THE POWER OF BUSINESS

AND THE POWER OF PEOPLE:

UNDERSTANDING REMEDY AND BUSINESS ACCOUNTABILITY

FOR HUMAN RIGHTS VIOLATIONS – COLOMBIA 1970 - 2014

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ABSTRACT

The questions of business involvement in human rights violations in countries facing civil conflict, as well as access to remedy and accountability for these violations have generated a considerable amount of attention from academia and practitioners. While most theoretical efforts on access to remedy and accountability have focused on identifying the obstacles to access to justice, these do not explain the unlikely case of Colombia, where despite all structural obstacles being present (e.g. armed conflict, corruption), the country has positioned itself as a leader in the region in terms of judicialisation and convictions of economic actors for their complicity with grave human rights violations committed in the course of the 50 year internal armed conflict. This thesis is a theory building and theory-testing project that looks for alternative explanations to the outcomes registered in Colombia, focusing on the agents involved in these cases and how the variation in the power of the people (claimants) and the power of businesses (defendants) explains access to justice.

This thesis uses the most comprehensive datasets in existence of business involvement in human rights violations (the *Corporations and Human Rights Database* and the *Corporate Accountability and Transitional Justice Database*) to present a novel and much needed systematic analysis to identify the factors explaining why and when remedy and accountability is possible. The results of the study suggest that the variations in the power of people and the power of business do offer a plausible alternative explanation to the unlikely case of Colombia. The Colombia data analyzed in this thesis suggests that while an increase in the power of the people (through the support of global actors and political opportunities) is necessary to secure judicialisation and remedy, these results are only possible when they face an economic actor with reduced veto power.

Acknowledgements

This has certainly been a very long road, but not a lonely one. And like all amazing things in life, this project was born in the most common of circumstances: during a walk with two brilliant women in London. They asked: Why don't you do the DPhil in Oxford, and I thought Why not? And so I embarked on this journey with my wonderful husband by my side and the support of my incredible family who have always believed that I was meant to do great things. To my mother, my father, my sisters and my brother, thank you.

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I finish this thesis at a time when my country has dared to imagine a future in peace, and I hope that this work will contribute in some way to this future. I dedicate this thesis to my two greatest achievements: Arturo and Emma. May this work inspire them to dream and to know that everything can be achieved with perseverance, courage and wonderful

people by your side to make your life just a little bit brighter every step of the way. And to my husband whose dreams, love and support helped made this project a reality.

Abbreviations

UNHCR	Office of the United Nations High Commissioner for Refugees
AUC	Autodefensas Unidas de Colombia (United Self-Defense Groups of Colombia)
BACRIM	Bandas Criminales Emergentes (Emergent Criminal Bands)
BHRRC	Business and Human Rights Resource Centre
CAA	Corporate Abuse Allegation
CATJ	Corporate Accountability and Transitional Justice Database
CATJ-Colombia	Corporate Accountability and Transitional Justice Dataset - Colombia
CEPAL	Comisión Económica para América Latina y el Caribe (United Nations Economic Commission for Latin America and the Caribbean)
CHRD-Colombia	Corporations and Human Rights Database-Colombia

CHRD-LA	Corporations and Human Rights Database-Latin America
CIJP	Comisión Intereclesial de Justicia y Paz (Inter-Church Commission of Justice and Peace)
CSR	Corporate Social Responsibility
DANE	Departamento Administrativo Nacional de Estadística (National Statistics Department)
ELN	Ejército de Liberación Nacional (National Liberation Army)
ESN	Escuela Nacional Sindical (National Union College)
FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
FDI	Foreign Direct Investment
Fedepalma	Federación Nacional de Cultivadores de Palma de Aceite (National Federation of Palm Oil Growers)
FISCH	Foro Inter-étnico Solidaridad Chocó (Inter-ethnic Forum Solidarity Chocó)

GDP	Gross Domestic Product
GMH	Grupo de Memoria Histórica (Historic Memory Group)
GVC	Global Value Chain
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
IDP	Internally Displaced Populations
INCORA	Instituto Colombiano de la Reforma Agraria (Colombian Institute of Agrarian Reform)
INCODER	Instituto Colombiano de Desarrollo Rural (Colombian Institute of Rural Development)
ILO	International Labor Organization
INGO	International Non-governmental Organisations
NGO	Non-governmental Organisations

OECD	Organization for Economic Co-operation and Development
TAN	Transnational Advocacy Network
TNC	Transnational Corporation
UDHR	Universal Declaration of Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNGP	United Nations Guiding Principles on Business and Human Rights

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Chapter 1 - Introduction

In the midst of a 50-year internal armed conflict, in the Pacific region of Colombia, Afro-Colombian communities, guerrilla groups, paramilitaries, and economic actors have coexisted and disputed control over territory and resources. In October 2014, a lower court in Medellin convicted 15 businessmen and businesswomen from nine different domestic palm oil companies for associating with the United Self-Defence Forces of Colombia paramilitary group (AUC paramilitary groups) to forcibly displace the members of the Afro-Colombian communities of Curvaradó and Jiguamiandó in the Department of Chocó[1]. The court ordered the restitution of the communal lands, and the reparation of victims. The *Tribunal Superior de Medellín* confirmed the decision in the appeal on 4 November 2016. Some argued that this decision fell short because it failed to hold the main actors behind the violations accountable; however in June 2017 the same Tribunal revoked a lower court's ruling and convicted Antonio Nel Zuñiga-Caballero, a businessman who was named by several of the people involved in the case as one of the leading actors behind the strategy of dispossession and displacement of these communities.

The struggle for these communities started in 1997 when the Colombian army and the AUC paramilitary groups joined forces to expel the leftist FARC guerrilla group from the area, with 3,500 peasants and members of Afro-Colombian communities forcibly displaced in the process (Gallon 2014; Interview Danilo Rueda 2015; Interview Juan

[1] Colombia has an intermediate level of government called Department, which groups several municipalities. Currently Colombia has 32 Departments that group 1122 municipalities. The Department of Chocó is located in the Northeast of the country and includes 30 municipalities.

Sebastian Ospina 2017). As this thesis suggests, the introduction of state investment incentives in the region and in the sector (Interview Andres Celis 2015; Interview Gabriel Sierra 2015); business opportunities to access cheap land; and the perfect meteorological conditions for palm oil plantations, prompted a group of businesspeople to contact paramilitaries with a business proposal. In 2000, several palm oil companies, including Urapalma S.A., started acquiring these communal lands, owning half by 2005 (Defensoría del Pueblo 2005). Supported by the Catholic Church (Dioceses of Quibdó), local NGOs (CIJP), international NGOs (INGOs) (WOLA) and other foreign actors (U.S Senators – Donald Payne), part of these communities began a legal process to seek restitution of their lands. Their search for justice has been extensive both in space and time. Over a decade a local NGO (supporting part of the communities) has reached out to domestic courts in the constitutional and criminal jurisdictions, as well as regional human rights bodies (e.g. the Inter-American Court of Human Rights), securing several decisions declaring the companies accountable for the forced displacement of these communities, i.e. for having benefited from the violent actions of the paramilitaries to access land, and later having acted as an obstacle to the communities' return.

Assigning criminal accountability to employees, high officials and owners of the palm oil companies is an unexpected outcome. Colombia's particular power imbalances resulting from historical, political, social and cultural dynamics in the country, would not have indicated that the judicialisation[2] of businesses on behalf of a poor, remote Afro-Colombian community would be successful. The emerging literature on business

[2] Throughout the thesis I use the term judicialisation to refer to the initiation of judicial actions (both civil and criminal) to prosecute the human rights violations in which businesses have been involved.

involvement in human rights abuses further shows how rarely a conviction[3] occurs in these types of cases.[4] It may not be difficult to imagine why economic actors are involved in human rights abuses in Colombia, given what we know about the proliferation of such abuses in countries with similar internal armed conflicts[5]. There is also evidence to suggest that abuses are more likely to occur in countries that - like Colombia - suffer from high levels of corruption, and recorded weak governance and rule of law according to the World Justice Project (WJP) Rule of Law Index (because of the longstanding armed conflict), and an economy dependent on attracting foreign direct investment. What is difficult to imagine is that judicial actions would lead to business accountability and remedy for the victims (See *Chapters 2 and 4* of this thesis).

Thus, this project used Colombia as a 'least likely' case study (Alford et al. 1995), in relation to the literature on obstacles to access to justice, to explain the improbable occurrence of business accountability through judicial mechanisms. It is a "hypothesis generating and hypothesis testing" case study because none of the current hypotheses

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[3] Throughout this thesis I use the term conviction interchangeably with remedy to refer to a ruling where the business is held accountable for its role in human rights violations, this includes rulings issued by criminal and by civil courts.

[4] For example, the CATJ-Colombia shows that while 439 economic actors were included in the rulings of the *Tribunales de Justicia y Paz*, only 8 have been convicted. Also, regarding litigation in foreign civil courts when TNCs are accused of the violation, Oxford Pro Bono Público found that no company has been convicted and remedy has only been possible through out of court settlements: "While victims have ultimately obtained redress in several cases, a review of the 13 jurisdictions reveals that not one case has been finally determined in favour of non-national litigants. All cases in which complainants have received compensation have resulted from out of court settlements, even in some circumstances where claims ultimately failed. For example, significant out of court settlements were reached in Doe v Unocal in the US, in a criminal action brought against Total in France, Lubbe and Others v Cape Plc in the UK and Dagi v BHP in Australia. In the case of Lubbe v Cape Plc, novel settlement trusts have been established and approved by the courts, which will grant compensation to existing and future claimants. Yet these cases are very rare." (Oxford Pro Bono Público 2008, iv)

[5] As I explain in more detail in *Chapter 2* of this thesis, there is evidence to suggest a negative symbiosis between business-related human rights abuses and host countries (or state-like actors) in conflict zones, where different armed actors fight over resources and territory with little or no control by the state. In these cases, economic actors become involved in this fight over resources and territory and in doing so become complicit in the violence.

explain why these economic actors would be prosecuted and successfully convicted in Colombia. Through this exploration, the study considers the possibility of expanding access to justice for victims of business human rights abuses in Colombia and elsewhere, while also revealing the persistent barriers to justice for those abuses. It asks: what factors explain the unlikely judicial successes of victims of business human rights abuses? And what obstacles remain?

The importance of business to global and domestic economies and their consequent increasing economic and political power is undeniable. Their role in the production of goods and provision of services, as well as their interaction with close and distant communities within and across countries has made their impact on human rights relevant enough to give traction to an international governance debate on business and human rights and a movement to fill the existing governance and accountability gap to modify business behaviour. Although in the past three decades several global initiatives[6], all of them voluntary, have sought to modify business behaviour, there are serious doubts as to the extent of their impact. While most efforts have focused on identifying the obstacles to holding corporations accountable and guaranteeing remedy for victims little has been achieved in terms of policies (Amnesty International 2014).

[6] The emergence of corporate accountability include initiatives and organisations like: United Nations Guiding Principles on Business and Human Rights; The Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises; United Nations Global Compact; Voluntary Principles on Security and Human Rights; International Finance Corporation; The Equator Principles; International Labour Organisation Convention No. 169 on the Right to Prior Consult of Indigenous Peoples; International Standards Organisation Convention 26,000; Extractive Industries Transparency Initiative; and the Global Reporting Initiative.

More progress is needed on understanding access to remedy[7], which has often been referred to as the "forgotten pillar" of the UN Guiding Principles on Business and Human Rights (UNGPs)[8]. According to Peter Frankental from Amnesty International, this lagging behind can be explained by factors ranging from lack of political will to procedural and legal hurdles[9]. His call for much needed research and policy advances on access to remedy is shared by the Business and Human Rights Resource Centre, which considers that the "[d]oors are closing on judicial remedies for corporate human rights abuses"[10]; and the Institute for Human Rights and Business that included "Overcoming barriers preventing access to effective remedies for corporate related human rights abuses" as one of the 10 business and human rights issues for 2015[11].

This thesis looked at judicial remedy mechanisms where states are thought to be struggling to hold economic actors to account in an increasingly global context, either because they are unable and/or unwilling to control business behaviour. Using Colombia as a case study and an agency centred framework (instead of a structural

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[7] See e.g. the initiative of the UN Office of the High Commissioner for Human Rights on enhancing accountability and access to remedy in cases of business involvement on human rights abuses http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx

[8] The UN Guiding Principles are the latest UN initiative to address corporate impact on human rights. They were led by Professor John Ruggie and approved by the UN Human Rights Council in 2001. See John Ruggie's "Just Business" published in 2013.

[9] Presentation by Peter Frankental from Amnesty International in the seminar "Business and Human Rights: Do businesses really promote human rights?" organised by Lawyers Without Borders – Oxford Student Division at the University of Oxford Law Faculty on 26 January 2015.

[10] See Thorgeisson, Sif. "Doors closing on judicial remedies for corporate human rights abuses", Business and Human Rights Resource Centre, 26 January 2015. Accessed 29 January 2015, https://www.opendemocracy.net/openglobalrightsopenpage/sif-thorgeirsson/doors-closing-on-judicial-remedies-for-corporate-human-rig; and Thorgeisson, Sif. "Closing the courtroom door: Where can victims of human rights abuse by business find justice?", Business and Human Rights Resource Centre. Accessed 29 January 2015, http://business-humanrights.org/en/closing-the-courtroom-door-where-can-victims-of-human-rights-abuse-by-business-find-justice

[11] See Top 10 Business and human rights issues for 2015 according to the Institute for Human Rights and Business. Accessed 29 January 2015, http://www.ihrb.org/top10/2015.html

obstacles approach), it investigated cases where despite all structural obstacles to justice being present, claimants have managed to secure remedy and accountability.

The literature on Colombia has focused on understanding the economic interests, strategies and consequences of business involvement in human rights abuses (ABColombia 2013; Fundación Ideas para la Paz, Programa de Investigación sobre Conflicto Armado y Construcción de Paz, and Departamento de Ciencia Política Universidad de los Andes 2011); and identifying the obstacles to access to justice for victims (Comisión Internacional de Juristas 2010). However, as *Fundación Ideas para la Paz* recognizes, there is no large-N data or systematic data analysis to understand patterns of abuses, judicialisation and remedy, and this arguably explains the lack of policy initiatives in Colombia on the issues of judicialisation and remedy (Rivas Gamboa et al. 2014)[12]. The large sample data used in this thesis is found in two datasets on which I have been master coder (i.e. creating the master list which identifies the cases that other team members coded into the datasets).

(i) The Colombia data of the pilot project on Latin America of Payne and Olsen's Corporations and Human Rights Database (CHRD-Colombia). It records cases of corporate (legal entities) involvement in human rights violations, including cases of past complicity with atrocities committed by actors of the armed conflict reported by victims and civil society. It

[12] In Colombia in recent years two attempts to address the issue of judicialisation and remedy at the policy level merit being mentioned: one coming from the judiciary and the other from the executive power. The first one is a series of decisions taken by the Constitutional Court ordering companies mainly from the extractives sector to stop their activities in communal lands when the local communities have not been consulted. The second one is contained in the peace agreement signed with the left-wing FARC guerrilla, where the Government agreed to third parties involved in the conflict (including economic actors) being held accountable through the transitional justice mechanisms currently being designed (including a special peace jurisdiction and a truth commission).

includes cases where judicialisation, remedy and accountability have been possible and cases where they have not been possible.

(ii) The Colombia data of the Corporate Accountability and Transitional Justice Database (CATJ-Colombia)[13]. It records cases of complicity of different types of economic actors (including firms, individuals, land owners and business associations) with atrocities committed by paramilitary groups in the course of the armed conflict in Colombia. Paramilitary leaders reported these cases as part of the truth telling mechanism of the transitional justice process, implemented as part of the demobilisation of these groups starting in 2003[14].

Both datasets include cases in Colombia. By keeping my analysis to one country, I controlled country-level variables and concentrate on investigating factors related to the actors involved (i.e. business and civil society) and other case-specific variables.

The research questions that guided the research are: What factors explain the judicialisation of economic actors when they have been accused of involvement in human rights abuses in the context of armed conflict? What factors explain remedy and

[13] The Corporate Accountability and Transitional Justice Database includes over 1,000 cases of business complicity with gross human rights violations in 37 countries that experienced transitions from authoritarian regimes to democracy or from conflict to peace between 1945 and 2017. This database is made up of 4 different datasets: (i) the post-Holocaust cases (also known as the Industrialist cases and Slave work cases); (ii) cases of economic actors named in Truth Commission reports; (iii) cases where judicial actions have been initiated against economic actors for their complicity with atrocities and (iv) cases of economic actors named in the course of the Justicia y Paz trials in Colombia. For this thesis I only used this last dataset, which is part of the larger database recording judicial and non-judicial efforts to bring economic actors to account for their involvement in past atrocities.

[14] As further explained in *Chapter 7* of this thesis, the paramilitary forces demobilized between 2003 and 2009 and the TJ mechanism used to put them on trial (*Justicia y Paz* process) gave them reduced sentences in exchange for truth telling. As a result of the *Justicia y Paz* process, several paramilitary leaders confessed to having links with economic actors.

accountability outcomes once judicialisations are underway? How do these factors behave when looking specifically at cases of business complicity with grave human rights violations committed by the paramilitaries in the course of the armed conflict? And what are the causal mechanisms that explain the relationships between these factors and the outcomes under study?

The project tests assumptions from an emerging literature on business, human rights, conflict and transitional justice. The main hypotheses, which I explore in depth in the theoretical framework chapter (*Chapter 2*), refer to the role that claimants and defendants have in judicialisation and remedy outcomes. I test these hypotheses using the large sample data from the CHRD-Colombia and CATJ-Colombia that include (i) instances of allegations of abuses presented by an individual or by a group against a company, which are found in the digital archive of the Business and Human Rights Resource Centre, and (ii) instances of allegations of abuses reported by fellow perpetrators, which are found in the first instance rulings issued up to 2015 by the *Justicia y Paz* Courts[15].

This research uses a mixed methods approach, combining quantitative analysis and qualitative case study analysis as analytical tools to explore the associations between the explanatory factors outlined in the theory chapter and the dependent variables of interest (i.e. judicialisation, remedy and accountability for involvement of economic actors in human rights abuses).

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[15] For a more complete description of the data and the methods of analysis see *Chapter 3*.

Using nested analysis, this research is designed to first use a comparative large-N case analysis, then move to a case study that allowed me to further explore the mechanisms that explain the operation of the variables tested in the large-N analysis. In this study, the large-N analysis drives the small-N analysis. It is a form of nested analysis in that there is interaction between the methods, which are interwoven and in dialogue with one another. This dialogue is necessary as part of a larger theory testing and theory building enterprise, where new questions arise as part of the interaction between theory and the different levels of analysis.

Because some of the main concepts used in this thesis are still contested in the literature and are still under construction by academics and civil society organisations, it is important to start by clarifying how I used the main concepts in my research: economic actors, corporate human rights abuses/violations, corporate complicity, judicial actions, accountability/remedy for victims and agency centred framework. These definitions derive from a review of the way these terms are used in the literature, as well as the way they are captured by the coding manuals of the CHRD-Colombia and the CATJ-Colombia.

Concepts

Economic actors

Although the existing literature has focused on the role of companies (legal entities) in human rights violations (Juan Pablo Bohoslavsky and Opgenhaffen 2010; Business and Human Rights Resource Centre 2013; International Commission of Jurists 2008;

Rodriguez et al. 2006; Ruggie 2013; Scherer 2012), recent research has shown that business involvement in human rights violations cannot focus solely on the role of firms as legal entities; rather it needs to include a much broader universe of economic actors (Bernal Bermudez and Marín López n.d.; Payne 2017; Payne, Pereira, and Bernal Bermúdez 2017). In this thesis, I consider economic actors to be corporations (both TNCs and domestic firms, as well as private, public and of mixed ownership), but also individual businessmen(women), land owners and business associations.

In the case of firms (legal entities), much of the literature on the topic of corporations and human rights focuses on the concept of the 'transnational corporation' or TNC. This is explained by the concern within the UN during the 1980s with foreign corporations operating in the developing world (Clapham 2006, 199): "The term 'transnational corporation' emphasizes the fact that there is usually a single legal corporation operating in more than one country, with a headquarters and a legal status incorporated in the national law of the home state" (Clapham 2006, 199). The 'transnationality' of corporations has led to the possibility of companies having their headquarters in one country, being incorporated in a second country, operating in a third and fourth country, with workers from a fifth country and shareholders from a sixth state (Clapham 2006, 200). This management arrangement increases the difficulty of regulating their operations, which is why the UNGPs focus on creating a framework that is particularly concerned with TNCs, as opposed to domestic companies (Ruggie 2013).

Also, considering that today global value chains (GVC), "in which intermediate goods and services are traded in fragmented and internationally dispersed production processes" (UNCTAD 2013, 10), are "typically coordinated by TNCs, with cross-border trade of inputs and outputs taking place within their networks of affiliates, contractual partners and arm's-length suppliers; and that TNC-coordinated GVCs account for some 80% of global trade" (UNCTAD 2013, 10), the international efforts have focused on regulating these business structures that can easily elude all domestic regulation because of their cross-border operations.

A few words are necessary about subsidiaries and TNCs in the case of Colombia. TNCs are firms registered in Colombia but with operations in different parts of the world, while subsidiaries are those companies registered in Colombia but controlled by TNCs that are registered abroad. One could wonder whether the subsidiaries behave as TNCs or as domestic companies, and if the state and claimants will see them as TNCs or as domestic companies. For the purposes of this thesis, an assumption from the claimant's perspective is that subsidiaries are under the same normative framework as their parent companies because their behaviour affects the reputation and legal liability of the parent company. In this sense, there is a functional equivalent to the "shadow of hierarchy" cast by the state to induce companies to behave responsibly, found in the relationship between TNCs and their subsidiaries (Borzel, Honke, and Thauer 2012). TNCs will pressure their subsidiaries to behave in accordance with the normative framework that they adopt at the global level.

Although corporate abuses by TNCs are more broadly publicised and targeted by civil society organisations[16], this does not mean that national companies are not involved in abuses. They have, however, been largely overlooked by the media and civil society because of their low visibility at a global level. This provides a perfect scenario to

[16] As Kathryn Babineau's work on Peru demonstrates (Babineau 2015)

commit abuses without any monitoring beyond the state where they are incorporated. Since both the CHRD-Colombia and the CATJ-Colombia include TNCs and national privately- and state-owned companies, this research considered both. As the theoretical section shows (See *Chapter 2*), scholars have not found evidence to support the claim that domestic and transnational corporations will behave similarly or will face the same demands for justice.

Corporate human rights abuses/violations

Although many assume that human rights violations can only be perpetrated by states, and not by individuals or businesses, it is increasingly the case that corporations are seen as directly or indirectly participating in these violations, as well as assisting or supporting the violating state. A purist approach to the negative impact of firms on human rights would argue that companies cannot be said to directly violate human rights, because they are not signatories and are therefore not subjects of international human rights and international humanitarian law.

In this sense, purists have referred to corporate involvement as 'human rights abuses', and not violations, which would denote the existence of a legal obligation. The consequence of this is that a court cannot hold corporations to account for violating international human rights law (with the only exception of the Alien Tort Claims Act that gives US Courts jurisdiction over "civil actions by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States"[17]). This is why

[17] The Alien Tort Claims Act (28 U.S.C. § 1350; ATS) is a piece of legislation in the United States that states: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States". Since the 1980s US Courts have interpreted this statute to allow foreign citizens to seek

for the majority of abuses, where a company is directly involved, victims will have to channel their claims through the existing domestic bodies of law (i.e. criminal, civil, administrative, constitutional law).

This purist approach is the one that informs the existing global regulatory framework regarding corporations, which has tried to move past this debate by attributing to companies an ethical responsibility (not obligation) to respect human rights (United Nations 2011). And this responsibility is restricted to respecting human rights, leaving the duty to protect and guarantee only to the state.

However, there are cases where companies can be held accountable for their role in human rights violations (i.e. breaches of international human rights and international humanitarian law), if they were complicit with those who are duty-bearers like states and non-state actors in armed conflicts. The UNGPs, as well as previous initiatives like the UN Global Compact[18], recognise that it is not enough for businesses to avoid causing adverse human rights impacts: they also need to avoid contributing to human rights violations (UN Global Compact 2000; United Nations 2011). According to Principle 2 of the UN Global Compact "[c]omplicity basically means being implicated in a human rights abuse that another company, government, individual, group etc is causing" (UN Global Compact 2000).

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reparation for human rights violations committed outside the United States. However, in 2013 the U.S. Supreme Court ruled in the case of Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659 (2013), that the Alien Tort Claims Act does not apply extra territorially and so it can only be invoked when the company had a strong link with the United States. In the Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659 (2013), the US Supreme Court of Justice found that the Alien Tort Claims Act does not apply extra territorially and so it can only be invoked when the company had a strong link with the United States.

[18] "The Global Compact (GC) is a voluntary initiative [launched in 2000] intended primarily for corporations to pledge commitment to human/labor rights and environmentalism (and anti-corruption after 2004)" (Lim and Tsutsui, 2012). It is part of the global effort to affect corporate behavior.

According to the Global Compact, there are three types of complicity: a company can knowingly assist a state in violating human rights; it can benefit from human rights violations; or it can remain silent and fail to report the violations being committed in the host country[19]. Whether and how these translate to the available legal framework is yet to be seen. Although several claims have been filed under the Alien Tort Claims Act[20] and in local courts in Argentina[21] and other countries in Latin America using the theory of 'corporate complicity', the meaning of complicity is still a subject of debate in the jurisprudence and has given rise to increasing uncertainty about the outcomes of litigation (Juan Pablo Bohoslavsky 2012; Juan Pablo Bohoslavsky and Opgenhaffen 2010).

Nonetheless, debating the nature of the human rights responsibilities of companies does not negate the fact that businesses are increasingly involved in complex human rights abuses/violations. This is even more true now considering their increasing economic and political power, their expanding sphere of influence, and the complexity of the structures that they use to operate (DeLaet 2006, 210–13). "Multinational enterprises collectively represent the most powerful economic forces in the world" (Aronofsky 1985), with the largest 44 corporations generating over 11 per cent of the global GDP

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[19] As Deitelhoff et al. (2010) argue in their work on business operating in zones of conflict, companies have tried to argue that they are legally obligated to uphold contracts with states that were violating human rights, thereby exonerating them from liability. However, doing business with violating states amounts to complicity and international law encourages companies to break contracts and break domestic laws in situations where those laws would result in the company participating – directly or indirectly – in human rights violations.

[20] For ATCA cases on corporate complicity see e.g. the case of *In re South African Apartheid Litigation*.

[21] Minera Aguilar S.A., subsidiary of Glencore, has been accused of being complicit in the crimes committed during the last military dictatorship (1976-1983) against 27 workers of the company. There is also a judicial action for complicity with the regime against Ledesma, particularly for the company's responsibility for the unlawful deprivation of liberty of victims of the so-called night of the blackout ("Noche del Apagón"), in July 1976.

(Global Trends 2013). This means that some of the largest multinationals hold more political and economic power than the states where they operate (Chesterman 2011). In effect:

> *"Royal Dutch Shell recorded 2012 revenues that exceeded the GDPs of 171 countries making it the 26th largest economic entity in the world. It ranks ahead of Argentina and Taiwan, despite employing only 90,000 people. The biggest industry group in terms of size remains the major energy conglomerates, buoyed by energy price increases over 2012, with revenues of the five largest players increasing between 25% and 46% over the year. Combined, the revenues of these five companies (Royal Dutch Shell, ExxonMobil, BP, Sinopec and China National Petroleum) were the equivalent of 2.9% of global GDP in 2012." (Global Trends 2013).*

Economic actors are also more and more involved in all aspects of individuals' lives, both in the public and the private sphere (Deva 2012). There are different types of involvement that emanate from different roles and relationships with the state and individuals. They provide private security and surveillance, manage prisons, monitor elections, provide water and sanitation, educate children, build infrastructure, manage large amounts of personal data, guarantee food security, keep us informed about what is going on in the world, and manage global finances, amongst other functions. They work in increasingly complex ownership structures (involving parent companies, several layers of subsidiaries and corporate groups), and rely on intricate supply chains, joint ventures and consortia, sometimes engaging in partnership with the host state. This creates distance between the company and the affected communities, and makes it more difficult to attribute responsibility (Mestad 2011).

Given their extensive reach in society, economic actors can be involved in violations of civil, political, economic, social and cultural rights. In practice, some of these rights may be more at risk in particular industries or contexts, but overall, they are all susceptible to being negatively impacted by corporate operations (United Nations 2011). There is increasing evidence to show that the sphere of influence of businesses is not restricted to their workers and consumers, but also includes local communities where they operate, as well as distant communities where their supply chains are located.

Economic actors can be involved in abuses of all human rights included in the International Bill of Human Rights (Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR)), and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work (United Nations 2011). They can also be involved directly or indirectly in the abuse. However, not all types of abuses and involvement have the same chances of being prosecuted.

The predominant paradigm behind international human rights law, which gives priority to enforcing civil and political rights, to the detriment of economic, social and cultural rights, has an effect on the types of abuses that are prosecuted (Sharp 2012, 782). In this sense, we would expect that some of the human rights abuses committed by firms rarely reach the courts, and if they do, they have to be rephrased to fit the predominant civil and political rights paradigm (Juan Pablo Bohoslavsky and Opgenhaffen 2010, 163; Sharp 2012, 782).

Furthermore, within this prevalence of civil and political rights, the paradigm assumes an unofficial hierarchy of rights, which makes it more likely to successfully prosecute corporations for crimes of physical violence and the most egregious violations of international law (Sharp 2012). However, as this thesis suggests, the data for Colombia does not support this assumption.

To summarize, I used the terms human rights abuses and human rights violations interchangeably to refer to negative impacts of economic actors on all human rights contained in the International Bill of Human Rights[22] and the ILO Declaration on Fundamental Principles and Rights at Work (ILO Declaration), in all cases that occurred within the business's sphere of influence, in which the economic actor is directly or indirectly involved.

Corporate complicity

The concept of corporate complicity has emerged from the combination of two sets of literature that have recently started to enter into dialogue: business and human rights and transitional justice (Payne et al. 2017; Payne and Pereira 2016). Transitional justice academics and practitioners have become increasingly more interested in looking beyond the role of state actors in past atrocities committed during repressive regimes or in the course of armed conflict, in order to focus on other actors, specifically economic actors. The following is the definition that I used for this thesis:

> "*By corporate complicity, we mean businesses' 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. Types of corporate acts might include direct complicity in*

[22] The International Bill of Human Rights consists of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

> *criminal violence (e.g. joint criminal enterprise and conspiracy to violence), violations of human rights under labor law (e.g. slave labor), financing of repression or war crimes, or illegal enterprises (e.g. knowingly procuring or profiting from violence, such as through blood diamonds) (Maassarani 2005, Tofalo 2006). Complicity does not require ideological affinity between corporations and their state or state-like partners. Indeed, corporate entities often defend their actions as a result of extreme pressure rather than willful collaboration"* (Payne and Pereira 2016, 2).

While in the last 35 years Colombian governments have signed at least 61 peace agreements with illegal armed actors (Chaparro González and Martínez Osorio 2011, 11), none of them explicitly referred to the role of economic actors in the violence. With the *Justicia y Paz* process that demobilised the AUC paramilitary groups (2003-2009), this started to change. Again, the transitional justice mechanisms devised to deal with past atrocities committed by these groups (criminal trials and a working group on historic memory) did not explicitly refer to corporate complicity (as defined above). However, in the course of the paramilitaries' confessions the role of economic actors in the armed conflict started to be revealed. This eventually led to business complicity being part of the discussions in Havana in the course of the peace process with the FARC guerrilla (2012-2016), and to its explicit inclusion in the final peace agreement signed between this guerrilla and the government in November 2016.

Economic actors were included as part of a broader category called *terceros civiles* (civil third parties to the armed conflict). The agreement defines them as: "people who without being part of the organisations or armed groups have contributed directly or indirectly to the perpetration of crimes committed in the course of the armed conflict." The agreement says that those *terceros civiles* can have access to the same special treatment (as guerrilla members and state agents) as long as they contribute to truth, reparation and guarantees of non-repetition.

Much has been discussed about the way in which these *terceros civiles* can be brought to account by the Special Jurisdiction for Peace (JEP) and the Truth Commission (the two transitional justice mechanisms created in the peace agreement). The Truth Commission is established as a platform for all actors, including businesspeople, to acknowledge collective responsibility in the commission of serious human rights violations.

> *"As participants in the violence, local, national, and international corporate actors could assist the TC effectively in at least six ways, by: firstly, helping to clarify the violent actions carried out in the regions of the country; secondly, acknowledging their collective responsibility for their participation in the conflict (as a company, an economic sector, a group of companies, professional association, and so forth); thirdly, clarifying the historical context, the origins and causes of the conflict in which they were sponsors or their rights were violated; fourthly, identifying the factors and conditions that facilitated or contributed to the continuation of the conflict, particularly economic conditions such as voluntary financing of armed groups; fifthly, explaining the different forms of illegal cooperation with paramilitaries or other armed groups; sixthly, clarifying the phenomenon of land grabbing in which the main beneficiaries were corporate actors, as shown in various legal cases."* (Sánchez and Marín López 2017, 128)

At the time of writing there is still some uncertainty about whether there will be specific incentives for businesspeople to voluntarily collaborate with the TC and if the TC will be able to recommend that they participate in reparation plans for victims.

Regarding the JEP, the constitutional reform approved by Congress in March 2017 and that incorporated these mechanisms into the Colombian legal system certainly restricted the ways in which the JEP can investigate business complicity (Article 16 of Legislative Act No. 002 of 2017). Article 16 states that only *terceros civiles* who have had a determinant and active role in the perpetration of grave crimes can be tried by the JEP.

At the time of writing, the Constitutional Court was reviewing this constitutional amendment to determine (amongst other issues) the interpretation of the words "determinant" and "active".

While so far complicity of economic actors with crimes committed in the course of the armed conflict has been tried by the ordinary jurisdiction (e.g. the Urapalma case), once the JEP is established, the Peace Tribunal will potentially be able to try businessmen and women for their role in grave crimes committed in the course of the conflict. However the JEP will only be able to bring them to account if they voluntarily decide to give in to its jurisdiction, or if there is sufficient evidence to assume that they have been involved in the gravest and most representative crimes. How this will be operationalized in practice remains to be seen[23]. If businesspeople forego the JEP, they will risk judicialisation in ordinary courts for criminal activities.

Judicial actions

The reasons for my focus on judicial actions in this thesis are twofold, one empirical and one theoretical: empirically, victims are increasingly using lawsuits for redress. In effect, in 39 per cent (562) of cases in the CHRD-LA[24] victims resorted to judicial actions, and the global governance debate has seen some major breakthroughs as a result of the legal mobilisation of affected communities[25]. Theoretically, one would

[23] For more information about the discussions around the judicialisation of *terceros civiles* see: Oficina del Alto Comisionado para la Paz; n.d.; Sánchez, Vargas, and Garzón 2016; Semana 2017; El Tiempo 2016

[24] The CHRD-LA is the larger database that includes cases of corporate involvement in human rights violations in Latin America. The Colombia data found in this database is what I have called the CHRD-Colombia, which I use in this thesis.

[25] The case of Yahoo in China is a telling one. The company answered the Government's request for information linked to an activist e-mail account, and as a result, he was arrested and

expect the factors that affect remedy outcomes to be different when they are state or company-led, considering the different nature and responsibility of states and economic actors towards citizens, and that the role of the company is meant to be more proactive to secure remedy and the state is meant to be more reactive (i.e. operate when the company has failed to provide remedy).

A judicial action for the purposes of this thesis included civil and criminal trials. A trial refers to the initiation of judicial activity after a claim is filed against the company or company employees or other economic actor, and goes from preliminary investigations to the appeals. Civil trials in Colombia were defined in opposition to criminal trials and include constitutional actions for the protection of fundamental rights *("tutelas")*, labour claims and administrative law claims (mainly used when there is a state entity amongst the defendants, or when the company is state owned). This category also includes trials and proceedings before the Inter-American Court of Human Rights.

Remedy and accountability

The outcome of judicial actions can be diverse. Criminal trials alone involve a complaint filed before the prosecutor, but the preliminary investigation can be dropped and not lead to a trial, owing to the prosecutor's inability to identify a perpetrator to indict, or more practical reasons such as the selective workings of an overburdened system. The investigation can reach the trial stage, which can result in the defendant being convicted or absolved. Some trials, if they reach the sentencing stage, can result

sentenced to 10 years in prison. The family filed a claim in the U.S. and there was great media exposure of the company's role in the detention of the activist. The company settled the lawsuit, set up the "Yahoo! Human Rights Fund" to provide assistance to people imprisoned in China for expressing their views on the internet, and joined forces with Google and Microsoft to create the Global Network Initiative (Ruggie 2013, 14–16) in a decision regarding compensation for the victim, moving beyond the justice and truth outcomes from a guilty verdict.

On the other hand, a civil trial involves the plaintiff and the defendant, and the state only fulfils an impartial role through the courts. There is, as a general rule, no prosecutor and no investigation carried out by the state. The same applies for constitutional actions. In these civil and constitutional cases, there is a third possible outcome: an out-of-court settlement. These settlements can include compensation with no recognition of accountability, or compensation with recognition of accountability. This list only includes some of the most common outcomes found in the CHRD-Colombia and CATJ-Colombia, but there are many other possibilities that vary from case to case, from jurisdiction to jurisdiction.

Some may argue that these results can be explained only by looking at the legal technicalities and hurdles that plaintiffs/prosecutors have to overcome to obtain the conviction of the defendant. However, this is a very restricted approach to the judicial system, and fails to acknowledge how political, social and cultural factors affect the outcomes of judicial proceedings. This research is embedded in this more comprehensive understanding of the workings of the judicial system, and looks for the particular factors that influence judicial outcomes when the defendants are economic actors accused of being involved in human rights abuses, particularly when the result of the judicial action is their accountability and/or remedy for victims. While some might refer to the range of outcomes from these cases as 'impunity,' 'successful judicialisation,' or 'justice,' I have adopted a less value-laden and more accurate language to categorise outcomes.

For the purposes of this research, accountability was defined as a judicial decision resulting in declaring the economic actor's involvement and responsibility for human rights abuses. Remedy was understood as any type of financial compensation, restitution, guarantee of non-repetition or rehabilitation resulting from the judicial actions against the corporation[26]. I make the distinction between remedy and accountability because there are cases in the CHRD-Colombia where a company has been held accountable but the victims did not receive any reparation (e.g. the Chiquita Brands case, where the company confessed to having funded paramilitary groups in Colombia, and the result of the criminal investigation by the U.S. Department of Justice was a fine, none of which trickled down to the victims); or a company has reached out-of-court settlements with victims where it has agreed to pay some compensation to the victims but not accept any liability (e.g. BP's out of court settlement in the UK with Colombian peasants who had sued the company for environmental degradation caused by the construction of the Ocensa pipeline).

