

2. Corporate complicity and transitional justice: setting the scene¹

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Corporate complicity in the human rights abuses of dictatorships and in armed conflict is not a new transitional justice phenomenon. Rough justice for such violations was meted out by the Allied Forces at Nuremberg when Bruno Tesch was tried, found guilty, and executed for the sale of the Zyklon B gas used in extermination camps in Nazi Germany. Forty additional businessmen were put on trial in the 'industrialist cases' at Nuremberg for Nazi-era slave labour, theft of Jewish property, and the production and sale of weapons of aggressive war and mass extermination. Many of them were convicted and imprisoned. Thus, just as the notion of transitional justice is said to have begun with the Nuremberg trials, so too could we say that corporate complicity was included in that process from its very origins.

Despite this historical pattern, continuity from Nuremberg has proved spotty, at best. At least there is one significant decision in international criminal courts. The UN International Criminal Tribunal for Rwanda (ICTR) convicted and imprisoned three businessmen for instigating the genocide in the 'media

¹ Adapted from Leigh A Payne, Gabriel Pereira, 'Corporate complicity in international human rights violations, *Annual Review of Law and Social Science*, 12: 63–84, 2016.

case'.² Foreign courts under the notion of universal jurisdiction have also held trials for corporate human rights abuses in dictatorships and armed conflicts. Law firms and NGOs have brought these cases in Europe, Canada, Australia, and elsewhere.³ The highest concentration of foreign court cases involves US civil courts under the Alien Torts Claims Act (ATCA). Although the ATCA cases have received much attention, Michael J. Kelly found that not one of the 60 cases he investigated ended in a legal victory for the plaintiffs.⁴ Most scholars and practitioners predict that the 2013 US Supreme Court decision in the *Kiobel* case will produce even fewer successful outcomes.⁵ The International Criminal Court (ICC) briefly discussed, but did not include, corporate human rights abuses in its mandate. Regional courts – such as the Inter-American Commission and Court of Human Rights – have also only just begun to consider this area of human rights. The UN's approach to corporate responsibilities for human rights abuses, embodied in the UN Guiding Principles on Business and Human Rights (UNGPs), has focused on soft law and voluntary principles rather than pressure on states to defend victims' rights to truth, justice, and reparations.

Such a picture suggests that transitional justice has all but ignored corporate responsibility for human rights violations in dictatorships and armed conflict. Indeed, it is only recently that corporate complicity is overcoming its role 'at the periphery of transitional justice work.'⁶ This chapter considers the dynamic and often overlooked processes underway around the world. In contrast to the emphasis placed on international governmental and non-government organizations in promoting transitional justice aimed at states' human rights

2 Nahimana et al. (Media case) (ICTR-99-52). The three defendants in the case were: Jean-Bosco Barayagwiza (Radio Télévision Libre des Mille Collines) sentenced to 32 years' imprisonment, Ferdinand Nahimana (same company) sentenced to 30 years' imprisonment, Hassan Ngeze (Kangura Magazine) sentenced to 35 years' imprisonment on 28 November 2007.

3 In the University of Oxford preliminary dataset of judicial actions for corporate complicity, cases have been brought in foreign courts for companies' human rights abuses in Burma (Belgium's DLH case), Syria (France, case of French surveillance companies in the Bashar El-Assad government), Democratic Republic of Congo (Canada's Kilwa case; Switzerland's Argor Heraeus SA case; and Australia's Anvil Mining case).

4 Michael J. Kelly, 'Prosecuting corporations for genocide under international law', *Harvard Law Policy Review*, 6: 339–367, 2012.

5 In what has been interpreted as a reversal from past ATCA decisions, the US Supreme Court interpreted the *Kiobel* case as having insufficient connection to the United States and therefore outside US jurisdiction.

6 Dustin N. Sharp (ed.), *Justice and Economic Violence in Transition*, Springer, 2014, p.2.

abuses, this report highlights dynamism ‘from below.’ It highlights innovative processes underway around the world in the search for truth, justice, and reparations for victims of corporate human rights abuses in dictatorships and armed conflict. The aim of this chapter is to consider processes that can overcome the governance gap, or the absence of mechanisms to address victims’ rights to truth, justice, and reparations, by including corporate complicity in transitional justice processes, specifically trials, truth commissions, and reparations.

The chapter begins with the assumption that the truth, justice, and reparations claims of transitional justice are consistent with examining the role of corporations in past human rights abuses. Despite a widespread assumption that transitional justice is aimed only at state actors, the most commonly used definition of transitional justice does not limit it in this way. The International Centre for Transitional Justice uses this definition: ‘Transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms.’⁷ The United Nations identifies transitional justice as ‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.’⁸ These definitions moreover are reinforced by the practice of transitional justice that has included non-state actors along with state actors in truth commissions and judicial investigations of past human rights abuses of dictatorships and armed conflicts. Thus, although corporate complicity has not yet become an explicit focus of transitional justice, its role in systematic human rights violations by dictatorships and in armed conflict makes it an implicit dimension of transitional justice that has been incorporated into transitional justice practices around the world. The empirical research included in this report reveals that at least half of the world’s truth commissions have included corporate complicity in their investigations and final reports, and that trials are underway in various domestic, international, and foreign courts to examine the role of businesses in past systematic human rights abuses.

