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Accountability for Corporate Complicity in Human Rights Violations: Argentina's Transitional Justice Innovation?

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“Democracy or Corporations” were the words that appeared on posters and in graffiti on the March 26, 2014 commemoration of the 1976 coup in Argentina. Those words capture the efforts that the country has begun in holding businesses accountable for their role in the military regime’s repressive apparatus. It might not be surprising that Argentina, as the world leader in transitional justice innovations,¹ might add corporate accountability to its set of accomplishments. The puzzle underlying this chapter, however, is whether other countries will follow Argentina’s lead or if the factors shaping the corporate accountability processes in Argentina are

¹ Francesca Lessa, Leigh A Payne, and Gabriel Pereira, “Overcoming Barriers to Justice in the Age of Human Rights Accountability,” *Human Rights Quarterly*, 2015.

unique and nontransferable to other contexts. We thus explore Argentina's efforts in a comparative framework and also attempt to build a theoretical link connecting accountability for business complicity with the broader transitional justice field.

To fulfill these objectives we raise and address the following questions: *Why* and *when* should corporate accountability become a new focus within transitional justice? *Where* and *how* are these transitional justice innovations occurring? We conclude with some reflections on the question of what factors contribute to success in achieving transitional justice goals through accountability for corporate complicity. Our responses to these questions draw on our cross-national research on accountability for corporate complicity, with a particular focus on Argentina in a comparative context.²

² Our cross-national research on accountability for corporate complicity is part of two larger projects: the "Alternative Accountabilities for Past Human Rights Abuses" project led by Professor Leigh Payne and Professor Kathryn Sikkink, and the "Corporations and Human Rights Database" project led by Professor Leigh Payne and Dr. Tricia Olsen. Dr. Gabriel Pereira is a team member of both projects. We have received generous support from a number of sources that we wish to acknowledge. The National Science Foundation (Grant No. 1228519) and the Arts and Humanities Research Council (Grant No. AH/K502856/1) supported our project "Alternative Accountabilities for Past Human Rights Abuses." The British Academy and the Leverhulme Trust, as well as the John Fell OUP Research Fund No. 121/482, provided funds for a pilot study on Latin American business and human rights and to create the "Corporations and Human Rights Database." The University of Denver's PROF, Faculty Research Fund, and Internationalization Grants were also instrumental in the data collection efforts for Latin America. We are also indebted to Kathryn Babineau and Laura Bernal-Bermúdez for their research for this project. In addition, we thank Juan Pablo Bohoslavsky, Tricia D. Olsen, and Horacio Verbitsky for their comments on an earlier version of this chapter.

Transitional Justice and Corporate Complicity: Why and When

Traditionally, transitional justice (hereafter TJ) has focused on the behavior of states and their direct associates in perpetrating human rights violations. The definition of TJ and its practice, however, have not excluded non-state actors as targets for accountability. TJ could thus be extended to include corporate accountability for complicity in past dictatorships and civil conflict, as we argue in this chapter.

TJ has been defined as a response to “systematic or widespread violations of human rights ... [in] recognition for the victims and to promote possibilities for peace, reconciliation, and democracy.”³ Nothing in the definition and purpose of TJ precludes the inclusion of businesses as long as they have participated in the *systematic or widespread* use of repression and if the aim of corporate accountability advances TJ goals.

In practice, moreover, non-state actors have been included in TJ mechanisms. Truth commissions and trials have focused on state forces and their civilian allies in death squads or paramilitary groups, as in Peru and El Salvador. They have also held accountable rebel or revolutionary forces fighting against the state, as in Guatemala and South Africa. The domestic prosecution of a priest in Argentina and a doctor in Uruguay for their involvement in torture provide two additional examples of the

³ International Center for Transitional Justice (ICTJ). 2009. “What Is Transitional Justice?” www.ictj.org/about/transitional-justice (accessed July 16, 2009).

incorporation of non-state and civil society actors within TJ's scope. The South African Truth and Reconciliation Commission (TRC) investigated religious organizations as well as businesses for their complicity in the apartheid era. In other words, TJ implicitly includes non-state forces engaged in the systematic and widespread violation of human rights. Including corporate complicity in TJ thus signifies the recognition of businesses involvement in the systematic and widespread human rights violations carried out by states and quasi states under dictatorships and in civil conflict.