Agency centred framework

Most of the existing literature on remedy and accountability efforts has focused on the powerful force of business, derived from the social capital of firms in the power elite and their pure economic power over the state, amongst other factors. Alternately, it

[26] According to the UN's *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, remedy for victims include any of the following forms: restitution, compensation, rehabilitation and guarantees of non-repetition. Public apologies have also been a common outcome of judicial proceedings for human rights violations. However, for the purposes of this research I excluded from the definition apologies, since if it is true that corporations' only social responsibility is to make profits, this form of remedy does not impact profits as directly as the others do.

assessed the structural obstacles to access to justice (e.g. corruption, jurisdiction). Yet the findings from the Colombian case, where victims – even poor and under-resourced ones – have been able to win court cases, show that these forces can be overcome. Examining only the power of business or the structural and institutional hurdles that claimants face in the course of the trial, fails to explain successful outcomes. In this sense, this project seeks to fill the gap in the literature by looking at an agency-centred approach.

Throughout this thesis I used an agency centred framework (developed in *Chapter 2* of this thesis) to answer the research questions about the factors explaining judicialisation, remedy and accountability when economic actors are involved in human rights abuses. I am interested in finding out how claimants manage to obtain favourable results in the courts and overcome the powerful force of business. In order to do so, I looked at factors that could explain an increase in the relative power of claimants in the courts, and factors that might explain a decrease in the relative power of corporations.

Plan for the rest of the thesis

The next chapter (*Chapter 2)* contains a review of the literature with the current understandings about business involvement in human rights violations, focusing specifically on their role in past violence in the course of an armed conflict. A second part develops the theory and framework that I build and test in the empirical chapters of this thesis (*Chapters 5, 6 and 7*). Finally, I present some conclusions.

Chapter 3 outlines the research design, referring specifically to the methods used to build and test the proposed theory, and how they relate to each other. It also contains a discussion about the large-N samples used in this thesis and the case selection.

Chapter 4 explores Colombia as an economy developing in the context of armed conflict. This chapter describes the context in which the cases analysed in the empirical chapters took place (*Chapters 5, 6 and 7*). Firstly, it includes a description of the political and socioeconomic characteristics of Colombia, suggesting weaknesses of the Colombian state and the strong veto power of economic actors over state responsiveness to violations. Secondly, it includes a literature review of what has been said so far about the relationship between economic actors and the paramilitary groups during the armed conflict in Colombia. Thirdly, I complement the literature review with some descriptive statistics using the data in the CHRD-Colombia and the CATJ-Colombia. This section locates Colombia in the broader Latin American context, using data from the CHRD-LA. Lastly, I present some concluding remarks.

The following empirical chapters analyse cases of business involvement in human rights violations in Colombia. The samples that I use include cases dating back to the late 1970s, when the first paramilitary groups were formed, all the way to 2014[27]. Each chapter analyses a different sample. The first two chapters use quantitative methods to analyse large sample datasets, while the third chapter uses qualitative methods to analyse a single case study.

[27] The time frame of the samples is delimited by the emergence of paramilitary groups and not left wing guerrilla groups (which started to emerge in the 1950s) because there is no systematic effort as of yet to identify cases of complicity between left-wing guerrilla groups and businesses in Colombia. Nonetheless, the truth telling processes that will come from the transitional justice mechanisms that were agreed on as a result of the peace process with the FARC guerrilla group (2012-2016) should contribute to fill this gap.

Chapter 5 is the first of three empirical chapters. Using the data from the CHRD-Colombia, this chapter firstly uses descriptive statistics to explore patterns of abuses, judicialisation, accountability and remedy. Subsequently, I build and test models predicting the judicialisation of firms, as well as the remedy and accountability outcomes of these judicial actions in Colombia. Lastly, I conclude by summarizing the findings and explaining what the data suggests regarding each one of the hypotheses developed in *Chapter 2*.

Chapter 6 is the second empirical chapter. Using the data from the CATJ-Colombia this chapter focuses solely on cases of complicity of economic actors with grave human rights violations committed by paramilitary groups in the course of the armed conflict in Colombia. Like *Chapter 5*, I use descriptive statistics and inferential statistics to explore patterns, and build and test models. Lastly I present some conclusions summarizing the findings and explaining what the data suggests regarding each one of the hypotheses developed in Chapter 2.

Chapter 7 is the last empirical chapter and the final part of the nested analysis design. It includes the case study analysis of 9 domestic palm oil firms involved in grave human rights violations committed by paramilitary groups during the 1990s in Colombia. This case allows for an in-depth investigation of the theory built and tested through the large sample analysis in *Chapters 5 and 6*. This chapter is structured as follows: firstly, a contextualization of the social and geographical characteristics of the department of Chocó and the communities involved in the case. Secondly, graphical representation of the companies' actions and civil society's reactions; as well as graphical representation of the way the theory operated in this case. Thirdly, an analysis of the companies' veto power and strategies to guarantee impunity. Fourthly, an analysis of the strategies and mechanisms used by civil society to secure convictions. Lastly, I present some conclusions.

Chapter 8 is the concluding chapter. It summarises the main findings of this thesis regarding the role that the power of people and the power of businesses play in explaining access to justice for business complicity with grave human rights violations committed in the course of the armed conflict. It then turns to the main contribution of this thesis to the emerging field of business and human rights, as well as to the field of transitional justice. It also outlines research tasks for future studies on access to justice for corporate complicity with past atrocities.

Chapter 2 – Business accountability and remedy for human rights violations: Literature and theory

Introduction

The questions of business involvement in human rights violations in countries facing civil conflict, as well as access to remedy and accountability for these violations have generated a considerable amount of scholarly attention both theoretically and empirically. However, to answer these questions two separate sets of literature have emerged. One focuses on the behaviour, i.e. the economic reasons behind the emergence and perpetuation of armed conflicts and the involvement of economic actors in atrocities committed by state and state-like actors in the course of civil conflict (corporate complicity cases); as well as the human rights abuses committed by business in contexts of armed conflict (e.g. environmental degradation, land grabs, lack of prior consultation with local communities, labour law violations) (Bannon and Collier 2003; Berdal and Malone 2000; Collier 1998; Cooper 2002; Humphreys 2002; Reno 1997; Tripathi 2010). The other on the use of transitional justice mechanisms to prosecute the economic actors involved in the violations during the conflict (Hutto and Jenkins 2004; International Commission of Jurists 2008; Michalowski 2013a; Nystuen 2011; Payne and Pereira 2016; Sharp 2013).

However, in order to facilitate peace (using transitional justice mechanisms) we need to understand war (Keen 2000), which is why a more comprehensive approach that brings these two sets of literatures together is much required. We need to understand the role of business in past violence, but we also need to know how to guarantee the victims' rights to truth, justice, reparations and guarantees of non-repetition when these violations occur. This is the objective of the first part of this chapter: to present a literature review that brings together these sets of literature, while also highlighting the gaps in the literature. The second part presents the two dimensions identified in an agency centred approach – the power of people and the power of business – that provide a useful framework for analysing together the two sets of literatures and understanding the cases where victims have managed to secure convictions of economic actors in Colombia.

In this thesis I argue that a discussion beyond structural obstacles to access to justice is much needed if we want to close the accountability gap. The judicialisation of economic actors for their role in human rights violations and the outcomes of accountability efforts can be explained by a power struggle between the people (i.e. victims and civil society) and economic actors, where the people will be able to push for judicialisation and remedy when they manage to trump the veto power of business.

I use Colombia as a case study for two reasons: (i) despite having most of the structural barriers to access to justice, there are 'success' stories that allow me to test under which conditions the power of people manages to trump the power of business in a context of adversity for accountability efforts and (ii) the context of transition that the country has experienced starting in 2003 with the demobilisation of the AUC paramilitary groups allows me to further explore the impact of the veto power of business on accountability, considering that some authors have argued that their veto power is strengthened during times of transition because of the state's reliance in economic actors for peace building.

The literature: Access to justice for human rights violations by business in the context of armed conflict

Although the negative impacts of business operations in the lives of people around the world are not new, the use of the human rights framework to define them is. It can be traced back to the 1970s when the United Nations unsuccessfully tried to negotiate a code of conduct of multinational corporations. Afterwards, following continued corporate scandals (like Union Carbide's Bhopal disaster in 1984), individuals and communities started using the human rights language to challenge companies and seek redress. With this strategy they managed to pressure companies and industries to create a set of Corporate Social Responsibility (CSR) global initiatives like the UN Global Compact and the Global Reporting Initiative, as well as a series of public-private initiatives (e.g. the Extractive Industry Transparency Initiative) (Karp 2014, 17–34; Ruggie 2013). However, these initiatives remained voluntary.

And as a result of escalating advocacy campaigns and lawsuits, in 2005 the UN Commission on Human Rights (today Human Rights Council) decided to create a special mandate, appointing Professor John Gerard Ruggie as Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (Ruggie 2013, xvii–xviii). The mandate resulted in the unanimous endorsement by the Commission of the UN Guiding Principles on Business and Human Rights in 2011 (UNGPs) that officially recognise that the negative impact of business operations can and should be defined in terms of human rights violations[28].

[28] The UNGPs rest on three pillars that are then expanded in different principles and markers to measure compliance: (i) the State's duty to protect against human rights abuses by a third party; (ii) an independent corporate responsibility to respect human rights. This is a well-established social norm, and noncompliance would affect the company's social license to operate; and (iii) greater access by victims to effective remedy, both judicial and non-judicial, including State and non-State lead mechanisms.

However, the UNGPs did not create any new way of looking at corporate accountability; they simply made sense of the mechanisms that were already in existence, relying on domestic judicial mechanisms for redress, and emphasizing the need for home states to prosecute corporations involved in human rights violations abroad (considering that some of the host states are thought to be unwilling or unable to prosecute these corporations).

Theoretically, there is a set of literature focusing on the emergence and evolution of these international norms, as well as the regulatory challenges and the legal perspective behind business involvement in human rights violations (Bilchitz 2009; Clapham 2006; Deva 2012; Paul and Schönsteiner 2013; Payne et al. 2017). Empirically, some large-N studies have started to emerge focusing on factors that explain the engagement of large firms with international voluntary principles like the UN Global Compact (Lim and Tsutsui 2012; Mwangi, Rieth, and Schmitz 2013). For example, Lim and Tsutsui recognise that the current regulatory framework, specifically the Global Compact[29], has not been able to modify corporate behaviour, since the adherence to global human rights initiatives is best explained by 'organised hypocrisy' and not commitment (Lim and Tsutsui 2012).

Now, we find that some of these violations have occurred in countries with internal armed conflicts and that there is a clear 'negative symbiosis' between the worst business-related human rights abuses and host countries (or state-like actors) in conflict zones (Ruggie 2013, 29; Tripathi 2010), where different armed actors fight over

[29] "The Global Compact was formally launched on July 26, 2000 and represents the first effort by the United Nations to create a multi-sectoral network of corporations, professional associations and NGOs designed to advance a commitment to corporate social responsibility. […] As of July 2011, the GC had more than 8,000 total members and more than 6,000 business members in 135 nations." (Mwangi, Rieth, and Schmitz 2013, 206–7).

territory and resources, and there is little or no control by the state. And here there are interesting studies that look at economics and violent conflict, without using the human rights framework. These studies seek to use the presence of economic considerations and commercial agendas as an explanatory factor of conflict (Bannon and Collier 2003; Berdal and Malone 2000; Collier 1998).

However, these approaches have focused on the legal and illegal economy of armed factions in a civil conflict, and not on the role and accountability of legal businesses in the violence. For example, William Reno has documented how in the civil wars in Central Africa the result has been the economic benefit of certain groups (including government officials, combatants, local traders and foreign businessmen) and the further impoverishment of others (Reno 1997). In Liberia, Charles Taylor was said to have received millions of dollars from the war between 1992 and 1996 (Berdal and Malone 2000). In the Democratic Republic of Congo, armed groups controlling areas rich in natural resources like gold, diamonds, cassiterite, wolframite and coltan have set up a self-sustained war economy through the trade of these minerals across neighboring countries (Gallmetzer 2010). Rwanda and Uganda have become major exporters of raw materials, including gold or cobalt, which they do not naturally possess (Mwanasali 2000). There are also the well-known cases of blood diamonds in Sierra Leone and Angola which have shown the clear linkages between the war economies and the global economy (Gamba and Cornwell 2000). But we can also find examples of this phenomenon beyond Africa. Between 1993 and 1997 the commanders of the Khmer Rouge enriched themselves through illegal logging activity and trading in gems (Berdal and Malone 2000, 6). In Colombia the war economy has included the illegal drug trade (Rettberg and Ortiz-Riomalo 2016), as well as the incursion of guerrilla and paramilitary groups in other economic activities like illegal exploitation of natural resources by the FARC (e.g. gold mining and logging) and incursions in large scale agribusiness by paramilitary groups.

Although some have referred to the importance of considering the role of legal business in the conflict and the extent to which these actors should be held accountable (Juan Pablo Bohoslavsky 2013; Reno 1997; Richani 2005; Ruggie 2013, 29–33), very little is known about this side of the economy and violent conflict. Some studies have looked at TNCs operating in conflict-ridden areas and colluding with state forces to commit human rights violations. For example, Exxon Mobil accused of collaborating with human rights violations committed by the military in Indonesia; Del Monte of lending its facilities to military forces to torture union leaders in Guatemala; and Shell of being involved in grave human rights violations committed by the military in Nigeria (Aaronson 2003, 63). However, no systematic study exists that looks at patterns of business involvement in human rights violations in countries with armed conflict (asking what type of economic actors are involved, in what types of violations, was there complicity with state or state-like actors in all types of violations, what are the degrees of responsibilities for the different types of involvement in the violence). This thesis starts to fill this gap by using two new large-N datasets to reveal some of these patterns in Colombia and propose plausible explanations.

Lastly, another set of literature has looked at access to justice for human rights violations committed by economic actors. Theoretically some have looked at access to justice for violations occurring in all types of contexts (Comisión Internacional de Juristas 2010; Oxford Pro Bono Público 2008), while others have focused specifically on access to justice for corporate complicity with grave human rights violations committed by state and state-like actors in the course of armed conflict (Bohoslavsky and Rulli 2010; Hutto and Jenkins 2004; International Commission of Jurists 2008; Michalowski 2013a; Payne 2017; Payne and Pereira 2016; Pereira 2017).

All of these works have focused on highlighting the obstacles that victims face to guarantee their rights to truth, justice, reparation and guarantee of non-recurrence are respected, and to explain the high levels of impunity. Most of them have focused on structural factors that undermine the claimant's right to access to justice. For example, the lack of a unified approach to regulating corporate human rights abuses at the local level. Plaintiffs are forced to use tort and criminal actions that do not refer specifically to human rights and normally have no extraterritorial operation[30]. Also, there is the difficulty of establishing the responsibility of a parent TNC for the actions of one of its subsidiaries, due to their separate legal personalities and the ambiguity of the jurisprudence on when it is possible to pierce through the corporate veil of protection. The ability of the judicial system to cope with complex claims, considerable delays in judicial proceedings and the high costs of litigation for victims, will also hamper the possibility of successfully prosecuting economic actors. Finally, plaintiffs may encounter problems accessing information and finding evidence of the abuse (Human Rights Council 2013; Michalowski 2013a; Oxford Pro Bono Publico 2008)[31].

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[30] According to the Supreme Court in the Kiobel v. Royal Dutch Shell decision, even the Alien Tort Claims Act (ATCA) in the U.S. is subjected to the presumption against extraterritoriality.

[31] In 2008 Oxford Pro Bono Publico (OPBP) submitted a report to Professor John Ruggie exploring the obstacles that victims faced in accessing justice and obtaining redress in domestic legal systems, either at the home or the host state. OPBP conducted a study in 13 different jurisdictions, trying to provide an accurate picture of world practice by evening out the sample between developed and developing countries.

The International Commission of Jurists (ICJ), reflecting on the particular situation of Colombia, mentions obstacles to do with the complexity of the law, inefficiency of the judiciary and geographical barriers to access the system, as well as social barriers that include ignorance of the law and lack of economic capacity to pursuit these lawsuits. These obstacles have been identified as the result of qualitative work, through interviews with civil society organisations and public officials. However, no systematic analysis exists to test the extent to which these structural barriers are sufficient to explain impunity.

There are very few attempts to move past these structural barriers to explain the levels of impunity, looking specifically at the economic agents involved and the extent to which global actors participate in the lawsuits to support the victims (Comisión Internacional de Juristas 2010, 41–46; Payne and Pereira 2016; Ruggie 2013, xvi). And these attempts have so far been theoretical and need to be tested empirically. The International Commission of Jurists in a 2010 report spoke of 'institutional-political obstacles' to refer to the veto power of business to secure impunity in Colombia (Comisión Internacional de Juristas 2010, 41–46). Ruggie presented the same idea in 2013 when he spoke of the capture of the state by strong economic actors as an explanatory factor of impunity (Ruggie 2013, xvi).

More recently, Payne and Pereira have presented a more robust framework to increase accountability for corporate complicity with grave human rights violations committed by state and state-like actors in the course of armed conflict and authoritarian regimes. Through empirical work and data collection of cases of complicity that have been brought to court in countries that have transitioned to peace or democracy, they suggest the following four factors as necessary to explain the inclusion of business accountability in transitional justice mechanisms: international pressure, domestic judicial leadership, civil society demand, and weak veto players (Payne and Pereira 2016).

Building on the work of Payne and Pereira, I suggest that in an environment where all structural obstacles remain constant (through an in-country study), there are two factors that explain the judicialisation and conviction by the courts of economic actors for their role in human rights violations: the veto power of businesses and the power of the opposing force: the people (agency-centred approach). In the next section of this chapter I present a set of hypotheses extracted from the literature that suggest conditions under which the power of each one of these actors is altered. Contrary to what some have suggested, I argue that the veto power of economic actors is not static or uniformly distributed in all types of economic actors. The business class is not an homogeneous mass, and therefore some business will have more veto power than others, and this veto power can change when the context in which they operate changes (e.g. a transition from conflict to peace). And in subsequent empirical chapters I test these hypotheses to see how these two powers interact when faced with accountability efforts through the courts.

A theory of justice: the powerful force of business meets the powerful force of the people

The theory built and tested in this thesis seeks to move beyond considerations about structural obstacles, and starts from a very basic premise or assumption: the main issue regarding judicialisation and remedy for business involvement in human rights violations is the asymmetric *power relations* between victims and enterprises (Dejusticia, Conectas Dereitos Humanos, and Justicia Global 2013). If all structural obstacles remain constant, and still some cases are "successful" in the courts, this means the claimants have managed to exert sufficient pressure to alter these asymmetric power relations. But how do they exert these pressures? What are the factors that explain their success?

As I said, there is very little information regarding patterns of business involvement in human rights violations, but also very little is known about when, how, and why claims are heard and/or addressed by the state. Colombia provides the best case to test an 'agency based approach' considering that: (i) there is evidence to suggest that Colombia has most of the structural obstacles to access to justice and nonetheless there are cases where claimants have been successful in the courts, and yet (iii) the claimants have managed to exert sufficient pressure to increase the likelihood of success in the courts.

The data in the CHRD-Colombia shows how in 39 per cent (75) of the corporate abuse allegations (CAAs or instances where a person or group of persons allege that an abuse has taken place) recorded for Colombia, those allegedly affected by company operations have resorted to judicial actions with varying outcomes. An unexpectedly high level -- 15 per cent (29) of these cases with judicial actions – resulted in both remedy and accountability. However, this still suggests that only the strongest cases are likely to get to the trial phase and win, but the majority of cases (85 per cent) do not. The CATJ-Colombia shows much more reduced levels of judicialisation and remedy when the universe includes only business complicity cases involving firms and other economic actors like individuals and business associations. In only 5 per cent (25 cases) of the mentions in the Justicia y Paz rulings did the Fiscalía prosecute the economic actor named by the paramilitary forces (these cases are ongoing), and only 2 per cent (8 cases) of the cases resulted in remedy.

The increasing economic and political power of corporations derived from their central role in national economies and development plans is undeniable (Chesterman 2011, 50). With the accelerated speed of economic globalisation in the 1990s, in the wake of the programmes to liberalise the economy of developing countries promoted by the World Bank and the International Monetary Fund, the business sector has gained increased economic and political power, while the governance capacities of states has decreased. There has been a reduction of the size of the state, which is now more dependent on the market and less able/willing to monitor and regulate the economic activities of corporations (Abouharb and Cingranelli 2009; Deitelhoff and Wolf 2010, 222; Deva 2012).

Programmes to liberalise the economy have resulted in the reduction of the size of the state, through reforms like privatisations[32], retreat of the state of regulation and opening of national boundaries (Aaronson 2003; Abouharb and Cingranelli 2009; Fourcade-Gourinchas and Babb 2002). Some even argue that the recent state and firm support of corporate social responsibility (CSR) can be explained as an effort to inoculate firms from regulation, and is used to justify light regulatory schemes (Kindermann 2009). There is also another facet of liberalisation that goes beyond a passive role of the state, and into an active role in increasing repression of civil and political rights in order to

[32] Between 2000 and 2008, the World Bank estimates that privatisation deals worth over US$450 billion around the globe. In Latin America alone these deals have been estimated at over US$36 billion and they have concentrated in the infrastructure sector, which includes natural resources and utilities (The World Bank n.d.).

secure the stability required to attract foreign investment (Kucera 2002; O'Donnell 1978)[33].

In this way, state responsiveness to violations and remedy claims needs to be seen through the lens of public/private relationships that range from economic dependency, alliances for large infrastructure projects, provision of public utilities by private companies and the use of companies by states to perpetrate human rights abuses (e.g. the use of company premises as detention centres by the dictatorships in Brazil, Chile and Argentina).

On the other hand, in transitional justice contexts, when countries are moving from conflict to peace (which is the case in Colombia) or from authoritarian regimes to democracy, the rule of law systems may not be fully functional. Also, the international community can exert pressure on the country to be more accommodating to businesses and to capitalist, neo-liberal reforms (Van Ho 2013, 54, 70); corporations will use their economic power to influence directly or indirectly the justice system to secure impunity (Paul and Schönsteiner 2013; N. C. Sánchez 2013); there is an increased difficulty to find evidence of the abuses (N. C. Sánchez 2013, 122); and governments will rely on firms for rebuilding and fulfilling socioeconomic or developmental objectives (Abrahams 2013, 153–54).

The existing literature beyond purely structural/institutional approaches on remedy and accountability efforts has focused on the impossibility of justice due to the powerful

[33] Blanton and Blanton (2006) have challenged this "conventional wisdom" that asserts that there is no complementary relationship between FDI and human rights, and that repression can be more conducive to increase FDI. They argue that there are economic incentives for firms to invest in countries that respect human rights, and that repression is not necessarily the best way to achieve economic efficiency.

force of business. Yet the findings from the Colombian case, where victims – even poor and under-resourced ones – have been able to win court cases, show that this force can be overcome. Examining only the power of business fails to explain successful outcomes. This project seeks to fill the gap in the literature by looking at an agency centred approach.

The questions are: what would explain the observed remedy and accountability outcomes? How do claimants move past the power of corporations and the lack of state capacity and political will? To answer this question I looked at two dimensions. The first one discusses the role of TANs and how they use political opportunities to enhance the relative power of claimants. The second one looks to identify some of the company-level characteristics that explain the changes in the powerful force of business.

Looking to examine the effectiveness of claimants in the courts, these two dimensions explore how the target of mobilisation (i.e. the state and the economic actors) becomes vulnerable to pressures because of the claimant's availability of leverage and the target's sensitivity to leverage (Keck and Sikkink 1998, 29).

Enhancing the power of people

This first dimension rests on the assumption that, in general terms, social mobilisation of people against the negative impacts of firms on their human rights is present in all cases recorded in the CHRD-Colombia. Social mobilisation understood as the evolution of a conflict from blaming to claiming, i.e. the process where the aggrieved group perceives a particular experience as injurious, identifies the entity that they think is responsible and then decides to confront it and seek remedy (Felstiner, Abel, and Sarat 1980). Over time, social mobilisation has taken different forms. Some have used *de facto* tactics, such as protests; boycotts; exposés in the world media and shareholder activism to demand remedy. Others have turned to legal mobilisation through the courts, with different outcomes.

H1: Transnational Advocacy Networks (TANs)

The claimants' capacity to secure judicialisation and remedy is enhanced when they have access to resources and support networks (Khagram, Riker, and Sikkink 2002a; McAdam 1982). In an increasingly globalised world, social mobilisation has had to adapt to respond to global threats and make use of new opportunities to pressure the state and economic actors to remedy human rights abuses. In this sense, globalisation is not only affecting and explaining corporate structure and actions (Tsutsui 2006a). This means that claimants will increase their chances of 'success' in the courts if they are able to tap into a network of domestic and international governmental and non-governmental institutions that will pressure the state to act through judicialisations and convictions. These networks will make use of transnational processes to generate domestic outcomes, and they mainly link actors across borders through the exchange of information and services (Khagram, Riker, and Sikkink 2002a, 7–10).

TANs cut across domestic and international politics, where non-state actors interact with each other, with states, and with international organisations. These interactions are structured as networks made up of "those relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services.” (Keck and Sikkink 1998, 2).

The members of TANs can be identified expansively to include not only INGO, NGOs, and local social movements, but also parts of states and intergovernmental organisations, as well as non-state actor like foundations, the media, churches, trade unions, corporations and research institutes (Keck and Sikkink 1998, 9; Khagram, Riker, and Sikkink 2002a, 9). For domestic actors, linking with world actors provides access, leverage and information. International contacts can also amplify the demands of domestic groups and eco them back into the domestic arena (Keck and Sikkink 1998, 13).

Not all of these actors need to be present, but INGOs and NGOs do play a central role initiating the actions (Keck and Sikkink 1998, 9). Also, considering the rise in their power and influence, intergovernmental organisations play definite roles in the outcomes of the actions (Gallagher n.d.; Tsutsui 2006b). In this sense, TANs look for alliances with individual elites at powerful international organisations and in powerful countries (Tsutsui 2006b).

The power of these international allies is partly based on their role in regional or world models that can either move states to prosecute corporations, or to condone the impunity of corporations (Meyer 2010). Modern nation-states are subjected to global pressures and instruction (McNeely 1995; Strang 1990), and are willing to adjust their behaviour in order to obtain membership in a group of more ‘rational’ actors in the global sphere (Meyer 2010, 12).

According to Keck and Sikkink (1998), TANs work through persuasion and socialisation, and use the following tactics:

(i) Information politics: generate information and move it to where it will have most impact. An example of this type of tactic is monitoring.

(ii) Symbolic politics: use symbols, actions and stories to make sense of a situation for an audience that is far away.

(iii) Leverage politics: call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence.

(iv) Accountability politics: effort to hold powerful actors to their previously stated policies and principles.

The success of these TANs in influencing state behaviour has been traced back to the density of the network and its ability to achieve leverage (Keck and Sikkink 1998, 26). And the density of a network has been linked to the number of "nodes" in the network but also their quality, i.e. with strong connections (Keck and Sikkink 1998, 28). "[D]enser networks and coalitions are likely to be more effective in achieving their goals, especially if they have significant network, coalition, or movement participants within the country or countries targeted by the campaign." (Sikkink and Smith 2002, 40).

One of the objectives of these networks is to secure the creation and the implementation of international norms, and in the past several decades, new normative expectations around the issue of business involvement in human rights violations have congealed into a series of global norms and international instruments. These norms have "diffused and changed political dynamics across the globe, engendering many new social movements that pressure governments and corporations to change their practice." (Tsutsui 2006a, 331). This means that new opportunities might be emerging at the global level that claimants could potentially seize to improve their position in court.

Local groups that are mobilising, including communities and local NGOs, apparently now have access to an emerging network of international governmental and non-governmental organisations, as well as foreign governmental organisations, that have either emerged as a result of the global regulatory process (e.g. the BHRRC, the UN Working Group on Business and Human Rights) or have evolved to include the issue in their agenda. Claimants could potentially tap into these TANs, therefore (i) bypassing an unresponsive state and appealing to global forums (Keck and Sikkink 1998, 12) and (ii) employing 'globally legitimated vocabularies' like human rights to redefine their claims at the global level (Tsutsui 2006a, 334). The impact of these emerging opportunities and networks were tested in this thesis (*Chapters 5, 6 and 7)*.

Domestic NGOs activate international networks when they consider that the "channels between the state and its domestic actors are blocked" (Keck and Sikkink 1998, 12). They bypass the state and search for international allies (either other states or intergovernmental organisations) to bring pressure on their own state. These partners can provide access, leverage and information, and an audience where their claims can resonate (Keck and Sikkink 1998).

Figure 2.1 Diagram of the Boomerang pattern

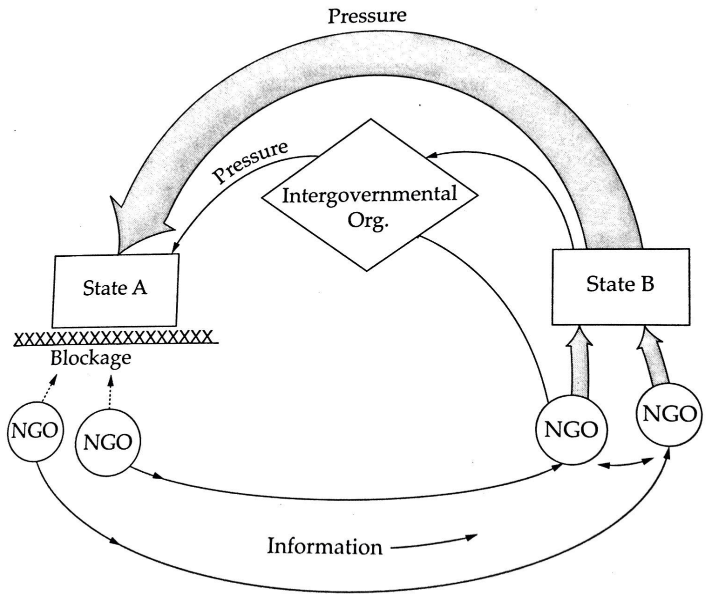


Figure 1 Boomerang pattern. State A blocks redress to organizations within it; they activate network, whose members pressure their own states and (if relevant) a third-party organization, which in turn pressure State A.

Source: (Keck and Sikkink 1998)

On the other hand, Keck and Sikkink argue that the most effective Transnational Advocacy Network (TAN) mobilisations have occurred around human rights violations that inflict bodily harm (Keck and Sikkink 1998, 27; 195; 204-205). This ties in with a predominant paradigm behind international human rights law, which gives prevalence to enforcing civil and political rights, in detriment of economic, social and cultural rights, has an effect on the types of abuses that are prosecuted (Sharp, 2012, p. 782). In this sense, we would expect that some of the human rights abuses committed by firms rarely reach the courts, and if they do, they have to be rephrased to fit the predominant civil and political rights paradigm (Bohoslavsky & Opgenhaffen, 2010, p. 163; Sharp, 2012, p. 782).

Also, within this prevalence of civil and political rights, the paradigm also has an unofficial hierarchy of rights, which makes it more likely to successfully prosecute corporations for physical violence crimes and the most egregious violations of international law (Sharp, 2012).

As I further explain in *Chapter 3*, by the very nature of the CHRD-Colombia, this database only records cases where domestic actors have been able to engage with global actors, precisely because the BHRRC (which holds the archive used to build the CHRD-Colombia) is an INGO that operates as an amplifier of claims (using Keck and Sikkink's terminology). The variation comes in the density of the TNA, which does vary across cases.

> H1: Cases where claimants are able to tap into transnational advocacy networks to pressure states are more likely to be prosecuted and violations will increase the likelihood of remedy.
>
> > H1a: Denser transnational advocacy networks will be more successful in pressuring the state to pursuit judicialisation and remedy.
> >
> > H1b: Judicialisation and remedy is more likely when a company is involved in physical violence crimes and the most egregious violations of international law (i.e. crimes against humanity, genocide, war crimes, torture), than when the firm is involved in violations affecting social, economic and cultural rights.

H2: Political opportunities

Understanding the political context and the "opportunities" structure is key to understand the emergence and outcomes of TANs. Political opportunities have been defined as "consistent – but not necessarily formal, permanent, or national – signals to social or political actors which either encourage or discourage them to use their internal resources to form social movements." (Tarrow 1996, 54). They open the possibility for weak and disorganised groups to challenge strong opponents. While, as opportunities narrow, even the strongest challengers face difficulties and need to change their strategies (Tarrow 1996, 54). There are four salient signals: the opening up of access to power, shifting alignments, the availability of influential allies and cleavages within and amongst elites.

According to McAdam "[u]nder ordinary circumstances, excluded groups, or challengers, face enormous obstacles in their efforts to advance group interests […] But the particular set of power relationships that define the political environment at any point in time hardly constitute an immutable structure in political life." (McAdam 1982, 40). In this way, political opportunities will arise with social processes that restructure existing power relations. They will open spaces for certain types of claims that could not have been successful before by either undermining existing political structures (in this case economic and political elites) or giving political leverage to excluded groups (in this case victims of human rights abuses by businesses) (McAdam 1982, 42).

> H2: When claimants are able to seize political opportunities that shift the power dynamics between victims, the state and economic actors in a given time, this will increase the likelihood of judicialisation and remedy outcomes.

As I further explain in *Chapter 4*, for Colombia the context of transition that came with peace processes involving the paramilitary and guerrilla groups constitute social processes that shifted power dynamics in the country. The processes revealed corporate involvement in the armed conflict, put businesses on the defensive, and had the potential to reduce their power over the outcomes of judicial action. They provided a political opportunity that claimants could tap into to increase their chances of success in the courts.

The powerful force of business

The second dimension refers to the types of economic actors that are more likely to secure impunity because of their veto power. From the literature I extracted the following hypotheses to explain in which cases we are more likely to see a strong veto power of businesses.

Firstly, considering the stronghold that economic actors have over the state when they have a central role in the national economy, when they have a central role in the national economy are more likely to secure impunity. There are different ways to define whether an economic actor has a central role:

- When their operations are part of the net inflow of foreign direct investment (FDI): One of the manifestations of international economic dependence is the direct economic penetration through private investment by TNCs, which results in these economic forces owing or controlling the process of production (Chase-Dunn 1975, 721). When a state's macroeconomic stability depends on FDI, this will result in it being less able/willing to monitor firms. The latter considering that increasing the costs of operation for firms would affect the country's status as recipient (Aaronson 2003; Clapham 2006).
- When a business is considered essential for the overall economic growth and economic development of a country (GDP and national taxes and revenues): The leverage of companies may be enhanced when it belongs to a strategic business sector; a country's economy is not diverse and therefore highly dependent on the firm's economic activities; or when the country is competing with other countries in the region for foreign direct investment in a particular industry, engaging in a race to the bottom[34] (Olsen and Payne 2013).

There are specific circumstances under which companies acquire an added importance to society that shield them from judicialisation. As Abrahams has argued, during times of transition from dictatorship to democracy, or from armed conflict to peace, when states will rely on firms for rebuilding and fulfilling socioeconomic or developmental objectives (Abrahams 2013, 153–54).

According to Carranza in times of transition, holding companies to account for their involvement in gross human rights violations is particularly challenging (Carranza

[34] See e.g. Davies, R. B., & Vadlamannati, K. C. (2013). 'A race to the bottom in labour standards? An empirical investigation'. *Journal of Development Economics* (103) 1-14.

2008). In fact, there are particular issues that arise when attempting to hold business to account in the context of transition (Michalowski 2013b, 1). States are particularly reliant on business for peace building and will therefore have additional incentives to prioritize investment over justice for victims (Abrahams 2013, 153–54). In this sense, the veto power of businesses acquires a particular resonance in these times, i.e. in the context of transition companies operating in sectors that are important to the national economy will be less likely to be prosecuted or convicted.

> H3: Companies that are central to the national economy are less likely to be prosecuted for their alleged involvement in human rights violations; and if they are prosecuted, claimants are less likely to obtain remedy and accountability outcomes.
>
> > H3a: The veto power of economic actors will increase in times of transition because of the state's reliance in their investment for peace building.

Some have argued that TNCs are more likely to secure impunity (Deva 2012, 13), not only because of their contribution to FDI (which is covered in H3), but also because "[m]ultinational enterprises collectively represent the most powerful economic forces in the world" (Aronofsky 1985), with the largest 44 corporations generating over 11 per cent of the global GDP (Global Trends 2013). This has led to some of the largest multinationals having more political and economic power than the states where they operate. State authorities are therefore more vulnerable to capture.

H4: TNCs are less likely to be prosecuted and convicted because of their economic power.

On the other hand, a high visibility brand or name makes companies more vulnerable to negative impacts on their image and reputation, and are therefore an easier target for claimants and civil society organisations through exposes. When companies have a visible consumer brand, they are themselves more sensible and aware of reporting mechanisms and judicial complaints (Clapham 2006, 206). These companies are found in markets where there is high customer awareness or the company is ranked as a leader in their industry (Deitelhoff et al. 2010, 208); as well as when it is part of a less competitive market (Deitelhoff et al. 2010, 217).

A high visibility brand has an impact on the possibility of companies reaching an out-of-court settlement with claimants[35], or collaborating with the judiciary in the course of the trial by accepting accountability and/or providing remedy. Following the company's rationale as an economic entity driven by profit, it is less costly to reach a settlement with claimants in order to decrease the negative economic impact of a judicial claim.

H5: Companies that have a high visibility brand or name are more likely to be prosecuted for their alleged involvement in human rights violations, and if they are prosecuted, claimants are more likely to obtain remedy and accountability outcomes through settlements because of the reputational effect.

[35] Like Deva (2012) recognises, ATCA litigation has led to out of court settlements but hardly any case has been decided against the company on the merits.

A cumulative reading of these four hypotheses could lead to contradictory results, which is why the mixed methods approach will allow me to test these hypotheses not only independently but also cumulatively to see which ones alone or in combination explain this dimension. I say that contradictory results because TNCs are increasingly more central to national economies, as development plans are more and more dependent on FDI. Companies with recognised brands are mostly TNCs. So according to this reading of the hypotheses, would TNCs be vulnerable or subjects of special protection? And why? The method I use in this thesis allows me to answer these questions.

This shows the importance of this work, which brings together the hypotheses extracted from the literature (which until now have been worked on separately), and tries to make sense of them.