7 <https://www.ictj.org/>

8 https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf

Corporate complicity as part of transitional justice mechanisms is not a ‘witch hunt’ aimed at businesses that operated during authoritarian regimes and in civil conflict countries. Rather, it involves an investigation into businesses’ direct or indirect action, assistance, or participation in (aiding and abetting) gross violations of human rights (genocide, torture, crimes against humanity, war crimes) perpetrated by the state or state-like actors (e.g., paramilitary or rebel forces that control territory) during authoritarian or civil conflict situations. The type of corporate act might include direct complicity in criminal violence (e.g., joint criminal enterprise and conspiracy to violence), violations of human rights under labour law (e.g., slave labour), financing repression or war crimes, or illegal enterprises (e.g., knowingly procuring or profiting from violence, such as trading in ‘conflict minerals’).⁹ Thus, corporate complicity does not require ideological affinity between companies and abusive regimes or parties, but actual business behaviour. Moreover, such complicity also arises in armed conflicts that occur under democratic governments with rule of law systems, such as the Colombian one.

Social scientists have recognized the business logic behind corporate complicity in dictatorships and armed conflict. Guillermo O’Donnell’s¹⁰ theory of the bureaucratic authoritarian state, for example, viewed businesses as crucial to the particular development strategy that emerged in the 1960s and 70s in Latin American and elsewhere. Businesses allied with authoritarian systems to ensure political stability during a period of labour and student revolts and challenges to the capitalist system and to advance and protect ‘capitalist deepening’ projects. States’ national security regimes repressed wages along with so-called subversive union leaders or workers. In urban areas, businesses’ active collaboration took the form of creating blacklists of workers who faced illegal detention, torture, death, or disappearance. Companies and banks financed the repressive apparatus particularly when those funds

9 Tarek F. Maassarani, ‘Four counts of corporate complicity: alternative forms of accomplice liability under the Alien Tort Claims Act’, *NYU Journal of International Law and Politics*, 38: 39–65, 2005; Inés Tófaló, ‘Overt and hidden accomplices: transnational corporations’ range of complicity in human rights violations’, in: Olivier de Schutter (ed.), *Transnational Corporations and Human Rights*, Hart, 2006, pp. 335–358; Jennifer Zerk, *Corporate Liability for Gross Human Rights Abuses: Towards a fairer and more effective system of domestic law remedies*, UN High Commission for Human Rights, 2014.

10 Guillermo A. O’Donnell, *Modernization and Bureaucratic-Authoritarianism: Studies in South American politics*, Institute of International Studies, University of California, 1973.

were cut off from international lenders because of well-known human rights violations. The Cold War logic prevalent at the time reinforced these policies and extended them into the countryside where the agrarian reform victories that protected peasant, indigenous, and rural workers were violently replaced with private sector land ownership, resulting in large numbers of internally and externally displaced peoples, illegal detention and torture, and massacres of leaders and communities. The Cold War logic and corresponding human rights abuses have persisted in some parts of the world even where democratic systems are in place, such as Colombia.

Corporate complicity in armed conflicts in Africa and Latin America show that economic self-interest is an additional factor explaining abuses along with political and developmentalist convictions. Human rights abuses are closely related to the business alliances with armed actors over 'conflict minerals' – the well-known case of 'blood diamonds' – as well as other forms of trafficking such as in weapons and humans. Businesses' involvement in state, paramilitary, or rebel protection rackets to secure their legal or illegal business operations, or to profit from the sale or trade in the tools of repression or war, has violated human rights of communities, movements, and individuals. The Colombian context provides examples of companies that intentionally and voluntarily financed armed groups and provided intelligence and logistical support to those groups perpetuating the conflict and its human rights violations. Companies and individual business people also profited from gross human rights violations, particularly through forced displacement. Banking operations have also found lucrative financing opportunities in repressive or civil conflict systems. The weak or non-existent rule of law in conflict or authoritarian rule contexts, moreover, means that abusive businesses tend to operate with impunity, lowering the cost of violation in highly lucrative sectors of the economy.

There are, in other words, countless victims of corporate human rights violations. These victims have not yet received redress. Transitional justice has not yet advanced sufficiently to address the rights of victims of corporate abuses: the right to know, the right to justice for gross violations of human rights, and the right to reparations. Transitional justice, moreover, aims not only to address victims' rights and needs, but also to prevent future victimization. The widespread impunity and lack of accountability associated with corporate complicity has undermined the guarantee of non-repetition. Accountability for corporate complicity in authoritarian and civil conflict situations thus constitutes

the ‘missing piece of the puzzle, to pursue the full spectrum of justice for this era’ of authoritarian rule and civil conflict.¹¹ Transitional justice thus offers a way to overcome what can be viewed as a governance gap in which victims’ rights exist in international human rights law but no international legal institutions exist to allow them to secure those rights.

Transitional justice potentially advances the same moral and practical arguments for corporate violations as for perpetrators of state violations. The moral argument is the duty to victims, to provide them with justice and compensation for the atrocities committed against them. The practical argument is about deterrence and non-repetition: without attaching a tangible cost – such as the credible threat of prosecution – to corporate human rights violations, they are likely to continue in future dictatorships, future armed conflicts, and in stable democracies. Moreover, it is the position of some peace and human rights organizations that, if corporate complicity in human rights violations is not addressed, the prospects for a sustainable peace are greatly diminished (see PAX’s introduction to this report). Just as the ‘age of human rights accountability’ attempted to advance justice for past state human rights violations to diminish them in the future, some form of accountability for corporate human rights abuses rejects any justification for such wrongdoing, relies on accountability as a form of deterrence for a democratic future that respects human rights, and addresses the needs of victims. The call for visibility, accountability, and remedy is a call to build a stable, peaceful, and sustainable democracy.

