valuable reciprocal learning opportunities might thereby be lost. Professional practitioners can offer grounded challenge to the woollier or less consistent parts of transitional justice discourse. In identifying due process, validity, and verification problems related to relatives' participation, they reassert important scientific and evidentiary boundaries necessary for outcomes that relatives themselves often strongly desire. They thereby provide useful reminders that creating or maintaining broader civic confidence in the justice system is itself a positive contributor to guarantees of non-repetition. Thus the underlying vocational identity which has brought some professionals into the orbit of work on these issues is to be celebrated rather than abandoned. It would be unhelpful to reinforce a notion of transitional justice practice as something separate from everyday state practice, or impossible to carry out within the confines of normal professional identity or agency culture.

### Bibliography

Accatino, Daniela and Cath Collins. 2016. Truth, Evidence, Truth: The Deployment of Testimony, Archives and Technical Data in Domestic Human Rights Trials. *Journal of Human Rights Practice* 8 (1): 81-100

Arthur, Paige. 2009. How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice. *Human Rights Quarterly*, 31(2): 321-367

Boss, Pauline. 2007. Ambiguous Loss Theory: Challenges for Scholars and Practitioners. *Family Relations* 56: 105-111

Cassese, A., 2013. *Cassese's International Criminal Law*. 3<sup>rd</sup> ed, Cambridge: Cambridge University Press

Castillo, María Isabel. 2013. *El (im)posible proceso de duelo*. Santiago: Universidad Alberto Hurtado.

Claude, Ophelia. 2010. A Comparative Approach to Enhanced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence. *Intercultural Human Rights Law Review* (5): 407-462

Collins, Cath. 2010. Human Rights Trials in Chile during and after the 'Pinochet years'. *International Journal of Transitional Justice* 4 (1): 67-86

Collins, Cath. 2016a. Prefacio. In Osmo, Carla (ed.) *Judicialização da Justiça de Transição na América Latina*. Brasília: RLAJT/ Ministério da Justiça do Brasil/ PNUD:13-22

Collins, Cath. 2016b. Respuestas estatales a la desaparición forzada en Chile: aspectos forenses, policiales y jurídicos. Working Paper Serie, Observatorio Justicia Transicional, Universidad Diego Portales, Santiago de Chile.

Darcy, Shane and William Schabas (eds.). 2004. *Truth Commissions and Courts: The Tension between Criminal Justice and the Search for Truth*. New York: Springer.

Dulitzky, Ariel. 2017. Desapariciones Forzadas: Las contribuciones de América Latina y de José Zalaquett. In Facultad de Derecho de la Universidad de Chile, *En Conquista de los Derechos Humanos: Homenaje a José Zalaquett Daher*. Santiago: Universidad de Chile.

Giorgou, Irena. 2013. State Involvement in the Perpetration of Enforced Disappearance and the Rome Statute. *Journal of International Criminal Justice* 11(5): 1001-1021

*Habeas Corpus*. 2015. Documentary film, 90 mins. Dirs. Claudia Barril and Sebastián Moreno. Santiago, Chile.

Hilbink, Lisa. 2007. *Judges beyond Politics in Dictatorship and Democracy*. New York: Routledge.

IACHR (Inter-American Commission on Human Rights). 2014. The Right to Truth in the Americas. OEA/Ser.L/V/II.152

IJTJ (International Journal of Transitional Justice). 2016. 'Special Issue: Reconsidering Appropriate Responses to Victims of Conflict', edited by Juan Méndez

Kritz, Neil J. (ed.), 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington, D.C.: United States Institute of Peace.

Lira, Elizabeth. 2015. Chile. Desaparición Forzada: 1973-2015. in Miguel Guisti, Gustavo Gutiérrez y Elizabeth Salmon (eds.) *La Verdad nos Hace Libres*. Lima: Pontificia Universidad Católica del Perú.

Madariaga, Carlos y Beatriz Brinkmann, 2006. Del Cuerpo y Sus Sucesivas Muertes: Identidad y Retraumatización – Particularidades del proceso de exhumación vivido en Chile. Santiago: Centro de Salud Mental y Derechos Humanos, CINTRAS.

McEvoy, Kieran, and Lorna McGregor (2008) *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*. London: Hart Books

Moon, Claire. 2013. Interpreters of the Dead: Forensic Knowledge, Human Remains and the Politics of the Past. *Social and Legal Studies* 22(2): 149-169

Moon, Claire. 2014. Human Rights, Human Remains: Forensic humanitarianism and the human rights of the dead. *International Social Science Journal* 65 (215-216): 49-63

Observatorio Justicia Transicional. 2010-2016 inclusive. Chapter 1 in *Informe Anual sobre DDHH en Chile*, Universidad Diego Portales, Santiago, Chile. [www.derechoshumanos.udp.cl](http://www.derechoshumanos.udp.cl)

Robins, Simon. 2011. Towards Victim-Centred Transitional Justice: Understanding the Needs of

Families of the Disappeared in Postconflict Nepal. *International Journal of Transitional Justice* 5(1): 75-98

Roht-Arriaza, N. 2005. *The Pinochet Effect: Transnational Justice in the Age of Human Rights*. Philadelphia, PA: University of Pennsylvania Press.

Rosenblatt, Adam. 2015. *Digging for the Disappeared: Forensic Science after Atrocity*. Stanford: Stanford University Press

Schwartz-Marin, Ernesto and Arely Cruz-Santiago, 2016. Pure Corpses, Dangerous Citizens: transgressing the boundaries between mourners and experts in the search for the disappeared in Mexico. *Social Research* 83(2): 483-510

Servicio Médico Legal. *Memoria Programa de Derechos Humanos 2007–2010*. Santiago: Gobierno de Chile, 2010.

Simić, Olivera. 2016. *An Introduction to Transitional Justice*. London, NY: Routledge

Willner, Roland. 2011. Micro-politics: An Underestimated Field of Qualitative Research in Political Science. *German Policy Research* 7(3): 155-185

Wilson, Richard A. 2011. *Writing History in International Criminal Tribunals*. Cambridge: Cambridge University Press.