The *why* of including corporate complicity in TJ is the importance of holding businesses accountable for their past involvement in human rights violations, thereby advancing the TJ goals of peace, reconciliation, and democracy. Peace depends on the guarantee of non-repetition; raising the reputational or financial costs to businesses of directly or indirectly participating in human rights violations increases the possibility of deterring future complicity. Reconciliation depends on knowledge and acknowledgment of past violations or truth; the truth about business involvement in violence holds them accountable for remedy and repair of those past harms. Advancing democracy, finally, depends on respect for human rights, protection from violations, and remedy when they occur; the principles of respect, protect, and remedy are businesses' duties as much as states'

responsibilities.⁴ Thus corporate accountability is consistent with TJ goals of advancing justice, reparations, truth-telling, and guarantees of non-repetition.⁵

When to include corporate complicity as part of TJ depends on the direct or indirect involvement of state-, privately, or jointly-owned businesses to the authoritarian regime or civil conflict violence. Although conducting business with repressive authoritarian regimes or warring armies, and making profits from that business, might be considered immoral, illegal behavior is the focus of TJ.

Maassarani usefully identifies four categories of business behavior that moves from immoral to illegal conduct: (1) joint criminal enterprises; (2) conspiracy to violence; (3) instigation of violence with knowledge of outcome; and (4) procurement, or profiting from sales or services knowing that it contributes to violence but without necessarily having criminal intent.⁶ When corporations engage in one or more of these four types of activities, they should face accountability for past state violence and thus fall within TJ's remit.

⁴ John Ruggie, Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises. "Business and Human Rights: Further Steps Toward the Operationalization of the 'Protect, Respect and Remedy' Framework," in Human Rights Council, United Nations, 2010.

⁵ Clara Sandoval, Leonardo Filippini, and Roberto Vidal, "Linking Transitional Justice and Corporate Accountability," in Sabine Michalowski (ed.) *Corporate Accountability in the Context of Transitional Justice* (London: Routledge Press, 2013).

⁶ Tarek F. Maassarani, "Four Counts of Corporate Complicity: Alternative Forms of Accomplice Liability Under the Alien Tort Claims Act," (2005) 38 *New York University Journal of International Law & Politics*, 39–65.

Some contend that TJ, or a “special kind of justice” is not necessary for business complicity when domestic torts law is sufficient. TJ, however, is not an exceptional form of justice;⁷ civil torts and criminal courts can form part of the TJ toolkit aimed at fulfilling victims’ demands for justice, reparations, truth-telling, and guarantees of non-repetition.⁸ Incorporating accountability for corporate complicity within TJ recognizes the unique role of businesses, not a unique form of justice. When past state violence, or the extent of violence, would not have been possible without corporate sponsorship, when businesses provided the legitimacy for violence and the capacity to carry out that violence, and when businesses knowingly contributed to that violence directly or indirectly, they moved beyond “dirty” business and into legal claims regarding corporate abuse increasingly recognized in international laws, as well as many state’s domestic torts.

Indeed, businesses themselves have begun to recognize their responsibility to uphold principles of respect, protect, and remedy. Norms of corporate conduct, underway and expanding via international voluntary agreements since the 1970s, embody these concepts, particularly in the UN Guiding Principles. Firms and industry sectors, in response, have increasingly addressed human rights in their bylaws or voluntary associations. These soft law agreements tend to act preemptively as guidelines to avoid costly lawsuits or campaigns; they do not constitute the conditions by which companies will be held accountable after they

⁷ Ruti G. Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000).

⁸ Youseph Farah, “Toward a Multi-Directional Approach to Corporate Accountability” in Sabine Michalowski (ed.), *Corporate Accountability in the Context of Transitional Justice* (London: Routledge Press, 2013).

commit atrocities. The argument behind including corporate accountability in TJ is to acknowledge the universality of human rights; businesses are not above the law. It also provides victims and states with the tools to advance justice, truth, reparations, and guarantees of non-repetition. It is not solely about punishing firms for past behavior, but about building a democratic future on a solid terrain of respect for human rights, protection of those rights, and remedy when those rights are violated.

Transitional Justice and Corporate Complicity: Where and How

Although corporate accountability is not new, we find that it is newly incorporated into the TJ toolkit. We further find that the way in which it is incorporated has involved innovations in the types of TJ mechanisms employed. Mechanisms traditionally associated with TJ – trials and truth commissions – have been used around the world to address corporate complicity; new kinds of civil trials have been added to the toolkit as a kind of “alternative accountability” mechanism.

We do not mean to exaggerate the claims about how far TJ has gone in including corporate complicity globally. Our preliminary study of TJ and corporate complicity in 116 countries that transitioned from civil conflict or authoritarian rule since 1970, reveals only a small fraction – 17 – that have addressed corporate complicity. These seventeen countries represent all of the regions of the world, suggesting that these innovations may be spreading. However, it is equally possible,

as we discuss further in our concluding reflections, that these efforts will not expand and will remain a unique TJ phenomenon.