What blocks this process? Why has transitional justice failed to implement the same sorts of accountability pressures used in relation to perpetrators of state atrocities? The main obstacles are unsettled international law with regard to business and human rights on one hand, and, on the other hand, the power of businesses to block law formation and the implementation of laws and norms that do exist. PAX’s introduction to this report argues that a third obstacle – political choices to let economic arguments prevail over questions of justice – has also limited transitional justice efforts in the area of corporate complicity in many countries. Most scholars, practitioners, and business people agree on the ‘moral

11 Juan Pablo Bohoslavsky, Veerle Opgenhaffen, ‘Past and present of corporate complicity: financing the Argentinean dictatorship’, *Harvard Human Rights Journal*, 23: 157–203, 2010, p.160.

and ethical duties' of businesses regarding human rights.¹² Few doubt that businesses have a 'responsibility to refrain from harming human rights.'¹³ A minority of businesses reject this notion of human rights responsibilities, but the vast majority recognize them. Whether from a principled position, a defensive posture, or a new corporate logic that 'human rights are good for business,' most businesses support, at least rhetorically, a human rights framework. In recent years, firm-specific corporate social responsibility initiatives, sectoral or multi-sector codes of conduct, and signing on to the Global Compact reflect a shift in corporate thinking about human rights.

Recognition of business's moral or ethical responsibilities has not translated into agreement on business's legal obligations. Legal scholars debate whether the customary international law used in the Nuremberg industrialist cases constitutes settled law. The application of international human rights law by some courts to corporate complicity cases in the post-Nuremberg era would suggest that businesses face the risk of judicial action if they engage in abuses. Mixed signals, however, may reassure businesses of their capacity to fight such cases and win. For example, the UN's 2011 UNGPs are the most significant international instrument governing business and human rights and rely entirely on soft law and voluntary principles rather than binding and enforceable obligations. When Royal Dutch Petroleum Co., known as Shell, attempted to use the UNGPs to argue that 'companies do not have direct international law human rights obligations,' the UN Special Rapporteur on Business and Human Rights and the author of the UNGPs, Professor John Ruggie, intervened to correct the misinterpretation.¹⁴

Another legal entanglement is whether businesses, or their employees, can be held accountable. No international forum recognizes the criminal liability of a company entity, but only states' obligations and individuals' liability. Individual, rather than corporate liability may not be a significant barrier to recognizing businesses' obligations. Because the individuals accused were acting not as independent citizens but rather as a result of their position within

¹² Barbara A. Frey, 'The legal and ethical responsibilities of transnational corporations in the protection of international human rights', *Minnesota Journal of Global Trade*, 153: 168–169, 1997.

¹³ David J. Karp, *Responsibility for Human Rights: Transnational corporations in imperfect states*, Cambridge University Press, 2014, p.63.

¹⁴ Surya Deva, 'Multinationals, human rights and international law: time to move beyond the state-centric conception', *Global Journal on Human Rights Law*, 23(2): 5–27, 2015, p.7.

the corporation, such criminal cases criminally implicate the corporate entity. Businesses, however, can and have successfully argued that the acts resulted from individual and not corporate behaviour. Where criminal liability occurs in these cases, lower-level and not top company executives tend to be found guilty.

The most serious constraint on international legal pressure, however, is the absence of enforcement mechanisms. Even if international customary law is interpreted to extend to businesses, and states are obligated under such law to hold businesses accountable, international accountability mechanisms do not exist to enforce those obligations. Although the ATCA uses international human rights law to bring corporate complicity cases in US courts, successful outcomes are few and they are likely to dwindle in the post-Kiobel era. As yet, no other foreign courts have filled the widening governance gap. Regional human rights courts lack jurisdiction over corporations. And the UN's human rights-related complaint procedures lack the mandate to monitor the activities of corporations.

The ICC could have offered a solution to this governance gap. Its mandate too is limited in this area of law. The ICC can 'adjudicate corporate involvement in international crimes, when the focus is shifted from the corporation as such to the individuals acting on behalf of a corporation.'¹⁵ Thus, the ICC does not have jurisdiction over legal entities, only individuals. These individuals include those directly responsible as well as others who may be liable, for example by aiding or otherwise assisting the crime. As of today, the ICC has not yet taken up a case of corporate complicity in human rights violations. The Court's behaviour does not mean that the issue of corporate complicity is outside its scope. The ICC's Chief Prosecutor, Mrs. Fatou Bensouda, stated in an interview that 'Those who financed crimes against humanity will also need to be held accountable for it.' She added that: 'In general terms, when crimes against humanity are judged, all the elements must be considered and all the actors involved must be observed: political and military leaders, executioners and also those who financed these crimes. In principle, they are also responsible and must be held accountable for the civilian casualties to which they contributed with their support for systematic plans against the civilian population.'¹⁶

15 Wolfgang Kaleck, Miriam Saage-Maaß, 'Corporate accountability for human rights violations amounting to international crimes. The status quo and its challenges', *Journal of International Criminal Justice*, 8(3): 699–724, 2010, p.710.

16 http://www.perfil.com/ediciones/2012/7/edicion_696/contenidos/noticia_0077.html

Consistent with that view, in Colombia the ICC mentioned the financing of illegal armed groups in its 2015 Report on Preliminary Examination Activities. The Office of the Prosecutor has identified ‘proceedings relating to the promotion and expansion of paramilitary groups’ as one of the five areas on which they continue to focus in Colombia.¹⁷

The ICC thus has the potential to respond to the governance gap in corporate accountability. In addition, the Office of the United Nations High Commissioner for Human Rights initiated in 2014 the elaboration of a legally binding instrument on transnational corporations and other business enterprises to promote the effective implementation of the UNGPs. No blueprint has yet emerged. The Inter-American Commission and Court of Human Rights has also adopted jurisprudence holding any member state internationally responsible for human rights violations carried out by corporations in their respective countries, but such mechanisms have not yet been applied to specific cases. The future looks promising; but the development of international pressure and enforcement mechanisms to date remains highly limited.