Based on the hypotheses extracted from the literature, the combination of different levels of power characterising the claimants and defendants in a case should allow for some expected outcomes in terms of judicialisation and remedy. The following table summarises the framework that I built and tested in this thesis.

Table 2.1 Summary of agency-centred framework

	Strong power of people	Weak power of people
Strong veto power of business	I Judicialisation possible (but not likely) and no remedy	II No judicialisation and no remedy
Weak veto power of business	IV Judicialisation and remedy	III No judicialisation and no remedy

Source: The author

Table 2.1 develops the framework by suggesting a way to identify when judicialisation and remedy are possible and when they are not possible using an agency-centred framework. According to Quadrant I of the table, when powerful claimants face powerful defendants, although judicialisations might be possible (but not likely) remedy is not possible because the veto power of economic actors will trump the power of claimants. This is the case for example of companies like Dole Food International and Occidental de Colombia LLC (coded in the CHRD-Colombia) where companies have been accused of complicity with paramilitary groups. Although claimants have liaised with global actors to pressure for judicialisations (increasing their strength), they have been unable to secure convictions (amongst other reasons) because of the strong veto power of these companies (and their subsidiaries operating in Colombia) given their large participation in FDI (which is measured by their operation in the natural resources sector and their nationality (they are both TNCs)).

As Quadrant II suggests, strong claimants are necessary in order to secure convictions. Although without them defendants might be prosecuted (while this is very unlikely), these criminal investigations will not advance to the trial stage. The CATJ-Colombia has several examples of cases where weak claimants have pursued the accountability of cattle ranchers in the courts and have failed to push the case beyond the preliminary investigation. The CHRD-Colombia includes for example the case of Kappa Resources Colombia Ltda (bought in 2006 by Pacific Rubiales), which was accused of hiring the services of paramilitary groups to forcibly displace peasants from their lands in Guamo, Tolima in 2001, when they refused to sell lands where oil wells had been discovered. Although, according to *El Espectador*, paramilitary leaders confessed to the company's complicity, the prosecutor acquitted the CEO in the course of the preliminary investigation (i.e. the case never reached the trial stage) (Quevedo 2011).

While structural barriers to access to justice can explain this case, the article from *El Espectador* suggests that an alternative explanation for this case is feasible, using an agency centred framework: This company had a strong veto power, because it was operating in the natural resources sector (contributing significantly to both GDP and FDI); and claimants had weak power to push for a trial because they were a family of peasants who did not manage to tap into any dense TAN, or call for the support of global actors to pressure the state to pursue this case.

Quadrants I, II and III suggest that strategies to empower civil society are necessary but not sufficient to guarantee both judicialisation and remedy. As Quadrant IV shows, the factor that I suggest needs to be present to explain remedy is the weakened veto power of business.

Conclusion

The aims of this chapter have been two-fold: firstly, present a literature review of the existing works on business involvement in human rights violations, bringing together sets of works that have so far been developed independently of each other (business and human rights, business and conflict and transitional justice). This review highlights the gaps in the existing literature and how this thesis will contribute to fill these gaps. Secondly, present a theory of justice to explain Colombia, a case that cannot be explained by existing hypotheses focusing on the structural obstacles that affect access to justice.

Regarding the first aim, the negative impact of business on human rights in conflict-ridden countries has been studied both theoretically and empirically. Although much has been said about the legal and illegal economy of armed factions in the conflict (i.e. on the economy of war), little is known about the role of legal business in the conflict and the extent to which these actors should be held accountable. Empirically, the systematic analysis in this thesis (see *Chapters 5, 6 and 7*) will contribute to fill this gap in the literature by revealing patterns in business involvement in abuses in a context of armed conflict.

On the other hand, most works that study access to remedy by victims for these violations have focused on identifying the structural obstacles that explain the low levels of remedy and accountability. However, these approaches fail to explain the case of Colombia, a country that has positioned itself as a leader in judicialisation and convictions in the region despite having most of the structural obstacles identified in the literature. This is where the second aim of this thesis comes in: Theoretically, this thesis seeks to contribute to the literature by suggesting alternative explanations to remedy outcomes in Colombia, building an agency centred approach to explain "success stories" in the courts.

This agency centred approach is built on the assumption that judicial actions are the scenario of a power struggle between claimants (people) and defendants (economic actors). And the results of these judicial actions will reflect variations in the power of these actors, which is by no means static. It will also identify the strategies that explain how claimants have managed to overcome the powerful force of business and the structural and institutional obstacles that underlay all cases of business involvement in human rights violations. The following table is a summary of the hypotheses that I tested in this thesis and that allowed me to build an alternative theory about access to justice:

Table 2.2 Summary of the theory and hypotheses

The power of people	TANs	H1	Cases where claimants are able to tap into TANs to pressure the state are more likely to end in judicialisation and remedy
		H1a	Denser TANs will be more successful in pressuring the state to pursue judicialisation and remedy
		H1b	Judicialisation and remedy is more likely when the economic actor is involved in violations of civil and political rights.
	Political opportunities	H2	When claimants are able to seize political opportunities that shift the power dynamics between victims, the state and economic actors in a given time, this will increase the likelihood of judicialisation and remedy outcomes.
The power of business	Importance to the economy	H3	Businesses that are central to the national economy are less likely to be prosecuted for their alleged involvement in human rights violations; and if they are prosecuted, claimants are less likely to obtain remedy.
		H3a	The veto power of economic actors will increase in times of transition because of the state's reliance in their investment for peace building
	Nationality of the business	H4	TNCs are less likely to be prosecuted and convicted because of their economic power.
	Brand	H5	Companies that have a high visibility brand or name are more likely to be prosecuted for their alleged involvement in human rights violations, and if they are prosecuted, claimants are more likely to obtain remedy and accountability outcomes.

Source: The author[36]

[36] In order to test these five hypotheses, as I further explored in *Chapter 3*, I used data collected for the CHRD-Colombia and the CATJ-Colombia. The hypotheses from the "Power of Business" dimension required further data collection on my part. For the *Brand* hypothesis I used the Fortune 500, Interbrand Top 100 and Forbes list of Best Brands as indicators. For the *Importance to the national economy* variable I used the sector where the business operates, the size of the firm and the economic actors' contribution to the GDP in terms of the subsector of the economy where they operate.

The next chapter presents a discussion about the methods and sample used in this thesis to test these hypothesis and build a theory of justice based on the variations in the power dynamics between claimants and defendants that are part of these cases of business involvement in human rights violations.

Chapter 3 - Methods and sample

Introduction

The works that make up the literature on business involvement in human rights violations are divided between those using qualitative methods (mainly case-study approaches) and quantitative methods. This thesis contributes to the debate by using a mixed methods approach, using both quantitative and qualitative methods of analysis to add different dimensions to the research puzzle. This chapter is structured as follows: firstly I describe the sample for the large-N analysis, including a discussion about case selection. Secondly, a discussion about the methods that I use, the levels of analysis, and how these methods interact and complement each other.

Sample and case selection for the large-N datasets

The large sample data that I used in this project comes from two datasets: the CHRD-Colombia and the CATJ-Colombia. Although both datasets record cases of business involvement in human rights violations in Colombia, I kept them separate for the analysis because the methodology of data collection and the source of information are very different. However, these two datasets complement each other and are used to bypass the selection bias and data omission problems (explained below). Precisely because of the differences between these two datasets there is very little overlap between them. Only 21 companies are found in both the CHRD-Colombia and the

CATJ-Colombia[37], and this represents 10 percent of the CHRD-Colombia and 4 percent of the CATJ-Colombia. This suggests that the CATJ-Colombia can be used to expand the scope of the sample of the CHRD-Colombia.

CHRD-Colombia

This dataset is part of Payne and Olsen's pilot project on Latin America[38], and it includes allegations of abuses recorded in the archive of the Business and Human Rights Resource Centre (BHRRC)[39] from 2000 to 2014, which is the most comprehensive archive in existence on corporate human rights abuses. Nonetheless, it has several limitations that have to be considered when analysing the data. Firstly, the BHRRC is an NGO with particular interests regarding sectors and countries, and this will have an effect on the amount of information gathered. It is, however, an NGO looking to record negative and positive impacts of companies in human rights. Secondly, due to resource constraints, the BHRRC has a limited number of researchers in the field, and until 2013 there was only one researcher in Latin America, located in Colombia. From 2013 a second researcher was based in Brazil, and in 2015 a third researcher based in Mexico and is focusing on Mexico, Central America and the Caribbean. Thirdly, the information is collected from the media, NGO and company press releases, as well as reports from NGOs and international organisations. This means that the information is restricted by the bias of these sources. And fourthly, because of this bias, there are concerns about the representativeness of the sample

[37] Agropecuaria Palmas de Bajirá; Asociación de Bananeros de Urabá AUGURA; Banacol; Banadex; Banafrut; Multifruits; Técnicas Baltime; Unibán; Unión de Bananeros de Urabá; Chiquita Brands; Coca-Cola; Del Monte; Dole Food Company; Fresh del Monte; Inversiones Fregni Ochoa; Maderas del Darién; Palmadó; Palmas S.A.; Palmas de Curvaradó; Palmura; Urapalma S.A.

[38] See: http://chrdproject.com/index.html

[39] See: http://www.business-humanrights.org/

(Olsen & Payne, 2013). As I will explain in this chapter, after conducting some tests for the Colombia data, I am less concerned about data biases in my research: I was both able to confirm the representativeness of the sample for the universe of cases that it represents (i.e. firms), and, using the data from the CATJ-Colombia I supplemented the CHRD-Colombia data.

The unit of analysis of the CHRD-Colombia is a Corporate Abuse Allegation (CAA), i.e. an instance in which a group and/or individual accuses a company of being involved in a human rights abuse. This dataset only includes firms, i.e. it does not include other types of economic actors like individual businessmen, landowners or business associations. For each CAA, the database includes information on the company (the name and if it has a parent company); a description and characteristics of the violation (where it occurred, the type of abuse, when it occurred, when was it reported); the parties involved (the affected party, those who reported the allegation, state involvement, and other third parties involved for example through advocacy); the company response to the allegation, if any[40]; judicial actions, non-judicial remedy mechanisms; as well as subsequent positive updates or positive actions by the company as a result of the abuse allegation. In this sense, it covers multiple levels of analysis by including information on the claim, how it is institutionalised (grievance mechanisms) and the outcomes and responses from the company and the state to the claim.

[40] The way the BHRRC works is that when they receive notice of an allegation of abuse by a firm, they contact the company to ask them for a response to the allegation. The CHRD-LA includes company responses when such responses appear in the BHRRC archive or in any other publicly available source. The CHRD-LA categorizes the following types of responses: denial (subcategorized in terms of exaggeration, exclusion, or incorrect reporting of facts), acknowledgment, justification of action, apology, and plan for change.

It overcomes several limitations of the current studies of the role of businesses in human rights violations that tend to focus on single firms (usually involving Fortune 500 companies), single countries or small-N comparisons of business sectors or firms. Although there are other large-N studies that have recently started to emerge, these have tended to concentrate on the participation of large firms or TNCs in voluntary corporate social responsibility (CSR) initiatives like the UN Global Compact (e.g. Lim and Tsutsui 2012). The CHRD-LA includes a broader range of firms and records their involvement in human rights violations. It concentrates on tracking corporate involvement in human rights violations in the region, independently of the firms' engagement with global CSR initiatives.

Since April 2013 I worked as part of the team creating the CHRD-LA. The project relies on data from the BHRRC digital archive. We sifted through all the material in the BHRRC website for Latin America and used a pre-established definition of CAA to separate articles related to allegations from other types of information held in the BHRRC archive[41], and create what we called master lists of allegations. I was in charge of identifying all CAAs for Colombia, and also prepared most of the master lists for the other Latin American countries. This has allowed me to have intimate knowledge of the cases and the dataset, as well as of the data collection process.

These efforts resulted in coding 1400 CAAs across 23 sectors of the economy and 24 Latin American countries. For Colombia, the CHRD-LA recorded 214 cases (occurring between the early 1980s and 2013). When a corporation is involved (directly, indirectly

[41] The BHRRC archive includes other types of information including for example INGO and NGO reports about a sector of the economy or a certain topic like tax evasion.

or supporting violations committed by the state) in one of the abuses listed below and defined in Annex 2, the CHRD-Colombia records it as an allegation.

The CHRD-Colombia includes the following five categories of abuse, as well as 33 subcategories of abuse:

- Physical integrity rights (Abuse): Disappearances/abduction; Arbitrary detention; Deaths; Forced labour, child labour, human trafficking; Forced displacement; Rape/sexual abuse; Violence; Intimidation/threats
- Development and poverty: Denying access to basic needs; Destruction of local economies; Displacement, no violence; Lack of investment in / exploitation of local economy; Encroachment/exploitation of indigenous land/property; No support from communities /right to prior consultation; Denial of freedom of expression; Denial of freedom of association; Other.
- Environment: Water contamination; Air contamination; Land contamination; Land erosion/impossibility to harvest; Destruction of natural resources; Unsustainable use of natural resources.
- Health: Access to medicine; Health problems; other
- Labour: Prison labour; Denial of freedom of association/right to unionise; Denial of freedom of expression (labour); Failure to meet basic labour standards; Discrimination; Other

A systematic process to clean the data followed the data collection phase of the project. During the cleaning process we did a fit/not fit test where we identified those cases that were recorded by the BHRRC, but did not fit our definition of human rights violation.

Cases that we identified as not fitting the definitions include cases of land grabs (e.g. several cases in Colombia where the companies allegedly participated in buying and accumulating over 40,000 hectares of land that had previously been granted by the government to landless peasants); and accidents leading to deaths or injuries attributed to negligence, with no evidence to suggest that the company had the intention to cause the death or injury (e.g. in Colombia a case where the Hilton Hotel in Cartagena was involved in a liability suit in the U.S. because of the death of a child in the pool).

After cleaning the data, the number of CAAs was reduced to 1369 observations for all countries in Latin America, and 193 for Colombia that fit the standard definition of human rights violation. The cases that did not fit the definition were not dropped from the database but rather flagged so that users of the database can exclude them from their analysis if they are checking or replicating our data and analysing human rights abuses.

Another part of the cleaning process entailed recoding some cases to fit the definitions of the violations included in Annex 2; addressing inconsistencies in coding (e.g. if a coder included the same actor as both reporting the abuse and being part of the third party verification of the abuse); and going through all remedy mechanisms to make sure they were correctly classified as judicial or non-judicial, and that they effectively were remedy attempts and not e.g. judicial actions filed by the company against the claimants alleging defamation.

Because the CHRD-Colombia drew its allegations from the BHRRC archive, it is important to recognise two limitations of the BHRRC data: selection bias and data omission. Firstly, regarding the selection bias, the BHRRC can only record those cases where the claimants or the organisations supporting them have had enough muscle to bring the claim forward and make it public. We thus do not possess the entire universe of cases, but only know of the cases where a claim was made. To overcome this data limitation, I use the CATJ-Colombia data, which includes cases where the claim did not reach the public sphere. The CATJ-Colombia includes a whole set of actors that have so far been underrepresented in the archives of the BHRRC and in the claims and reports from INGOs that have given more resonance to TNCs and to the role of firms. This dataset broadens the picture of complicity to include domestic companies and individuals into the analysis of judicialisation and remedy outcomes.

This relates to the second limitation: data omission. Although the BHRRC is the most comprehensive archive of corporate human rights abuses in existence (Ruggie 2013), staff members with specific country expertise have been added gradually over the years, without having to replicate the data collection process for the allegations that occurred before they joined the team. In Latin America, a field researcher based in Colombia was responsible for the entire region until 2013, at which point a new researcher for Brazil joined her. In 2015, another researcher was hired to focus on Mexico, Central America and the Caribbean. Also, countries with better media coverage will be better represented than those that do not. Moreover, the data omission problem is less prominent in Colombia because, as I mentioned before, the first BHRRC country expert for Latin America is a Colombian human rights defender, located in Colombia. This means that she has particularly strong networks to collect information of human rights abuses in Colombia, and she has been consistently and systematically implementing the same data collection process. Nonetheless, reporting bias may still skew the data.

While research by fellow team-member Kathryn Babineau in Peru shows that the CHRD-LA records 90% of the cases against larger and transnational corporations reported by the Peruvian Ombudsman's office (Babineau 2015, 28), Colombia does not have a governmental entity, like the Ombudsman's office in Perú, or an NGO that is systematically recording instances of human rights violations by companies (Rivas Gamboa et al. 2014, 11). In this sense, the coverage of the CHRD-LA is unique in Colombia, and until recently the only source of information that has compiled these types of cases[42].

Although a key word search in the main media outlets of the country showed there is less known omission of data in the BHRRC (than in countries like Brazil for example), this does not mean that all cases are included in the CHRD-Colombia. The World Press Freedom Index ranks Colombia as one of the worst performers in the Americas in terms of freedom of the press, only followed by Honduras, Venezuela, Mexico and Cuba[43]. The latter is confirmed in the Freedom House Index on freedom of expression[44]; and both indexes refer to murder and threats against journalists by actors of the internal armed conflict, or violent gangs as the main obstacle to the realisation of this basic freedom. Also, in an interview with the Director and with the Human Rights Adviser of

[42] Currently I am part of a Working Group on Corporate Accountability and Transitional Justice (CATJ) which brings together NGOs from Argentina ((ANDHES, CELS), Colombia (DeJusticia) and the University of Oxford (Professor Leigh Payne). In this thesis I used the CATJ-Colombia, which is one of the outcomes of this Working Group. In the future we would like to track more cases in Colombia where companies were complicit with violations committed by the actors involved in the internal armed conflict. The Escuela Nacional Sindical in Colombia has a database of cases of business involvement in violence against union members. However this database is not open to the public (Interview Carlos Julio Díaz 2015; interview Viviana Colorado 2015). The Comisión Intereclesial de Justicia y Paz, a local NGO in Colombia, has a list of cases that they are working on, but these cases are restricted to the Northern region of Colombia where they work.

[43] See https://index.rsf.org/#!/index-details , Accessed 18 September 2015

[44] See https://freedomhouse.org/report/freedom-world/freedom-world-2015#.Vfx92Xi4nEY , Accessed 18 September 2015

the *Escuela Nacional Sindical (ESN)* (National Union College) I was informed of cases of human rights violations where publicly owned companies were involved in the abuses that are not recorded in the CHRD-LA (precisely because they were not reported by the media).

While I do not have the universe of cases, and certain reporting biases exist, nonetheless, the data I do have is the most complete set that exists to allow for analysis of the phenomenon, and it is more complete than the data on other countries, which makes it more likely that the sample represents the population of cases (Agresti and Finlay 2009, 15). Moreover, I have supplemented the CHRD analysis with the analysis of the CATJ-Colombia to verify findings.

However, these limitations do restrict the generalizability of the findings, as the universe that I can speak of does not reflect all cases occurring in Colombia, but rather the cases whose characteristics make them more likely to be picked up by BHRRC. In this sense, I am analysing like cases, and can only test the impact of my independent variables for these types of cases, and not for all types of cases of business involvement in human rights violations in Colombia. I consider this limitation in Chapter 5, where I use this dataset to test my hypotheses.

CATJ-Colombia

The second dataset that I will use includes the data for Colombia from the Corporate Accountability and Transitional Justice Database (CATJ-Colombia). This database was created by joint efforts from the University of Oxford, CELS (NGO based in Argentina), ANDHES (NGO based in Argentina) and Dejusticia (NGO based in Colombia). It aims to track judicial and non-judicial responses to business complicity in human rights violations during dictatorships and armed conflicts throughout the world. It includes the so-called "industrialist" and slave labour cases in Nazi Germany up to the conflict in Colombia. In addition to mapping where accountability has occurred, the project further considers the type of accountability, and the outcome of those accountability processes for victims. The unit of analysis is business involvement in human rights violations during dictatorships and/or armed conflict. Although it has a more restricted sample than the CHRD-Colombia (which includes both cases of complicity and cases where the violation is not directly related to the violence during the conflict), it includes a wider range of economic actors including firms, individual businessmen(women), landowners and business associations.

I participated in the collection of the Colombian portion of the dataset, which includes cases of business complicity with grave human rights violations committed by the AUC paramilitary groups during the armed conflict. We coded a total of 35 first instance rulings issued by the Justice and Peace Tribunals between 2011 and 2015[45]. These Tribunals are part of the transitional justice mechanisms instituted in 2005 to deal with the demobilisation of the AUC paramilitary groups. These rulings do not convict or decide on the accountability of businesses, they merely mention economic actors that were named by the paramilitaries during their confessions (*versiones libres*) as collaborators or having benefitted from the violence.

[45] These 35 rulings include all sentences issued by Justice and Peace Tribunals by 2015 which was when we started the coding process.

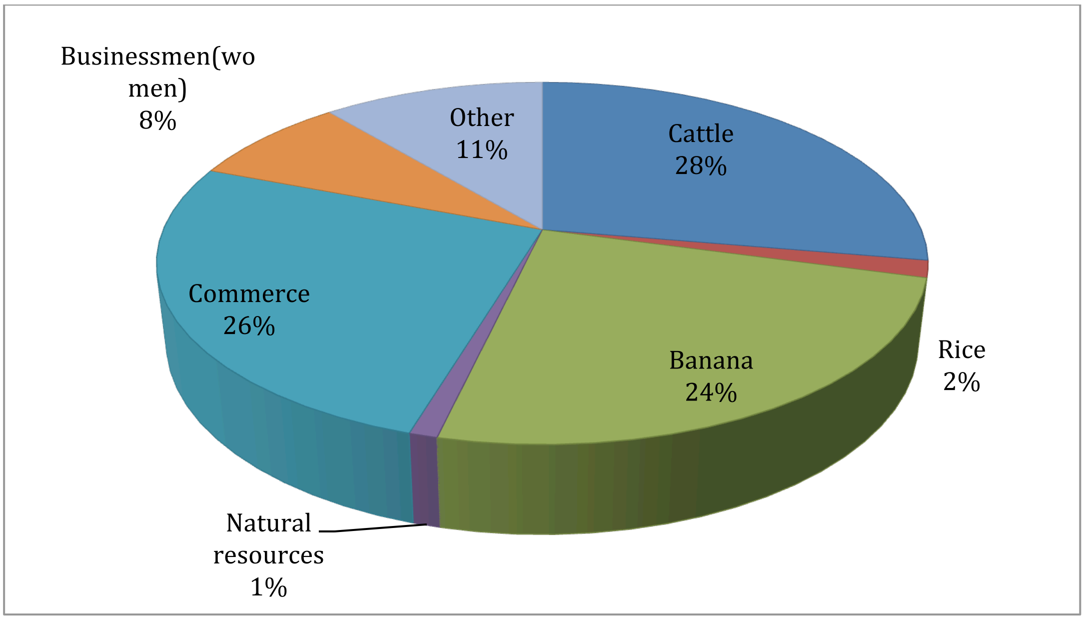
After negotiations with the Uribe administration, in 2003 the largest paramilitary group in Colombia (the AUC) demobilised. The Justice and Peace Law (Law 975) issued in 2005 created a transitional justice mechanism based on criminal trials to facilitate the demobilisation and peace process with these groups. As Payne (2008) explained, "[o]ne of the most novel aspects of the Justice and Peace Law is the incorporation of paramilitary's "confessions" to past violence. […] Colombia's process exchanges confessions for a reduced prison sentence; it is not an exchange for amnesty." The criminal trial, as designed in Law 975, starts with a confession (*versión libre)* of those actors who have demobilized and have complied with the requisites established in the law to access the benefits established in the law in terms of sentencing. These confessions take place before a prosecutor of the Justice and Peace Unit of the General Prosecutor's office, and they should be a voluntary narrative of all the crimes that he/she committed or had knowledge of during his/her time in the AUC. In the course of these confessions, paramilitary leaders have referred to their ties with politicians (a phenomenon known as *parapolítica*) and economic actors.

Just like the CHRD-Colombia this dataset has two limitations: selection bias and data omission. The selection bias comes from a legal filter applied by the Court to construct what they refer to as 'judicial truth'. The Court will only include in the ruling the names of economic actors mentioned by the paramilitaries in their confessions when they are able to find additional evidence of the complicity. This will comply with regulation and jurisprudence from the Constitutional Court to avoid being sued for slander by individuals or companies who are mentioned in the rulings without sufficient evidence. Additionally, from the cases included in the ruling, the Court will only order the Prosecutor to start an official investigation against an economic actor when in the course of the proceedings it has found serious indications of the complicity with crimes (Figure 9). Another source of selection bias is a particular focus of the Prosecutor's office during the confessions on the role of economic actors in financing paramilitary groups. In my interviews with clerks from the *Tribunal de Justicia y Paz de Bogotá* (Justice and Peace Tribunal of Bogotá) they explained that the Prosecutor's office has focused on this type of complicity because 'financing terrorism' is a crime easier to prove (the paramilitary groups had an accounting system that recorded every payment) than pursuing investigations to establish the links between the economic actor and e.g. murder, disappearance, torture or forced displacement[46].

However, the selection bias that comes from the legal hurdles that need to be met by the Court does not mean that the sample found in the rulings is not representative of the mentions by defendants in the confessions. Figure 3.1 below shows the distribution of cases mentioned by the paramilitaries in their confessions by sector of the economy (until May 2017). The data was given to me by the Transitional Justice Unit of the Attorney General's Office in response to a request for information, and the distribution is similar to the one found in the CATJ-Colombia. There is total of 796 cases, with a concentration of cases in the agriculture sector, and very little has been said about the natural resources sector.

[46] Interview Juan David Velasco, Clerk at the office of Magistrate Eduardo Castellanos, Tribunal de Bogotá de Justicia y Paz, 25 May 2017.

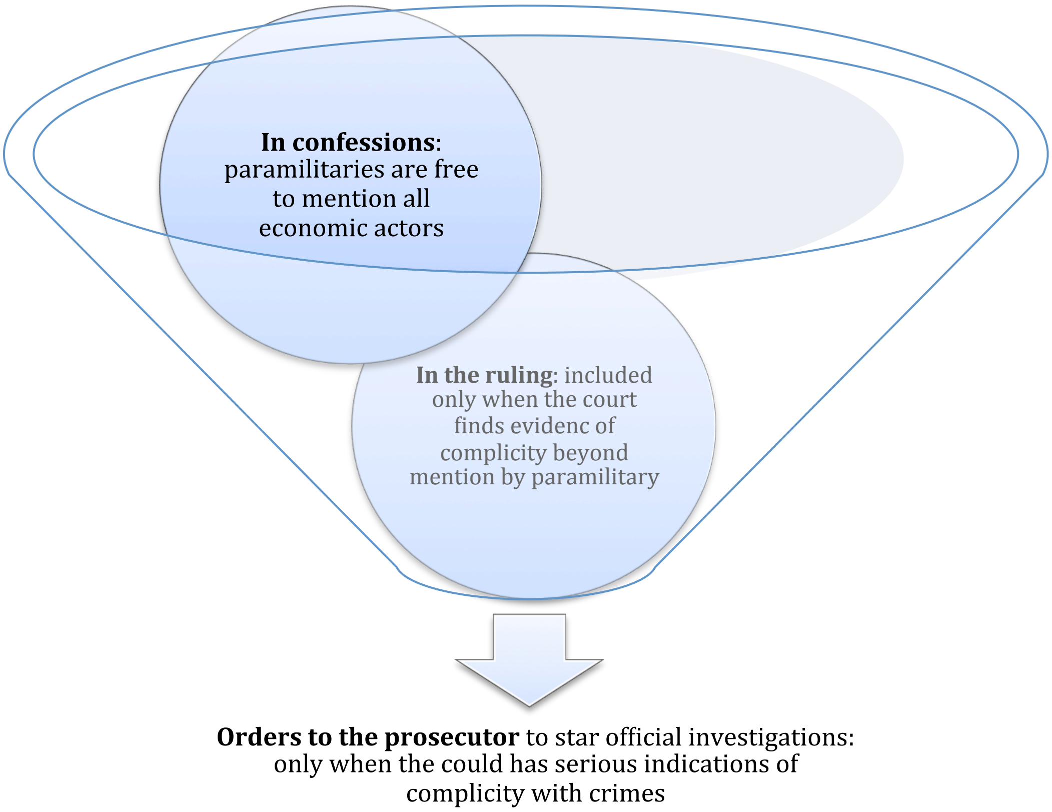
Figure 3.1 Distribution of cases recorded in the confessions of paramilitary leaders, per sector of the economy



Source: Transitional Justice Unit of the Attorney General's Office, 2017

The data omission comes from different sources. Firstly, the selection bias that comes from legal impediments of the Courts to include all economic actors mentioned by paramilitaries, leads to the omission of cases involving TNCs. These are cases where the Court is less likely to find additional evidence of the parent company's complicity, considering that not even the paramilitaries are in a position to support their claims (e.g. with financial reports) having only dealt directly with the local actor or agent. Secondly, fellow perpetrators (in this case paramilitary leaders) have focused on the complicity of certain sectors of the economy. For example, as Magistrate Uldi Teresa Jiménez from the *Tribunal de Justicia y Paz de Bogotá* said: in the confessions the Prosecutors' have collected so far the paramilitaries have focused on the agriculture and commerce sectors of the economy, neglecting to talk about other sectors, like the mining sector where the Magistrates suspect there is also cases of complicity. Thirdly, there was a learning curve for the Prosecutor and the Tribunals to develop protocols to obtain information from the paramilitaries. Specifically regarding the role of economic actors in the atrocities, as these institutions started to identify patterns in the confessions, they started to build protocols with the questions that the Prosecutor had to ask regarding for example financial support coming from the private sector[47].

Figure 3.2 Filter applied in the course of the trial to list of mentions of complicity included in confessions



Source: Interview Magistrate Uldi Teresa Jiménez, 25 May 2017.

Although these are important limitations of the data, the CATJ-Colombia is still an important source of information and the most comprehensive large-N dataset available to the public. This dataset includes cases that were not captured by the media or the

[47] Interview Magistrate Uldi Teresa Jiménez, 25 May 2017.

BHRRC, and therefore were excluded from the CHRD-Colombia[48]. This allows me to test whether cases different from the ones included in the CHRD-Colombia, i.e. those that did not have access to TANs, have different explanatory factors. The CATJ-Colombia dataset has 439 observations and includes data on the economic actor involved, the violation, the victims and the defendants. It also notes whether judicial action was initiated. There is an important difference between the CHRD-LA and the CATJ-Colombia, which is that while the CHRD-LA only includes data on companies (legal entities), the CATJ-Colombia also includes data regarding businessmen (women). In fact, 72% of cases recorded in the CATJ-Colombia relate to Colombian citizens engaged in economic activity and not companies or corporations. This highlights the focus of TANs on corporations instead of small and medium sized domestic businesses, which do not have a separate legal personality from their owners.

I included my dependent and independent variables in the CATJ-Colombia dataset in the same way that I did for the CHRD-LA. For the hypothesis regarding the influence of TANs on judicialisation and remedy outcomes I cannot test the impact of the density of the TAN but rather see whether the lack of access to TANs in most of the cases in the CATJ-Colombia has an impact on those outcomes.

[48] There is only an overlap of 21 cases that are included in both datasets: Agropecuaria Palmas de Bajira S.A.; Asociacion de Bananeros de Colombia – AUGURA; Banacol Inc.; C.I Banadex S.A.; C.I. Banafrut S.A.; C.I. Multifruits y Cia S.A.; C.I. Tecnicas Baltime de Colombia S.A; C.I. Uniban S.A.; C.I. Union de bananeros de Uraba S.A; Chiquita Brands International Inc.; Coca Cola; Dole Food Company, Inc.; Fresh Del Monte Produce, Inc.; Inversiones Fregni Ochoa; Maderas del Darien S.A; Maderas del Darien, S.A.; Palmado LTDA; Palmas S.A.; Palmas de Curvarado S.A.; Promotora Palmera de Curvarado Ltd. – PALMURA; Urapalma S.A.

Methods

Mixed methods: Nested analysis

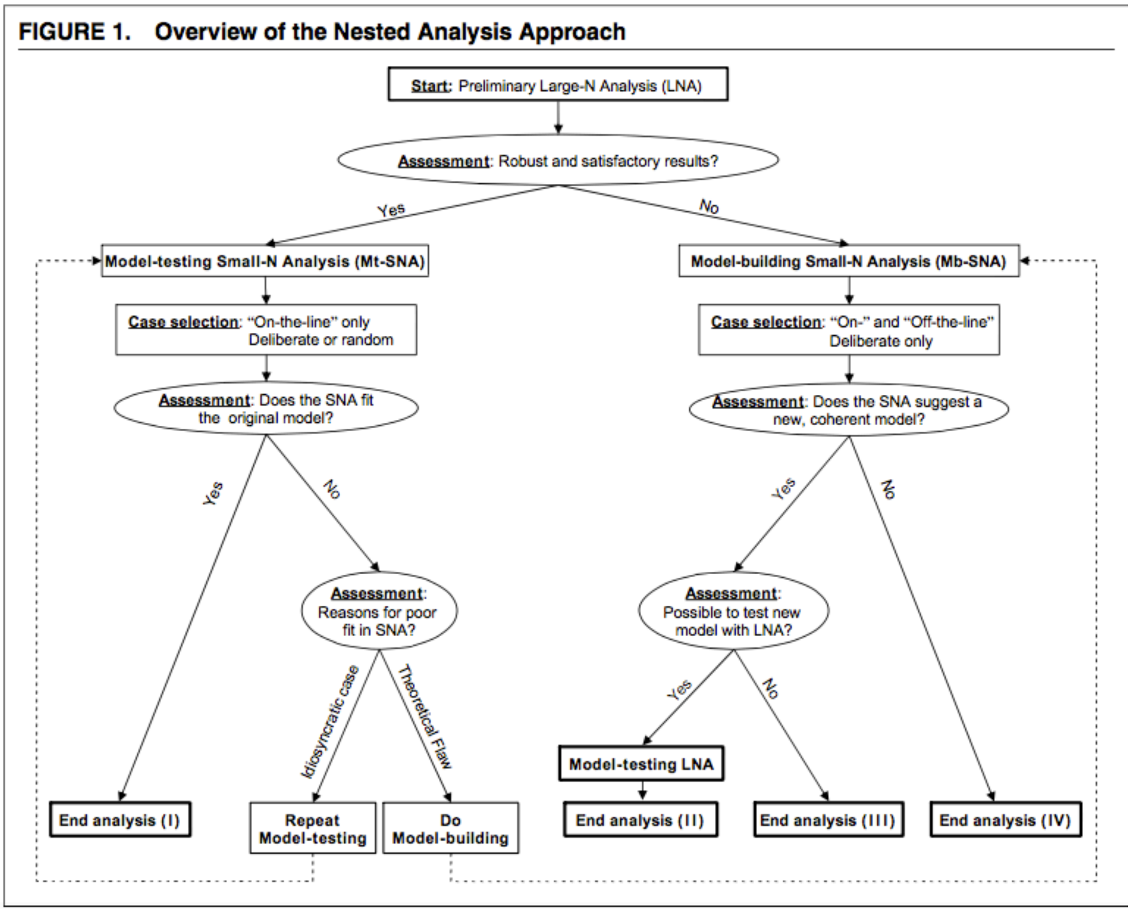
This research uses a mixed methods approach, combining quantitative analysis and qualitative case study analysis as analytical tools to explore the associations between the explanatory factors outlined in *Chapter 3* and the dependent variables of interest, which refer to judicialisation, remedy and accountability for business involvement in human rights abuses. It has multiple levels of analysis and employs different types of data (Small 2011).

Using a nested analysis, this research is designed to first establish evidence of relationships using large-N analysis and then explore the mechanisms that explain the relationships through the analysis of one case study (Lieberman 2005; Small 2011). The large-N analysis drives the small-N analysis, and there is an interaction between the methods, which are interwoven and in dialogue with one another. This dialogue is necessary as part of a larger theory testing and theory building enterprise where new questions arise as part of the interaction between theory and the different levels of analysis (Figure 3.3).

I start with descriptive and inferential statistics, looking for evidence of relationships between the dependent and independent variables. Then I will move to the in-depth case study to do theory testing of some of the hypotheses outlined in the theoretical framework chapter and present a multi-causal model. As Lieberman explains regarding the merits of nested analysis, I will use "statistical analysis [to] guide case selection for in-depth research" and then employ small-N analysis to "assess the plausibility of observed statistical relationships between variables, to generate theoretical insights from outlier and other cases" (Lieberman 2005, 435).

According to this approach to mixed methods research, the trends that quantitative analysis generates drive the small-N analysis, and in particular case selection. As will be demonstrated in my analysis chapters, my initial quantitative investigation into the relationships between the explanatory factors and the dependent variable yielded robust results. The case that I selected to study, therefore, is derived from the trends I observed in the large-N analysis, in order to both identify causal mechanisms explaining these trends and answer questions about the relationships between explanatory factors and the dependent variable (access to remedy) which statistical analysis of the CATJ-Colombia did not allow me to analyse specifically for cases of business complicity with state and state-like actors. Via statistical analysis, I was able to establish evidence of relationships between factors and outcomes, but less about how and why those relationships existed; qualitative analysis better provided those insights. Thus, after first outlining my quantitative investigation, this thesis then outlines one case study analysis: the case of palm oil companies involved in the forced displacement of the Afro-Colombian communities of Curvaradó and Jiguamiandó in the Department of Chocó.

Figure 3.3 Overview of the nested analysis



Source: Lieberman 2005, 437

The large-N analysis showed that there is strong evidence in support of the interaction between the veto power of economic actor and the powerful force of people explaining judicialisation and remedy outcomes in Colombia. However, given the small number of cases with remedy recorded in the CATJ-Colombia, I was unable to use inferential statistics to test the relationship of this outcome with the independent variables of interest. I will use the case study for model testing and to further explore the role of these opposing forces in access to remedy when the business is accused of complicity with grave human rights violations committed by the paramilitary groups in the course of the armed conflict.

Levels of analysis

Figure 3.4 below shows the different levels of analysis that will be included in the nested analysis, the type(s) of data and type(s) of analysis that will be used, as well as the objectives of each level within the broader objective of answering the research question:

Figure 3.4 Levels of analysis

Level	Type of data	Type of analysis	Objective
Regional	Large sample data	Quantitative techniques (descriptive statistics)	Describe the Colombian case as a theoretically relevant case within the Latin American region
Macro	Large sample data	Quantitative techniques, large-N analysis (descriptive statistics, logit regression model for categorical variables)	Explore the relationships between the explanatory factors outlined in the theory chapter and the dependent variable of interest
Micro	Interviews, textual data	Case study, process tracing	Test hypotheses to create a multi-causal model. Tease out key moments and strategies, looking at how actors face these cases.