Our analysis of how TJ addressed corporate complicity in these cases, reveals a new trend. On one hand, non-judicial mechanisms, particularly truth commissions, have been used in several countries, as other chapters in this book discuss. On the other hand, judicial mechanisms have also expanded. The use of trials as a TJ mechanism has tended to involve criminal prosecutions. In the case of corporate complicity, however, civil trials have outnumbered criminal trials.⁹ In our preliminary global study of accountability for corporate complicity, we found a total of sixty-one trials, most of them ongoing. Of these, about two-thirds are civil (thirty-nine trials, or 64 percent) compared to one-third that are criminal cases (twenty-two trials, or 36 percent). This trend is represented in the Table 1.

Table 1:
TJ and Corporate Complicity: Cross-National Study

Criminal Trials			
REGION (countries)	Domestic	Foreign	International
AFRICA (3)	1 (DRC)	3 (DRC) 1 (Liberia)	1 (Rwanda)
AMERICAS (2)	14 (Argentina) 1 (Chile)		
ASIA (1)	1 (Myanmar)		

⁹ By “civil trials,” we mean any prosecution in which individuals, groups, companies, and/or the state are held accountable for human rights violations by a *civil court*. We use the term “civil” as opposed to both criminal and military courts. Thus, we include in our definition lawsuits in which plaintiffs bring legal complaints seeking remedy for damages through acts committed by individuals, groups, companies, and/or the state. By “remedy for damages,” we mean monetary compensation, reparation, and nonfinancial remedies.

EUROPE			
MENA			
TOTAL (6)	17	4	1
Civil Trials			
REGION (countries)	Domestic	Foreign-ATS	Foreign
AFRICA (4)	1 (DRC)	1 (DRC) 1 (Morocco) 5 (Nigeria) 10 (South Africa)	
AMERICAS (1)	4 (Argentina)	1 (Argentina)	
ASIA (3)		2 (Indonesia) 2 (Myanmar) 1 (Papua NG)	1 (Myanmar)
EUROPE (1)		1 (Croatia)	
MENA (2)		8 (Iraq) 1 (Syria)	
TOTAL (11)	5	33	1

Source: Corporate Human Rights Database (CHRD).¹⁰

The use of this nontraditional TJ mechanism is observed in both transnational and domestic litigation.¹¹ The most common use has been in foreign

¹⁰ The Corporations and Human Rights Database (CHRD – <http://chrdproject.com>) so far includes only the pilot project focused on Latin America. The unit of analysis is a corporate abuse allegation (CAA). A team of graduate students have coded each CAA documented in the Business and Human Rights Resource Centre (BHRRC), an archive of allegations of corporations' human rights violations in all countries of the world from 2000 to the present. This archive has been used in scholarly, legal, and policy-oriented projects because of its strength in documenting the alleged abuse and the response. It thus provides a good starting point for tracking changes in violations over time. See <http://business-humanrights.org/>.

¹¹ Despite the creation of two UN ad hoc criminal tribunals in Yugoslavia and Rwanda, and the creation of the International Criminal Court with the Rome Statute of 1998, we found only one case of an international criminal trial. As expected, given the nature of the international human rights bodies, this is a criminal trial. The International Criminal Tribunal for Rwanda processed and convicted three businessmen in the well-known “media case” for their direct and public incitement

civil trials against businesses.¹² Of these, nearly all (thirty-three of thirty-nine cases), were advanced under the Alien Torts Statute (ATS), a statute that allows foreign citizens to seek justice in U.S. courts for violations committed outside the United States. Indeed, more than half of all – criminal and civil – trials in our database (54 percent) involved ATS.

These cases are concentrated in three countries: South Africa, Nigeria, and Iraq. Eight of the cases are in response to the South Africa apartheid era. For example, in one class-action suit, the plaintiffs argued that in selling cars and computers to the government, these companies aided and abetted violations of

to commit the 1994 genocide. In the *Prosecutor v. Nahimana, Barayagwiza and Ngeze* case, the defendants were accused of having been the masterminds behind a media campaign to desensitize the Hutu population and incite them to murder the Tutsi population in Rwanda in 1994. Ferdinand Nahimana and Jean-Bosco Barayagwiza were both influential members of the “Comité d’Initiative” (the Steering Committee) that founded *Radio Télévision Libre des Mille Collines* (RTLM), a radio station that from July 1993 to July 1994, broadcast virulent messages branding Tutsis as the enemy and Hutu opposition members as accomplices. Hassan Ngeze was the owner, founder, and editor of the *Kangura* newsletter, which was published from 1990 to 1995 and was widely read across Rwanda. *Kangura* produced hate-filled messages, characterizing Tutsis as enemies who wanted to subvert the democratic system and seize power for themselves. On November 28, 2007, an Appeals Chamber acquitted the defendants of a number of crimes but found them guilty of public incitement to commit genocide. See Sophia Kagan, “The ‘Media Case’ before the Rwanda Tribunal: The Nahimana et al. Appeal Judgment,” *The Hague Justice Portal*, April 24, 2008, www.haguejusticeportal.net/index.php?id=9166 (accessed November 22, 2014).