The veto power of business cannot entirely explain the governance gap, but it is crucial to understanding the limitations on corporate accountability. The global might of a few companies has been well-documented and suggests that some corporations may not need collective action to leverage veto power over decisions made in international, foreign, or domestic arenas. The kind of cultural capital that business elites enjoy along with judges, prosecutors, and politicians may indicate that an active business lobby may be less significant than shared values in protecting corporate interests. Implicit veto power may also result from dependence on business for global or domestic economic stability and wellbeing that results in an unwillingness to sanction abusive behaviour. Thus, even if international law established explicit human rights obligations on businesses, as some scholars claim that it does, states are unlikely to sanction businesses for abusive behaviour where those companies or sectors are integral to the national economy or national security. The absence of settled law leaves states free to do so without constraint.

¹⁷ The Office of the Prosecutor of the International Criminal Court, *Report on Preliminary Examination Activities*, 12 November 2015, under 137, p.32.

Direct action by businesses to block accountability is also evident however. The history of the UNGPs reveals powerful pressure from businesses in favour of voluntary mechanisms and against binding obligations. Corporations' economic power allows them to hire high-priced, skilled lawyers to defend them in complicated legal battles – litigation costs that victims can rarely afford. At the very end of long trials, businesses tend to offer financial settlement on condition of no acknowledgment of wrongdoing, thereby avoiding law-making or precedent-setting decisions that might affect subsequent cases. These legal manoeuvres have led scholars to conclude that, in corporate human rights cases, '[c]ourthouse doors are, for both legal and practical reasons, generally closed to victims, particularly those who live in poverty.'¹⁸

The power used by businesses to intimidate, threaten, bribe, and coerce decisions favourable to them is also documented.¹⁹ To suppress investigations and damaging public exposure, corporations' lawyers are known to threaten, to file libel or slander cases against legal practitioners involved in corporate complicity prosecution cases. Amnesty International and the Inter-American Commission of Human Rights have documented the violence and intimidation faced by indigenous human rights defenders when they bring claims against extractive and other mega-project firms. Some groups have proved unwilling to initiate or continue their claims for justice when faced with business threats. Despite the formidable power of businesses to block accountability for human rights violations, they have not always used it. In the industrialist cases after World War II, several companies acknowledged their complicity in Nazi regime atrocities. In so doing, they recognized the responsibility of companies to abide by international human rights standards. As the examples in the Germany case

¹⁸ Robert C. Thompson, A Ramasastry, Mark B. Taylor, 'Translating *Unocal*: the expanding web of liability for business entities implicated in international crimes', *George Washington International Law Review*, 40(4): 841–902, 2009, p.895.

¹⁹ One example is the recent murder in Honduras in March 2016 of Berta Cáceres, the leader of the Council of Popular and Indigenous Peoples Organizations of Honduras (COPINH). At least two of the murderers have been linked to the Desarrollos Energéticos SA (DESA) company. Cáceres had challenged the impact of the company's Agua Zarca hydroelectric dam on the indigenous Lenca people. 'Berta Cáceres and human rights defenders in Honduras,' Amnesty International, <http://www.amnesty.ca/our-work/individuals-risk/berta-caceres-and-human-rights-defenders-honduras>. See also the business pressure in favour of voluntary principles and soft law embodied in the United Nations Guiding Principles and against binding standards of corporate human rights compliance: Giovanni Mantilla, 'Emerging international human rights norms for transnational corporations,' *Global Governance*, 15(2): 279–298, 2009.

in this report show, recognition sometimes occurs without the threat of judicial action.²⁰ Businesses have also paid into compensation funds particularly for slave labour, seemingly accepting responsibility for Nazi-era atrocities or attempting to avoid judicial action. In the contemporary setting, the Argentine National Stock Exchange hired three academics to investigate and reveal to the public its complicity in the dictatorship.²¹ In another Argentine case, the new owners of a firm turned over to the National Prosecutor's office its archive that could reveal the company's complicity with the dictatorship. Although likely intended to protect the current owners from past corporate behaviour, it nonetheless could contribute to establishing a pattern of systematic abuse by businesses.

The weakness of international human rights law in corporate complicity and the power of the business veto have posed obstacles, but have not entirely blocked transitional justice efforts. Both civil society forces and domestic judicial innovations have made advances in terms of including corporate complicity as part of transitional justice. The truth commission reports analysed in this report show that domestic and international human rights organizations have brought attention to the violations carried out by companies during dictatorships and armed conflict. Civil society groups have carried out parallel 'naming and shaming' efforts. In Argentina, the 24 March anniversaries of the coup in recent years have identified the responsibility of firms in the civil-military dictatorship's repression. In South Africa, the Khulumani victims' support group brought a civil suit against companies' human rights violations during the apartheid era. It also used the 2010 World Cup in the country to highlight the role of one of the event's sponsors in the apartheid era: Daimler's Mercedes-Benz iconic hood ornament was identified in posters as the 'star of Apartheid.' In Brazil, students mobilized to petition the removal of a São Paulo street name associated with one of the businessmen connected to the

20 The 1973 trial of Albert Ganzenmüller, secretary of transport and deputy director of the Reichsbahn, for the firm's involvement in the deportations to death camps was closed after he had a heart attack on the first day. Ganzenmüller lived 23 years after the trial ended without threat of further prosecution.

21 A Dandan, H Franzki, 'Entre análisis histórico y responsabilidad jurídica', in: H Verbitsky, JP Bohoslavsky (eds.), *Cuentas Pendientes: Los cómplices económicos de la dictadura*, Siglo Veintiuno, 2013, pp.217–234. See also English version of the book: H Verbitsky, JP Bohoslavsky, *The Economic Accomplices to the Argentine Dictatorship: Outstanding debts*, Cambridge University Press, 2015; MC Perosino, B Nápoli, WA Bosisio, *Economía, Política y Sistema Financiero: La última dictadura cívico-militar en la CNV*, Comisión Nacional de Valores, 2013.

coup and subsequent repression. These civil society initiatives mark a shift away from focusing exclusively on state violations during dictatorships and armed conflict and towards including corporate complicity in those human rights violations. They may apply the kinds of pressures on courts that make it difficult for prosecutors and judges to ignore the moral, ethical, and legal duty to bring justice and remedy to victims.