Source: The author

Interaction of the methods and data: Mixed data collection and mixed data analysis:

In order to better explain the way the methods and types of data will interact with each other, I will refer to two approaches to mixed methods research: mixed data collection and mixed data analysis (Small 2011).

Mixed data collection:

As outlined in *Figure 3.4*, this research included different types of data (large sample data, interview data and textual data). It is also based on a sequential design where the collection of interview data and textual data is preceded by the collection of the large sample data. The case study was selected from the large sample data to conduct in-depth interviews and search for document evidence.

Combining different types of data allowed me to verify the findings from one type of data using the findings from a different type of data (confirmation). This was the case with the results from the case study and the logistic regressions where I tested the same factors. It also allowed me to complement the different types of data using qualitative data to interpret quantitative findings (complementarity).

Mixed data analysis:

Quantitative techniques by level of analysis:

For the *Regional* level of analysis, where I will seek to situate Colombia in the broader Latin American context, the sample includes 1369 CAAs, which represent the total number of CAAs for 24 countries in Latin America. At this level I will only use descriptive statistics techniques in order to situate Colombia in the broader Latin American context. Any results from the descriptive statistics techniques applied to this sample will have to bear in mind the limitations of the data outlined before, particularly the data omission that significantly affects some countries like Venezuela or Cuba. Therefore, after exploring the whole CHRD-LA I selected the following countries to focus the comparative exercise, because they seem to be less affected by data omission: Argentina, Peru and Mexico. I also focused on cases involving TNCs (based on the findings of Kathryn Babineau in Peru, where the BHRRC had a coverage of 90 per cent of the cases involving TNCs, but 30 per cent coverage of cases involving domestic companies). This approach is based on the assumption that international and foreign media are more likely to pick up these cases.

In the *Macro* level of analysis, where I tested the hypotheses in *Chapter 3* for model building through large-N comparative analysis, the sample will be 193 observations that make up the CHRD-Colombia. I employed descriptive statistics and inferential statistics to assess the impact of each explanatory variable on judicialisation and remedy outcomes for corporate involvement in human rights abuses in Colombia.

For this level of analysis I had two dependent variables. The latter in order to look at the factors that explain the decision to move from blaming to claiming (judicialisation), and then the factors that explain the outcomes once the claim is initiated (Felstiner, Abel, and Sarat 1980). The first is a dichotomous categorical variable that measures the judicialisation of economic actors (answering the question was the economic actor prosecuted?) (DV1). The second one is a dichotomous categorical variable (DV2) that measures the remedy outcomes of the judicialisations (answering the question was the economic actor convicted and required to remedy the claimants).

- DV1: Judicial action

  0=No judicial action initiated

  1=Judicial action initiated

- DV2: Remedy success

  0=No remedy

  1=Successful remedy

The independent variables (IV) are based on the hypotheses outlined in *Chapter 3*. In order to create these variables, in addition to the data collected in the CHRD-Colombia and CATJ-Colombia, I added additional dichotomous and categorical variables. The following table describes indicators and variables that I used to test each hypothesis:

Table 3.1 IVs and indicators per hypothesis

	Hypotheses			Indicators/variables
The power of people	TANs	H1	Cases where claimants are able to tap into TANs to pressure the state are more likely to end in judicialisation and remedy	Because all cases in the CHRD have access to TANs, I can only test this hypothesis in terms of density of the TAN (H1a) and not in terms of having access to a TAN or not. I will be looking at what type of TAN claimants need to tap into to increase the odds of remedy and judicialisation.
		H1a	Denser TANs will be more successful in pressuring the state to pursue judicialisation and remedy	I have two indicators of density[49]: - Number of nodes in the network: I created a dichotomous variable to measure the density of the network, using the data already collected for the CHRD-Colombia. If a particular case has 3 or more nodes it is coded as 1 (having a dense network), while cases with less than 3 nodes are coded as 0 (having a less dense network). - Quality of the nodes: GLOPRESSURES variable to see the weight of the international actors in the network. This variable describes whether the networks included INGOs, foreign state and inter state organisations. It is a dichotomous variable where cases are coded as 1 if the network included foreign state officials, INGO or any of the following international organisations had a role in the case reporting, as other groups involved, as third party or in the judicial or non-judicial remedy: Inter-American Commission of Human Rights, Inter-American Court of Human Rights, UN bodies, International Labor Organization, Organization for Economic Cooperation and Development.
		H1b	TANs are more likely to pressure for judicialisation and remedy when the economic actor is involved in violations of civil	**Control variable:** I created 7 binary variables to represent each one of the seven types of abuses coded in the CHRD-LA. The first one ABUSES is coded as "1" if the company is accused of being involved in physical violence abuses, e.g. beatings, torture, forced displacements through the use of violence, and "0" for the cases with other types of abuses; the second one DESC is coded as "1" when the company is accused of abuses related to development and poverty, e.g. not conducting prior and informed consultations with communities, encroachment of indigenous lands, and "0" for the other cases; ENVIRONMENT is coded as "1" when the company is accused of affecting the environment,

[49] It is not possible to test quantitatively the density of the network in terms of the quality of its nodes, i.e. the strength of the relationship between the parts of the network. Nonetheless, the case study analysis does allow me to shed light on this aspect.

<table>
<tr><th></th><th colspan="3">Hypotheses</th><th>Indicators/variables</th></tr>
<tr><td></td><td></td><td></td><td>and political rights.</td><td>and “0” for the other cases; HEALTH is coded as “1” when the company’s operations have allegedly produced health problems, and “0” for the other cases; and LABOUR is coded as “1” if the abuse relates to labour rights, e.g. affecting the workers’ right to unionise, not complying with minimum health and safety standards, and “0” for the other cases.</td></tr>
<tr><td></td><td>Political opportunities</td><td>H2</td><td>When claimants are able to seize political opportunities that shift the power dynamics between victims, the state and economic actors in a given time, this will increase the likelihood of judicialisation and remedy outcomes.</td><td>POLOPP describes if there were political opportunities at the time the trial started. This is a dichotomous variable, and cases are coded as “1” if the case is coded as “1” in the corporate complicity variable and the date of the allegation coincided in time with the following time periods where “peace processes” have taken or are taking place: “Peace process” with AUC paramilitary groups: The negotiations started in 2003; the Justice and Peace Law was enacted in 2005; the demobilisations took place between 2003 until 2006 and the “versiones libres” are scheduled in the website of the Fiscalia General de la Nación up to June 2015. The timeframe of the “peace process” with the AUC for the purposes of this thesis will be from 2003-2006. A second “peace process” is the one with the FARC. The timeframe for this “peace process” for the purposes of this thesis will be from 2012-2016.</td></tr>
<tr><td>The power of business</td><td>Importance to the economy</td><td>H3</td><td>Businesses that are central to the national economy are less likely to be prosecuted for their alleged involvement in human rights violations; and if they are prosecuted, claimants are less likely to obtain remedy.</td><td>For this thesis, based on existing literature, I used three different indicators to measure the actor’s importance to the economy:
- Sector of the economy: I created two separate dummy variables for the two sectors of the economy where most of the cases are concentrated in the CHRD-Colombia (78 per cent) and which are important to the economy for different reasons: agriculture and natural resources. NATURAL RESOURCES is a dummy variable (0=All other sectors, 1=Natural resources) that represents all cases where the business operates in this sector as oppose to any other sector of the economy. This sector is important because of its significant intake of FDI (over 50%). AGRICULTURE is also a dummy variable (0=All other sectors, 1=Agriculture). This sector is important because it is the sector with more participation in the GDP (with little participation in FDI intake).
- Size of the firm: I controlled for the size of the firm in the regressions of the CHRD-Colombia data (Rettberg 2003, 5). In order to create this variable I used the public record of the Chambers of Commerce around the country to identify the capital investment of each firm. I then used the categories of large, medium and small firms created in Law 905 of 2004, which are used by the Chambers of Commerce to classify companies in Colombia based on two criteria: the number of employees and their assets. Given that the information about capital investment is available in the</td></tr>
</table>

	Hypotheses			Indicators/variables
				public record of the Chambers of Commerce, I used this criterion to develop the following categories (article 2 Law 905 of 2004): (i) Micro size firms: those with a registered capital of up to 500 monthly minimum wages (approximately up to USD$126,500); (ii) Small size firms: those with a registered capital between 501 to 5,000 monthly minimum wages (approximately between USD$ 126,753 and USD$ 1,265,000); (iii) Medium size firms: those with a registered capital between 5,001 monthly minimum wages and 26,000 monthly minimum wages (approximately between USD$ 1,265,000 and USD$6,600,000); (iv) Large firms: those with a registered capital of over 26,000 monthly minimum wages (approximately over USD$6,600,000). The variable SIZEFIRM is a categorical variable coded as "1" for micro size firms, "2" for small size firms, "3" for medium size firms, and "4" for large size firms. Firms where I was unable to identify the capital investment are left as missing values.
		H3a	The veto power of economic actors will increase in times of transition because of the state's reliance in their investment for peace building	This hypothesis will be tested using the indicators of H3 with the CATJ-Colombia data.
	Nationality of the business	H4	TNCs are less likely to be prosecuted and convicted because of their economic power.	The TNC variable describes whether the company was a transnational corporation or a domestic company. It is a dichotomous variable coded as a "1" if the company or parent company is registered abroad. Transnational corporations will be understood as those that are registered in Colombia and have operations abroad, as well as those companies that are registered abroad and operate in Colombia directly or through a subsidiary.
	Brand	H5	Companies that have a high visibility brand or name are more likely to be	The BRAND variable describes whether a company has a well-known brand. It is a dichotomous variable coded as "1" if the brand of the Company or the parent company is listed in: Interbrand's 2014 list of 100 best global brands[50]; 2014 Global CSR Reptrack 100 ranking[51], which looks at consumers

[50] http://bestglobalbrands.com/2014/ranking/

[51] http://www.reputationinstitute.com/CMSPages/GetAzureFile.aspx?path=~\media\media\documents\2014_csr_reptrak_100-topline_report.pdf&hash=49a074f19bbf592bc2f5ecfdd4560caf5e2b6bcba4ad38d95b9879b03b1d3708&ext=.pdf

	Hypotheses			Indicators/variables
			prosecuted for their alleged involvement in human rights violations, and if they are prosecuted, claimants are more likely to obtain remedy and accountability outcomes.	response to companies' reputation; or in BrandZ Top 50 Most Valuable Latin American Brands 2014[52]. These sources measure the value of the brand, which is derived from the high visibility of the brand.

Source: The author

[52] http://www.wpp.com/wpp/marketing/brandz/brandz-reports/

Qualitative case study:

The quantitative analysis allowed me to identify significant relationships between the independent variables and remedy and accountability outcomes. Nonetheless, given the early stage of development of the research programme on access to justice for corporate complicity I also included a case study analysis in order to begin the identification of causal mechanisms that link these explanatory variables and outcomes, the contexts in which these relationships take place, and strategies promoted by claimants. To this end, the case study discussed in this thesis (Urapalma S.A.: palm oil companies in Chocó) was selected on the basis of the value of the dependent variable, i.e. because it has both remedy and accountability as an outcome of the judicial action. As George and Bennett explain "in the early stages of a research program, selection on the dependent variable can serve the heuristic purpose of identifying the potential causal paths and variables leading to the dependent variable of interest. Later the resulting causal model can be tested against cases in which there is variation on the dependent variable." (George and Bennett 2005, 23).

In other words, this case study analysis does not allow generalisations. An exercise for future research will lead to other in depth case studies to ascertain whether the same mechanisms and strategies are present in other cases with similar or different results and why. While some have argued that selecting case studies based on the value of the dependent variable can bias the results (Geddes 1990), this critique refers to the use of comparative case study analysis to generate theories with some degree of generalizable results.

This case study was designed to clearly outline the research puzzle, by looking at the firms' strategies to perpetrate the abuse and the confrontation of power that eventually lead to the judicialisation of the economic actors and remedy for the displaced communities. It will also serve to investigate the causal mechanisms between judicialisation and remedy outcomes, on the one hand, and the independent variables, on the other. Using a *theory testing approach* I will use this least-likely case to test the model from the large-N analysis about refined explanations of judicialisation and remedy outcomes (based on alternative explanatory arguments).

The case of Urapalma S.A. refers to a group of domestic palm oil companies in Colombia whose executives, owners and former employees were convicted in October 2014 and June 2017 for having links with the AUC paramilitary groups and being involved in the forced displacement of the Afro-Colombian communities of Curvaradó and Jiguamiandó from their lands, located in the municipality of Carmen del Darien, department of Choco. The firm benefitted from cheap access to the communal lands, occupied the territory and acted as an obstacle for the community's return. This case involves a poor and neglected community that was able to access a transnational advocacy network that brought together the Church, NGOs, INGOs, Watchdog institutions (Ombudsman) and international human rights bodies, to successfully pressure state entities (not only Colombian authorities but also the Black Caucus of the U.S Congress). It also entails civil society taking advantage of the political opportunities that came with the demobilisation of the paramilitary forces that controlled the territories.

Because this case is part of the CHRD-Colombia and the CATJ-Colombia sample, and given my role in the creation of the database, I had foreknowledge of the values of some of the independent variables. This however did not bias case selection, but was rather an opportunity to use within-case analysis to explore whether the values of the independent variables and dependent variable were incomplete or simply wrong (George and Bennett 2005, 24).

Not only is this case the only case with remedy that is found in both datasets, but also, its particular characteristics allows me to see all the players in action: the interactions between the economic actors (palm oil firms and businessmen) and the paramilitary groups to jointly set up a business enterprise (García Reyes 2014; Gutiérrez Sanín and Vargas Reina 2016, 18), as well as the strong mobilisation of civil society (Carroll 2011).

To conduct the case study I drew from a set of primary and secondary sources, including in-depth semi-structured interviews and primary and secondary document review, which includes NGO reports, official documents and reports, as well as news coverage and academic literature. The interviews allowed me to access information that is not available to the public, particularly regarding the criminal investigations and criminal trials, which are subjected to legal reserve. I focused on contacting the main stakeholders in the case, and used a snowball method to identify other relevant actors. I conducted 15 semi-structured interviews with convicted businessmen; NGO representatives; leaders of the Church; state officials; and members of the affected communities.

Conclusion

This thesis adds to the existing literature on business involvement in human rights violations because it uses a mixed methods approach that seeks to complement the results from qualitative and quantitative methods so far used independently in the literature. I use two large-N datasets and a case study to build and test theory.

Although the samples from the large-N datasets have two limitations: a selection bias and data omission, the CHRD-Colombia and the CATJ-Colombia are the two most comprehensive datasets in existence of business involvement in human rights violations in Colombia, and I consider the limitations throughout the analysis. I also use different methods and designed the research so that I am always contrasting the findings from the different samples. The research design allows me to have more robust results by using different methods and types of data.

Chapter 4 – Colombia: an economy in war

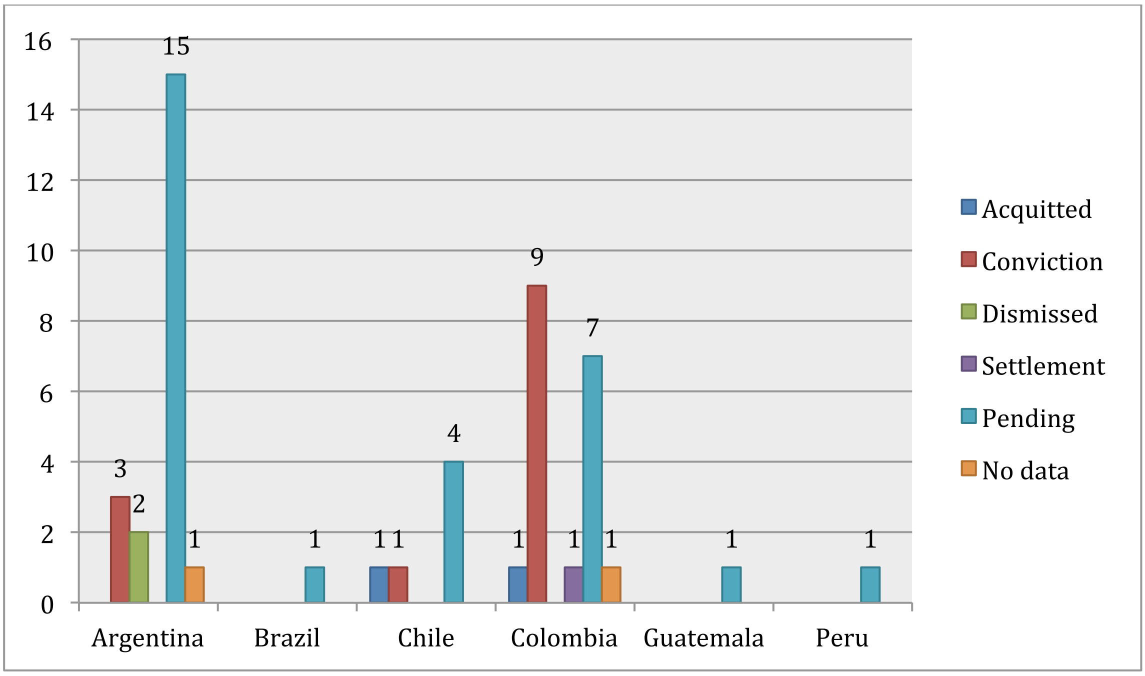
"*Those who wish to facilitate peace will be well advised to understand the nature of war*"
- David Keen (2000) -

Introduction

Colombia has some of the conditions found in the literature that characterise countries where the most egregious corporate human rights abuses are committed, and where we are less likely to find business accountability and remedy: an internal armed conflict; high levels of corruption; registered weak governance and rule of law according to the World Justice Project (WJP) Rule of Law Index; a plan to increase economic development based on foreign direct investment; as well as legal, social, political, organisational and institutional obstacles to justice (Bernaz 2013; Deitelhoff et al. 2010; Lim and Tsutsui 2012; Ruggie 2013; Tripathi 2010). It is also one of the countries where some of the most emblematic cases of business human rights abuses studied in the literature have been committed, with allegations of abuses involving companies like BP, Occidental Petroleum, Nestlé, Chiquita Brands, Drummond and Cerrejón. And these abuses range from labour abuses, to environmental degradation, to strategic alliances with illegal and legal armed forces involved in physical integrity violations during the armed conflict.

This country presents an interesting case for the study of accountability mechanisms for business involvement in human rights violations, because it has some of the most important obstacles to justice identified in the literature, and yet some 'success stories' have been possible where judicialisation and remedy have been possible. Although very little has been achieved in terms of convictions, Colombia is a leader in the world and in the region in terms of judicialisation and conviction of economic actors for their involvement in grave human rights violations (Figure 4.1).

Figure 4.1 Outcomes of judicial actions per country in Latin America



Source: CATJ, 2016

This chapter presents Colombia as the context where the grave human rights violations and accountability efforts studied in this thesis took place. Firstly it includes a brief story of the Colombian internal armed conflict. Secondly, it includes a description of the political and socioeconomic characteristics of Colombia that allow me to show some of the weaknesses of the Colombian state and the strong veto power of economic actors over overall state responsiveness to violations; thirdly I outline what has been said about the economy of the armed conflict. Lastly I present descriptive statistics about the cases of business involvement in human rights violations recorded in the CHRD-Colombia and the CATJ-Colombia.

A brief history about the internal armed conflict in Colombia

Colombia has the world's longest continued armed conflict involving several leftist guerrilla groups[53], right wing paramilitary forces, drug traffickers, and the armed forces of Colombia. Although there is some debate about the starting date of the conflict (because of the recurrence in the use of violence as part of the political confrontations in the country dating back to the XIX Century), the current conflict has been dated back to the 1950s, and is still on-going (because the ELN guerrilla group has not demobilised). The conflict has affected virtually all municipalities (Figures 4.2 and 4.3).

The origins of the guerrilla warfare in Colombia can be traced back to the political violence in the 1950s between members of the Conservative and Liberal parties, as well as the cold war and the Cuban revolution (Palacios 2012; Pardo Rueda 2015). In the early

[53] Although several guerrilla groups have been involved in the armed conflict, including the Movimiento 19 de Abril – M-19 and the Ejército Popular de Liberación – EPL, there is currently only one guerrilla group involved in combat: Ejército de Liberación Nacional – ELN, because the Fuerzas Armadas Revolucionarias de Colombia signed a peace agreement with the Government in November 2016.

1950s, several liberal guerrilla groups were formed in different regions of the country to fight against the conservative governments. These groups were created after several years of escalated state violence and repression of members of the liberal party and the murder in 1948 of the liberal presidential candidate Jorge Eliecer Gaitán. At this time some "paramilitary" groups called *bandas de pájaros* (flocks of birds) emerged, supported informally by the armed forces and conservative politicians (Palacios 2012, 42; Pardo Rueda 2015, 434–41).

Although most of these guerrillas demobilised after an amnesty offered in 1953-1954 by the government of General Rojas Pinilla, the seeds of the (until recently) oldest guerrilla group in the world (the FARC) remained. The FARC consider themselves the descendants of a revolutionary movement that started in 1948 and that has been subjected to several wars by the government, the last of which started in 1964 with the *Operación Marquetalia* where the armed forces attacked one of their strongholds in the Department of Tolima (Palacios 2012, 93–98; Pardo Rueda 2015, 477–89). Also, starting in the 1960s, following the success of the Cuban revolution, several communist guerrilla groups started to emerge. The *Ejército de Liberación Nacional* (National Liberation Army) was the first group to emerge in the wake of the Cuban revolution, but others followed like the *Ejército Popular de Liberación* (Popular Liberation Army). Lastly, in the 1970s urban guerrilla groups like the M-19 emerged. They signed a peace agreement with the government in 1990 and some of their leaders have been active members of the national political arena (Senators, Governors, Mayors and Presidential candidates).

In the 1960s, during the *Frente Nacional*[54], civil self-defence groups were coordinated by the National Police in an effort to consolidate anti-subversive operations against guerrilla groups that had been extorting and kidnapping local elites, as well as attacking large infrastructure projects like oil pipelines[55]. Behind this curtain of legality several paramilitary groups emerged (called "private justice groups") that were increasingly involved in atrocities (Gutiérrez 2014, 363–64). In the early 1980s several anti-subversive groups emerged in Puerto Boyacá (*Magdalena Medio* region[56]) – eventually trained and endowed by the military forces - to counter the violence of the remaining rural guerrilla groups (Ronderos 2014, 33–35).

In the late 1980s the legal basis of these groups was derogated after continued accusations of their links with drug traffickers. Later, following continued demands by business associations from all over the country, a new legal framework was created called *Las Convivir* (Decree 356 of 1994), which allowed the creation of security and special services cooperatives monitored by the state. This was the ideal instrument for the expansion of the paramilitary groups that emerged in the 1990s. These groups latter associated themselves in the *Autodefensas Unidas de Córdoba y Urabá* (ACCU) in 1995, and then in the *Autodefensas Unidas de Colombia* (AUC), that demobilised under the *Justicia y Paz* law in 2005. Although between 2005 and 2006, over 35,000 combatants of

[54] The National Front (1958-1974) was a period of Colombian history where the Liberal and Conservative parties, looking to end systemic violence and the military dictatorship of Rojas Pinilla, used a plebiscite to agree on a system where for 16 years these two parties would alter the Presidency and they would divide equally all public positions (González González 2014, 317)

[55] See Decrees 3398 of 1965 and 1667 of 1966

[56] The *Magdalena Medio* is a valley in the centre of Colombia next to the Magdalena River (the main water way across the country) and it comprises territory from 8 departments: Antioquia, Bolívar, Boyacá, Cesar, Santander, Caldas, Cundinamarca and Tolima.

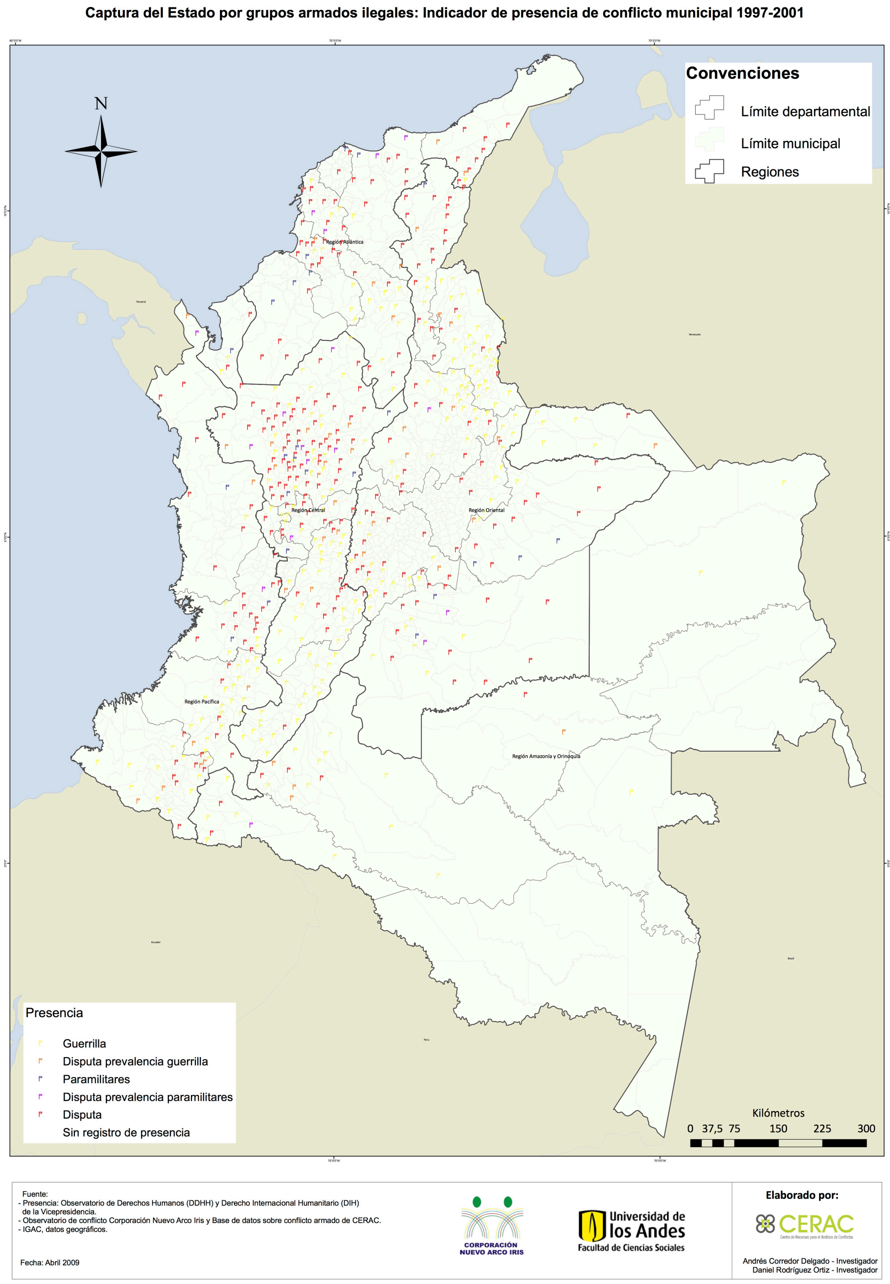
the AUC paramilitary forces gave up their arms, many continued to operate in criminal groups.

Drug traffickers have been present in Colombia since the 1970s (Palacios 2012, 112–15) and they eventually became involved in the armed conflict. Since 1978 several leaders of drug cartels bought lands in the *Magdalena Medio* where the first paramilitary groups were created and by 1984 these armed groups started providing security services to drug traffickers to finance the war (Ronderos 2014, 38–39). The FARC had attacked drug laboratories and were charging fees to allow the exit of coca leaves from territories that they controlled, which explains why in the early 1980s the drug traffickers joined the anti-subversive struggle of the paramilitaries and the armed forces. Later, drug traffickers became leaders of paramilitary groups and this is when drug trafficking became part of the illegal economy of the conflict (Ronderos 2014, 39).

However, the guerrilla groups were not strangers to this business. Since the mid 1980s they discovered that drug trafficking was an important source of income to support their military activities. They started (as I said) charging a fee to allow the extraction of coca leaves from territories that they controlled and for guarding the plantations and laboratories (*impuesto de gramaje)*, and later on they moved to having their own coca plantations and participating in the commercialisation. The FARC were declared by the United States as terrorists and drug traffickers in 1988 and they are said to have handled 60 percent of all drug trafficking in the country (RCN 2014) .

The following maps (Figures 4.2. and 4.3) show the distribution of guerrilla groups and paramilitary groups in the national territory:

Figure 4.2. Indicators of presence of the armed conflict by municipality 1997-2001



Source: MOE; et al. 2010

Figure 4.3 Indicators of presence of the conflict by municipality 2002-2007

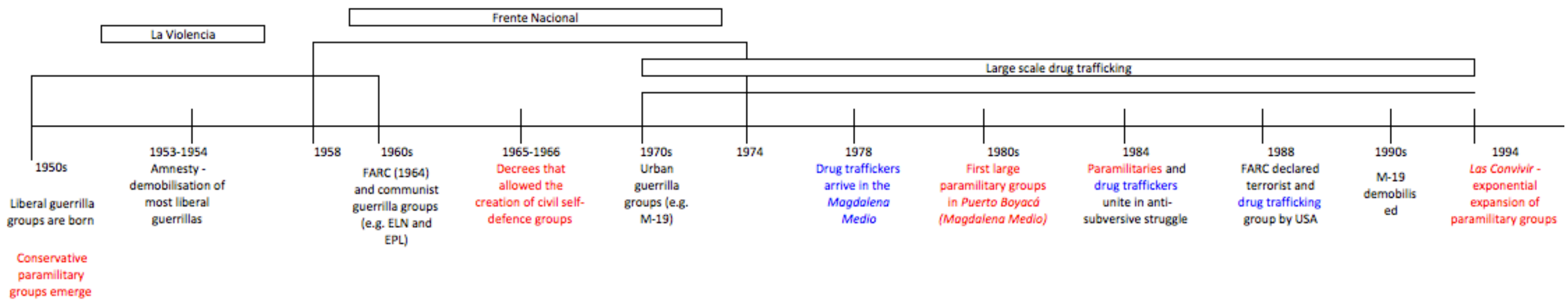
Captura del Estado por grupos armados ilegales: Indicador de presencia de conflicto municipal 2002-2007

Source: MOE; et al. 2010

Between 1958 and 2012 the conflict has resulted in the death of at least 220,000 people, 81 per cent of them civilians (Centro Nacional de Memoria Histórica 2013a); between 1970 and 2010 39,059 people have been abducted by illegal armed forces (Centro Nacional de Memoria Histórica 2013b); and by March 2013 the Victims' Registrar *(Registro Único de Victimas)* reported 25,007 disappeared, 1,754 victims of sexual violence, 6,421 children and adolescents recruited by illegal armed forces as child soldiers and 4,744,046 internally displaced people (IDP) (Centro Nacional de Memoria Histórica 2013a, 33). The country has the second largest number of IDPs in the world, and the highest number of disappeared in the region (Centro Nacional de Memoria Histórica 2013a, 58, 75).

Although Colombia has suffered from such high and persistent levels of violence, it is also practically the only country in the region that has had over a century of democratic institutions, with very few exceptions. Although part of the violence has come from the elected governments or their allies, they have still managed to lead democratic regimes while using repression against opposition groups (armed and unarmed). Scholars have offered different explanations for this phenomenon (Gutiérrez 2014; Posada Carbó 2006), and it is important to keep in mind the stability of the democratic regime in Colombia, because to some extent this will explain the stability and performance of the national economy also described in this chapter, as well as some of the success stories through constitutional actions for the protection of fundamental rights (*tutelas*).

Figure 4.4 Summary timeline of the armed conflict



Source: The author

Colombia: a weakened state facing the strong veto power of economic actors

In 2005 the publication Foreign Policy Review included Colombia as one of the fifteen states in the world at most risk of being a failed state. While the concept of failed states is contested amongst academics and historians, there does seem to be some agreement that Colombia has been a weak(ened) state (González González 2014, 40–45). Most studies have tended to define a state as weak using two main criteria: the state's autonomy and the state's capacity (Migdal 1988; Skocpol, Evans, and Rueschemeyer 1985). Colombia has overall performed poorly in both, with the. As Leah Anne Carroll suggests, the fact that Colombia has not experienced a period of complete assimilation of the working class, no populist era, nor does it have a history of radical agrarian reform, has meant that the state has not (for the most part) been autonomous from the national economic and political elites. And when some reforms opened spaces of political participation to historically excluded groups during the 1980s and 1990s, it resulted in a violent backlash from the elites to reinstate the status quo (Carroll 2011, 5–29). Because Colombia has a relatively diverse economy (Figure 4.6), this has meant that no one sector of the economic elite has been able to capture the state. But the control of the state by this elite has been made clear when human rights, labour rights and participation of the left in politics has been concerned (Carroll 2011, 6).

There has also been the phenomenon of capture of the state by illegal armed and not armed actors (drug traffickers). In 1982 the known drug trafficker Pablo Escobar reached Congress (and was expelled in 1983 after several accusations of his illegal activities), and between 1990 and 2009 paramilitary groups (also involved in drug trafficking) had captured one third of public positions in the Executive and Legislative branches (at the national, regional and local level) (MOE; et al. 2010). The AUC paramilitary groups had helped new economic and political elites consolidate their power through the control of the state. In 2002, the Congressmen and women elected to the Senate with the support of "narco paramilitarism" represented 25% of the votes (2 million votes) (MOE; et al. 2010, 32–33). Some political parties, like *Colombia Viva, Colombia Democrática, Alas Equipo Colombia* and *Convergencia Ciudadana* were born captured by these illegal forces, because they were created to represent the interest of both legal and illegal actors (González González 2014, 46–47).

The state's capacity is also under question. On the one hand, it is not the main agent of social control in the territory (Migdal 1988). The state has had to compete with vertical systems of social control in the regions, not only including the local political elites (*gamonales*) (Urrutia and Ocampo 2014), but also with paramilitary and guerrilla groups with control over large extensions of the territory and the population living in those areas (Carroll 2011; González González 2014; Richani 2007). On the other, the state's control over the behaviour of economic actors has been restricted because of a series of programmes to liberalise the economy that have resulted in the reduction of the size of the state (e.g. through privatisations and the retreat of the state of regulation) (Abouharb and Cingranelli 2009; Deitelhoff and Wolf 2010, 222; Deva 2012). The state's capacity is also diminished by its continued focus in defeating (historically without success) the different illegal armed actors participating in the conflict.

While the overall weakness of the Colombian state has been studied extensively in the literature, there is an argument to be made regarding the independence and the capacity of the judicial system in Colombia, that could in turn explain the leadership of Colombia in the region and in the world in terms of convictions of business people for their role in the armed conflict. Although the World Justice Rule of Law Index finds that Colombia has an independent judiciary, there is a large difference between the performance of the country in civil justice and in criminal justice. In criminal justice the country receives the lowest scores in terms of effective investigations, and timely and effective investigation ("Colombia" 2016) The judiciary:

> *"[…] is afflicted by delays and lack of effectiveness in the investigation and prosecution of crimes. Colombia faces serious challenges in the area of order and security, which is partly attributable to the presence of powerful criminal organisations. Police abuses, violations of human rights, and poor conditions of correctional facilities are also significant problems. Civil conflict remains an area of concern." (Agrast et al. 2013).*

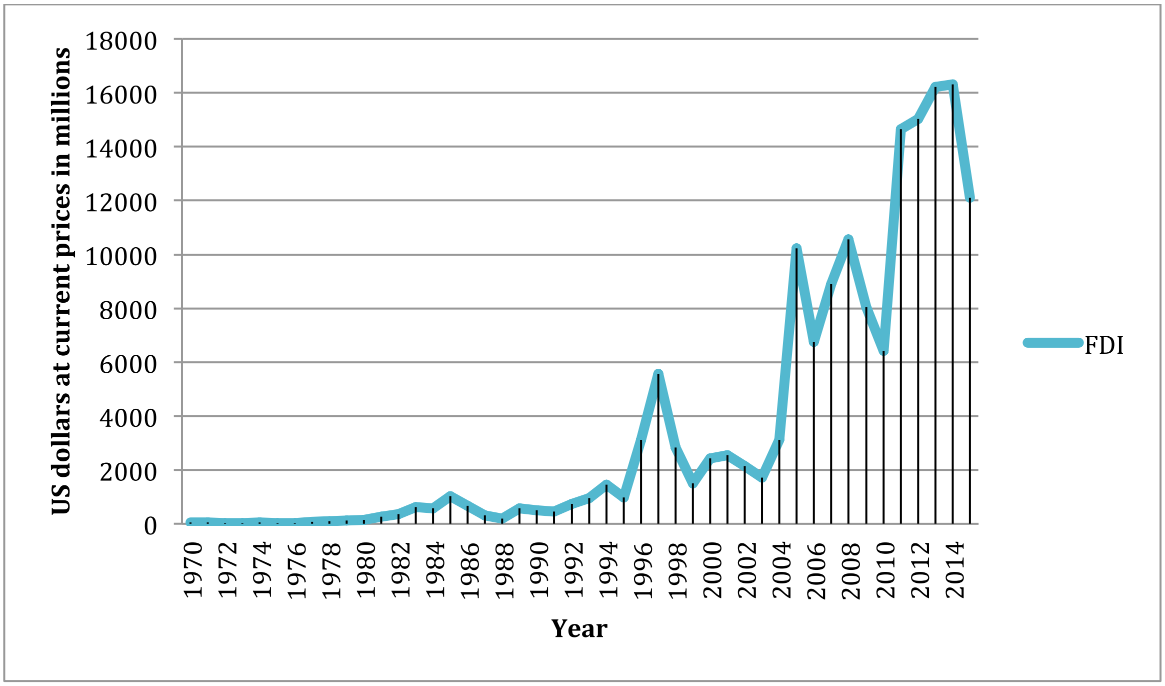
This assessment however only refers to criminal actions and neglects to refer to the ways in which the constitutional actions for the protection of fundamental rights (*tutelas*) have provided an "easy route" to access to justice. The procedure was designed for claimants to present their claims (even verbally) and then have a right to receive a response within the following 10 days. It has provided a space for victims to secure decisions of a Court to pressure the criminal jurisdiction and other state entities to act in order to avoid the perpetuation of the abuses. However, this "easy route" can only be used if there is no other judicial action available to victims or if it is necessary to avoid an irremediable harm.