¹² By “foreign trials” or “foreign litigation,” we mean judicial process that occurred or are occurring in a country different from where the violations of human rights took place.

international law. The Khulumani victims' support group also used U.S. courts and ATS to address companies' apartheid-era crimes.

The Ogoni peoples of Nigeria brought a successful case against Shell Oil for collaborating with the authoritarian regime's military and police in the murder of political activists. Two U.S.-based human rights advocacy groups used ATS to bring cases against Shell and other defendants for abuses, including summary execution, crimes against humanity, torture, inhuman treatment, and arbitrary arrest and detention. Despite attempts by Shell to have the cases dismissed, a trial date was set. Right before the trial, the company settled for \$15.5 million in what is recognized "as a milestone moment in the movement towards corporate accountability and human rights."¹³ We discuss later in this chapter, as other chapters in this book explore, the subsequent Kiobel case brought against Shell and decided in the U.S. Supreme Court that has had a negative impact on the use of ATS to remedy victims of corporate abuse.

The eight cases related to corporate complicity and human rights abuse in Iraq also involve ATS. In one case, families of men working for a U.S. oil services company in Iraq claim that their passports were confiscated and they were trafficked to work at a U.S. air base and en route, they were killed. Most of the other cases involve Iraqi plaintiffs seeking justice for torture they endured or remedy for long periods of detention without trial.

¹³ See Center for Constitutional Rights, "Factsheet: The Case Against Shell," June 16, 2009. See <http://ccrjustice.org/learn-more/faqs/factsheet%3A-case-against-shell-0> (accessed November 22, 2014).

Although corporate complicity in South Africa, Nigeria, and Iraq is reliant on the ATS, three of the four cases related to the atrocities in the DRC are taking place not in the United States or the DRC, but in Germany, Switzerland, and Canada. Three employees of the Anvil Mining Company were acquitted for complicity in war crimes by a military court in the DRC. In Germany, Olof von Gager, a senior manager of the Danzer Group, faces prosecution for being complicit in human rights abuses committed by Congolese police and military during an attack on the village of Bongulu in northern Democratic Republic of Congo in 2011. A criminal complaint in Switzerland is against Argor-Heraeus SA for benefiting from raw materials extracted through pillage and war crimes during an armed conflict between 2004 and 2005. Finally, a class action suit was brought in a Canadian court against Argor-Heraeus SA for being complicit in human rights abuses, by providing logistical support to the Congolese army who raped, murdered, and brutalized the people of the town of Kilwa in 2004.

Domestic litigation has been also used to address business complicity.¹⁴ Nearly four in ten cases (36 percent) of the judicial cases that we found were heard in domestic courts. Argentina has been the leader in these cases. No other country has gone as far as Argentina in TJ or has innovated as much. It is perhaps, then, unsurprising that corporate complicity is a new innovation in Argentina's TJ toolkit. In our preliminary investigation into corporate complicity cases around the world,

¹⁴ By "domestic litigation" or "domestic trials," we mean judicial processes that took or are taking place in the same country where the violation of human rights occurred.

well more than half (64 percent) of all criminal cases and nearly a third of all criminal and civil cases (31 percent) are from Argentina. In addition, Argentina is using law creatively to find ways to hold businesses accountable for their complicity in past human rights abuses. In that regard, although most of the trials are criminal ones (fourteen out of nineteen), civil trials were introduced as an alternative mechanism to address business complicity. We found four trials of this kind.

In sum, this brief overview of where and how TJ was used in cases of corporate accountability suggest that no region is exempt from the efforts. It also shows that innovations in TJ – particularly the use of civil trials – have accompanied the advancement of corporate accountability. Nonetheless, the number of countries engaged, the number of cases included, and the few outcomes of these cases, suggest that accountability for corporate complicity could be considered an innovation, or an aberration in the advancement of TJ. An in-depth study of Argentina – the country that has gone the farthest in including corporate complicity in TJ – allows us to consider the factors that advance or thwart the process.