In recent years, domestic courts have begun adopting innovative measures to overcome the blockages posed by business veto power, unsettled international law, and reliance on voluntary principles. Some of these cases are examined in this report (see Chapters 4 on Argentina and 5 on Brazil). These innovations creatively combine domestic law and international human rights law in ways that might become models for overcoming impunity.

These cases represent an innovation on the ‘bottom-up’ approaches to corporate accountability for human rights violations found in the existing literature that focuses on advanced democracies, particularly the United States, the United Kingdom, Canada, the Netherlands, and Australia. What this report shows is ‘bottom-up’ dynamism occurring in the transitional countries of the global South. Indeed, an argument could be made that these domestic courts are playing a catalyst role in shaping international law, transforming it to enhance the rights of victims of corporate human rights.

When cases of corporate complicity in dictatorships and armed conflicts are being tried, particular sets of challenges emerge. Because of the passage of time since the occurrence of these human rights abuses, statutes of limitations have lapsed for some crimes. In addition, those most responsible for corporate decisions have died, left the company and the country, and in other ways are difficult to track down and prosecute. Similarly, records directly implicating the company or the individual rarely exist, particularly when the firm becomes aware of a pending lawsuit. Finding witnesses long after the incidents also poses difficulties. As we discuss further below, prosecutors and claimants have faced legal (e.g., counter libel or slander suits) and other forms of intimidation (e.g., harassment and threat of violence) that complicate judicial efforts. In many cases, such as Colombia, the lack of witness protection further inhibits claims. These barriers to domestic prosecution have not proved insurmountable, as the cases illustrated in this report show. Legal innovations at the domestic level are emerging. They bypass the constraints

on accountability emanating from the international focus on soft law and voluntary principles. Domestic laws have been applied, often in combination with international human rights law, to reach judgments against corporate acts (see Chapter 11 on Colombia). By developing case law and legal strategies, innovators suggest models that could influence domestic processes elsewhere – perhaps a more appropriate focus than an international one. Efforts to apply unsettled international law regarding corporate obligations or looking to international enforcement of those obligations in the form of soft law and voluntary principles may have a deleterious effect on domestic prosecution.

There are certainly limitations on this model. Most of the successful outcomes of the domestic cases globally involve civil courts; successful criminal actions are much rarer. Yet, in March 2016 a criminal guilty verdict was rendered by an Argentine court against Marcos Levin, owner of the Veloz del Norte. Levin has been sentenced to 12 years in prison for crimes against humanity involving the illegal detention and torture of a company employee, Victor Cobos. As the evidence provided in this report shows, there are a small number of justice victories for victims that demonstrate the possibility of overcoming obstacles.

In sum, transitional justice's reliance on international institutions to promote accountability and the rights of victims may fall short in the area of corporate complicity. Settled law regarding the human rights obligations of businesses and effective enforcement mechanisms to pressure states to advance these cases do not exist. Moreover, businesses have shown their collective, individual, cultural, social, and political power to veto accountability efforts. As civil society pressure increases and domestic courts find ways around the international and business veto blockages, businesses may begin to understand that their resistance may backfire and have significant legal and reputational effects. The changes underway in the global South have begun to play this transformative role to close the governance gap and reinforce the rights of victims of corporate abuse to truth, justice, and remedy. ♦

Box 1. Truth commissions and corporate complicity¹

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When the Brazilian National Truth Commission (CNV) began in 2012, its decision to investigate not only the crimes of state agents but also corporate complicity in the dictatorship's repressive apparatus seemed like an innovative direction for transitional justice in general and truth commissions in particular. Transitional justice in general and truth commissions in particular had not yet explicitly included recognition of the direct and indirect violations by non-state business actors in dictatorships and armed conflict. However, recent research conducted at the University of Oxford² reveals that Brazil's efforts were not as unique as they at first appeared.

The Oxford study has examined where truth commissions have included corporate complicity in human rights violations in their final reports, how they do so, and what they recommend regarding justice and remedy for victims. The research entailed investigating 39 final truth commission reports in 30 countries.³ See table, this box.

Where have truth commissions recognized corporate complicity?

The Oxford research reveals that over half of the truth gathering bodies that issued final reports recognized business involvement in gross violations of human rights during dictatorships and armed conflicts. The study finds that 22 out of 39 truth commissions (56%) or 19 of the 30 countries (63%) named specific companies, business associations, or individual members of the

1 Research assistantship is gratefully acknowledged for those engaged in the University of Oxford truth commission and corporate complicity project: Kathryn Babineau, Laura Bernal-Bermúdez, Lina Malagón, and Julia Zulver.

2 The University of Oxford study is part of the Corporate Accountability and Transitional Justice (CATJ) collaborative project funded by the Open Society Foundation. The project includes partners in Argentina (CELS and ANDHES) and Colombia (Dejusticia). This truth commission study received funding from the British Academy and the University of Oxford Press John Fell Research Fund.

3 Although some studies mention 50 truth commissions worldwide, not all of these investigative bodies issued final reports available to the public. The Oxford team still hopes to access and analyse reports from truth commissions in Germany, Lebanon/Syria, Lithuania, Nepal, the Philippines, and South Africa (Harms Commission).

business community involved in human rights violations.

Truth gathering mechanisms that include corporate complicity are not evenly distributed around the globe. Most are concentrated in Latin America, with 10 such truth commissions in nine countries. The region is closely followed by Africa with eight truth commissions in eight countries, and Asia with four truth commissions in two countries. Although other world regions – the Middle East and North Africa and Europe – had truth commissions that issued final reports, the Oxford study did not find references in them to business involvement in human rights violations.