The closing court of the constitutional jurisdiction, the Colombian Constitutional Court, has been called the most activist court in the world in terms of social rights enforcement by David Landau (2010). The Court has issued several rulings (the most known of which is the decision about the U'wa indigenous peoples) declaring invalid oil extraction permits issued by the government without conducting prior consultations with local communities. As I further discuss in Chapter 5, this easy route to justice and the activism of the Constitutional Court could explain the fact that the CHRD-Colombia data suggests that cases are more likely to be prosecuted and end with convictions if the violation refers to socio economic rights (which includes lack of prior consultation).

In this environment, we find a thriving economy, in fact one of the most stable economies in Latin America. According to the World Bank, Colombia is an upper middle-income country with a GDP of US$ 282.4 billion for 2016 (World Bank 2016). In 2011, it is the fourth largest economy in Latin America, as measured by GDP, and is recorded to have abundant natural resources (OECD, 2013).

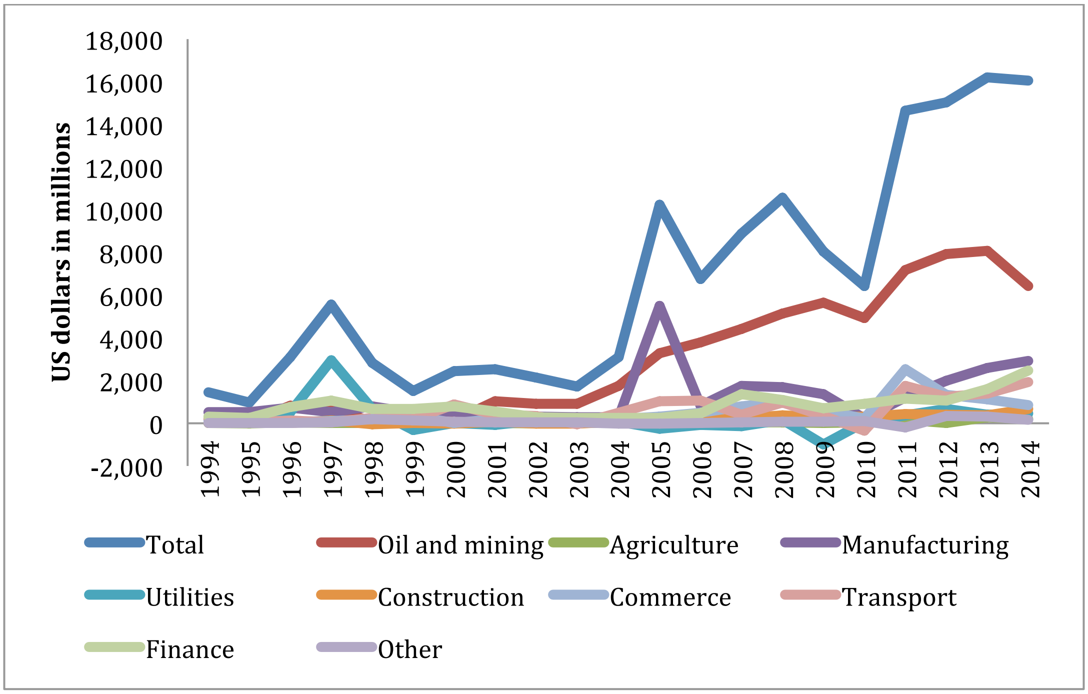
Colombia, like other Latin American countries had an agricultural economy focused on exports, but in the 1990s it started a process of liberalising its economy, opening borders and implementing an export oriented industrialisation scheme, supported by the CEPAL, the World Bank and the International Monetary Fund. Foreign direct investment went from 0.15% of the GDP in 1970 to 4.3% in 2012, with a peak of 6.9% in 2005 (UNCTAD) (Figure 4.5). The sector with largest intake of FDI is by far the oil and mining sector, while the other sectors of the economy remain marginal (Figure 4.6). The government development plans from 2002 to 2014 include foreign direct investment as one of the most important components for development (Departamento Nacional de Planeación 2002, 2006, 2010).

Figure 4.5 Foreign direct investment inflows to Colombia 1970-2015



Source: UNCTAD Data Center 2017

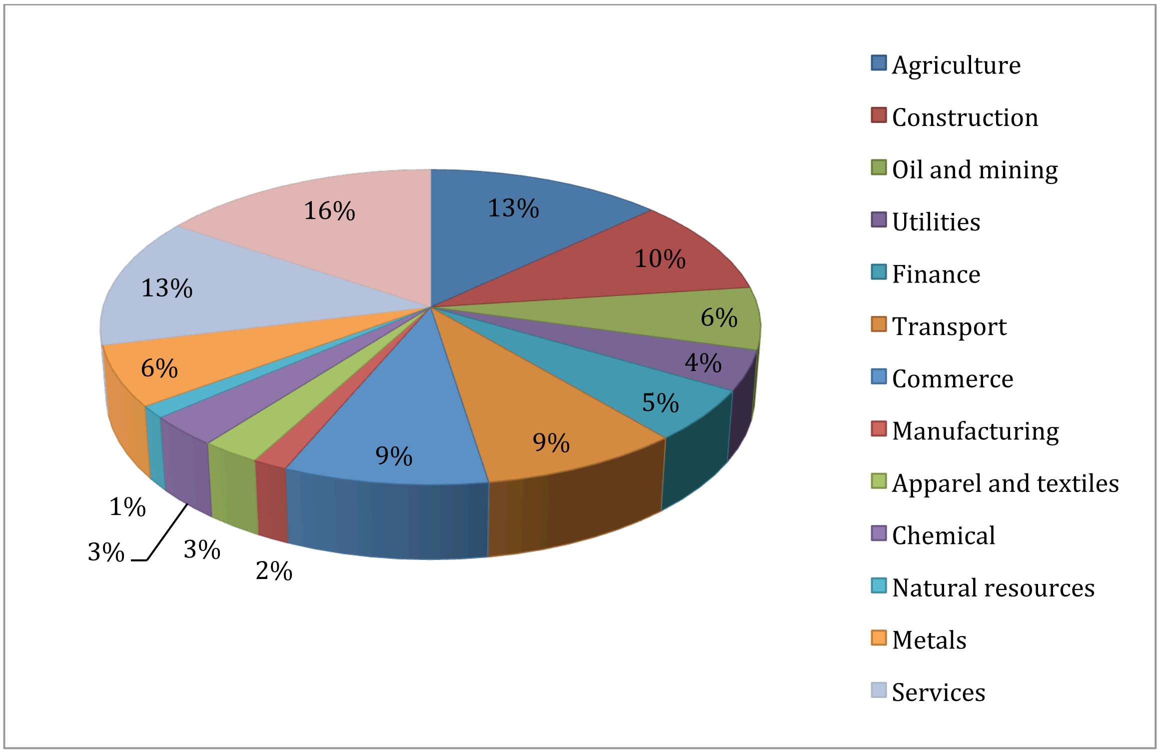
Figure 4.6 Foreign direct investment inflows per sector of the economy 1994-2014



Source: DANE, 2015

As I said, Colombia has a relatively diverse economy with no sector having more than 15 per cent contribution to the total GDP in any given year. In 2012, the sectors that contributed the most to national GDP were agriculture (13%), construction (10%), transport and commerce (9%) (Figure 4.7).

Figure 4.7 Percentage of participation of sectors of the economy in GDP in 2014



Source: DANE, 2015

However, in the past decade, the economy has moved towards the extraction of natural resources, particularly the oil, gas and mining sector (OECD 2013, 6). In 2011 oil and mining represented 8% of the GDP and accounted for 70% of exports (OECD 2013, 14), and in 2012 Colombia was producing more barrels of petroleum than Ecuador, despite having considerably fewer reserves[57] (BP 2013). In 2013 Colombia produced on average a little over 1 million barrels of oil a day, and for 2014 the Ministry of Mines expected to increase the reserves by increasing exploratory activities from 115 exploratory wells to 188, and 209 exploratory perforations (Portafolio 2014).

[57] According to the OECD (2013, p. 14) "Proven reserves for oil and gas are estimated to last 7 to 8 years. The expected life of commodity resources is, however, difficult to estimate as exploration in much of the country has barely started. "

“The boom has boosted foreign investment, economic growth and government revenues. However, the rising terms of trade and related capital inflows have contributed to a sharp appreciation of the exchange rate, undermining the competitiveness of other sectors” (OECD 2013, 3). Mining activities can be highly capital intensive but not contribute to job creation, deepening income inequality (OECD 2013, 3). According to *Fedesarrollo*, in 2013 the mining sector only employed 1.2% of the work force (Fedesarrollo and Asociación de Gestión Humana 2013).

Some, like Colombian economists José Antonio Ocampo and Sergio Clavijo, argue that Colombia is going through a process of deindustrialisation because the focus on the mining and energy sector has led to the weakening of the rest of the productive sectors, including the national industry, which is increasingly weakened by the signing on to free trade agreements with no policies to strengthen its export capacities. According to Ocampo the participation of the industry in the economy is one third of what it used to be in 1990 (Ocampo 2013). Also, the focus on the export of commodities has led to a reduction of the participation of agriculture and manufacturing in the GDP (Clavijo, Fandiño, and Vera 2013; Ocampo 2013; OECD 2013). In fact, according to *Fedesarrollo*, moving towards the mining and energy sector has led to a decrease in employment in the agriculture and manufacture sector in 2012, which could be seen as a sign of the Dutch disease (Fedesarrollo and Asociación de Gestión Humana 2013).

Colombia has high levels of income and land inequality. Despite being an upper middle-income country, its income per capita is 70% below the OECD average and below many other emergent economies. Colombia remains one of the most unequal countries in the world, according to the GINI Coefficient, with 3.7 million people under the poverty line from 1997-2011 (OECD 2013). Although a better distribution of resource revenues (1.4% of GDP) could impact poverty and inequality, in the past royalties have not significantly encouraged growth, nor reduced poverty. Not only because commodity producing regions received most of the royalties, but also because of the high levels of corruption. In 2011 the Congress passed a reform that is meant to improve the allocation and effective use of royalties across regions (OECD 2013, 18). The same can be said of taxes. The Colombian tax system raises little revenue, and “redistributes little, if at all” (OECD 2013, 24).

Land inequality is also a problem in Colombia. According to the UNDP, 52% of lands are catalogued as large properties, and are in the hands of 1.15% landowners (Programa de las Naciones Unidas para el Desarrollo PNUD 2011). Despite of this, the last two administrations (2002-2014) have followed development plans for the rural areas of Colombia based on promoting national and foreign investment in large-scale agro industrial projects[58], which could deepen the concentration of lands in the hands of a few landowners and companies.

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[58] See national development plan for 2002-2006 called ‘Hacia un Estado Comunitario’, available at: https://www.dnp.gov.co/PND/PlanesdeDesarrolloanteriores.aspx, accessed 14 January 2014; national development plan for 2006-2010 called ‘Estado Comunitario: desarrollo para todos’, available at: https://www.dnp.gov.co/PND/PND20062010.aspx, accessed 14 January 2014; and national development plan for 2010-2014 ‘Prosperidad para Todos’, available at: https://www.dnp.gov.co/PND/PND20102014.aspx, accessed 14 January 2014.

The state is looking to increase the flows of foreign direct investment (FDI) to sectors different from oil, gas and mining where it has historically concentrated (Bermúdez Liévano 2012). This has entailed e.g. a move towards large-scale agricultural projects that could not only potentially contribute to increase the levels of land inequality, but also be in direct conflict with the Victims Land and Restitution Law, issued in 2011, which is seeking to return lands to the victims of forced displacement (Unidad Investigativa 2011); as well as the peace agreement with the FARC (signed in November 2016) which includes a plan for an agrarian reform. By July 2017, the entity in charge of land restitution, *Unidad de Restitución de Tierras*, had received 100,000 requests, corresponding to millions of hectares (Unidad de Restitución de Tierras 2016, 8).

The move towards the extraction of natural resources is problematic not only because of the possible negative impacts on the economy, but also because natural resources are located in the territories of indigenous peoples and Afro Colombian communities, which has led to increasing social conflicts between the communities and companies. Out of a population of 47 million, 3% are indigenous peoples, organised in 87 groups, who inhabit 710 collective territories called *resguardos*[59] (reservations). These territories have an extension of approximately 34 million hectares, which represent 29.8% of the national territory (Departamento Administrativo Nacional de Estadística 2007, 22). There is also a significant number of Afro Colombian communities, 1219 groups overall, who represent 10.6% of the population. They own collective territories that extend across 4 million

[59] Part of the territory assigned by law to one or more indigenous groups, with certain level of administrative autonomy, collectively owned. These territories cannot be sold or seized.

hectares, 4.13% of the national territory (Departamento Administrativo Nacional de Estadística 2007, 23–24).

The economy in and of the armed conflict

Although some argue that Colombia has one of the most longstanding democratic traditions in Latin America, with a deep-rooted liberal constitutionalism, "[r]ecognising a tradition does not mean that you glorify it"[60] (Posada Carbó 2006, 142). Many have identified the causes of the on-going armed conflict precisely in the grave faults of the democratic process in Colombia (Centro Nacional de Memoria Histórica 2013a; Palacios 2006). For example, Leah Anne Carroll argues that the emergence of the first left-wing armed guerrilla groups in the 1960s can be traced back to the creation of the *Frente Nacional* - a political and electoral coalition between the liberal and conservative parties, which resulted in a distribution of power between them from 1958 to 1974, excluding all other groups (Carroll 2011, 9). Some trace it back to the XIX Century, alleging that we have a long history of using violence as part of political confrontation, starting with the eight civil wars in the XIX Century, the period called *La Violencia* (The Violence) (1946-1957) and then the *Frente Nacional* (National Front) (1958-1974) (Kline 2003).

At the time of writing this thesis, and in the course of the past decade, Colombia has undergone two major transitions to end the conflict. Between 2003 and 2006 the paramilitary group *Autodefensas Unidas de Colombia* (United Self-Defence Forces of

[60] In original language: "Reconocer una tradición no significa glorificarla."

Colombia or AUC) demobilised under the Justice and Peace process, which is a transitional justice mechanism according to which, in exchange for demobilizing and confessing to past violence, paramilitary leaders received a reduced sentence[61]. Some paramilitaries didn't demobilise, others took up arms again and conformed what the government has called *BACRIM* or *Bandas Emergentes* (Emergent Criminal Groups).

On the course of the confessions to past violence, paramilitary leaders have mentioned the names of several economic actors who were allegedly involved in financing the AUC or benefitted from their violent actions (e.g. to acquire land, control protests from union members). In 2012 the largest guerrilla group in the country, the FARC (*Fuerzas Armadas Revolucionarias de Colombia),* and the government started a peace process that resulted in the signature of a peace agreement in November 2016. As part of this agreement, the transitional justice mechanisms - that include a special jurisdiction for peace that will hold trials (JEP) and a truth commission – will have the possibility to bring economic actors to account for their involvement in grave human rights violations committed by state and state-like actors in the course of the conflict (Payne, Pereira, and Bernal Bermúdez 2017; Sánchez and Marín López 2017).

However, following Keen (2000), if we want to facilitate peace and guarantee the victims' rights to truth, justice, reparation and guarantee of non-recurrence, the first step is to understand the nature of war, and the extent to which these economic actors participated in the economy of war. This is why the following lines will seek to present

[61] See Law 975 of 2005, available at: http://www.fiscalia.gov.co/jyp/wp-content/uploads/2013/04/Ley-975-del-25-de-julio-de-2005-concordada-con-decretos-y-sentencias-de-constitucionalidad.pdf

an approach to the armed conflict looking specifically at the economic reasons behind the dynamics of war.

Although some have focused on the political reasons behind the start of the conflict in the 1950s, we can certainly argue that these were not the sole reasons behind the violence. Our conflict is not religious or ethnic, but it does have one distinct characteristic that links the economic elite to its very origin: land. While it cannot be said that ours is a conflict over natural resources (in the terms used by Paul Collier in his work to explain the emergence of violence) (Gutiérrez Sanín and Vargas Reina 2016, 3), the conflicts that have surrounded the distribution of land in Colombia since the 19th Century can be considered to be part of the epicentre of the violence (Richani 1997). In fact, one of the mechanisms that explain the increase in the number of cases of land dispossession by paramilitary groups is the use of violence by the economic elite for revenge (i.e. the economic elites would use the paramilitary groups to take back the lands that had been taken from them to give to landless peasants during the 1980s and 1990s (Gutiérrez Sanín and Vargas Reina 2016, 21)). An example of this type of practice is the case of the palm oil companies analysed in this thesis in *Chapter 7*, where 15 companies were able to operate in lands that had been taken from Afro-Colombian communities who had been awarded communal land titles in the 1991, in detriment of elite land-owners (Gutiérrez Sanín and Vargas Reina 2016, 18).

Specifically speaking about the emergence and strengthening of the paramilitary groups several studies have traced economic actors to the very first paramilitary groups in Puerto

Boyacá. In fact, Henry de Jesús Pérez (founder of the first paramilitary groups in the 1980s that later inspired the new wave of paramilitaries of the 1990s that demobilised in 2003) was a businessman and landowner (Ronderos 2014). And several of the paramilitary leaders of the second wave of paramilitaries were cattle ranchers, businessmen and land-owners who used an economic logic to lead their private armies and form alliances with the local and regional economic elites (Gutiérrez Sanín and Vargas Reina 2016). A well-known example of this is the case of Salvatore Mancuso, a cattle rancher and landowner from the North of the country, who became leader of the *Bloque Córdoba* of the AUC. He created alliances with economic and political groups that allowed him to usurp lands across several municipalities (Gutiérrez Sanín and Vargas Reina 2016, 16).

Others have looked to identify the role of economic actors in financing paramilitary groups not only to explain their emergence, but also to explain their expansion through the territory. Camilo Echandía shows how the guerrilla and paramilitary groups during the 1980s and 1990s started to appear in places with thriving economic activity and important access to natural resources (Echandía Castilla 2006). To that end, they seemingly operate like a business enterprise looking for new opportunities to finance their operations through the control of lands and resources. This same perception of the dynamics of the conflict (that go beyond the military strategy) is shared by Magistrate Uldi Teresa Jiménez of the *Tribunal de Justicia y Paz de Bogotá*, who in answer to my question about a business logic in the operation of the paramilitary groups? responded:

> *"Yes, but the great difficulty is that in the places where you find paramilitary groups you also have guerrilla groups. So the question that I asked to the drug trafficker alias "El Mellizo" was: were you fighting to push the FARC out of the territories because you didn't want them to keep victimizing the community, or did you want to push them out to appropriate business opportunities? So that is a very thin line that is difficult to identify. I think that one thing leads to the other. One wonders, what poor territories were occupied by paramilitaries, with no resources whatsoever? You can hardly find any, because they were either a corridor for drug trafficking or a place for plantations or to access fuel."*

The paramilitaries have recounted how forced displacement was used as a war strategy, but it also coincided with the economic interests of both the paramilitaries and economic elites and companies who were either involved directly in the forced displacements or benefited from the low prices of the land (Centro Nacional de Memoria Histórica 2013a, 71; Juzgado Adjunto al Juzgado Quinto Penal del Circuito Especializado de Medellín 2013). According to the *Centro Nacional de Memoria Histórica*, more than 8.3 million hectares of land (7% of the territory) have been abandoned because of the conflict (Centro Nacional de Memoria Histórica 2013a, 76). The UNDP 2011 Human Development Report '*Colombia rural. Razones para la Esperanza'*, reports forced displacement specially affecting the regions of Antioquia and Chocó (Programa de las Naciones Unidas para el Desarrollo PNUD 2011, 277).

The paramilitary leaders have also confessed to being financed by companies in exchange for providing security from the leftist guerrilla groups[62]. The FARC sabotaged infrastructure to isolate communities and interrupt economic activities. The ELN (*Ejército de Liberación Nacional*) was involved in the explosion of oil and gas infrastructure, as a way of opposing the extraction of national resources by foreign

[62] This is also true of the Colombian army, which has received funds from corporations in exchange for protection.

companies (Centro Nacional de Memoria Histórica 2013a, 99). Allegedly, the protection scheme provided by the paramilitaries included repression of all social protest coming from union members, activists, community leaders, human rights defenders, or any other individual labelled as '*guerrillero*'. The *Grupo de Memoria Histórica* (GMH) (Group of Historical Memory) was able to document the selective murders of 1,227 community leaders, 1,495 political militants, 685 union members and 74 human rights defenders. The number of unionised workers killed in the course of the conflict is debated. While the GMH records only 658 deaths from 1984 to 2011, the *Escuela Nacional Sindical* and the UNDP recorded approximately 2,800 deaths in the same period (Centro Nacional de Memoria Histórica 2013a, 46).

Some have tried to create categories to describe the different ways in which the economic actors have been involved in the violence. The following list does not attempt to be exhaustive, but tries to show what has so far been revealed through the Justicia y Paz process (Bernal Bermudez and Marín López n.d.; Gutiérrez Sanín and Vargas Reina 2016; Sánchez 2013, 120–21):

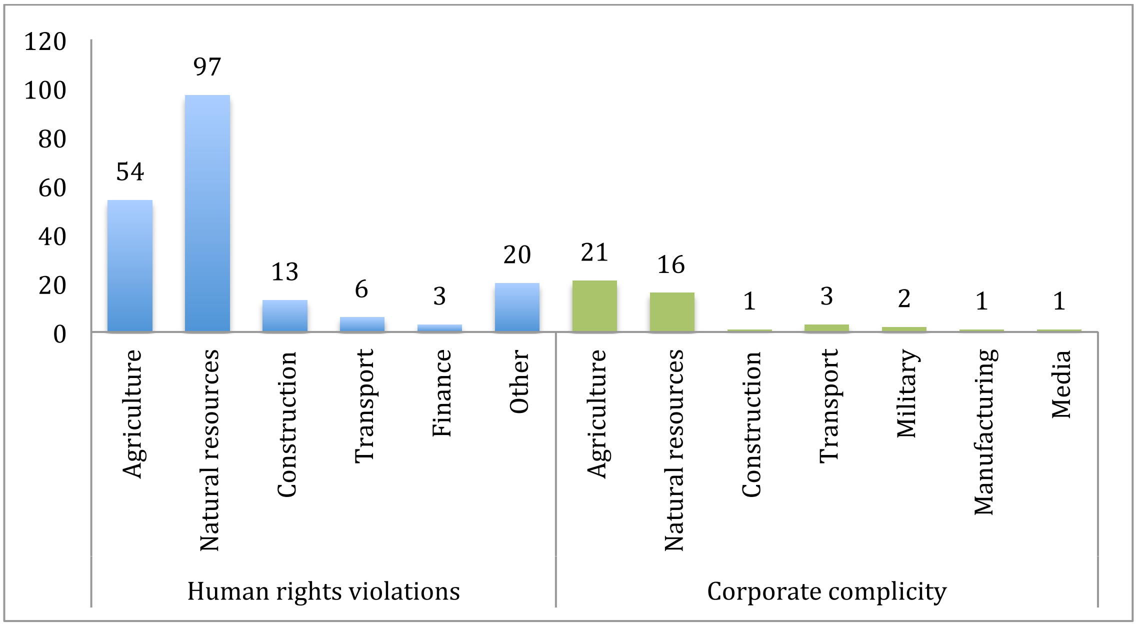
- The economic elite participates directly in the violence as commanders of paramilitary units.
- The economic elites make explicit pacts with illegal armed groups e.g. to finance the group (either willingly or through extortion), in exchange for security, to jointly develop a productive project, to appropriate lands.

Business involvement in human rights violations

And it is in this context that we find two datasets recording cases of corporate involvement in human rights violations. In this section I will present some descriptive statistics that speak to the context that I have outlined in this chapter. We find violations committed by economic actors operating in all sectors of the economy (Figures 4.8 and 4.9). Both the CHRD-Colombia (which includes allegations reported by victims and civil society) and the CATJ-Colombia (which includes allegations reported by paramilitary leaders) coincide in suggesting that most abuses occurred in the agriculture sector. There is however an important difference regarding the natural resources sector in both datasets. The CHRD-Colombia records nearly 40 per cent (16) of the cases of corporate complicity (45) involve companies operating in the natural resources sector. This suggests that there is a focus of civil society activism in this sector. On the contrary, the CATJ-Colombia (which only includes cases of corporate complicity reported by paramilitary leaders) only records 10 per cent of cases in this sector. As I was told while interviewing Magistrates of the Justice and Peace Tribunals and clerks that have participated in drafting the *Justicia y Paz* rulings that we used to create the CATJ-Colombia, it has been more difficult to find information to triangulate with the confessions of the paramilitaries regarding the involvement of extractive companies in the violence[63]. And only cases where they are able to triangulate information to meet higher probatory standards are included in the rulings.

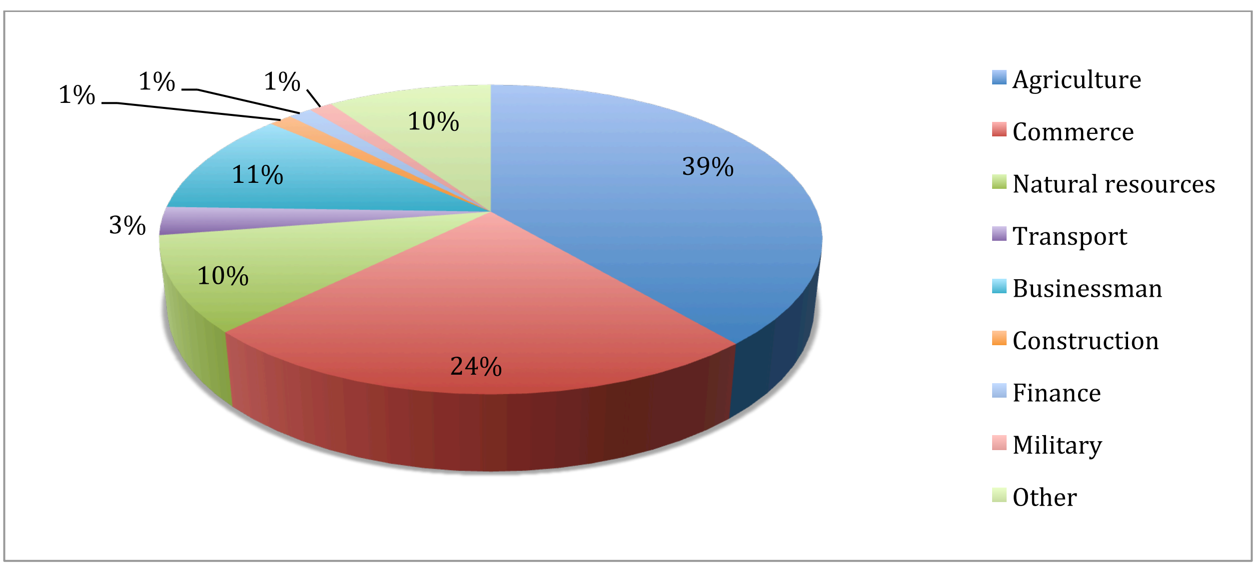
[63] Interview with Magistrate Uldi Teresa Jiménez from the Tribunal de Justicia y Paz of Bogotá, 25 May 2010.

Figure 4.8 Distribution of cases of abuses across sectors of the economy by type of involvement in the CHRD-Colombia



Source: CHRD-Colombia, 2014

Figure 4.9 Distribution of cases of abuses across sectors of the economy in the CATJ-Colombia



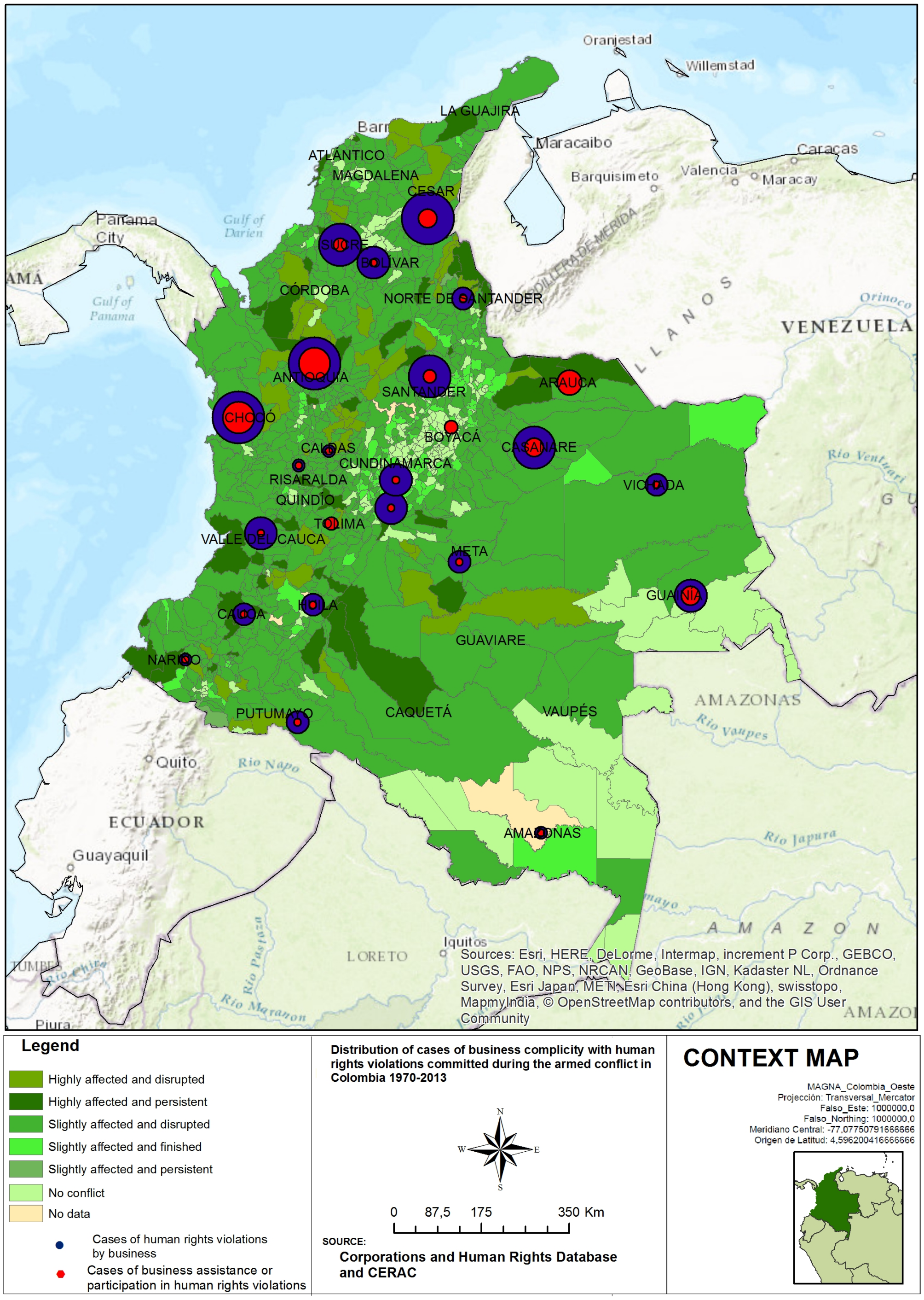
Source: CATJ-Colombia, 2016

The data in the two datasets (Figures 4.8 and 4.9) also shows that while economic actors have been involved in complicity with human rights violations committed by state and state-like actors in the course of the armed conflict, they have also been involved in violations with no direct connection to the violent actions of the armed actors of the conflict. These cases include, for example the abuses attributed to *El Cerrejón* regarding the resettlement of indigenous populations in *La Guajira*, the environmental crimes committed by Drummond when the company was caught in 2011 dumping coal into the Santa Marta Bay, or reports of police brutality targeting protesters against the construction of dams across the country.

The nationality of the economic actor involved in the violations also tends to support the focus of civil society in TNCs, while the judicial truth found in the Justice and Peace rulings reveals the difficulty to find enough evidence to link the local economic actors with transnational capital or transnational enterprises. In the CHRD-Colombia, in 18 per cent (8) of the cases reported by civil society as corporate complicity cases (45) the company involved was a TNC, while in the CATJ-Colombia in only 2 per cent (9) of the cases of business complicity (439) was the company identified as a multinational.

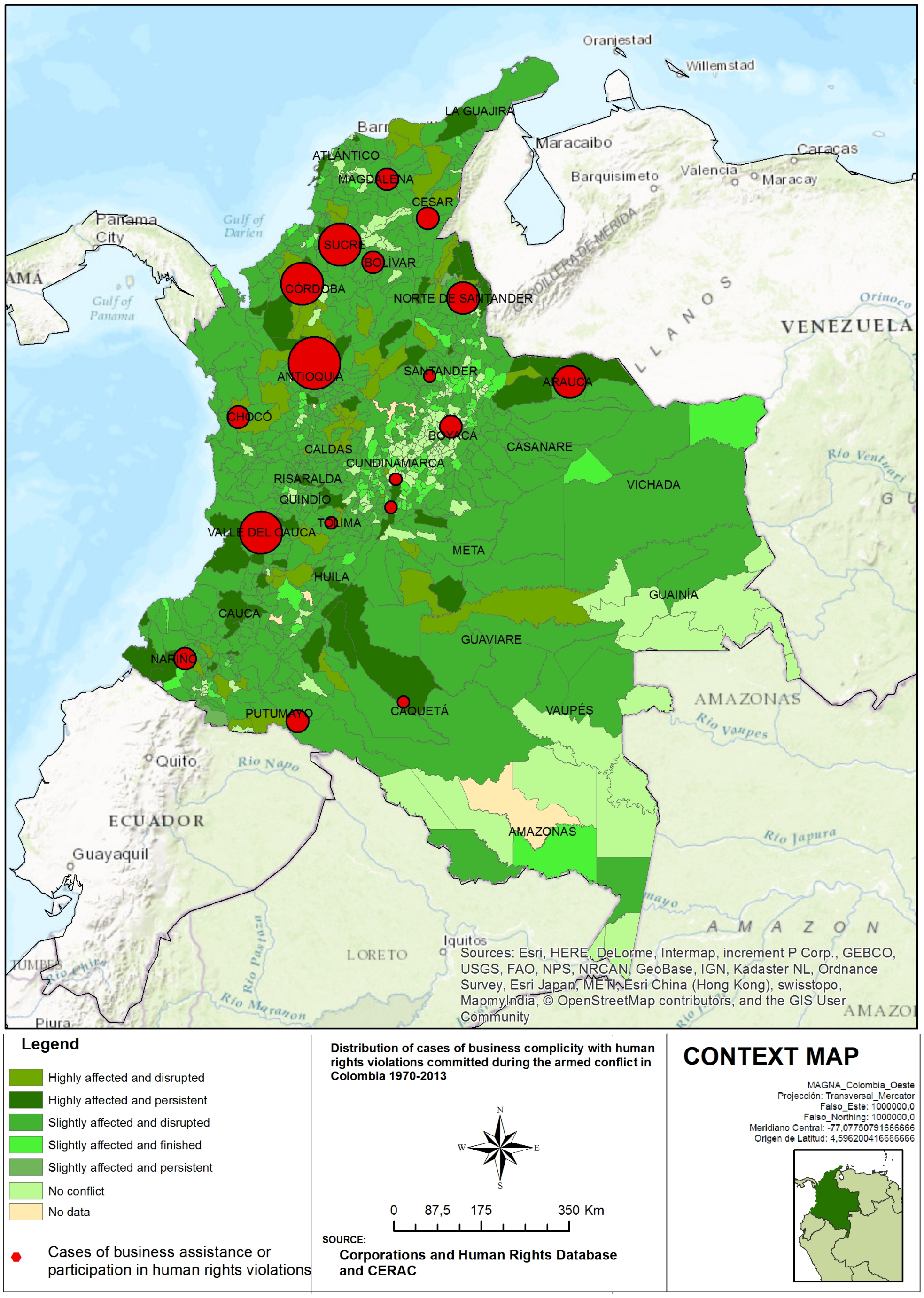
Regarding the distribution of cases in the territory, the following maps show how pervasive the phenomenon was. However, there is a concentration of the reported abuses in the northern part of the country that suggests the need to enquire further about what happened in the southern departments of Vichada, Meta, Caquetá, Putumayo, Guaviare, Vaupés and Amazonas (Figures 4.10 and 4.11).

Figure 4.10 Distribution in the territory of cases from the CHRD-Colombia



Source: The author, CHRD-Colombia and CERAC

Figure 4.11 Distribution in the territory of cases from the CATJ-Colombia



Source: The author, CATJ-Colombia and CERAC

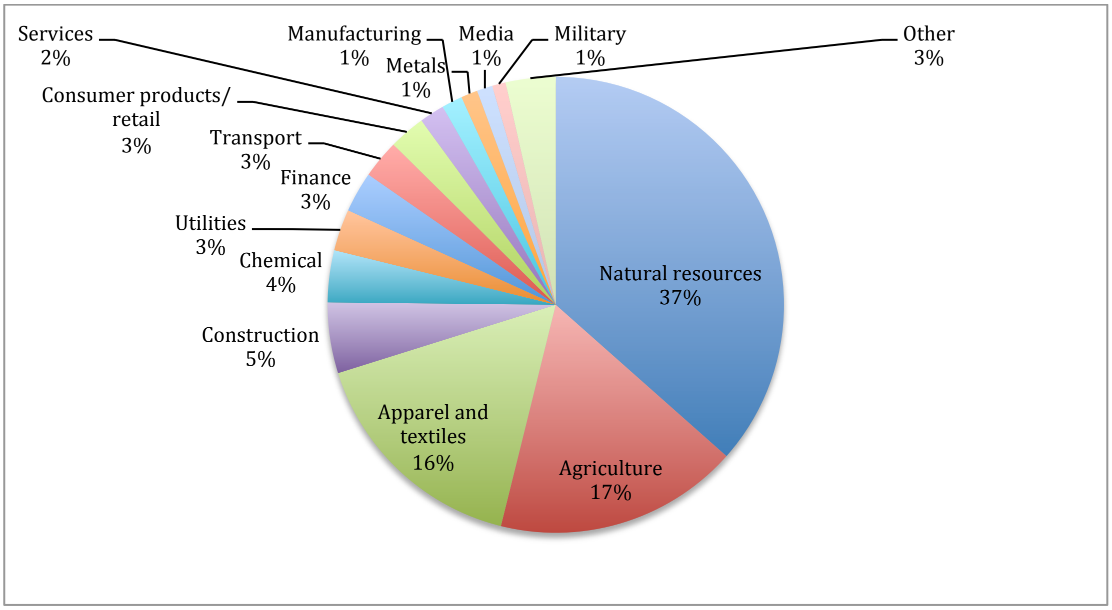
Colombia in the broader Latin American context

This section will use descriptive statistics to situate Colombia in the broader Latin American context. The CHRD has a total of 1,369 CAAs in 24 countries. Colombia has the second largest number (193) of abuses after Argentina (269), and is followed by Brazil (181), Mexico (167) and Peru (106). Despite the data omission that we know exists for Brazil because of the language barrier, this country as it is represents 13% of the data. All four countries have been affected by systematic violence coming from armed conflict or repressive regimes, which is why they provide a good comparative framework to situate Colombia.