Explaining Transitional Justice and Corporate Complicity

Argentina provides a good focus for the study of TJ and corporate complicity because it has used the largest set (four) of mechanisms to examine the largest number (nineteen) of cases. Nearly all of the other countries that have included corporate complicity in TJ used only one type of mechanism (thirteen out of

seventeen countries). No other country included four types of mechanisms. In addition, Argentina has begun to examine twenty cases of corporate complicity, compared to the next highest country – Iraq – that is investigating eight cases and all in U.S. courts.

The comparison between Iraq and Argentina show that we cannot consider advancement in TJ as a good indicator of which countries will likely include corporate accountability in their TJ processes. Whereas Argentina has gone the furthest in TJ, Iraq has not initiated such a process. The list of countries included in our analysis range in terms of those that have a high level of accountability (Argentina, Chile, Rwanda) and those that have not had any accountability for past violations (Brazil, Cote D'Ivoire, Kenya, Liberia, Nigeria).

One of our arguments about “alternative accountabilities” could explain the Iraq phenomenon. We hypothesize that countries least able to advance criminal prosecutions, owing to legal or political obstacles, might adopt instead alternative accountability mechanisms, such as civil trials, customary justice, reparations processes, and vetting. As discussed previously, we seem to have a U-curve explanation, in which corporate accountability as the missing piece in TJ is introduced as an alternative to the traditional TJ mechanism of criminal prosecutions or as a culmination of that prosecutorial strategy to include civil society along with state violators.

The U-curve description further challenges the factors that we have used to explain why countries fall on one end of the impunity-accountability continuum or the other. We consider the importance of four factors – civil society demand, judicial

leaderships, international pressure, and absence of veto players – to explain accountability.¹⁵ As mentioned earlier, countries with a very high level of impunity with regard to state violations are some of the leaders in terms of corporate accountability. Yet some of the leaders in terms of accountability for state violations are also leaders in corporate accountability. Adding corporate accountability to our model challenges it.

Nonetheless, when we disaggregate the explanatory factors to look only at corporate accountability, some patterns emerge. We consider three main groups. First, those that benefit from international innovative processes. The use of foreign or international bodies in attempting to bring accountability explains fourteen of the seventeen country cases. Where international linkages find ways to bring cases outside the country, accountability efforts advance. International pressure takes the form of international non-governmental organizations (Hereinafter INGOs) and their local linkages to try cases in international or foreign courts.

Left out of this group is the second category of explanations for innovations in Brazil, Cote D'Ivoire, and Kenya. These three countries are at the impunity end of the accountability spectrum. They do not have cases in international courts. In these cases, accountability for business abuses may be possible where accountability for state abuses is not. Here, corporate accountability provides the kind of alternative accountability that shares the responsibility for past abuses among a range of state and civil society actors.

¹⁵ Lessa et al., "Overcoming Barriers to Justice."

Moreover, these international cases often do not deliver justice. The recent Kiobel decision in the U.S. Supreme Court has even further weakened the already questionable strength of the ATS. It is not clear, therefore, that countries whose cases are brought within U.S. or other foreign civil courts benefit from these processes. Argentina provides an example. It has had only one case in U.S. courts, and the U.S. Supreme Court dismissed it in early 2014. The plaintiffs Bauman et al., a group of twenty-three Argentine citizens, accuse Daimler Chrysler AG (now known as Daimler) and its subsidiary, Mercedes Benz Argentina, of cooperating with authoritarian security forces to kidnap, torture, illegally detain eight workers and kill nine others that were employees of the company and thought to be labor organizers and union leaders. Following Kiobel, the Supreme Court dismissed the case on the grounds that there were insufficient ties between the violations and the U.S. branch of the company to prove the U.S. federal courts had jurisdiction to hear the suit and make a decision.

Thus reliance on linkages to bring cases in international or foreign courts is not too promising for advancing TJ and corporate accountability. Instead, we contend that the pathway may depend on innovators who have included corporate accountability as the missing piece of their TJ processes. In this set of countries, businesses are recognized as co-responsible for the violence and thus equally accountable to states in the truth and justice process. Rather than the first stage, or the foreign stage, of TJ, this is the last phase. It holds that the foundation of a sustainable peace, reconciliation, and democracy depends on the adoption of human

rights practices in the state and civil society. The cry for “never again” targets not just armed groups but also those who sustained them in civil society.

In these situations, domestic judicial leaders already exist who have found ways around legal loopholes that block accountability. It is also likely that a propitious domestic political context may be necessary to get around the power of businesses in the economy, politics, and society.

This is the case of Argentina. We suggest that Argentina is worthy of analysis not because the factors that explain its advance can explain the diffusion of corporate accountability elsewhere. On the contrary, we contend that Argentina is unique in having found ways around past obstacles to accountability. Few countries have pursued the extensive set of TJ mechanisms used in the country. On the other hand, Argentina’s innovations in TJ have shown what is possible in accountability. Similarly, examining its progress on accountability for corporate complicity, Argentina presents models – like its earlier advances on state accountability for past violations – that can be adapted elsewhere, in contexts in which corporate accountability is the first TJ step or where countries seek a domestic complement to the international efforts at corporate accountability.