How do truth commissions address corporate complicity?

Of those truth commissions that include corporate complicity in gross violations of human rights, all (22 in 19 countries) named specific companies, business associations, or individual members of the business community involved in those abuses. The final reports identified 321 national and multinational economic entities around the world assumed to be complicit in the human rights violations in dictatorships and armed conflict. This number corresponds to an average of 17 companies named per country, but the range is vast with only one company named in three countries and Brazil topping the list with 123 companies named. Reports that name higher than the average number of companies include those on Guatemala (45), Liberia (34), and South Africa (30). The naming of specific companies potentially involved in human rights violations provides initial areas for investigation by judicial bodies for strategic litigation. Indeed, the Oxford study reveals that 22 companies named in 10 truth commission reports have faced subsequent judicial action in domestic and foreign criminal and civil courts. These include companies in Latin America (Argentina – three, Brazil – one, Ecuador – three, Guatemala – three, and Peru – one), Africa (Cote-D'Ivoire – one, Kenya – one, Liberia – five, Nigeria – three, and South Africa – two), and Asia (East Timor – one).

The vast majority of the companies named in truth commissions are identified for their involvement in financing repression and conflict: 154 (48%). Although truth commission reports identified non-specific forms of company participation in violent repression and conflict in 105 (33%) of the cases, they also included specific violations linked to named companies, including kidnapping, arbitrary detention, torture, disappearance, extrajudicial killing or murder, slave labour, and rape. The reports also identified companies that

established on-site detention centres. Companies carried out these violations in collaboration with public (e.g., military or police), private (e.g., death squads and paramilitaries), and firm-sponsored security apparatuses.

The highest proportion of victims of company violations identified in the reports were members of the perceived political opposition (36%), followed closely by unionized and non-unionized urban and rural workers (32%). Local communities, including ethnic groups and indigenous peoples, did not fall far behind (25%).

What follow-up actions do truth commissions recommend?

Although the identification of firms involved in corporate complicity is a significant step in recognizing non-state business actors' responsibility for human rights violations, only a little over half of the truth commission reports (12 of 22) followed up with recommendations regarding remedy for abuses. Of those, seven truth commissions focused on official policies of reparations and restitution, specifically recovery of land, jobs, and other assets, as well as unspecific forms of victim reparation. The South African Truth and Reconciliation Commission called on businesses to voluntarily contribute to a reparation fund, an effort viewed as largely unsuccessful by most accounts. Labour and economic reforms were suggested in some cases as well as the promotion of human rights (Honduras, Paraguay, and Ecuador). Only Brazil explicitly advanced a recommendation for further investigation into companies' violations for possible prosecution. Thus, this study shows that what is unique about Brazil's truth commission is not the investigation into companies' abuses but its recommendation to hold those companies responsible. A civil case is ongoing in Brazil against Volkswagen for its involvement in the on-site detention and abuse of 12 unionized workers. The truth commission reports for Ecuador and Liberia also hinted at further investigations and prosecutions, and, indeed, some of those cases are making their way through the courts.

What conclusions can be drawn about truth commissions and corporate complicity?

These findings from the Oxford team's study of truth commissions and corporate accountability reveal that truth commissions have recognized the role played by corporations in the violence under dictatorships and during armed conflict. Public awareness of these truth commission findings remains quite low however. Even transitional justice specialists lack knowledge of

these truth commission efforts. It may be that the traditional transitional justice focus on violations carried out by state actors obscures awareness of truth commission initiatives regarding non-state actors' responsibility for human rights abuses. Governments dependent on businesses, and the named businesses themselves, would no doubt find truth commission findings inconvenient and harmful, and might therefore attempt to minimize their importance. Whatever the reason, truth commissions' investigations and reporting have generally failed to make visible companies' responsibility for abuses; they have hardly had an impact on public recognition of the phenomenon. Truth commissions, furthermore, have rarely made serious efforts to promote accountability or remedy mechanisms for corporate violations in their recommendations. Such an outcome is consistent with the very slow progress of prosecutions of companies for human rights abuses that have been initiated at domestic, foreign, and international level. Truth commissions' findings suggest a kind of governance gap, in which recognition of human rights violations by businesses exists without corresponding mechanisms to support victims' rights to redress and remedy. ♦

Country	Truth commission name	Year	
Argentina	National Commission on the Disappearance of Persons (Comisión Nacional sobre la Desaparición de Personas, CONADEP)	1983	
Brazil	National Truth Commission (Comissão Nacional da Verdade, CNV)	2012	
Chile	National Commission on Truth and Reconciliation (Comisión Nacional de Verdad y Reconciliación, 'Rettig Commission')	1990	
Chile	National Commission on Political Imprisonment and Torture (Comisión Nacional Sobre Prisión Política y Tortura, 'Valech Commission')	2003	
Cote D'Ivoire	Commission on Dialogue, Truth & Reconciliation (Commission Dialogue, Vérité et Réconciliation)	2011	
East Timor	Commission for Reception, Truth, and Reconciliation (Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste, CAVR)	2002	
Ecuador	Truth Commission to Impede Impunity (Comisión de la Verdad para Impedir la Impunidad)	2007	
Ghana	National Reconciliation Commission	2004	

Table 1. Truth commissions

Transitional justice and corporate complicity: cross-national study

No. firms named	Types of violations	Recommendations
11	General; Kidnapping; Disappearance; Arbitrary detention; Murder; Torture; Detention centres	None
123	General; Kidnapping; Disappearance; Arbitrary detention; Extrajudicial Killing; Murder; Torture; Financing repression; Detention centres; Displacement	Further investigation
14	General; Arbitrary Detention; Torture; Detention centres	None
2	General; Arbitrary detention; Detention centres	None
1	Murder; Environment	None
2	Financing	Reparations
14	General; Disappearance; Murder; Financing; Property displacement; Environment	Human rights promotion
5	General; Arbitrary detention; Murder; Torture	None