The abuses recorded in the region have occurred in all sectors of the economy. However, because the CHRD has focused its efforts in the behavior of TNCs and mostly large size companies[64], it is no surprise to find a large concentration of cases in the natural resources, agriculture and apparel and textiles sectors where these companies tend to operate in the region.

[64] This was identified by Kathryn Babineau's work in Peru (Babineau 2015) and in my own research in Colombia where over 70 per cent of the companies registered by the CHRD-Colombia are large size firms.

Figure 4.12 Distribution of cases per sector of the economy in Latin America



Source: CHRD, 2014

The types of abuses recorded in the CHRD suggest that the region has been particularly affected by firms' involvement in physical violence and environmental damages.

In 39 per cent (530) of the cases recorded in Latin America civil society used judicial actions to seek accountability and remedy, and in 24 per cent (330) of the cases they resorted to non-judicial remedy mechanisms, including direct negotiations with the company. In both cases, the data seems to indicate that there is a focus of civil society in companies operating in the natural resources sector, i.e. extractives.

Conclusion

This chapter has provided a detailed description of Colombia as a conflict zone where war has been waged for over 50 years and where a thriving economy has managed to emerge and sustain itself as one of the more stable economies of the region. I have also described a context where amongst a weakened state, there are some institutional innovators (specifically the Constitutional Court) and easy routes to justice (*tutelas*) that have on occasions countered the inefficiencies of the criminal system.

But, in terms of David Keen (2000), what do we know about war in Colombia that can help us understand peace?

What we know about war in Colombia is that the atrocities that have resulted in millions of victims are not only attributable to armed actors in the conflict. That there are different ways in which economic actors are involved in a conflict where resources and territories have been disputed by armed actors. That there is a fine line between military and business strategy; and that there is a two-way relationship between armed actors and economic actors: economic actors/activities have helped armed actors wage war and armed actors have helped economic actors do business in conflict zones. And what does this mean for peace? That the only way to guarantee the victims' rights to truth, justice, reparation and guarantees of non-repetition is through a process that looks for accountability of all actors involved in atrocities, including economic actors.

The following empirical chapters (*Chapters 5, 6 and 7*) test the hypotheses developed in *Chapter 2* in order to identify strategies that civil society has used to increase their power to seek accountability and remedy outcomes, as well as to identify the obstacles that still curtail the victims' efforts to vindicate their rights.

Chapter 5 – Globalization and the struggle for justice

Introduction

The question of business involvement in human rights violations, accountability and access to remedy for those abuses has spawned an enormous amount of scholarly attention both theoretically and empirically. This thesis investigates what happens to the power of the people to seek accountability and the power of businesses to guarantee impunity when they are confronted with each other. The main assumption is that the power of actors involved in these cases varies; it is not static or homogeneous across all civil society groups and all companies. So, just like victims and civil society can be empowered through political opportunities (that open spaces of vindication) and strategic alliances with TANs, business too need to be seen as a heterogeneous group with different levels of veto power to secure impunity. This power will vary, for example, depending on the sector where they operate (and the weight that it has in the national economy), the nationality and the size of the firm.

The second level of the Nested Analysis Approach is the quantitative analysis of the CHRD-Colombia. Using this dataset, the ensuing discussion first uses descriptive statistics to explore patterns of abuses, judicialisation, accountability and remedy. Subsequently, this chapter builds and tests models predicting the judicialisation of businesses (i.e. judicialisation of corporate behaviours), as well as the remedy outcomes of these judicial actions in Colombia. The results confirm that the power of people and the veto power of firms vary; it is not static. In this way, referring to accountability processes as a David and Goliath struggle is not completely accurate. While there are some companies that amass significant veto power, this is not always the case. And understanding when and how this power is decreased allow us to explain judicialisation and remedy outcomes.

On the other hand, the power of people is not always the same. The claimants are also able to redefine themselves to increase their power and seek accountability. Strong evidence is provided in support of political opportunities explaining judicialisation of firms for corporate involvement in human rights abuses (i.e. the use of judicial actions), but the overall explanatory leverage of this factor is limited. Subsequently, although there is evidence of pressure from global actors increasing the odds of remedy, the overall explanatory value of this variable seems to be trumped by company level characteristics (like the sector where it operates and the size of the firm). The regression analysis in this chapter and in *Chapter 6* allowed me to narrow the range of hypothesis deserving more detailed analysis in the case study analysis of *Chapter 7*, because they suggest that some hypotheses have little empirical support.

An overview of the CHRD Colombia

The data of the CHRD-Colombia confirms what the literature suggests about companies operating in conflict-ridden areas: In areas where different armed actors fight over territory and resources, and there is little or no control by the state, firms will tend to participate in this fight in order to operate (Ruggie 2013, 29; Tripathi 2010). The data shows patterns indicating that cases of corporate involvement in human rights violations in Colombia tend to follow the dynamics of the armed conflict, i.e. companies operating in Colombia have been highly involved in physical violence abuses (allowed by the violent dynamics of the conflict); and the distribution of these abuses across the national territory corresponds to fluctuations in the intensity of the conflict.

The CHRD-Colombia has 193 observations that occurred between 1989 and 2013, registering cases where domestic companies (116) and TNCs (77) have been involved in all types of human rights violations, while operating in the context of an internal armed conflict. Only 23 per cent (45) of the cases are explicitly linked to corporate complicity with paramilitary groups in the commission of grave human rights violations; however this does not mean that the other 77 per cent (148) of cases are unrelated to the conflict, particularly because these cases occurred in areas highly and persistently affected by the armed conflict. In fact, 39 per cent (57) of the cases that were not labelled as instances of corporate complicity with state or state-like actors in the course of the conflict, involved physical violence abuses (allowed for by the violent dynamics of the conflict). The other 61 per cent (91) of the cases refer to development (38), environment (25), health (5) and labour abuses (23) occurring as negative effects of the company's operations.

Companies are alleged to have been involved in abuses that range from crimes of physical violence (51 per cent), development and poverty abuses[65] (21 per cent); environmental damage or destruction (14 per cent); labour-related abuses (12 per cent); and, in a small proportion of cases, the company is accused of causing health problems to local populations (3 per cent) (Table 5.1). The data on the types of abuses hints at reporting bias. In effect, this distribution of abuses, showing a large proportion of them to be related to physical violence, tends to support the hypothesis that civil and political rights violations are more likely to be picked up by the media and by civil society, while economic, social and cultural rights remain under reported. There seems to be, however, an increasing concern with development and environment issues, which together make up 35% of the allegations. Lastly, considering that the degradation of the environment will most likely have a negative impact on the health of the local population, the significant difference between the number of recorded cases that relate to the degradation of the environment versus those that relate to health problems suggests an underreporting of health abuses.

[65] This category refers to social, economic and cultural rights, and includes abuses like denying access to basic needs; destruction of local economies; lack of investment in/exploitation of local economy; encroachment/exploitation of indigenous land/property; no support from local communities/lack of prior consultation.

Table 5.1 Types of abuses - Frequency and percentage[66]

	Frequency	Percentage (%)
Abuse	98	50.78
Development/poverty	40	20.73
Environment	27	13.99
Labour	23	11.92
Health	5	2.59
Total	193	100

Source: Corporate Human Rights Database, 2014

Table 5.2 Type of abuse by type of judicial action

	Type of abuse				
	Abuse	Development/poverty	Environment	Health	Labour
Civil trial	29 (45%)	17 (26%)	9 (14%)	2 (3%)	8 (12%)
Criminal trial	36 (82%)	3 (7%)	2 (5%)	0	3 (7%)
UTD	2 (50%)	1(25%)	0	0	1(25%)

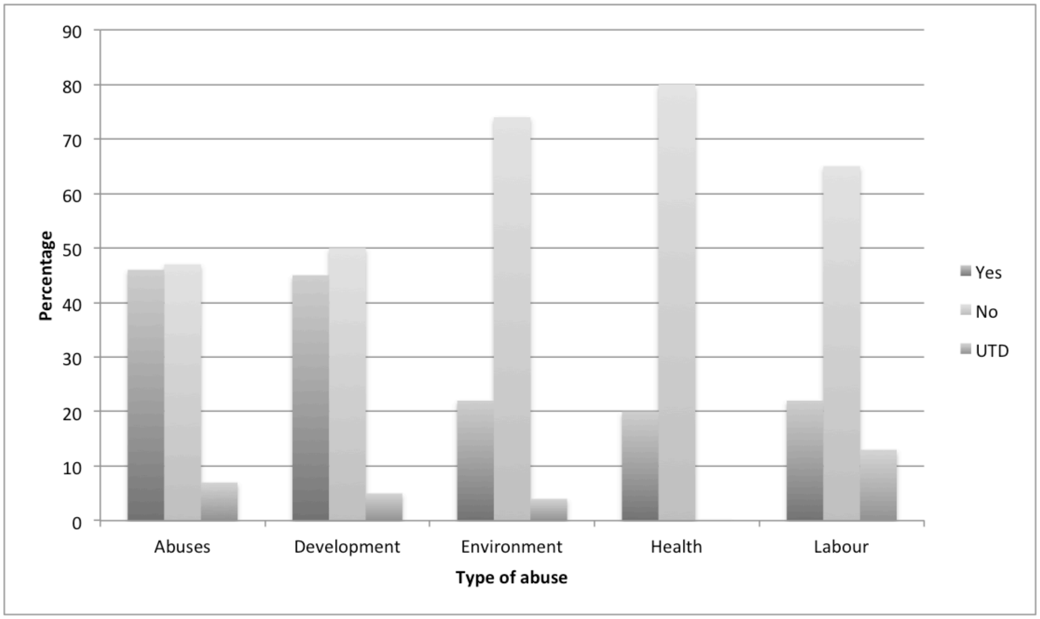
Source: Corporate Human Rights Database, 2014

[66] Some of the cases coded in the CHRD involved more than one type of violation. These cases were coded using the following criteria in order to avoid duplicating cases: we coded one variable called the primary violation (which I used for this analysis) where we identified the main accusation against the company and another variable with secondary abuse, where we coded the related abuse. An example of these types of cases were the allegations of physical violence against union members, where the primary violation was the murder or torture of the worker, but this violence was also affecting the workers' right to unionise (a labour abuse). When the allegations were clearly referred to both types of abuses as primary we would code two different cases, one for each type of abuse.

The use of judicial actions varies depending on the type of abuse. Out of 193 observations, 75 record one or more judicial actions. Of those 75 cases, 60 per cent are related to physical violence and 24 per cent to development and poverty. On the other hand, abuses affecting the environment (8 per cent), health (1 per cent) and labour rights (7 per cent) have low levels of judicialisation.

Although the low levels of judicial actions for labour, health, and environment abuses, could suggest that victims tend to bring judicial claims against corporations when the abuses relate to physical violence crimes, this is hardly confirmed by the data, since this could be explained by less media coverage of these types of cases, or the BHRRC having more stringent criteria to consider these abuses as human rights violations. The considerable proportion of cases in which the coders were unable to determine whether there was a judicial action for labour abuses could suggest that although the media records an intention of filing a claim, they do not continue the coverage (Figure 5.1).

Figure 5.1 Distribution of judicial actions per type of abuse



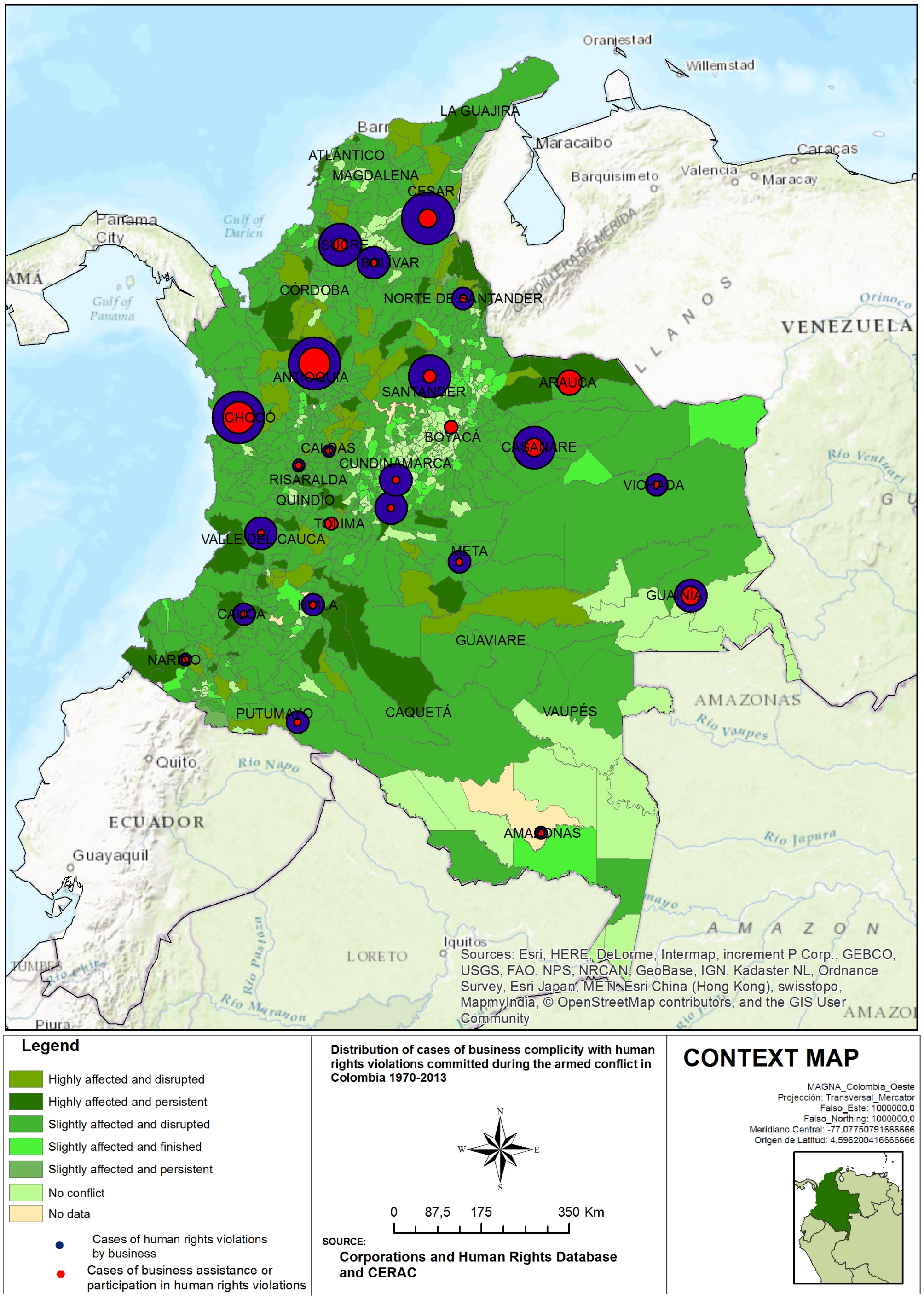
Source: Corporate Human Rights Database, 2014

The CHRD-Colombia data suggests that domestic companies were more involved in grave human rights violations committed by illegal armed actors of the conflict than TNCs. Domestic companies were involved in 82 per cent (37) of the cases of corporate complicity recorded in the dataset, and in 63 per cent (62) of the cases that involved some type of physical violence against the victims[67]. This is in line with the findings in this thesis from the analysis of the CATJ-Colombia data in the next chapter (*Chapter 7*), which support allegations of a persistent and pervasive relationship between domestic economic elites and the paramilitary groups operating in the Northern part of the country.

[67] Some of these physical violence abuses were explicitly attributed in the claim to one of the armed groups in the conflict, and those were labelled as corporate complicity cases (45). However, there were 53 cases of physical violence where the claim could not link the alleged business behaviour with e.g. a paramilitary group.

As Figure 5.2 shows, almost all cases of violations reported by the BHRRC are found in the Departments located to the North of the country, where the conflict was characterised by high levels of violence and dispute over territory and resources between the state, paramilitary and left wing guerrilla groups. The Departments of Choco (26), Antioquia (22), Cesar (24) and La Guajira (17) have the highest concentration of cases (58 per cent). Because most of the cases involve firms operating in the agriculture and natural resources sector (78 per cent), this suggests that the companies had to take part in this struggle over territory and resources in order to participate in the market. And the high proportion of cases where physical violence was involved (51 per cent) in those Departments suggests that they were also participating in the dynamics of violence inherent to the conflict.

Figure 5.2 Distribution of cases in the territory



Source: The author, CHRD and CERAC

The northern part of the country was severely affected by violence from the paramilitary forces where they started their process of consolidation in terms of control of the territory and violence. Antioquia and Chocó alone had the largest concentration of paramilitary cells in all the country (13 structures of the AUC in 153 municipalities) (Granada C 2008, 9). The paramilitary forces were overall the actor in the armed conflict that mostly targeted civilians (Centro Nacional de Memoria Histórica 2013a). Also, from the truth telling process of the Justice and Peace Law, we know that several paramilitary leaders were businessmen or were looking to participate in business enterprises, and that they strategically targeted firms to finance their violent actions. In this sense, the concentration of allegations of corporate involvement in human rights abuses in the northern part of the country could be explained by the dynamics of the armed conflict.

The Colombian state's involvement in the abuses has been varied, though from the data in the CHRD-Colombia it is possible to suggest that there hasn't been a particular focus to support victims who seek remedy. As expected, those mostly affected by the allegations of abuse are local communities and unionised workers, who have been overall the ones targeted by actors of the armed conflict and who endure the consequences of large infrastructure projects. There does not seem to be a trend pointing to the general public seeing themselves as particularly affected by abuses. And this could potentially explain the difficulty that victims have to give traction to their claims.

The CHRD-Colombia records these abuses as affecting different groups of people. In 128 cases local communities were recorded as being the ones affected by the abuse (this category includes indigenous and afro-Colombian groups). In 72 cases workers were named as victims of the abuse, while in 33 the general public appeared to be the one affected (mostly in cases where the environment was concerned). NGOs, INGOs, the media and the affected communities themselves primarily reported these abuses.

Because of the sectors where the cases are concentrated and the fact that local communities are the ones more greatly affected by the violations reported in Colombia, it is not surprising to see that in 24 per cent of the cases the allegation refers to conflicts around land ownership, where communities allege being victims of forced displacement (through violent or non-violent means) to allow for the company's operations. These cases include for example the use of paramilitary forces to guarantee access to lands through violent forced displacement (e.g. Urapalma S.A.), or causing the displacement of communities through the degradation of the environment to a point where it is impossible to inhabit or harvest the lands (e.g. *El Cerrejón*).

In 30 per cent of the cases the state participated in efforts to redress and remedy those allegedly affected, while in another 30 per cent of the cases the state was either involved in committing the violation (and the company assisted) or assisted the company in perpetrating the abuse. These figures are evidence of the fragmentation of the state, where some state entities (like e.g. Ombudsman's offices, or other watch dog entities within the state) are acting to protect the population from companies, while other state entities (like the armed forces) acted in defence of the interests of the companies.

Table 5.3 Descriptive statistics from CHRD-Colombia

Variable (N=193)	M	SD	Minimum	Maximum
Dependent variables				
Judicialisation	.38	.48	0	1
Remedy	.16	.37	0	1
Independent variables				
Nationality of the firm	.39	.49	0	1
Sector of the economy (natural resources)	.50	.50	0	1
Sector of the economy (agriculture)	.27	.45	0	1
Brand				
TANs (number of nodes)	.17	.38	0	1
TANs (global actors)	.42	.49	0	1
Political opportunities	.22	.42	0	1
Interaction term: TANs (number of nodes) and natural resources	.06	.24	0	1
Interaction term: TANs (number of nodes) and agriculture	.06	.24	0	1
Interaction term: TANs (global actors) and natural resources	.23	.42	0	1
Interaction term: TANs (global actors) and agriculture	.10	.31	0	1
Control variables (type of abuse)				
Physical violence abuses	.50	.50	0	1
Development abuses	.20	.40	0	1
Environment abuses	.13	.34	0	1
Labour abuses	.11	.32	0	1
Health abuses	.025	.15	0	1

Source: Author

Explaining judicialisation and remedy outcomes

In this environment, in which companies are operating in a violent context and are involved in human rights violations with or without complicity of the armed actors in the conflict, there have been attempts by victims and civil society to hold firms accountable for these violations. According to the data in the CHRD-Colombia, in 39 (75) per cent of the cases a judicial action was initiated, while in 22 per cent (42) of the cases affected parties resorted to non-judicial mechanisms, nearly half of which were company-led mechanisms.

The CHRD-Colombia records a total of 113 judicial actions out of which 56% (65) were civil lawsuits (which include constitutional actions for the protection of fundamental rights or *tutelas*), 39% (44) were criminal proceedings and in 4% (4) of the cases it was not possible to determine the nature of the action. Only 12 cases with judicial actions reached a trial, 11 of which were civil trials (including constitutional actions) and 1 criminal trial. This could suggest that although judicial actions for criminal offences, which involve physical violence crimes, are often used, they seldom reach the trial stage. This could be explained by the several legal hurdles and structural obstacles that victims face in a criminal investigation, e.g. the prosecutors are unable to identify a perpetrator of the crime, difficulty to find evidence to support the claim, or the victims lack of resources and access to prosecutors to secure the continuity of the investigations (Comisión Internacional de Juristas 2008b; Sánchez 2013). Another explanation, explored in this thesis, is the veto power that economic actors have over states' responsiveness.

As expected, the outcomes of these cases are mostly tending towards impunity, with 82 per cent (159) having no remedy or accountability at the time of writing. However, in 18 per cent (34) of cases there has been judicialisation and remedy. This seems very surprising given the armed conflict, the power of business, and the patterns of impunity, which is why the three empirical chapters in this thesis (*Chapters 5, 6, and 7*) investigate quantitative and qualitatively explanations for the break in the pattern of impunity.

Because I used nonlinear models (logit), I used three types of statistical methods to have a more robust analysis of the relationship between the independent variables and the outcome variables of interest. Firstly, I used descriptive statistics with Chi-Square test to identify any statistically significant relationships between the variables. Secondly, I ran logit regressions and used odds ratios to identify significant associations between the independent variables and judicialisation and remedy outcomes. Lastly, I used predicted probabilities to build "ideal types of cases" to summarize the effects of key variables identified in the two previous steps.

Descriptive statistics and Chi-Square test[68]

This section uses descriptive statistics and Chi-Square tests to draw out some trends regarding judicialisation and remedy outcomes. I drew the following conclusions about the patterns of judicialisations and remedy outcomes, which have to be read alongside the results from the logistic regressions in the next section. On the one hand, the power of

[68] I considered using principal component analysis to simplify the data structure before carrying out further analysis, i.e. reducing the number of IVs to a few independent principal components. It could also allow me to interpret the underlying structure of the data in terms of the most important principal components (Bartholomew et al. 2008, 117–18). However, considering that the independent variables are separate variables, conceptually distinct and with separate effects, there are no theoretically plausible reasons to group them into single components or indexes. These variables conceptually and theoretically do not measure the same thing in different ways. I might consider using PCA in a next step of analysis where using the results from this thesis to improve measure specification and create an index of the individual company's importance to the economy using information on e.g. the number of employees, capital investment, sector where it operates, contribution in taxes.

people to pursue judicialisation of firms and remedy outcomes seems to be linked to political opportunities that change the power dynamics (in the case of Colombia the power dynamics of the armed conflict) and the support from global actors. On the other hand, the power of companies to secure impunity seems to be linked to their global dimension (measured by their nationality and the sector where they operate), and not to the size of the firm. Lastly, contrary to what the literature suggests, the state seems more willing to prosecute and convict companies when they have been involved in violations of economic, social and cultural rights, and not when they are accused of being involved in physical violence.

There are two dependent variables of interest. The first (DV1) refers to the judicialisation of corporations through judicial actions (it answers the question: was a judicial action initiated?). In the CHRD-Colombia, in 39 per cent of the cases (75) a judicial action was initiated. The second (DV2) refers to remedy outcomes (it answers the question: did claimants receive reparation for the violation as a result of the judicial action?). In the CHRD-Colombia, in 17 per cent of the cases (32) there was remedy for the claimants. The independent variables (IV) are based on the hypotheses outlined in the theory chapter. Table 5.3 below summarizes these variables. However, for a more detailed description of the variables and indicators see Table 2.1 in *Chapter 2*.

Table 5.4 Summary of hypotheses and variables

The power of people	TANs	H1	Cases where claimants are able to tap into TANs to pressure the state are more likely to end in judicialisation and remedy
		H1a	Denser TANs will be more successful in pressuring the state to pursue judicialisation and remedy
		H1b	TANs are more likely to pressure for judicialisation and remedy when the economic actor is involved in violations of civil and political rights.
	Political opportunities	H2	When claimants are able to seize political opportunities that shift the power dynamics between victims, the state and economic actors in a given time, this will increase the likelihood of judicialisation and remedy outcomes.
The power of business	Importance to the economy	H3	Businesses that are central to the national economy are less likely to be prosecuted for their alleged involvement in human rights violations; and if they are prosecuted, claimants are less likely to obtain remedy.
		H3a	The veto power of economic actors will increase in times of transition because of the state's reliance in their investment for peace building
	Nationality of the business	H4	TNCs are less likely to be prosecuted and convicted because of their economic power.
	Brand	H5	Companies that have a high visibility brand or name are more likely to be prosecuted for their alleged involvement in human rights violations, and if they are prosecuted, claimants are more likely to obtain remedy and accountability outcomes.

Source: The author

The Power of People:

The first set of hypotheses refers to characteristics of the claimants and their ability to make the most of the environment where the trial takes place.

Transnational Advocacy Networks: quantity and quality of the nodes

One of the hypotheses derived from the social movements literature is that when claimants manage to tap into transnational advocacy networks judicialisation is more likely, and claimants are more likely to be successful in terms of remedy and accountability. By the very nature of the BHRRC website (which we used as the main source to build the CHRD-Colombia), there is no variation in the data on whether the claimants managed to tap into TANs. The BHRRC is after all an INGO that acts as an amplifier of demands and therefore has a role in creating global linkages around these cases[69] (Keck and Sikkink 1998). In this sense, I have already dealt with global linkages by extracting the cases from the BHRRC archive.

Nonetheless, some networks are denser than others. And not all cases have the same number and variety of groups involved. In this sense, I looked at possible trends in the way that denser and less dense networks operate, and the outcomes they manage to

[69] However, the BHRRC is not an INGO whose activities are focused on litigation, but rather on non-judicial remedy and accountability mechanisms. Their role is to act as an intermediary between the affected parties and the companies. This is why the role of other INGOs with a different approach to business accountability is important to consider.

achieve. From the existing theory on TANs, denser networks can be understood in two ways: in terms of number of nodes and in terms of quality or type of actors involved. In this way, I used two variables to test how these networks affect the probability of judicialisation and remedy. The first variable (*TANs*) will look at density in terms of number of nodes, with denser networks having three or more nodes participating in the case either as petitioners or any other role supporting the claimants. The second variable will explore density in terms of quality or type of nodes involved in the network. The *Globalpressures* variable will look at cases where INGOs, inter-governmental organisations or other states are part of the TAN (this does not include the BHRRC which is present in all cases).

Having these two dimensions of density in separate variables allowed me to see if the quality of the nodes trumps the number of nodes (or vice versa), i.e. if it is more important for a TAN to secure international or foreign links, or to secure a larger number of nodes in order to impact outcomes.

In 82 per cent (159) of the cases, less dense networks (in terms of numbers) were involved. While in 58 per cent (111) of the cases only domestic links were present. This corroborates what we already know: denser networks are more difficult to find/build (both in terms of number (34 cases) and quality of the nodes (82 cases)). This suggests that very few claimants have the muscle to proactively seek engagement with denser and more complex networks. However, the issue of corporate involvement in human rights violations does seem to attract the attention of international actors, considering that in 42 per cent (82) of cases these actors are present. And, contrary to what one might think, the nationality of the company does not seem to be the driver in these actors' decision to get involved in a particular case. In 62 per cent (51) of the cases where these forces were present, the targeted company was a domestic company.

Also, in almost all cases with dense networks in terms of number of nodes there is an international or foreign partner involved (91 per cent (31) of cases). This suggests that most dense networks are dense both in terms of number and quality of nodes. This relationship was statistically significant[70].

Denser networks both in terms of number and quality of the nodes focus on physical violence abuses (71 per cent of cases with 3 or more nodes, and 57 per cent of cases where global actors are involved), and this relationship was statistically significant[71]**.** Also, cases related to socio economic rights (sustainable development) attract the attention of global actors (27 per cent of cases with global actors).

Labour abuses do not attract the attention of denser networks, with only 4 per cent of cases with denser networks (in terms of numbers) relating to these types of abuses**.** These cases also do not attract dense networks in terms of quality of the nodes because only in 13% of the cases with violations of labour rights there are international or foreign actors involved. Both relationships are statistically significant[72]. In Colombia, labour unions have been mainly an endogamic group, aligning themselves with organisations that focus

[70] *$X2(1, N=193)$* = **40.0393**, *$p<0.000$.*
[71] Global actors: *$X2(1, N=193)$* = **19.3410**, *$p<0.001$***; TANs:** *$X2(1, N=193)$* = **7.5085**, *$p<0.1$*
[72] TANs: *$X2(1, N=193)$* = **7.5085**, *$p<0.1$; Global actors: $X2(1, N=193)$* = **19.3410**, *$p<0.001$*

solely on workers' rights, and have not pursued networks with larger human rights NGOs and INGOs.

Denser networks in terms of number don't discriminate the sector where the companies are operating. However, there does seem to be a higher proportion of cases with international links in the natural resources sector (56 per cent), as oppose to agriculture (26 per cent) or other sectors of the economy combined (18 per cent). This tends to support the claim that international and foreign actors have focused on companies that operate in sectors that have more of a global outlook (and monitoring), like the natural resources sector in Colombia which has a significant participation of FDI flows and dominates the exports of the country.

Surprisingly, denser networks both in terms of number of nodes and international links do not focus on TNCs, with 60% of cases with dense networks focusing on domestic companies. And both denser and less dense networks (in terms of number and quality) do not target companies with recognized brands. In 80 per cent of cases with denser networks TANs targeted companies with no recognized brands. This suggests that networks in Colombia have been using political economy arguments to pressure the state, and not appealing to economic aspects (like the devaluation of the brand) to target companies.

Denser TANs (in terms of number) were present only in 21 per cent of the cases where judicial actions were filed. This could suggest that judicialisation does not necessarily need the support of complex TANs. In fact, in 79 per cent of the cases there was no need for a complex structure of support to allow judicialisation. However, there does need to be more than the BHRRC (i.e. more than 0 in the scale) for judicialisation to occur. A high proportion of cases with judicialisation have between 1, 2 and 3 nodes (94 per cent). The entry barrier perhaps is not at the time of judicialisation but once the trial is underway, particularly considering that in a larger set of cases (41 per cent) with remedy outcomes, dense networks were involved. The relationships between TANs and the remedy and accountability outcome variable was statistically significant.

On the other hand, the presence of global actors seems to matter both in terms of judicialisation, as well as remedy outcomes. Global actors were present in 51 per cent (38) of cases with judicialisation, and 79 per cent (23) of the cases where claimants were successful in terms of remedy. In both cases the relationship was statistically significant.[73]

Political opportunities

Now, regarding the domestic political environment where the trial takes place, arguably the likelihood of judicialisation, remedy and accountability outcomes is increased when claimants are able to identify and take advantage of domestic political opportunities that restructure power relations, by undermining existing political structures (in this case

[73] Judicialisation: $X2(1, N=193) = 13.0188$, $p<0.001$; *Remedy:* $X2(1, N=192) = 31.9372$, $p<0.000$

economic and political elites) or giving political leverage to excluded groups (in this case victims of human rights abuses by businesses).

For this research, I took the peace processes with the paramilitary forces and the FARC guerrilla group as positive political opportunities, which altered both the physical and the legal constraints for claimants to access to justice. The physical barriers were created by the presence of these groups in the territory, which gave them control over the population. When they demobilised, their physical presence and control is limited. On the other hand, the legal barriers refer to the difficulties that claimants faced to find evidence of the link between the firm and the abuse. These processes bring with them truth telling exercises, confessions from leaders that have been used by claimants in the courts as evidence of the complicity of businesses in the abuses perpetrated by armed actors in the course of the armed conflict.

In 23 per cent (44) of the cases recorded in the CHRD-Colombia the allegation of the abuse (i) referred to the company's complicity with actors of the armed conflict, and (ii) was presented during the period when the peace processes were and have been taking place. This trend does not suggest that the majority of cases had no political opportunities whatsoever, but rather suggests that the majority of the allegations (77 per cent) were not cases of corporate complicity (there was corporate complicity only in 45 cases in the CHRD-Colombia, out of 193). The latter considering that the peace processes will provide opportunities predominantly for the victims of abuses committed by actors in the course of the internal armed conflict.

Although cases with peace processes as political opportunities do not attract the attention of denser TANs in terms of number of nodes, they do attract the attention of global actors. These results tend to confirm what scholars have suggested in terms of victims having to face additional challenges in transitional justice contexts that trump the opportunities that could open up with peace processes and consequent changes in power structures. In this sense, the strategy that victims will have to follow is seek global actors to open up international political opportunities and in turn put pressure on the state to prosecute corporations (Khagram, Riker, and Sikkink 2002b). In over half of the cases (55 per cent) global actors were present, and this relationship was statistically significant[74]. In transitional justice contexts, when countries are moving from conflict to peace (which is the case in Colombia) or from authoritarian regimes to democracy, the rule of law systems may not be fully functional. Also, the international community can exert pressure on the country to be more accommodating to businesses and to capitalist, neo-liberal reforms (Van Ho 2013, 54, 70); corporations will use their economic power to influence directly or indirectly the justice system to secure impunity (Paul and Schönsteiner 2013, 85; Sánchez 2013, 115); there is an increased difficulty to find evidence of the abuses (Sánchez 2013, 122); and governments will rely on firms for rebuilding and fulfilling socioeconomic or developmental objectives (Abrahams 2013, 153–54).

[74] X2 (1, N=193) = 3.3914 $p<0.1$

In 35 per cent of the cases where a judicial action had been initiated, there were political opportunities, and this relationship was statistically significant[75]. In 41 per cent of the cases where remedy outcomes were possible, there were political opportunities. This relationship was statistically significant[76]. Again, these numbers have to be read considering that not all judicial actions referred to corporate complicity. They tend to support the claim that in countries with internal armed conflicts, demobilisation and truth telling mechanisms do offer an important opportunity for victims to come forward and seek remedy. Nevertheless, they need global actors and international opportunities to pressure the state to act.

Table 5.5 Summary of Chi-2 test results for the Power of People

Key
Frequency *Percentage*

Variable (N=193)	Judicialisation (Yes)	Judicialisation (No)	Remedy (Yes)	Remedy (No)
TANs (number of nodes)	16 47%	18 53%	12*** 35%***	22*** 65%***
TANs (global actors)	38 46%	44 54%	24*** 29%***	58*** 71%***
Political opportunities	26*** 59%***	18*** 41%***	13*** 30%***	31*** 70%***

*** p<0.01, ** p<0.05, * p<0.1

[75] *X2(1, N=193)* = 9.8180*, p<0.01*
[76] X2(1, N=192) = 1.0670, p<0.01

The Power of Business

Sector of the economy

Following political economy arguments, companies operating in strategic sectors (like public utilities, or national security) or sectors integral to the national economy will be more likely to secure impunity. Given the limited data on the individual company's role in the national economy, I am using two measures of the firm's veto power: (i) a sector-oriented approach, which used the sector's participation in the GDP and FDI to measure the firm's importance to the economy, and the importance of the sector's engagement with the global economy, and (ii) the firm's size as a proxy of its individual importance to the economy in terms of their contribution to national finances through taxes and larger contribution to production.

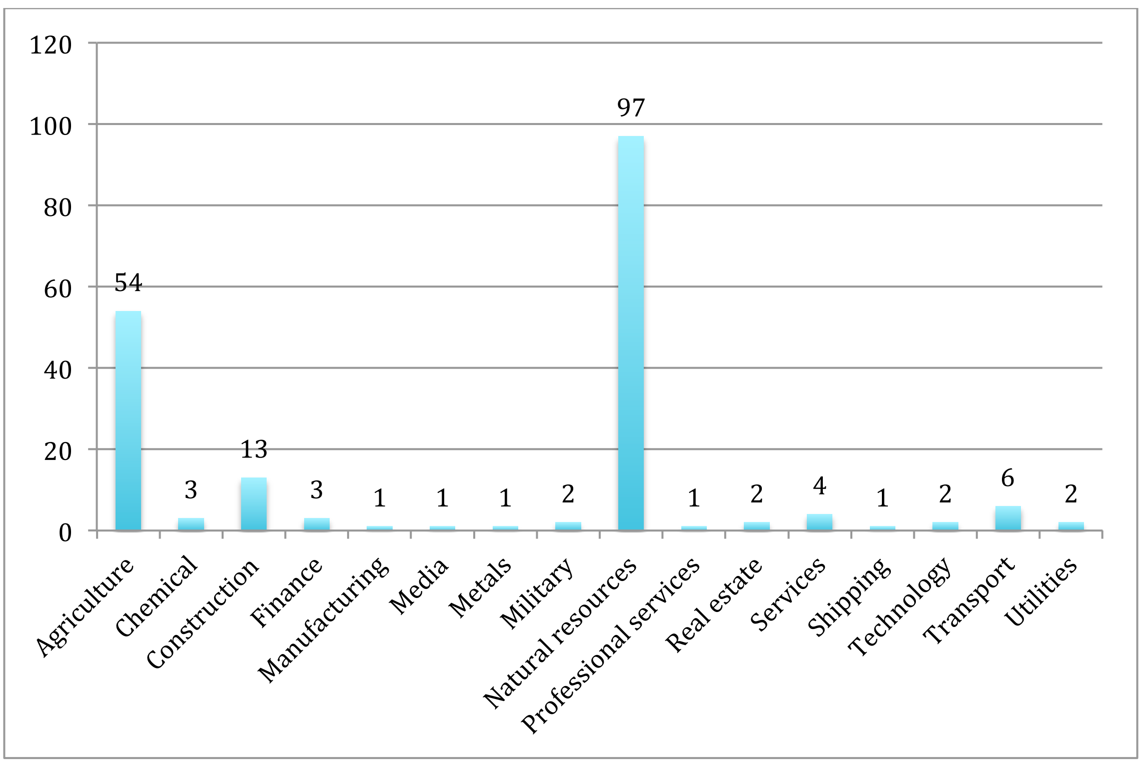
Figure 16 below shows how most of the allegations recorded by civil society are found in the natural resources and agriculture sectors (78 per cent of cases). Although this cannot be interpreted as though there are more abuses in these sectors, it can certainly be said that more attention is being paid to them. These two sectors differ in the way that they are important to the economy. The sector of natural resource extraction shows the economy's dependence on the global economy. It has a lower participation in the total GDP (6.9%) (although still significantly high), but more importantly represents 49.2 per cent of the total FDI inflows for the country and 66 per cent of the total exports[77]. This explains why 72 per cent of TNCs in the CHRD-Colombia are recorded as operating in the natural

[77] 2012 Figures from the Colombian Central Bank and DANE.

resources sector. These characteristics allow me to argue that this sector is a good representative of corporations that are important to the national economy because of their role in inserting the country in the global economy. It is not a perfect measure because there are domestic firms operating in the sector, but the outward looking vision of the sector is a good enough measure.