Our preliminary analysis of the trials addressing business complicity in Argentina reveal four models that could be adapted elsewhere and that overlap with Maassarani’s legal criteria, although not the same labels: (1) direct complicity in criminal violence; (2) violations of labor law; (3) financing repression; and (4) illegal business. We now discuss these categories and illustrate each with a few of the twenty cases underway in Argentine domestic courts.

1. Direct Complicity in Criminal Violence

A number of top officers from several companies face criminal prosecution for their alleged participation in human rights violations.¹⁶ The emblematic case in this category involves the trial of the corporate leaders of the Ledesma sugar mill in 2012 in Jujuy. The company is accused of being complicit in the well-known “Noche del Apagón” (“Night of the Blackout”) between July 20 and 27, 1976. An estimated 400 workers, students, and professionals were allegedly kidnapped, tortured, killed, and disappeared during this incident. Four policemen were detained for their involvement in the repression. From Ledesma’s top management, Alberto Lemos and Carlos Pedro Blaquier were indicted for the firm’s involvement in human rights violations, including providing the trucks used in kidnapping workers. In addition, the company is accused of having caused the blackout by cutting off electricity to facilitate the military operation. The company further allowed the armed forces to set up a clandestine detention center, Esquadron 20, on its grounds. As a result of their involvement in these abuses, the firm’s directors are now barred from traveling outside the country during the investigation.¹⁷

¹⁶ In addition to Ledesma, Mercedes-Benz, and Ford Motor Company discussed here, top officers from the following companies are being prosecuted currently for direct involvement in human rights abuses: Techint; Atarsa; Minera Aguilar S.A.; Loma Negra; La Veloz del Norte; and Acindar.

¹⁷ See latest developments at <http://tiempo.infonews.com/2012/11/16/argentina-91029-la-justicia-proceso-a-blaquier-por-29-casos-de-secuestro-en-1976.php>.

The top managers of two automobile manufacturers – Mercedes Benz and Ford Motor Company – have also faced investigation for direct human rights violations. The charges against Mercedes Benz involve the company's creation of a blacklist of workers who were subsequently kidnapped. These workers were members of the internal workers committee. A criminal action was opened in 2002 but there have been no indictments so far.¹⁸ In October 2013, an Appeals Court confirmed the charges against three former Ford Motor Company executives (Pedro Muller, Guillermo Galarraga, and Hector Francisco Jesus Sibilla) for their crimes against humanity of targeting union leaders for kidnapping and torture. They stand accused, and are under house arrest, for having helped the repressive security apparatus in the illegal kidnapping and torture by providing names, national identification numbers, photographs, and home addresses. The army forces seized two dozen union workers off the Ford factory floor to be tortured and interrogated and sent to military prisons. Bail is set at \$142,000.¹⁹

These cases illustrate situations in which the extent of violence would not have been possible without corporate involvement. The companies are alleged to have contributed to the violence directly and, thus, accountability for their wrongdoing is justified by the aim to provide victims with redress and remedy, to raise the cost of human rights abuses, and to advance justice norms and promote non-repetition. In addition, the use of criminal prosecution is consistent with one

¹⁸ See www.ambito.com/noticia.asp?id=724383.

¹⁹ Whereas Muller is a Czech national, the other two accused are Argentine. See the latest development here www.cij.gov.ar/nota-11452-Lesa-humanidad-procesaron-a-ex-directivos-de-la-empresa-Ford.html.

transitional justice view that the prosecutorial model is the most effective means to achieve these goals.

The possibility of holding the managers of these companies accountable seems to result from two main factors. First, they are large and visible companies that are associated with particularly egregious and well-known offenses. The Argentine case suggests that these types of cases may resonate more than others because there is more information in the public domain, the companies are recognizable, and the violations are particularly abhorrent. Their visibility is likely to send a message not only to other subsidiaries of the transnational company or the industrial sector, but to all firms, about the reputational, financial, and legal risks of becoming partners with authoritarian regimes and armed violent actors.