Country	Truth commission name	Year	
Guatemala	Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan People to Suffer (or Commission for Historical Clarification – Comisión para el Esclarecimiento Histórico)	1997	
Haiti	National Truth and Justice Commission (Commission Nationale de Vérité et de Justice)	1995	
Honduras	National Commissioner for the Protection of Human Rights (Comisionado Nacional de Protección de los Derechos Humanos, CONADEH)	1993	
Kenya	Truth Justice and Reconciliation Commission (TJRC)	2009	
Liberia	Truth and Reconciliation Commission (TRC) of Liberia	2006	
Nigeria	The Judicial Commission for the Investigation of Human Rights Violations (Oputa Panel)	1999	
Paraguay	Truth and Justice Commission (Comisión Verdad y Justicia, CVJ)	2004	
Peru	Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliación, CVR)	2001	

No. firms named	Types of violations	Recommendations
45	General; Kidnapping; Disappearance; Arbitrary detention; Extrajudicial killing; Murder; Torture; Financing repression; Slave labour; Property displacement; Rape; Environment; Detention centres	None
6	General; Disappearance; Financing repression	None
1	Arbitrary detention; Extrajudicial killing;	Media reforms Break up oligopolies
6	General; Property displacement; Landgrabs	Restitution of lands Titling
34	General; Arbitrary detention; Murder; Torture; Financing repression; Slave labour; Property displacement; Child soldiers	Investigation Seize unlawful properties Reparations and restitution
9	General; Arbitrary detention; Extrajudicial killing; Murder; Financing repression; Property displacement; Environment	Reinstatement Environmental protections Contract reform
3	General; Arbitrary detention; Extrajudicial killing; Torture; Property displacement; Detention centres	Human rights promotion Labour reforms
4	General; Kidnapping; Arbitrary detention; Murder	Reparation Restitution

Country	Truth commission name	Year	
Sierra Leone	Truth and Reconciliation Commission	2002	
South Africa	Commission of Truth and Reconciliation (TRC)	1995	
South Korea	The National Committee for Investigation of the Truth about the Jeju April 3rd Event	2000	
South Korea	Presidential Commission on Suspicious Deaths	2000	
South Korea	Truth and Reconciliation Commission	2005	
Zambia	Human Rights Commission of Inquiry (Munyama Human Rights Commission)	1993	

No. firms named	Types of violations	Recommendations
7	General; Murder; Financing repression; Slave labour; Rape; Child soldiers	Compensation Regulation
30	General; Extrajudicial killing; Murder; Financing repression; Environment	Voluntary contributions
1	General; Arbitrary detention; Torture; Detention centre	None
1	General	None
1	General; Arbitrary detention; Torture	None
1	General; Environment	None

Box 2. Trials and corporate complicity¹

Gabriel Pereira, postdoctoral researcher, Department of Sociology, University of Oxford

Research conducted at the University of Oxford reveals an increase in the use of judicial mechanisms to make businesses accountable for their involvement in human rights violations in transitional justice (TJ) contexts. The use of trials as a TJ mechanism has tended to involve criminal prosecutions, but civil trials have been intensively used to deal with cases of corporate complicity as well.² In a preliminary global study of accountability for corporate complicity, a total of 86 trials were found, most of them ongoing. Of these, 46 trials are civil and 40 are criminal. This trend is represented in Table 2.1 & 2.2.

The use of trials for business involvement in human rights violations in TJ is observed in both transnational and domestic litigation.³ The most common use has been in civil trials against businesses.⁴ Of these, a majority of cases (31 of 46 cases), were advanced under the Alien Tort Claims Act (ATCA), a statute that allows foreign citizens to seek justice in US courts for violations committed outside the United States.

1 Part of the evidence presented in this report is taken from Leigh A Payne, Gabriel Pereira, 'Accountability for corporate complicity in human rights violations: Argentina's transitional justice innovation', in: Horacio Verbitsky, Juan Pablo Bohoslavsky (eds.), *The Economic Accomplices to the Argentine Dictatorship. Outstanding debts*. Cambridge University Press, 2016, pp.29–46.

2 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 non-financial remedies.

3 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. See Sophia Kagan, 'The "Media Case" before the Rwanda Tribunal: The Nahimana et al. Appeal Judgment', The Hague Justice Portal, 24 April 2008, www.haguejusticeportal.net/index.php?id=9166

4 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.

Table 2.1. Criminal trials

Transitional justice and corporate complicity: cross-national study

Region (countries)	Domestic	Foreign	International
Africa (3)		3 (Democratic Republic of Congo) 1 (Liberia)	1 (Rwanda)
Americas (3)	14 (Argentina) 1 (Chile) 18 (Colombia)		
Asia (1)		1 (Myanmar)	
Europe			
MENA (1)		1 (Syria)	
Total (8)	33	6	1

Source: Corporate Human Rights Database (CHRD)⁵

⁵ The Corporations and Human Rights Database (CHRD on <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 has coded each CAA documented in the Business and Human Rights Resource Centre (BHRRRC), 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>

Table 2.2. Civil trials

Transitional justice and corporate complicity: cross-national study

Region (countries)	Domestic	Foreign-ATCA	Foreign
Africa (4)		1 (Morocco) 5 (Nigeria) 10 (South Africa)	1 (Democratic Republic of Congo)
Americas (3)	4 (Argentina) 9 (Colombia) 1 (Brazil)	1 (Argentina)	
Asia (3)		1 (Indonesia) 2 (Myanmar) 1 (Papua NG)	
Europe (1)		1 (Croatia)	
MENA (1)		8 (Iraq)	
Total (12)	14	31	1

Source: Corporate Human Rights Database (CHRD)

These cases are mostly 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 international law. The R̥hulumanı victims' support group also used US courts and the ATCA to address companies' apartheid-era crimes.