On the other hand, the agriculture sector has a much lower participation in the total FDI (0.4%) and exports (11%), but almost double participation in the GDP (11.9%).

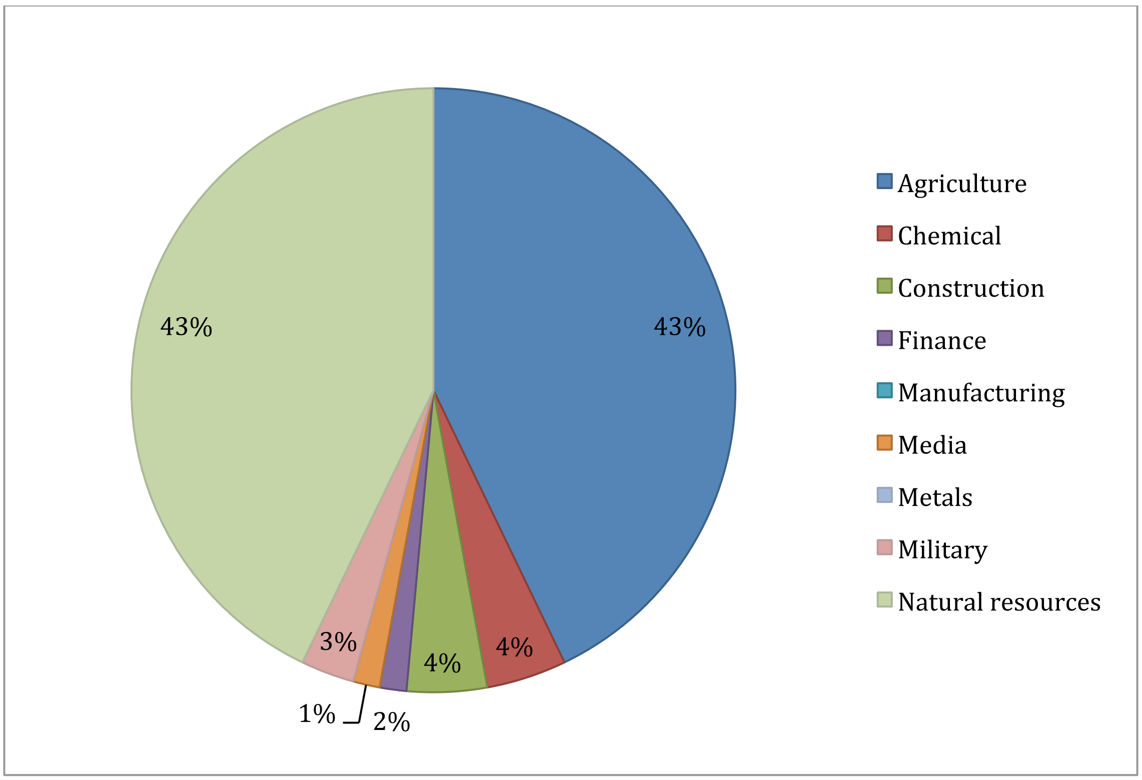
Figure 5.3 Distribution of abuses by sector of the economy



Source: CHRD, 2014

Figure 5.4 shows the distribution of judicial actions per sector of the economy, again showing a concentration of judicial actions in the agriculture and natural resources sector (together 80 per cent of cases with judicial actions). The other 20 per cent of cases is distributed between the chemical (3), construction (3), finance (1), media (1), military and security services (2) and utilities sector (1) (with none of them having more than 6 per cent of the cases).

Figure 5.4 Distribution of judicial actions per sector of the economy



Source: CHRD, 2014

The two sectors where the allegations are concentrated (agriculture and natural resources), allow me to test for differences in judicialisation and remedy outcomes between companies that participate in FDI flows and exports (natural resources), versus those companies that are important to the national economy in terms of GDP, but that have no substantial participation in FDI flows or exports (agriculture)[78].

As I said, in 80 per cent of the cases with judicial actions firms operating in the agriculture and natural resources sectors allegedly perpetrated the abuse. This relationship is statistically significant[79]. On the other hand, we are more likely to see remedy and accountability outcomes in cases occurring in the agriculture sector (52%) than in the natural resources (32%) or all other sectors of the economy (16%). This relationship is also statistically significant[80]. The higher proportion of cases in the agriculture sector could provide evidence to support the claim that the domestic span of the agriculture sector makes the companies operating in it less likely to amass the same veto power as other sectors like the natural resources sector, which is more inserted in the global economy.

Nationality of the firm

There are 129 companies allegedly involved in violations, 43 of them are subsidiaries of TNCs (or TNCs registered abroad); and the other 86 are domestic companies registered and operating in Colombia. Some have argued that TNCs have larger economic and political power than domestic companies. In Colombia, there is a higher proportion of reported judicialisation of domestic companies (63% per cent) than TNCs (37 per cent).

[78] In future research I could use PCA to create a scale of the individual company's importance to the economy using information on the number of employees, capital investment, participation in FDI flows, taxes and royalties contributed to the State.
[79] $X2(2, N=193) = 9.0790, p<0.01$
[80] $X2(2, N=192) = 10.1370, p<0.01$

Trials against domestic companies are also more likely to end in remedy and accountability (71 per cent) than trials against TNCs (29 per cent). Although these numbers tend to confirm the trends suggested for the industry sector data above where there is more remedy and accountability for the agriculture sector which is dominated by domestic companies (over 70 per cent), the relationships between nationality of the firm, judicialisation and remedy outcomes was not significant.

Brand

In 27 cases (14 per cent) the firms allegedly involved in the violation have recognized brands, while in 166 (86 per cent) the firm did not have a recognized brand. Some consider that the reputational risk for a company will decrease its veto power because of their exposure to public censure. In this sense, companies with recognized brands will be more likely to be prosecuted (targeted by civil society) and to remedy claimants (in order to avoid costly depreciations of their brand). The CHRD-Colombia data does not seem to confirm this hypothesis. In fact, in Colombia nearly all of the cases where firms have been prosecuted (92 per cent (69)) involve companies whose brands are not recognized and therefore there is no reputational risk incentive to pursue legal action against them. And this relationship was statistically significant[81]. The same happens with remedy outcomes where in 97 per cent of the cases (31) the company did not have a recognized brand. This relationship was also statistically significant[82].

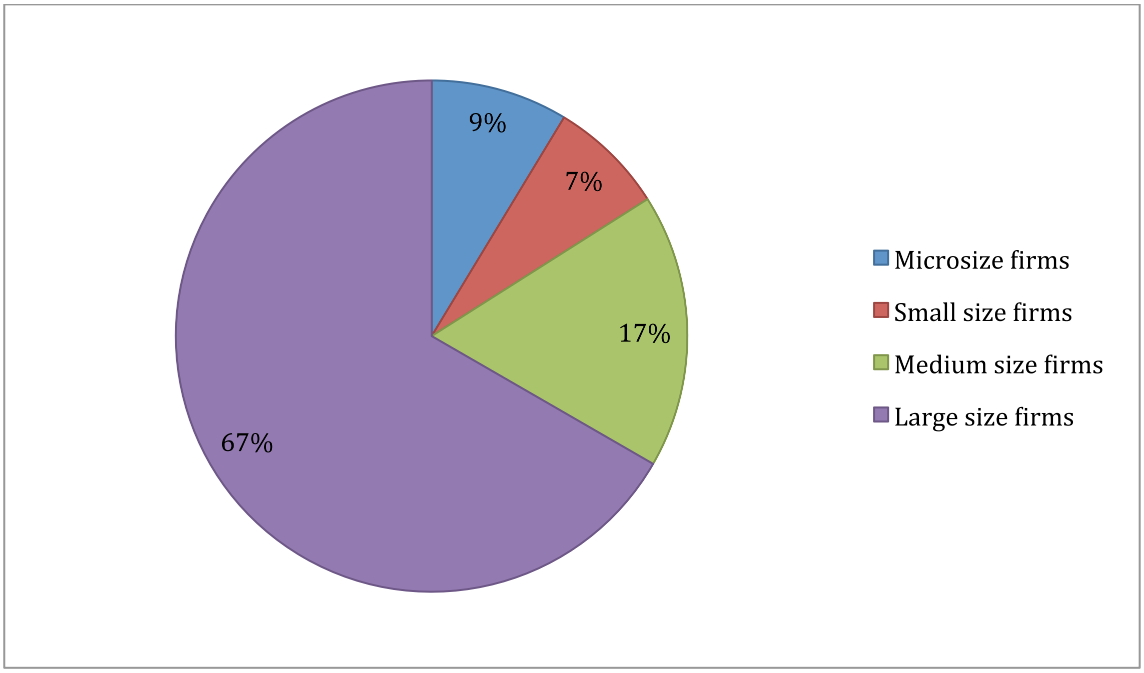
[81] $X2(1, N=193) = 3.6575, p<0.05$
[82] $X2(1, N=193) = 3.7632, p<0.05$

Size of the firm

Another way to measure the veto power of firms is its size (Rettberg 2003, 5). Because companies in Colombia are categorized by size according to their capital investment (Law 905 of 2004), this is a good measure of their contribution to the national economy via taxes and levels of production. In this sense, larger companies will be more important to the national economy and therefore have more veto power to secure impunity. Preliminary descriptive statistics analysis of the CHRD-Colombia data does not corroborate this hypothesis. In fact, it suggests a pattern of judicialisation and remedy that concentrates around large size companies.

For the companies that I was able to find information about their size (150), over 80 per cent of the cases (126) involved medium and large size companies, which demonstrates the particular emphasis of global civil society on these types of firms that have the potential to participate in the global economy through exports, while micro and small firms are left out of the monitor (Figure 5.5). Also, it suggests that the negative impact of large size firms is greater and therefore more likely to be picked up by civil society.

Figure 5.5 Proportion of cases by size of the firm



Source: CATJ-Colombia, 2017

Contrary to what the theory suggests, the data suggests that medium and large size firms are the ones more frequently prosecuted: over 70 per cent (41) of the cases with judicial actions involve these types of firms, which suggest that their veto power to stop judicialisations is not linked to their size. This relationship was statistically significant[83]. Over half of the cases (26) relate to physical violence abuses. Also, when we look at the outcomes of these judicialisations, we find that convictions are still concentrated around larger firms[84] (with 64 per cent (16) of the 25 cases with convictions involving mid and large size firms), for all types of abuses, including physical violence abuses (grave human rights violations). In this sense, the size of the firm does not seem to be the explanatory factor behind judicialisation and convictions.

[83] $X2(3, N=150) = 8.5723, p<0.05$
[84] $X2(3, N=150) = 9.8855, p<0.05$

Again, these findings tend to suggest that the global dimension of the company (measured in two ways: the sector where it operates and its nationality) is more suitable to explain the strong veto power of firms to secure impunity. However, these results will be contrasted with the results from the logistic regressions in the next section.

Table 5.6 Summary of Chi-2 results for The Power of Business

Key
Frequency *Percentage*

Variable (N=193)	Judicialisation (Yes)	Judicialisation (No)	Remedy (Yes)	Remedy (No)
Natural resources	30** 31%**	67** 69%**	11** 11%**	86** 89%**
Agriculture	30*** 56%***	24*** 44%***	16*** 30%***	38*** 70%***
Nationality of the firm	28 36%	49 64%	10 13%	67 87%

*** p<0.01, ** p<0.05, * p<0.1

Logistic regressions

In order to determine what factors influenced the distribution of cases where there was judicialisation and convictions for corporate involvement in human rights violations, I conducted the following analysis using logit modelling testing of the 193 CAAs from Colombia.

The models represent probability outcomes derived from a logistic regression utilising odds ratios, and is designed to measure the probability of judicialisation (ranging from 0=no judicialisation to 1=judicialisation), and remedy outcomes (ranging from 0=no remedy success, 1=remedy success) for a given CAA in the database. These outcomes are contingent upon the presence or absence of some of the explanatory factors that I will explore in this section, most of which are binary (0=factor is not present, 1=factor is present)[85]. Natural resources is a dummy variable (0=All other sectors, 1=Natural resources) that represents all cases where the company operates in this sector as opposed to any other sector of the economy. TANs represents the mobilisation of the affected community or group and their capacity to access dense transnational activist networks to support their claims (0=Less dense TANs, 1=Denser TANs). Global pressures represents the proactive involvement of global actors in the case, including foreign states or any of the following international organisations: Inter-American Commission of Human Rights, Inter-American Court of Human Rights, UN bodies, International Labour Organization, Organisation for Economic Co-operation and Development. Cases received a 1 (=factor present) when any of these entities played a role in reporting or as other groups involved in the case. Political opportunities represents whether there were domestic political opportunities available to the claimants at the time they filed the suit. Cases received a 1 (=factor present) if there was corporate complicity[86] in the perpetration of the abuse and

[85] I employed the variance inflation factor (VIF), which allows me to detect (multi)collinearity between explanatory variables, by showing how much the variance of the coefficient estimate is being inflated by multicollinearity. I used the common rule of thumb in econometrics that a VIFi>10 indicates harmful multicollinearity. For my explanatory variables, the mean VIF is 1.19, which suggests that there is no (multi)collinearity and they can all be included in the model.

[86] By corporate complicity I mean the collaboration of the company with the illegal armed actor to perpetrate the abuse, as well as the company benefitting from the abuses perpetrated by the illegal armed actor.

the lawsuit was filed in the time frame when peace processes with paramilitary forces and the FARC guerrilla were taking place[87]. Brand represents the susceptibility of the firm to reputational concerns by categorizing firms into those that have a well-known brand or name and those that do not. Cases received a 1(=factor present) if the company had a well-known brand or name[88]. TNC represents the nationality of the firm. A case is coded as a 1 (=factor present) if the company involved is a multinational corporation registered in Colombia, or if it is a subsidiary of a multinational corporation that is registered abroad.

I included a set of 5 binary variables, which are used as a control variables in the regression, representing the type of abuse allegedly perpetrated in each case: Abuses (physical violence abuses (including torture, beatings and death)), Environment (including pollution and erosion), Development (including lack of prior informed consultation and denying access to basic needs), Health (including those related to pollution and those not related to pollution), and Labour (including denial of freedom of association and substandard wages). Preliminary descriptive data analysis suggests a

[87] if the allegation has a "1" in the corporate complicity variable and the date the trial started coincided in time with the following time periods where "peace processes" have taken or are taking place:
"Peace process" with AUC paramilitary groups: The negotiations started in 2003; the Justice and Peace Law was enacted in 2005; the demobilisations took place between 2003 until 2006 and the *versiones libres* are scheduled in the website of the *Fiscalia General de la Nación* up to June 2015. The timeframe of the peace process with the AUC for the purposes of this thesis is from 2003-2015.
A second "peace process" is the one with the FARC that started in 2012 and ended with the signature of a peace agreement in November 2016. The timeframe for this "peace process" for the purposes of this thesis is from 2012-2016.
[88] I.e., if the brand of the Company or the parent company is listed in: Interbrand's 2014 list of 100 best global brands; 2014 Global CSR Reptrack 100 ranking, which looks at consumers response to companies' reputation; or in BrandZ Top 50 Most Valuable Latin American Brands 2014. These sources measure the value of the brand, which is derived from the high visibility of the brand.

relationship between the type of violation and judicialisation, and between the type of violation and remedy outcomes. It seems to be more likely to have judicialisation and remedy outcomes when the abuse relates to civil and political rights, than to economic, social and cultural rights (in 60 per cent of the cases with judicial actions there were allegations of physical violence abuses, and in 50 per cent of cases with remedy success, the allegation involved these types of abuses). Therefore, I decided it was necessary to include these variables as controls in my inferential analysis.

I also included a categorical variable, which is also used as a control variable, representing the size of the firm, as it is an alternative measure of a firm's importance to the national economy suggested in the literature. I used the criteria included in Law 905 of 2004 to categorise firms as microbusinesses, small size companies, medium and large size firms. The variable is coded as "1" for micro size firms (i.e. those with a registered capital of up to 500 monthly minimum wages (approximately up to USD$126,500); "2" for small size firms (those with a registered capital between 501 to 5,000 monthly minimum wages (approximately between USD$ 126,753 and USD$ 1,265,000)); "3" for medium size companies (i.e. those with a registered capital between 5,001 monthly minimum wages and 26,000 monthly minimum wages (approximately between USD$ 1,265,000 and USD$6,600,000); and "4" for large size firms (those with a registered capital of over 26,000 monthly minimum wages (approximately over USD$6,600,000))[89].

[89] In order to include this variable in the regression models, I used Multiple Imputation to replace the missing values for 43 cases where I was not able to find reliable information about the size of the firm. Using this technique I was able to estimate the missing values using the rest of the values in the model as predictor variables. Because I am missing a high proportion of the data (22%) I decided not to use listwise deletion and instead use multiple imputation, (Acock 2010, 357–76; UCLA Institute for Digital Research and Education n.d.)

Judicialisation of firms[90]

The model for the data is as follows:

$$\text{logit}\,[P(\text{judaction} = 1)] = \alpha + \beta 1\text{TAN} + \beta 2\text{globalpressures} + \beta 3\text{polopp} + \beta 4\text{agriculture} + \beta 5\text{natural resources} + + \beta 6\text{brand} + \beta 7\text{nationality} + \beta 8\text{abuses} + \beta 9\text{development} + \beta 10\text{environment} + \beta 11\text{health} + \beta 12\text{firmsize} + \varepsilon$$

As the regression findings in Table 5.6 demonstrate, not all independent variables are associated with judicialisation of firms, and for those that are associated the results are of a moderate magnitude. Peace processes viewed as domestic political opportunities are positively associated with judicialisation. Although the results are marginally significant, these processes of transition are linked with an increase by a factor of 2.4 in the odds of a case being prosecuted. On the other hand there are several company level characteristics that are associated with judicialisation. The brand and the size of the firm have a negative association. While the results for the brand confirm what I found in the descriptive statistics (i.e. that having a recognised brand is not linked to judicialisation), the findings regarding the size of the firm do differ. According to the results of the regression, the hypothesis in the literature seems to be confirmed: that small size companies (with less veto power) are more likely to be prosecuted than large size ones.

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[90] Considering the results from the Urapalma case study and the descriptive statistics from the CHRD-Colombia, it could be possible to suggest that the interaction between civil society variables and company level variables might impact judicialisation and access to justice. In order to test for this I used interaction terms combining the TANs and global pressures variables with the variables that code cases depending on the sector of the economy where the company operates (natural resources and agriculture). For judicialisation of companies, the interaction did not yield have significant effects.

Table 5.7 Odds Ratio Logit Findings - CHRD Colombia (Judicialisation)[91]

	(1)	(2)
VARIABLES	Logit coeff	Odds Ratio
Judicialization		
Firm size	-0.430*	0.650*
	(0.221)	(0.144)
Global actors	0.571	1.769
	(0.393)	(0.695)
TANs	-0.486	0.615
	(0.516)	(0.317)
Political opportunities	0.892**	2.440**
	(0.444)	(1.083)
Sector: agriculture	0.311	1.365
	(0.491)	(0.671)
Sector: natural resources	-0.820*	0.441*
	(0.489)	(0.216)
Brand	-1.056**	0.348**
	(0.536)	(0.186)
Nationality	0.625	1.868
	(0.398)	(0.743)
Physical violence abuses	0.720	2.053
	(0.567)	(1.163)
Development abuses	0.988	2.685

[91] I used the Pseudo R-squared value to measure the goodness of fit of the model to the data. The regression model explains 15% of the variance, which means that the model moderately fits the data.

	(0.602)	(1.617)
Environment abuses	-0.154	0.857
	(0.700)	(0.600)
Constant	0.236	1.267
	(0.969)	(1.227)
Observations	193	193

Standard errors in parentheses
*** $p<0.01$, ** $p<0.05$, * $p<0.1$

The odds ratios associated with dense networks both in terms of number of nodes and global actors involved; as well as the sector where the company operates are not significant in the model. The results will be contrasted with the findings from the quantitative analysis of the business complicity cases of the CATJ-Colombia and the qualitative case study analysis.

Remedy and accountability outcomes

The model for the data is as follows:

$$\text{logit}[P(\text{remedysuccess} = 1)] = \alpha + \beta1\text{TAN} + \beta2\text{globalpressuresXagriculture} + \beta3\text{natural resources} + \beta4\text{polopp} + \beta5\text{brand} + \beta6\text{nationality} + \beta7\text{abuses} + \beta8\text{development} + \beta9\ \text{environment} + \beta10\text{firmsize} + \varepsilon$$

The results from the regressions in Table 5.7 demonstrate that there is a significant effect of the interaction between global actors and companies operating in the agriculture sector that lead to an increase in the odds of remedy. This means that if a case has the presence of global actors and the company is operating in the agriculture sector the odds of remedy increase by a factor of 28.

The results from the Colombia data, contrary to assumptions in the literature, also suggest that the odds of a case ending in convictions increase by a factor of 11.2 when the company is involved in violations of socio economic rights (however, this relationship is marginally significant). These results suggest that the companies' veto power is trumped by strong state institutions (like the Constitutional Court) that have created strong precedents to protect the right of local communities to prior and informed consultations. This also suggests the importance of creating precedents to increase the odds of judicialisation of firms. This is the strategy adopted by the global civil society movement.

The odds ratios associated with peace processes as domestic political opportunities, and company level characteristics (like firm size, brand and nationality of the firm) are not significant in the model. .

Table 5.8 Odds Ratio Logit Findings CHRD-Colombia (Remedy)

	(1)	(2)
VARIABLES	Logit coeff	Odds Ratio
Remedy		
Firm size	-0.0764	0.926
	(0.269)	(0.249)

Global actors and agriculture	3.345***	28.35***
	(0.761)	(21.57)
TANs	0.468	1.597
	(0.599)	(0.956)
Political opportunities	-0.0132	0.987
	(0.722)	(0.713)
Brand	-1.614	0.199
	(1.167)	(0.232)
Nationality	0.231	1.260
	(0.520)	(0.655)
Physical violence abuses	1.083	2.953
	(1.264)	(3.733)
Development abuses	2.417*	11.22*
	(1.257)	(14.10)
Environment	1.838	6.281
	(1.314)	(8.251)
Constant	-3.541**	0.0290**
	(1.548)	(0.0448)
Observations	188	188

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Predicted probabilities

Based on the regression findings, I generated the following outcome prediction tables, which provide the odds of judicialisation and remedy outcomes for the types of cases created with the combination of some of the explanatory variables (Long 1997, 64–69; Long and Freese 2006, 162–64). The probabilities of judicialisation and remedy in the sample go from 0.06 to 0.87, with a mean predicted probability of 0.42.

The data suggests the salient role of political opportunities to increase the odds of judicialisation. However, the result from the regressions and the predicted probabilities of judicialisation show that there are several company level characteristics that also have an important impact on the odds of judicialisation: the brand, the nationality and the size of the firm. The pressure exerted by global actors and TANs has a marginal effect on increasing the odds of judicialisation (which is why I did not include it in Table 5.8), and this suggests that even if claimants manage to access dense support networks, they will still face substantial veto power from certain types of businesses, and will only be able to push for accountability when the context where these processes are taking place change (i.e. when political opportunities change power dynamics).

Table 5.9 Predicted probability of judicialisation - CHRD-Colombia

		Well-known brand		Not well-known brand	
		TNC	Domestic company	TNC	Domestic company
Micro-size firm	No political opportunities	.44**	.33*	.64***	.53***
	Political opportunities	.63***	.52**	.83***	.72***
Large size firm	No political opportunities	.19**	.08*	.38***	.27***

	Political opportunities	.38**	.27*	.57***	.46***

*** p<0.01, ** p<0.05, * p<0.1

Source: The author

Regarding remedy outcomes, I tried a different approach and looked at the predicted probabilities of remedy success for the ideal type of case. This ideal type of case considers all the variables whose presence was statistically significant and increased the odds of remedy outcomes in the logistic regressions[92]. Accordingly, there are 79% chances of remedy in cases where global actors are exerting pressure on the state and small size companies operating in the agriculture sector are accused of violations of socio economic rights. The chances of remedy decrease to 16% when the type of abuse is physical violence abuses, and to 1.7% when a company with a well-known brand is involved.

Conclusions

Not all explanatory variables work in concert to produce judicialisation or remedy; therefore statistical analysis from the CHRD-Colombia does not support all the hypotheses. While transitioning from conflict to peace opens political opportunities that have a positive effect on judicialisation, and global actors have a positive effect on remedy, the results from this quantitative study show that social mobilisation hits a wall when it comes to the type of company that they target. Evidence suggests that the veto power of firms is still very much present in these cases, and that no matter how strong

[92] Globpressures=1; tans=1; development=1; tansXagriculture=1. The rest of the variables=0.

and dense the networks are some companies are more likely to secure impunity. Companies with well-known brands, TNCs, large size firms and companies operating in certain sectors of the economy are more likely to avoid accountability efforts through the courts. This does not mean that there are no other mechanisms that might be more effective to seek remedy and accountability when these types of companies are involved (e.g. shaming campaigns that affect the market value of the brand or legislative processes in home countries to encourage due diligence and accountability mechanisms in case of violations).

Overall, this quantitative analysis provides a strong base of evidence that some of the explanatory factors I assessed are important to understanding judicialisation and remedy outcomes. Specifically: political opportunities, global pressures, the brand, the size and the sector where the company operates. This links to the case study analysis of Urapalma and the palm oil companies in Chocó (*Chapter 7*) where I found that the judicialisation and conviction of businessmen for their involvement in forced displacement was the result of an interaction between the increased power of the affected community and the decreased veto power of the economic actors.

The CHRD-Colombia data analysis reveals new ways of explaining access to justice and how we should understand the variations in the strength of claimants and defendants. Using the agency centred framework summarised in Table 2.1, this data shows how for the cases identified by the BHRRC (see *Chapter 4*), an increase in the odds of judicialisation is more likely explained by the claimant's ability to seize political opportunities independently of their capacity to tap into dense TANs. There is also evidence to suggest that the windows to push for judicialisation that are opened through political opportunities will only work as entry points when the firm has a weakened veto power, e.g. domestic companies with not well-known brands (Quadrants I and II of Table 2.1). This strategy will allow civil society to push for much needed precedents that will later allow them to point to other types of companies.

On the other hand, regarding remedy outcomes, the CHRD-Colombia data suggests that political opportunities can only take you as far as judicialisation. In order to pursue convictions claimants need to secure support from global actors, or else remedy is virtually impossible. Nonetheless, in this stage the veto power of firms is even more evident, because the possibility that global actors have to increase the odds of convictions is linked to the type of company that is targeted: small size firm operating in a sector of the economy with small FDI intake and mainly dominated by domestic companies.

The following table summarizes the findings regarding judicialisation and remedy linking them to each one of my hypotheses and the two dimensions that make up the agency-centred approach that I am arguing for:

Table 5.10 Summary of findings for the CHRD-Colombia (Judicialisation and remedy)

The power of people	TANs	Cases where claimants are able to tap into TANs to pressure the state are more likely to end in judicialisation and remedy	**Judicialisation and remedy**: Still under consideration to be further developed in *Chapters 6 and 7*. Not tested in this chapter

		Denser TANs will be more successful in pressuring the state to pursue judicialisation and remedy	**Judicialisation**: Rejected. It doesn't seem to be necessary to have great muscle (in terms of the complexity of the TAN) to push for judicialisations for cases with sufficient notoriety to be captured by the BHRRC.
			Remedy: Confirmed. A strong muscle (including several nodes and global actors) seems to be required to obtain remedy outcomes once judicialisations are underway.
		TANs are more likely to pressure for judicialisation and remedy when the economic actor is involved in violations of civil and political rights.	**Judicialisations:** Rejected. The type of abuse doesn't seem to be relevant to explain judicialisation.
			Remedy: Rejected. Although TANs do focus on physical violence abuses, the data suggests that the state is more willing to prosecute and convict the firm when it is involved in violations of economic, social or cultural rights.
	Political opportunities	When claimants are able to seize political opportunities that shift the power dynamics between victims, the state and economic actors in a given time, this will increase the likelihood of judicialisation and remedy outcomes.	**Judicialisations:** Confirmed. The changes in power dynamics and truth telling mechanisms open a window of opportunity for victims to ask for judicialisation and obtain remedy.
			Remedy: Rejected. The changes in power dynamics open spaces for judicialisation, but do not explain remedy outcomes.
The power of business	Importance to the economy	Businesses that are central to the national economy are less likely to be prosecuted for their alleged involvement in human rights violations; and if they are prosecuted, claimants are less likely to obtain remedy.	**Judicialisation:** Still under consideration to be further developed in subsequent chapters. A joint reading of the three tests that I used in this chapter suggest that in terms of judicialisation the veto power of companies is tied to their role in the global economy but more importantly to the size of the firm. However, the interpretation of the results was

			difficult.
			Remedy: Still under consideration to be further developed in subsequent chapters. The results from this section suggest that the importance of a firm is determined by its role in the global economy. In this way, domestic firms that operate in sectors with lower FDI intake and lower participation in exports are arguably less important to the economy and therefore more likely to be convicted (independently of their size).
		The veto power of economic actors will increase in times of transition because of the state's reliance in their investment for peace building	**Judicialisation and remedy:** Still under consideration to be further developed in *Chapters 6 and 7*. Not tested in this chapter.
	Nationality of the business	TNCs are less likely to be prosecuted and convicted because of their economic power.	**Remedy**: Confirmed. TNCs' veto power enables them to elude judicialisation and remedy outcomes.
	Brand	Companies that have a high visibility brand or name are more likely to be prosecuted for their alleged involvement in human rights violations, and if they are prosecuted, claimants are more likely to obtain remedy and accountability outcomes.	**Judicialisation and remedy**: Rejected. The data suggests that companies are targeted regardless of the visibility of the brand.

Source: The author

The next chapter will use the CATJ-Colombia to further test what happens to the power of people and the power of business when they face each other in a battle for accountability for corporate complicity, in the context of transition.

Chapter 6 - From conflict to peace: Business accountability in times of transition

Introduction

After testing the role of civil society networks and the veto power of firms to explain judicialisation and remedy for cases of business involvement in human rights violations in Colombia (*Chapter 5*), in this Chapter I focused solely on cases of business complicity with grave human rights violations committed by paramilitary groups in the course of the armed conflict in Colombia. This allowed me to continue to test the hypotheses outlined in *Chapter 2* about the power of people and the power of business, because in times of transition, like the ones that Colombia has been and is currently undergoing, two interesting things happen to the power of the actors involved in cases of business involvement in human rights violations: (i) new spaces of vindication will open up for victims when power structures change through demobilisation of armed actors and their withdrawal from their areas of influence, as well as with the implementation of transitional justice mechanisms like the victims' law (Law 1448) issued in 2011 (which include measures to repair victims of the conflict)[93] and (ii) the veto power of business is increased because of the state's reliance on their investment for peace building and development.

[93] See http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=43043

Using the CATJ-Colombia the ensuing discussion first uses descriptive statistics to explore patterns of judicialisation and remedy, as well as to highlight persistent obstacles to accountability efforts. Subsequently, this chapter tests models predicting the judicialisation of businesses. Strong evidence is provided in support of the presence of global pressures helping to increase the odds of business being prosecuted for their involvement in complicity with grave human rights violations, but the overall explanatory leverage of this factor is limited. However, there is evidence of the veto power of business remaining as a big obstacle because of the country's reliance on their support to rebuild.

I was unable to use inferential statistics techniques to analyse the possible relationships between remedy outcomes and the independent variables, because the regression line was not the best fit for the data. The cases with remedy in the CATJ-Colombia are so few that there is no variation in the values of the independent variables, which means that the variables explain perfectly the outcome variable. In this sense, I use the case study to further explore the relationship between remedy and the independent variables of interest.

As I discussed in *Chapter 2*, the question of business participation in gross human rights violations committed during the course of civil conflict by state or state-like actors (e.g. paramilitaries or rebel forces that control territory) has been the object of debate and scholarly literature. We find that there is a clear 'negative symbiosis' between the worst business-related human rights abuses and host countries (or state-like actors) in conflict zones (Ruggie 2013, 29; Tripathi 2010), where different armed actors fight over territory and resources, and there is little or no control by the state. And here there are interesting studies that look at economics and violent conflict, without using the human rights framework. These studies seek to use the presence of economic considerations and commercial agendas as an explanatory factor of conflict (Bannon and Collier 2003; Berdal and Malone 2000; Collier 1998).

Colombia in the past decade has undergone two major stages of transition. As I have explained before, starting in 2003 the AUC paramilitary forces demobilized and with this demobilisation came (at least) a partial change in the social and political order (i.e. a transition). However, because the other armed actors in the conflict (left-wing guerrilla groups) did not demobilize, this stage can at best be called a fragmentary transition. In this sense, in Colombia starting in 2003 we have had transitional justice mechanisms without a transition (understood as a radical change in the political and social order) because the armed conflict has been ongoing (Uprimny 2006). From 2012 the FARC guerrilla group started a peace process that ended in November 2016 with the demobilisation of the largest guerrilla group involved in the conflict. This produced a second stage of transition where mechanisms will be implemented to deal with past atrocities.

In times of transition, holding companies to account for their involvement in gross human rights violations is particularly challenging (Carranza 2008). In this sense, the veto power of businesses acquires a particular resonance in these times of transition, i.e. in the context of transition companies operating in sectors that are important to the national economy will be less likely to be prosecuted or convicted. So far in this thesis I found that companies operating in sectors with large FDI intake have a strong veto power that can even trump the power of a dense transnational activism network. However, this chapter will also test whether in a context of transition (looking only at cases related to violence in the course of the conflict) other sectors' veto power is altered.

The literature on political opportunities and the emergent literature on corporate complicity with human rights violations allow me to present times of transition as a two way highway: on the one hand, because the armed actors are demobilized, power dynamics in the regions change and open spaces for victims to bring their claims. The truth telling exercises that come with transitional processes also present an opportunity to collect information about the role of the private sector in the abuses (Bernal Bermudez and Marín López n.d.; Payne 2017). From the quantitative inferential analysis of the CHRD-Colombia I found that the peace process with the paramilitary groups was positively associated with judicialisation. The results suggest that these processes of transition (although marginally significant) are linked with an increase of 2.3% in the odds of a case going from not being prosecuted to being prosecuted. Although the analysis suggested that there is no relationship to remedy outcomes, descriptive statistics of the CATJ show that Colombia is a leader in the region in terms of convictions of business for their role in past atrocities. I was able to explore one of these cases in depth in *Chapter 7*, where I looked at the factors explaining the conviction of over 10 businessmen of the palm oil sector in 2014. Of the 16 convictions recorded in the CATJ-Colombia, 13 are in Latin America and 9 of them are in Colombia.

On the other hand, as I said before, in times of transition, the state is particularly bound by its reliance on business to rebuild. This thesis will use the CATJ-Colombia to test whether the increased power of victims to present their claims (because of the changes in power dynamics) is able to trump the increased power of business in these situations. Or, if on the contrary, victims have an increased power to bring claims forward but not against all types of companies.

The ordinary criminal jurisdiction has already begun to investigate the role of businesses in the conflict. In recent cases, like Urapalma S.A. and the *Federación Nacional de Ganaderos* (National Federation of Cattle Ranchers), businessmen have been convicted on the basis of evidence that emerged from this truth-telling process. The analysis of the CATJ-Colombia from this chapter will look at the "success" stories where convictions were possible, showing the opportunities and persistent obstacles that civil society will face to hold businesses to account.

In this chapter I used descriptive and inferential statistics to explore cases of business complicity with grave human rights violations committed by the AUC paramilitary groups during the armed conflict, focusing particularly on the questions: what factors explain judicialisation and convictions of economic agents involved in business complicity. This chapter weaves into the current affairs in Colombia where a peace agreement was signed with the FARC in November 2016 and there are two transitional justice mechanisms that will look into third party involvement in the conflict: a truth commission and the special jurisdiction for peace (JEP). This chapter seeks to show patterns in the truth telling process so far and how these possibly respond to the company level and civil society level factors that I looked at in *Chapter 2* of this thesis.

From conflict to peace: the role of economic actors in past atrocities in Colombia

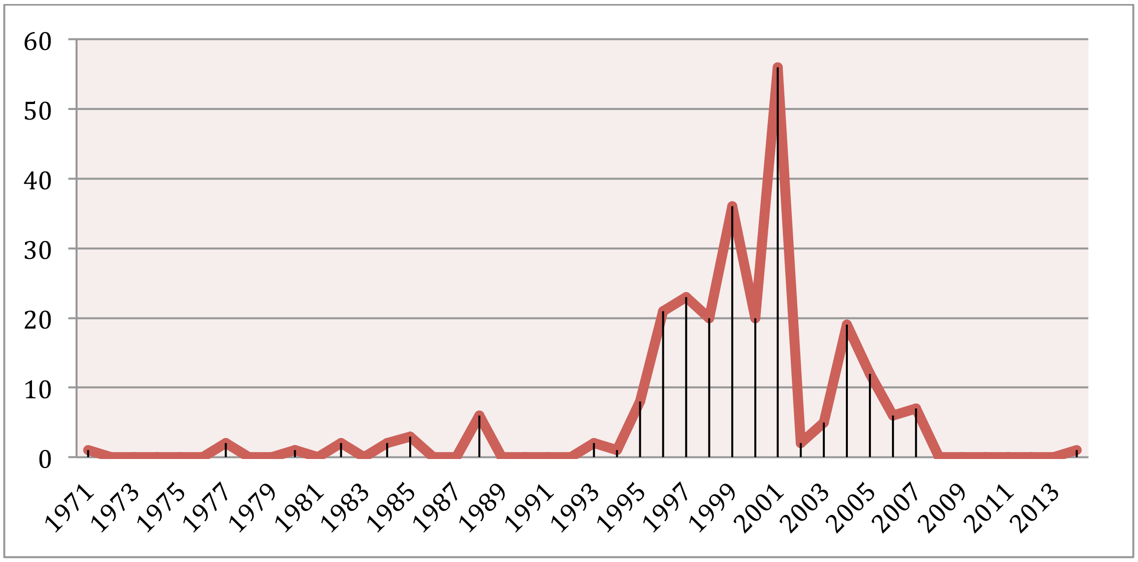
As *Chapter 4* suggests, there is an economic dimension to the armed conflict beyond illegal drugs that is only recently being discovered through the confessions of the leaders of the AUC paramilitaries[94]. From the truth-telling process with the demobilised paramilitary groups, there is evidence to suggest that around 15,700 orders for further investigation into business involvement with atrocities were issued in the course of the justice and peace process (Bernal 2017). Although most of these cases have not gone beyond the stage of preliminary investigation[95] (Verdadabierta.com 2015), recent declarations from the Attorney General suggest an increase in the number of criminal investigations against businessmen that will reach the trial stage. The Prosecutor declared that financing paramilitary forces will be considered a crime against humanity (not subjected to statute of limitations) and announced that investigations were underway regarding businessmen who financed the *Bloque Bananero* that operated in the Northern part of the country (Redacción Judicial 2017).