2. Labor Law Violations

The creative use of Argentine labor law is a model that could be replicated elsewhere. In these cases, companies have been charged with failing to protect their workers' safety. In February 2012 in the "Ingegnieros" case, an Appeals Labor Court dismissed the statute of limitations claims of a legal action brought to the court. Maria Gimena Ingegnieros, the daughter of Enrique Roberto Ingegnieros, brought the case. She requested financial compensation for her father's disappearance during the civil-military dictatorship. She claimed that Techint SA, owing to its co-authorship of the crime of disappearance on the company's grounds, should pay compensation. The company has denied the claim and further contends that the

worker safety law, under which the case was brought, has a two-year statute of limitations that had long ago run out. The Appeals Court rejected that claim, declaring that statutes of limitation do not apply to compensation claims linked to crimes against humanity.²⁰

The April 2007 SIDERCA case, brought by Ana María Cebrymsky, the wife of Oscar Orlando Bordisso, heard by the Supreme Court of the Province of Buenos Aires follows a similar logic. Bordisso disappeared shortly after he left work in 1977. In 1995, his wife claimed compensation from his employer – SIDERCA – under Argentine labor law, specifically that the country’s work safety law obliged the company to protect her husband on entering and exiting the work site. The company rejected the claim and argued against legal action owing to the statute of limitations. The first instance tribunal accepted the claim against the company. On appeal, the company again lost in the Provincial Supreme Court. The Court ordered compensation for Bordisso’s widow.

These cases illustrate an innovative use of labor law in TJ. They involve a blending of domestic law and international human rights law to recognize the company’s duty to respect and protect human rights and remedy abuses. The importance of judicial leadership in linking domestic and international law is crucial to the success of the case, which might have been dismissed easily because of the normal application of statutes of limitations in worker safety cases. Families of employees could use this innovative linkage to crimes against humanity in other

²⁰ See latest developments here www.diariojudicial.com.ar/fuerolaboral/Se-le-vino-la-noche-a-empresas-donde-hubo-desaparecidos-20120215-0002.html.

countries where union leaders and activists died or disappeared owing to the complicity of their employers and where criminal trials with particular evidentiary constraints may face obstacles. Although tried in civil courts, the use of international law recognizes the crime against humanity, the responsibility of the firm in committing such a crime, and providing some form of reparations for the victims' families.

3. Financing Repression

Argentina has also investigated cases in which businesses have financially collaborated with the dictatorship's repressive apparatus in illegal economic activity. In 2009, a group of victims of human rights violations brought the Ibañez case to a civil court to investigate the complicity of banks in crimes against humanity. The group alleged that the banks financed the de facto regime, facilitating the commission of grave human rights violations against the civil population. In the Ibañez case, the large sums of the loans provided to the regime thus sustained, expanded, and intensified the military and its repressive apparatus.

A similar case was brought to courts in 2010. The Garragone case was filed by Martin Garragone, the son of one of Argentina's disappeared, against Citibank and the Bank of America. Garragone argued that the banks' loans to the dictatorship were crucial for its abuses of human rights and demanded the right to truth about the links between the companies and the disappearance of his father. Garragone cited a report prepared by Juan Pablo Bohoslavsky, an Argentine expert on financial

complicity at the UN Human Rights Council, demonstrating that the banks were aware that the funds transferred to Argentina would be used to support the illegal and repressive infrastructure. The case is in its early stages; the court still needs to declare that it has jurisdiction to review the case under procedural law.²¹

Cases in this category deal with the crucial question of the financing of the illegal state apparatus. It goes beyond a company's investment opportunities and into knowledge of the use of those funds to finance illegal activities. State violence would not have been possible without corporate sponsorship. Additionally, accountability for financial complicity offers an opportunity to provide remedy for victims. And raising the cost of financing repression may deter future corporate complicity.

On the other hand, these cases are very difficult to win. Both cases are "frozen" because of a number of legal technicalities. They have nonetheless, brought attention to banking sector complicity in the civil-military dictatorship that, at the very least, plays a truth-telling role and potentially raises the reputational costs for those banks involved.

4. Illegal Business

In an additional creative legal turn, Argentine courts have begun to investigate companies' involvement in illegal business transactions. The Papel Prensa case is

²¹ Link to the latest developments:
<http://tiempo.infonews.com/2013/09/09/argentina-109064-argentina-a-un-paso-de-investigar-a-bancos-por-creditos-a-la-dictadura.php>.

illustrative. Some observers consider the case to be an example of the Kirchner government's political misuse of transitional justice to punish and weaken the government's current political opponents; others see it as an important case for correcting the wrongs of the previous regime and its corporate allies. After an initial flurry of activity around the case, it somewhat died down until the end of 2012 when files related to the case were discovered along with other military regime files in an air force headquarters.