The Ogoni people 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 US-based human rights advocacy groups used the ATCA 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 US\$ 15.5 million in what is recognized 'as a milestone moment in the movement towards corporate accountability and human rights.'⁶ The subsequent US Supreme Court decision on *Kiobel v. Royal Dutch Petroleum* has had a negative impact on the use of the ATCA to remedy victims of corporate abuse.⁷ Until the *Kiobel* decision, foreigners could sue companies for human rights violations that occurred anywhere in the world. In this decision, the Supreme Court applied the presumption against extraterritoriality to severely limit the territorial reach of the ATCA. This means, as scholars such as Alford⁸ claim, that 'the only claims that may go forward under the ATS [ATCA] are those that touch and concern the territory of the United States with sufficient force to displace the presumption against extraterritoriality.'

The eight cases relating to corporate complicity and human rights abuse in Iraq also involve the ATCA. In one case, families of men working for a US oil services company in Iraq claim that the men's passports were confiscated and they were trafficked to work at a US 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.

6 See Centre for Constitutional Rights, 'Factsheet: The case against Shell', 16 June 2009, <http://ccrjustice.org/learn-more/faqs/factsheet%3A-case-against-shell-0>

7 *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013) – decided 17 April 2013.

8 Roger Paul Alford, 'The future of human rights litigation after *Kiobel*', *Notre Dame Law Review*, 89(4): 1749–1772, 2014.

Although corporate complicity in South Africa, Nigeria, and Iraq is reliant on the ATCA, three of the four cases relating to the atrocities in the Democratic Republic of Congo (DRC) are taking place not in the US or the DRC, but in Germany, Switzerland, and Canada. Three employees of the Anvil Mining Company were acquitted of 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 DRC in 2011. There is a criminal complaint in Switzerland 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 Kijwa in 2004.

Domestic litigation has been also used to address business complicity.⁹ Nearly half of the judicial cases that we found were heard in domestic courts. Argentina (18 trials) and Colombia (17 trials) have been the leaders in these cases. In our preliminary investigation into corporate complicity cases around the world, more than three quarters (75 percent) of all criminal cases and more than half of all criminal and civil cases (51 percent) are from these countries.

In sum, this brief overview of where and how TJ was used in cases of corporate accountability suggests 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.

Prosecution models

We are also analysing the different forms in which prosecution is taking place. Our aim is to elaborate prosecution models that can be taken as guidelines for future judicial actions in different context. Such analysis is in a preliminary stage and is initially restricted to Argentina, one of the two leaders in terms of trials for business complicity. We found four models (1) direct complicity in criminal violence, (2) violations of labour law, (3) financing repression, and (4) illegal business.

⁹ 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.

1. Direct complicity in criminal violence

A top officer from a local company was convicted for his involvement in human rights violations, and a number of officers from other companies face criminal prosecution for their alleged participation in such violations.¹⁰

The emblematic case in this category is the Levin case. A federal court in Salta province sentenced former bus company owner Marcos Levin to 12 years in prison in 2016. Levin is the first businessman to be found guilty of human rights violations during the dictatorship in Argentina. He was a former owner of a coach company La Veloz del Norte. The tribunal found evidence that Levin participated in the kidnapping and torture of employee and unionist leader Mr Victor Cobos. Levin provided crucial information that allowed state agents to identify and torture him.

Another important case is 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 20 and 27 July 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 to kidnap 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 centre, Esquadron 20, on its grounds. As a result of their involvement in these abuses, the firm's directors are now barred from travelling outside the country during the investigation.¹¹

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

10 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 SA; Loma Negra; La Veloz del Norte; and Acindar. Corporations and Human Rights Database.

11 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>

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.¹² 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 of, 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 US\$ 142,000.¹³

2. Labour law violations

The creative use of Argentine labour 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 Labour 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.¹⁴

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

¹² See www.ambito.com/noticia.asp?id=724383

¹³ See the latest development at www.cij.gov.ar/nota-11452-Lesa-humanidad-procesaron-a-ex-directivos-de-la-empresa-Ford.html

¹⁴ See the latest developments at www.diariojudicial.com.ar/fuerolaboral/Se-le-vino-la-noche-a-empresas-donde-hubo-desaparecidos-20120215-0002.html

left work in 1977. In 1995, his wife claimed compensation from his employer – Siderca – under Argentine labour 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.

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 IbañNewez 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 in the loans provided to the regime thus sustained, expanded, and intensified the military and its repressive apparatus.

A similar case was brought to court 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 the latter's abuses of human rights and demanded the right to truth about the links between the companies and his father's disappearance. 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.¹⁵

¹⁵ See the latest developments at <http://tiempo.infonews.com/2013/09/09/argentina-109064-argentina-a-un-paso-de-investigar-a-bancos-por-creditos-a-la-dictadura.php>

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 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 died down somewhat until the end of 2012 when files relating 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 a plane crash) of David Graiver, the owner of the Papel Prensa newsprint company. Graiver had alleged links to the left-wing urban guerrilla Montonero movement opposed to the dictatorship.¹⁶ After his death, Graiver'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.¹⁷

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 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.

¹⁶ The Montoneros urban guerrilla movement was one of the most important clandestine and illegal leftist groups during the 1970s in Argentina.

¹⁷ See the latest developments at www.telam.com.ar/notas/201401/48677-para-fresneda-la-causa-de-papel-prensa-se-encuentra-cajoneada.html