The case involves events following the death in 1976 (in an airplane crash) of David Gaiver, the owner of the Papel Prensa newsprint company. Gaiver had alleged links to the left-wing urban guerrilla Montonero movement opposed to the dictatorship.²² After his death, Gaiver's wife, Lidia Papaleo, and some months later, his brother, Isidoro Graiver, the heirs to the company, were allegedly threatened and pressured into selling the company to FAPEL (Fábrica Argentina de Papel). FAPEL subsequently sold the company to the three biggest Argentine newspapers loyal to the military regime (La Nación, Clarín, and La Razón), securing their monopoly over news production in the country during the dictatorship. The criminal trial is in its early stages, and the investigation is allegedly frozen.²³

A second judicial case relates to the commission of human rights violations and money laundering. In the Vildoza case, several military officers and civilians are accused of the illegal procurement of property from detained individuals and the

²² The Montoneros urban guerrilla movement was one of the most important clandestine and illegal leftist groups during the 1970s in Argentina.

²³ See latest developments at www.telam.com.ar/notas/201401/48677-para-fresneda-la-causa-de-papel-prensa-se-encuentra-cajoneada.html.

sale of the real estate to private individuals and companies connected to the military. The investigation was initiated by the public prosecutor and private partners and later included the Financial Information Unit (Unidad de Información Financiera), the state agency in charge of investigating money laundering activities. The controversy about the case is whether a money laundering law initiated in 2004 could be applied to a case from the 1970s. This has been resolved by showing that the profit from the sale of the real estate transaction continues to benefit the individuals who initially seized the property.

These cases of illegal transactions show the tight connections between the private sector and the authoritarian regime. Not only did the authoritarian regime fail to monitor business transactions, its repressive apparatus facilitated, participated in, and profited from the sale of stolen property and monopolistic practices. Drawing attention to illegal economic activity weakens the image of the regime and the businesses involved even among those who might otherwise support human rights violations under the guise of national security. No justification exists for these economic crimes. By tarnishing reputations, these cases raise the cost of violations, even if they do not end in criminal prosecutions.

Conclusion: Argentina as TJ and Corporate Complicity Innovator or Loner

The impact of these cases in terms of actual justice outcomes is limited. Whereas the labor law cases have delivered some remedy to the families of the victims, the other

cases are stalled in courts and may never deliver accountability. One lesson to take away from the Argentine case is that civil cases are more likely to progress, with lower evidentiary standards, than criminal ones. The barriers to justice for corporate complicity, however, are high even in Argentina's propitious political and judicial environment.

Impact may not be measured only in holding trials. We have shown in our earlier work that trials do not necessarily deliver justice.²⁴ Scholars have also argued that guilty verdicts are not the only means to measure the impact of TJ. The truth-telling process that emerges from investigation delivers corporate accountability in the form of reputational costs. Targeting certain companies with name recognition – Ledesma, Ford, Mercedes, Volkswagen, Bank of America, Citibank, Techint, and so on – associates those companies with unscrupulous practices even without guilty verdicts. Although large companies may be able to absorb negative campaigns in local markets, the opening up of these cases may expose the company to global campaigns against them.

Argentina thus plays a pivotal role in TJ and corporate accountability. On one hand, it is a loner in pursuing so many cases through so many different types of TJ mechanisms. On the other hand, it has proved to be an innovator, shaping the sorts of models of corporate accountability, and creatively combining labor and business law with international human rights law, that could be used elsewhere. That process is likely to be formalized when the special unit of the National Prosecutor's Office

²⁴ Lessa et al., "Overcoming Barriers to Justice."

releases in 2014 its blueprint for addressing economic crimes, including business involvement in the perpetration of crimes against humanity during the last dictatorship.

As an innovator, Argentina has faced particular challenges. First, it is advancing these cases in a void, without prior experience or models from elsewhere. In addition, as in other contexts, it faces corporate veto players. Most of the cases it has confronted involve companies that remain powerful in society. Some of them are transnational (e.g., Ford and Mercedes Benz), and others are large national companies (such as Grupo Clarín). Even a propitious Kirchner government political environment willing to take on these powerful actors may not prove capable of advancing these claims.

Where these cases have advanced, Argentina presents an interesting model of uniting agencies with different expertise. Traditional TJ practices have involved mainly the Public Prosecutor and Human Rights Secretariat offices. In corporate complicity cases, the Financial Information Unit became involved in the *Papel Prensa* and *Vildoza* cases mentioned earlier. Also, the state has provided valuable information for the development of prosecutorial investigations, such as in the *Papel Prensa*, in which the Financial Information Unit wrote a report accounting for the alleged involvement of the Grupo Clarín in the illegal sale of a paper mill company and the disappearance and torture of individuals. Tentatively, the involvement of a wide range of state agencies, judicial and non-judicial ones, might be a factor facilitating the emergence of accountability process. However, this is only a tentative conclusion and further research should be conducted in this realm.