[94] See Interview of Magistrate Uldi Teresa Jiménez, Tribunal de Justicia y Paz de Bogotá D.C., 25 May 2017, Bogotá.
[95] The two emblematic cases that have reached the trial stage are the palm oil companies case (analysed in this thesis in *Chapter 5*) and the case of the Fondo Ganadero de Córdoba See: http://www.verdadabierta.com/tierras/despojo-de-tierras/5242-directivos-del-fondo-ganadero-de-cordoba-a-responder-por-despojo-de-tierras

This section of the chapter will use descriptive statistics to show what we know so far about the phenomenon of complicity with paramilitary groups, based on the judicial truth that has been recorded in the rulings from *Justicia y Paz*. Firstly, the data in the CATJ-Colombia tends to confirm what has been suggested so far in the literature: that economic elites (economic actors) are found at the very origins of the paramilitary enterprise in the 1980s in *Puerto Boyacá*, when Henry de Jesús Pérez (a landowner of the region) met with the political and economic elite of *Puerto Boyacá* to form the first anti-subversive group in the country, which would later inspire the second wave of paramilitary groups created in the 1990s (later known as the AUC) (Ronderos 2014). The economic elite has participated in the violence either as military leaders of the different factions, or through explicit alliances with these groups. In 3 per cent (12) of the cases recorded in the CATJ-Colombia, the paramilitaries recounted how the economic actors were involved in financing the creation of a faction in a given region.

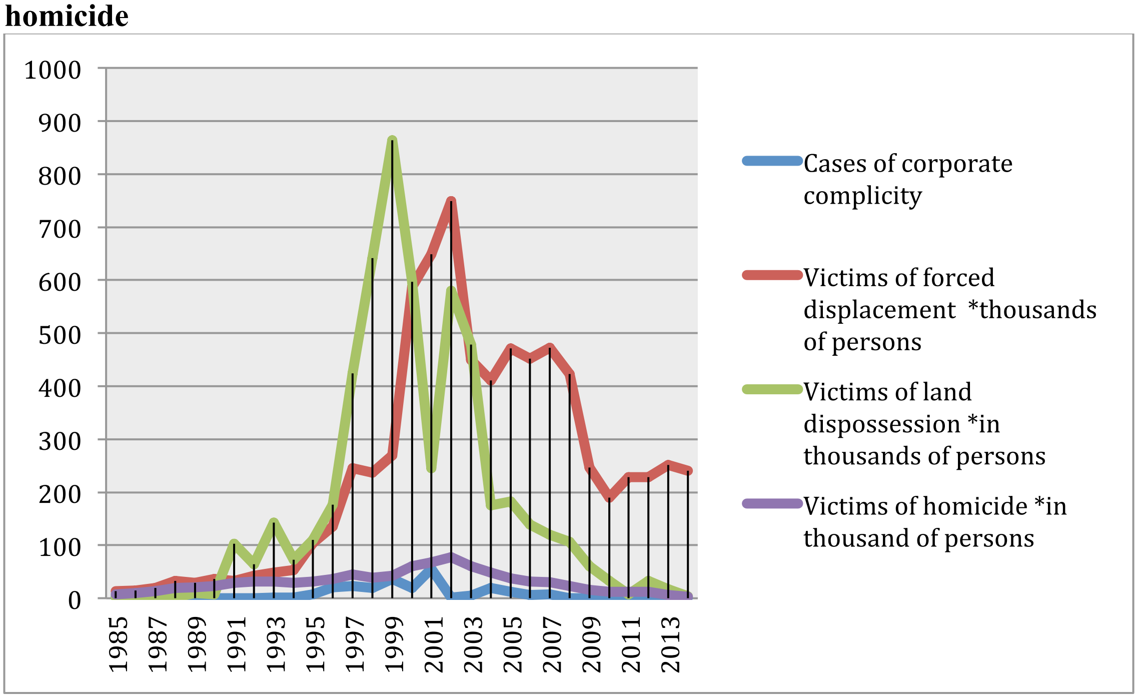
The two peaks in Figure 6.1, the first one in the 1980s and the next one (more pronounced) in the 1990s are a reflection of the story of emergence and strengthening of paramilitary groups, in line with what has been argued by scholars and outlined in *Chapter 4* of this thesis. Also, Figure 6.2 suggests that the times when there was an increased number of cases of corporate complicity coincides with times where the violence by paramilitary groups was stronger (Bernal Bermudez and Marín López n.d.).

Figure 6.1 Distribution in time of cases of business complicity in Colombia (1971-2013)



Source: Bernal Bermudez and Marín López n.d.

Figure 6.2 Distribution of corporate complicity cases in time and intensity of the conflict in number of victims of forced displacement, land dispossession and homicide



Source: Bernal Bermudez and Marín López n.d.

The CATJ-Colombia tends to show that in Colombia cases of business complicity with paramilitary groups have mainly involved individuals and not firms (72 per cent). And apparently, a large proportion of the companies that were involved are not TNCs benefiting from the conflict (despite the focus of academic studies in TNCs) and escaping judicialisation because of limits of jurisdiction, but rather small and medium sized domestic companies (25 per cent). Only 2 per cent of the cases mentioned in the rulings involve TNCs (or subsidiaries of TNCs)[96] (See Figure 6.3).

However, this statistic does not mean that there was a low proportion of TNC involvement in the atrocities that resulted from the conflict, because there is a selection bias resulting from the fact that the Court is less likely to find additional evidence of the parent company's complicity, considering that not even the paramilitaries are in a position to support their claims (e.g. with financial reports) having only dealt with directly with the local actor or agent[97]. What this statistic does show is that there is a whole set of actors that have so far been underrepresented in the archives of the BHRRC and in the claims and reports from INGOs that have given more resonance to TNCs and to the role of firms. This dataset broadens the picture of complicity to include domestic companies and individuals into the analysis of judicialisation and remedy outcomes.

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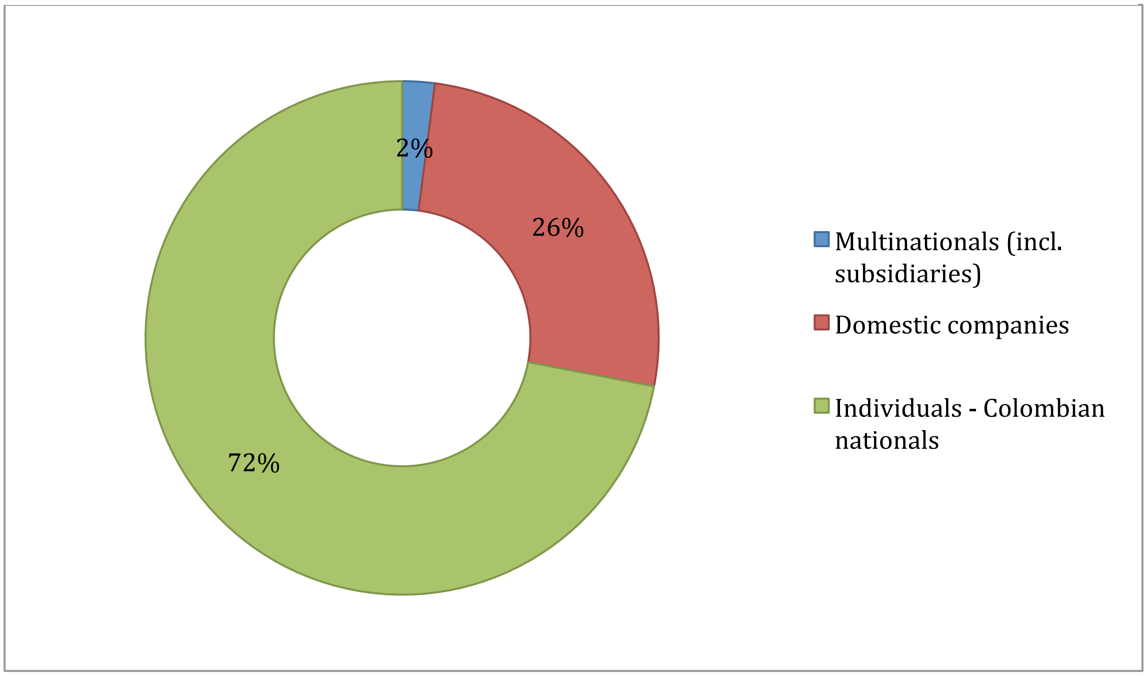
[96] Banco Ganadero; Bavaria; C.I Banadex S.A.; C.I. Tecnicas Baltime de Colombia S.A.; CONSERVA S.A.; Chiquita Brands International Inc.; Coca Cola; Del Monte; Procesadora de Leche S.A. – Proleche.

[97] Interview Juan David Velasco, Clerk from the office of Magistrate Eduardo Castellanos, Tribunal de Justicia y Paz de Bogotá, 25 May 2017.

Figure 6.3 Nationality of economic actors - CATJ-Colombia



Source: CATJ, 2017

Now, regarding the sectors of the economy where these economic actors involved in the violence operated, this new domestic dimension of the phenomenon coincides with the patterns registered in the CHRD-Colombia, which show the agriculture and natural resources sectors as having the largest number of cases. However, in the CHRD-Colombia the proportion of cases in the oil, gas, coal and mining sector is much larger (90 cases in the CHRD-Colombia (47% of the sample), and only 24 in the CATJ-Colombia (5% of the sample)). The explanation for this difference is two-fold: firstly, there is data omission for this sector. The Prosecutors' have not enquired particularly into this sector during the confessions, and the paramilitaries have focused on the agriculture sector. However, there are recent efforts by the *Tribunal de Justicia y Paz de Bogotá* to fill the gaps, systematically asking the defendants about the different sectors of the economy, particularly the extractives sector[98]. Secondly, a high proportion of the companies operating in this sector are TNCs, and these companies are more likely to be excluded from the rulings (even if they are mentioned by the defendants in their confessions), because the Court will most likely not find any information to triangulate and gain the extra level of certainty that they need to include the name of a TNC in the ruling.

In this sense, we cannot conclude from the data that economic actors operating in the natural resources sector were less involved in corporate complicity than those operating in the agriculture sector. However, what we can say is that natural resources and agriculture are portrayed both by victims and fellow perpetrators as the sectors with more cases of business involvement with human rights violations.

Given the emphasis of the defendants in the agriculture sector, the data of the CATJ-Colombia does appear to be representative in terms of the subsectors that were specially involved in the violence. Like the media has amply reported[99], the CATJ-Colombia does seem to indicate that cattle ranchers and banana growers are the sectors with a more pronounced involvement in complicity cases with the paramilitary forces, followed closely by palm oil growers (See Figure 6.4). This coincides with the fact that the data that we have so far has focused on the phenomenon in the northern part of the country where these two economic activities and the paramilitary violence has concentrated (See

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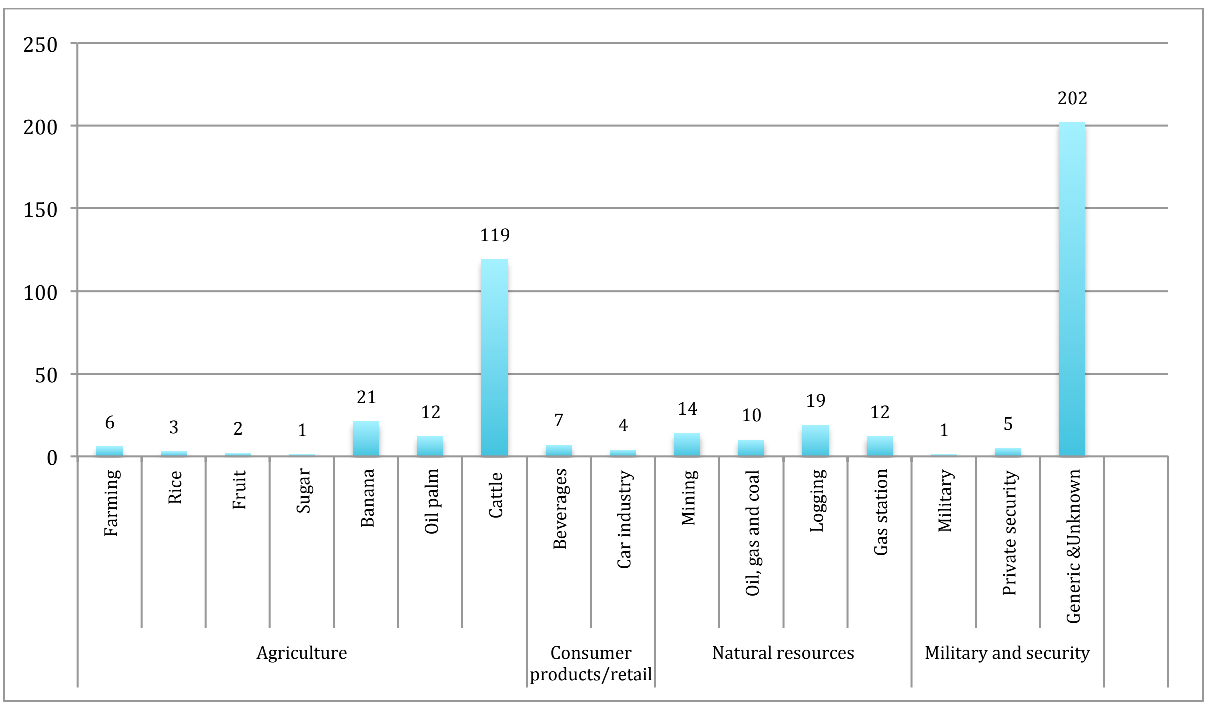
[98] Interview with Magistrate Uldi Teresa Jiménez, Tribunal de Justicia y Paz de Bogotá D.C., 25 May 2017, Bogotá.
[99] See (Bluradio 2017; Martínez Hernández and Laverde Palma 2017)

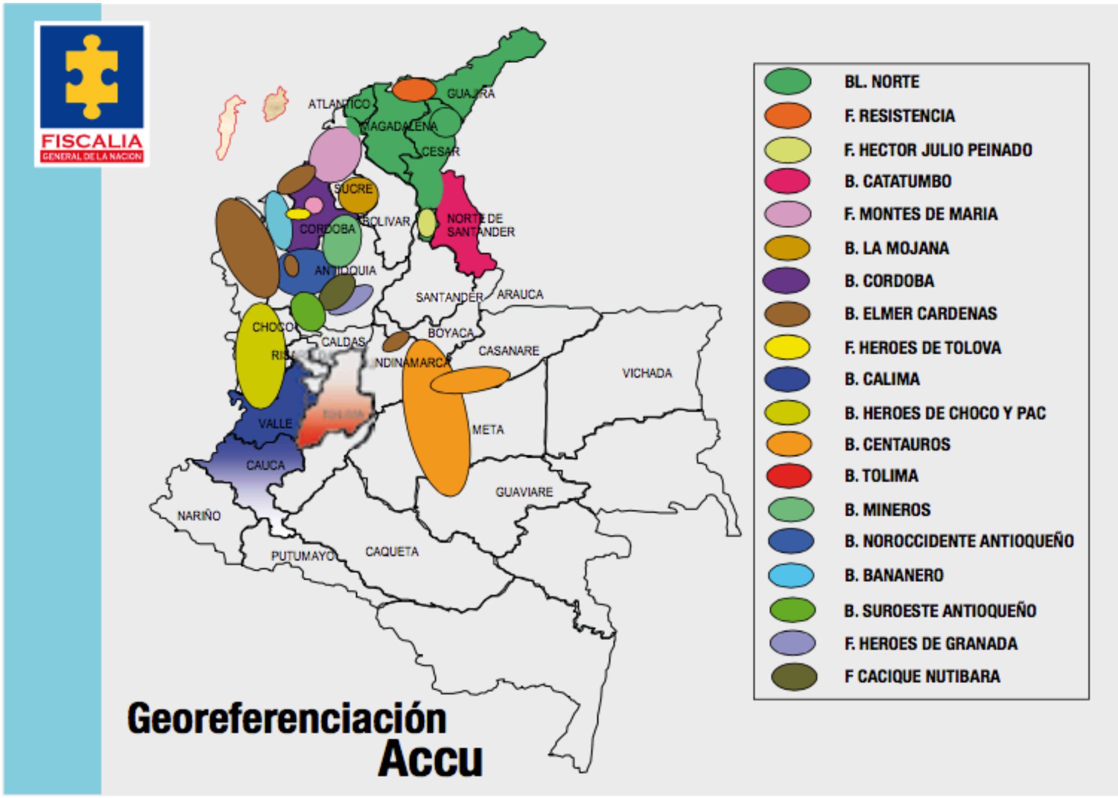
Figure 6.5). Another important point to understand the concentration of cases in the cattle sector is the historic support of self-defence groups by the *Federación Nacional de Ganaderos.* Immediately before the creation of the *Convivir* (in 1994), the Federation had advocated before the government and Congress the creation of civil-military self-defence groups trained and supervised by the military. They praised the role that illegal self-defence groups had had in the fight against guerrilla groups (that had been targeting cattle ranchers to finance their strategy to military expansion in the 1990s) and were looking to legalise them (Gutiérrez 2014, 370–73).

Figure 6.4 Distribution of cases per sector and subsector of the economy



Source: CATJ, 2016

Figure 6.5 Presence of the AUC paramilitary groups in the territory

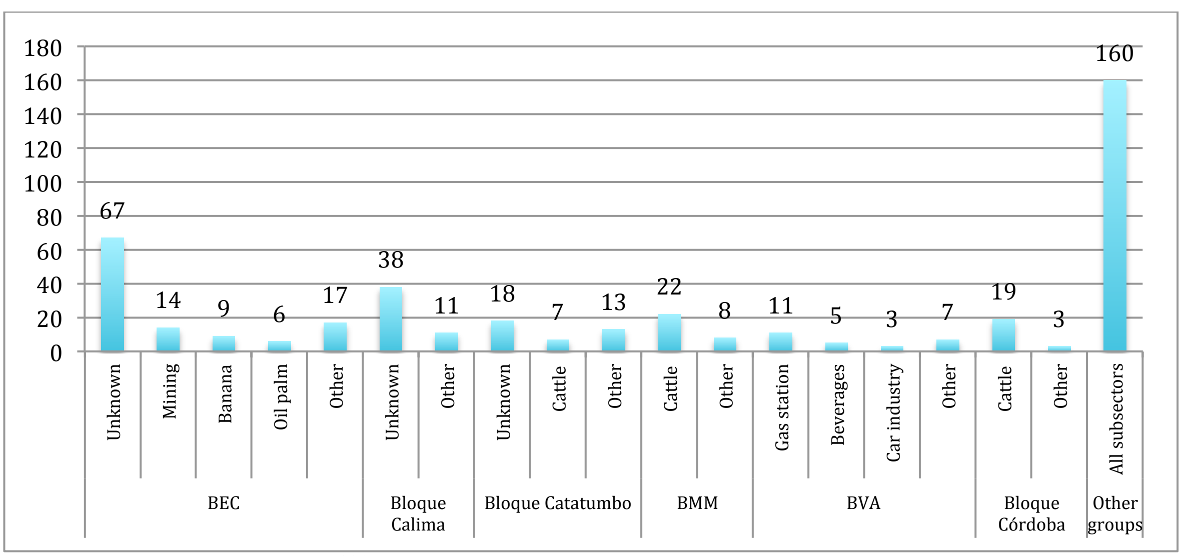


Source: Centro Nacional de Memoria Histórica and Organización Mundial para las Migraciones 2012, 26

From what we know so far from the justice and peace process certain blocks of the AUC paramilitary groups have been more engaged with economic elites in their operations. And there seems to be a tendency to focus on certain subsectors of the economy. The *Bloque Elmer Cárdenas* (BEC), operating in the region of Urabá, is by far the group with the largest involvement in business complicity cases (113 cases – 26 per cent of cases in the CATJ-Colombia). This block is involved in: all cases involving economic actors operating in the mining sector (14); three quarters of the cases relating to the palm oil sector (9), and a third of the cases of banana plantations (9). Some blocks focused in the cattle subsector (e.g. *Bloque Catatumbo* and *Bloque Montes de María*), while others focused on retail (e.g. *Bloque Vencedores de Arauca*) (See Figure 6.6). Following what

Gutiérrez Sanin has suggested, this could be explained given the leadership of each of these blocks acting in accordance to their background (Gutiérrez Sanín and Vargas Reina 2016). For example, the blocks that were led by cattle ranchers were more likely to reach out to other businessmen of that subsector of the economy. This was the case of the *Bloque Catatumbo* (led by cattle rancher Salvatore Mancuso): 18 per cent of the cases attributed to this faction of the AUC involve cattle ranchers; or the even more evident case of the *Bloque Montes de María* led by Edwar Cobos Tellez (alias "Diego Vecino") who was a cattle rancher (and came from a family of cattle ranchers. His father was a member of the Board of the Fund of Cattle Ranchers of Santander in the 1990s) (Verdadabierta.com 2010). 73 per cent (22) of the cases of complicity attributed to this block involved cattle ranchers.

Figure 6.6 Distribution of cases by block of the AUC that the defendant belonged to and the subsector of the economy where the business operated



Source: CATJ-Colombia, 2016[100]

[100] BEC: Bloque Elmer Cárdenas; BMM: Bloque Montes de María; BVA: Bloque Vencedores de Arauca

Now, because the CATJ-Colombia records the paramilitaries' perspective of the phenomenon, the way that they lived and understood their relationships with economic actors, they have referred to individual cases that global civil society has seemingly neglected to give visibility. As I have suggested in this thesis, global civil society's perspective (reflected in the CHRD-Colombia) seems to revolve around firms and more importantly TNCs[101]. This explains why in the CATJ-Colombia the presence of dense activism networks with participation of global actors is so scarce: Only in 2 per cent of the cases (9) dense networks were present; and these 9 cases can in turn be grouped in three larger cases: the palm oil companies (6), the Chiquita Brands case (2) and a case involving Ecopetrol (1)[102].

Although no TANs have formed around cases involving individual businessmen(women) or business associations, this does not mean that civil society has neglected these types of cases. What I have found is that in these cases civil society's reports and efforts have focused on denouncing the subsector of the economy without backing specific processes of judicialisation or convictions. For example, in 35 per cent of the cases (109) where the CATJ-Colombia refers to an individual businessman this person is named as a cattle rancher. And there are several reports from the media and NGOs referring to the links between cattle ranchers and the paramilitary groups (e.g. Posada n.d.), but no evidence of

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[101] This assumption has been confirmed by Kathryn Babineau's work in Peru, where she found that the CHRD had underreported cases of domestic companies involved in human rights violations (Babineau 2015).

[102] 67 per cent of these cases (6) are the palm oil companies in Chocó studied in *Chapter 7* of this thesis; 22 per cent (2) are the companies involved in the Chiquita Brands case (i.e. Chiquita Brands and C.I. Banadex S.A.) 11 per cent (1) is a case involving Ecopetrol.

NGOs and INGOs backing the judicialisation and conviction of individual cattle ranchers.

Although nearly half of the cases that were prosecuted involved individual businessmen (11 out of 25), none of them have ended with convictions. Because none of these cases had the backing of TANs[103], this suggests that dense TANs are not necessary for a case to be prosecuted. In fact, the presence of global actors and more than three nodes in the network seems to be indifferent to explain cases that are prosecuted. In nearly 50 per cent of the cases where the economic actor was prosecuted (13) there was no pressure from a dense TAN (in terms of number of nodes); and in 70 per cent of the cases with judicialisation (18) there was no global actor involved in the case. These relationships were statistically significant[104]. However, dense networks were present in 75 per cent of cases with remedy outcomes, and global actors were present in all cases where remedy was possible, which suggest that they are necessary to obtain convictions. These relationships were statistically significant[105]. One possible explanation for the salient role of global actors to obtain convictions is that these actors level the playing field by exerting pressure directly on the state, just like the veto power of companies also reaches the highest state entities.

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[103] There is no evidence of civil society organisations backing these cases. The Prosecutor *ex officio* led the judicialisation.

[104] TAN: $X2(1, N=439) = 88.8982, p<0.000$; GLOBPRESSURES: $X2(1, N=439) = 138.6729, p<0.000$

[105] TAN: $X2(1, N=439) = 215.9457, p<0.000$; GLOBPRESSURES: $X2(1, N=439) = 202.2743, p<0.000$

The data collected in the CATJ-Colombia suggests that the little presence of TANs and global actors in the cases recorded in the dataset has tended to focus on certain types of abuses and certain sectors of the economy. We know that in Colombia, in 60 per cent of the cases where TANs are present (6), the case refers to theft of property and forced displacement in the course of the armed conflict[106]. Global actors have tended to focus on cases of financing paramilitary groups and theft of property and forced displacement[107].

Regarding the type of abuse, I cannot test for this in the CATJ-Colombia because all the violations included in this dataset are physical violence abuses (Kidnapping, Disappearance, Arbitrary detention, Extrajudicial killing, Murder, Torture, Financing repression/conflict, Clandestine torture centres, Slave labour, Theft of property/Forced displacement, Provided logistical support to paramilitary groups, Creating paramilitary groups).

Lastly, regarding the distribution of cases in the territory, the following map shows how pervasive the phenomenon was. However, there is a concentration of the abuses in the northern part of the country that suggests the need to enquire further about what happened with economic actors operating in the southern departments of Vichada, Meta, Caquetá, Putumayo, Guaviare, Vaupés and Amazonas (Figure 6.7): either they were not as involved in complicity with violence committed by armed actors, or cases of complicity will start to be revealed in the truth telling mechanisms that came out of the peace process with the FARC.

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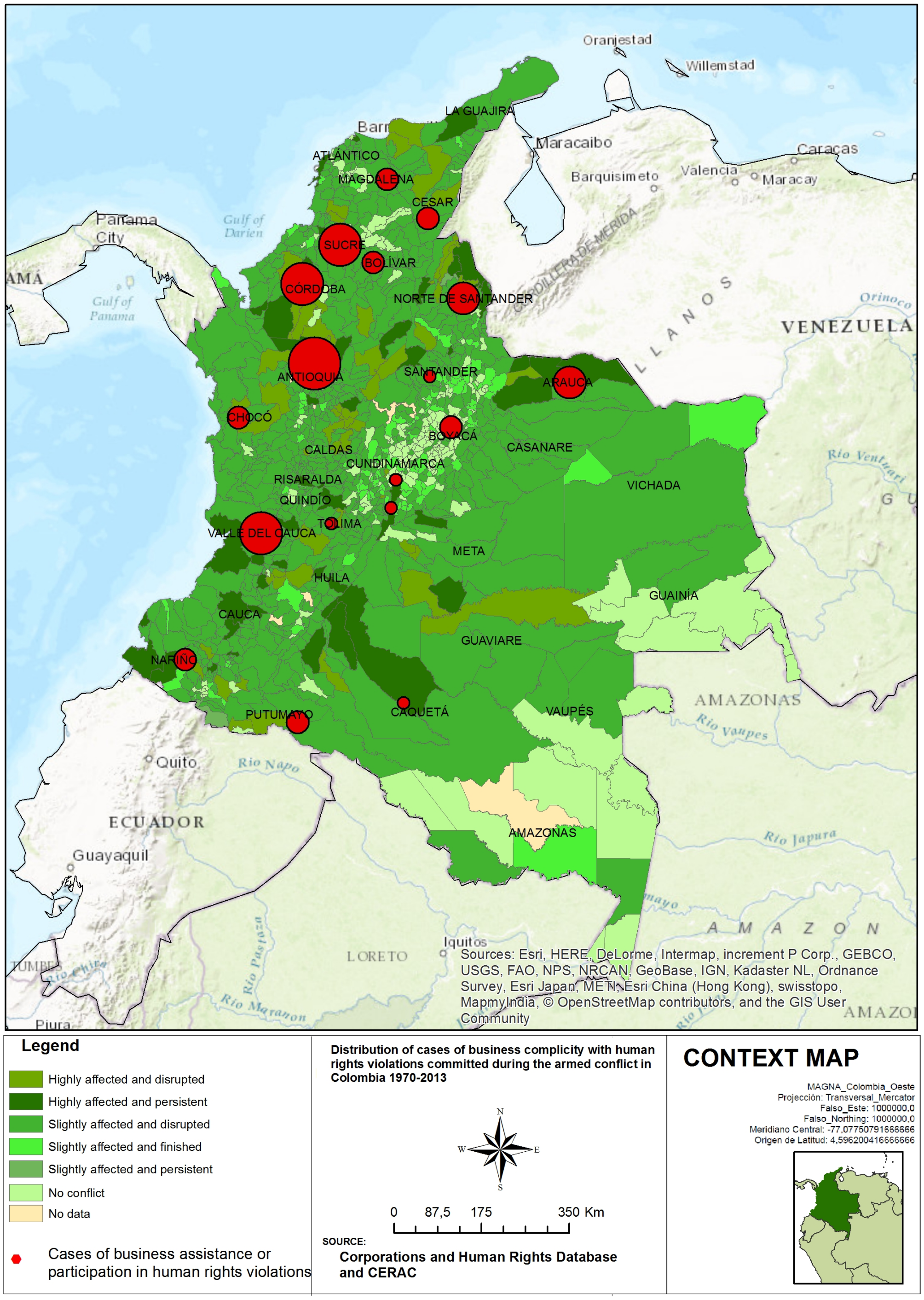
[106] $X13(1, N=439) = 36.7121, p<0.000$

[107] From the 17 cases where global actors were present, 9 of them referred to financing violence, while 6 referred to theft of property/forced displacement. $X13(2, N=439) = 15.2476, p<0.01$

Figure 6.7 Distribution in the territory of cases recorded in the CATJ-Colombia



Source: The author, CHRD and CERAC

Logistic regressions: The power of people and the power of economic actors

In this chapter I ran the logistic regressions using similar models to the ones used in *Chapter 5* to look for relationships between the independent variables and judicialisation, using the CATJ-Colombia data. One of the variables in the model (Brand) does not represent the line of best fit of the regression because there is 100 per cent correlation between that variable and the judicialisation outcome variable. This is why I excluded the Brand dummy variable from the models. Also, I could not include the TANs and Global pressures variables in the same model because they were too highly correlated. This is why I focused on Global pressures, considering the results from *Chapter 5*, which suggested that the presence of global actors have an effect (even if marginal) on judicialisation. Finally, as I stated in the introduction to this chapter, I will not be able to test the relationship between the independent variables and remedy outcomes using the CATJ-Colombia.

The results from the statistical analysis in *Chapter 6* tended to support the claim that in countries with internal armed conflicts, demobilisation and truth telling mechanisms do offer an important opportunity for victims to come forward and seek remedy. But they need global actors and international opportunities to pressure the state to act. However, the inferential statistics below also tend to support the claim that countries like Colombia that are facing a period of transition and rely more on business for building[108] will be more likely to leave out of the accountability efforts TNCs and companies that are important to the Colombian economy in terms of contribution to FDI or GDP.

[108] This was made clear when in April 2015 the Peace Commissioner (Sergio Jaramillo) met with a group of businessmen to ask for their support with peace building.

In order to determine what factors influenced the distribution of cases where there was judicialisation, I conducted the following analysis using logit modelling testing of the 439 cases recorded in the CATJ-Colombia.

Just like what *Chapter 5*, the models in this chapter represent probability outcomes derived from a logistic regression utilising odds rations, and are designed to measure the probability of judicialisation (ranging from 0=no judicialisation to 1=judicialisation) for a given case of business complicity in the database. These outcomes are contingent upon the presence or absence of some of the explanatory factors that I will explore in this section, all of which are binary (0=factor is not present, 1=factor is present), except for the control variable GDP which is a continuous variable[109]. Natural resources is a dummy variable (0=All other sectors, 1=Natural resources) that represents all cases where the company operates in this sector as opposed to any other sector of the economy. Agriculture is a dummy variable (0=All other sectors, 1=Agriculture) that represents all cases where the company operates in this sector as opposed to any other sector of the economy. TANS represents the mobilisation of the affected community or group and their capacity to access dense transnational activist networks (in terms of number of nodes) to support their claims (0=Less dense TANs, 1=Denser TANs). Global pressures represents the proactive involvement of global actors in the case, including foreign states or any of the following international organisations: Inter-American Commission of

[109] I employed the variance inflation factor (VIF), which allows me to detect (multi)collinearity between explanatory variables, by showing how much the variance of the coefficient estimate is being inflated by multicollinearity. I used the common rule of thumb in econometrics that a VIFi>10 indicates harmful multicollinearity. For my explanatory variables, the mean VIF is 1.19, which suggests that there is no (multi)collinearity and they can all be included in the model.

Human Rights, Inter-American Court of Human Rights, UN bodies, International Labour Organization, Organisation for Economic Co-operation and Development. Cases received a 1 (=factor present) when any of these entities played a role in reporting or as other groups involved in the case. TNC is a dichotomous variable that represents the nationality of the economic actor. If the economic actor is a firm registered abroad (i.e. in a country different from Colombia) or registered in Colombia but operating abroad the case will receive a 1 (=factor present).

The models for the data are as follows.

$$\text{logit}\,[P(\text{judaction} = 1)] = \alpha + \beta 1\text{globalpressures} + \beta 2\text{agriculture} + \beta 3\text{naturalresources} + \beta 4\text{nationality} + \varepsilon$$

$$\text{logit}\,[P(\text{judaction} = 1)] = \alpha + \beta 1\text{globalpressuresXagriculture} + \beta 2\text{naturalresources} + \beta 3\text{nationality} + \varepsilon$$

As the regression findings in Table 6.1 demonstrates, all the independent variables are associated with judicialisation of economic actors involved in cases of business complicity with the conflict, and for most of the variables the results are of a moderate magnitude, except for the presence of global actors. Contrary to what I found in the CHRD-Colombia data, for cases of complicity recorded by the Justice and Peace tribunals in their rulings, the presence of global actors is positively associated with judicialisation and is linked to a considerable increase in the odds of a case being prosecuted. The data suggests that without the presence of pressure from global actors a case of complicity with paramilitary forces will hardly reach this stage (Table 6.3). These results confirm what has been suggested by the literature in terms of TANs, and particularly dense TANs involving global actors, being necessary to bypass the obstacles that obstruct accountability efforts at the local level (Keck and Sikkink 1998). The difference between the CHRD-Colombia data and the CATJ-Colombia data could be explained by the difference in notoriety of the cases that each one of these datasets record. Because of the source of the CHRD-Colombia, the cases analysed only include cases that have had the magnitude to be captured by the media and local NGOs and then by the BHRRC. While the cases in the CATJ-Colombia lack this notoriety and therefore the impact of TANs to bring these cases to the public light is greater.

Regarding the company level variables, the data suggests that they are all negatively associated with judicialisation. Considering the nationality of the business, the odds of a case being prosecuted will increase by over 90 per cent if it involves a domestic company or a national individual (Table 6.3). Also the odds will increase by a little over 80 per cent when the actor operates in a sector different from the agriculture sector. Although these statistics tend to confirm the hypotheses in the literature about the veto power of businesses being increased in times of transition because of the country's reliance in the business sector for peace-building, there is some evidence to suggest that the pressure from global actors can overcome the powerful force of business. When I interacted the global actors variable with the agriculture variable (Table 6.2), to look at the odds of prosecuting cases where global actors are involved in accountability efforts involving businesses operating in the agriculture sector (which contributes 12 points to the GDP), the association (which was negative with agriculture and positive for global actors) is positive, showing a significant increase in the odds of a case being prosecuted.

The odds associated with operating in the natural resources sector are not significant in the models.

Table 6.1 Odds Ratio Logit Findings CATJ-Colombia - Model 1

VARIABLES	(1) Logit coeff	(2) Odds ratio
judaction_new		
globpressures	6.018***	410.9***
	(1.019)	(418.7)
agriculture	-1.354*	0.258*
	(0.788)	(0.203)
naturalresources	-0.508	0.602
	(0.951)	(0.572)
tnc	-2.720**	0.0659**
	(1.384)	(0.0912)
Constant	-3.055***	0.0471***
	(0.324)	(0.0153)
Observations	439	439

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1[110]

[110] I used the Pseudo R-squared value to measure the goodness of fit of the model to the data. The regression model explains 35% of the variance, which means that the model is a strong fit for the data.

Table 6.2 Odds Ratio Logit Findings CATJ-Colombia - Model 2

VARIABLES	(1) Logit coeff	(2) Odds ratio
Judicialisation		
Nationality	-3.410**	0.0330**
	(1.555)	(0.0514)
Sector: natural resources	0.0586	1.060
	(0.794)	(0.841)
Sector: agriculture	-1.970*	0.139*
	(1.054)	(0.147)
Global actors	2.996*	20.00*
	(1.589)	(31.78)
Agriculture X global actors	4.336**	76.37**
	(2.152)	(164.3)
Constant	-3.054***	0.0472***
	(0.324)	(0.0153)
Observations	439	439

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 6.3 Percentage change in the odds of judicialisation per variable (not including interaction terms)

Variable	Percentage change
Global pressures	+100
Agriculture	-83
Natural resources	-57
Nationality	-94

Predicted probabilities

Based on the regression findings, I used prediction models to provide the odds of judicialisation for the types of cases created with the combination of some of the explanatory variables (Long 1997:64–69; Long and Freese 2006:162–64). The probabilities of judicialisation in the sample go from 0.0003 to 0.94, with a mean predicted probability of judicialisation of 0.054. Once again the data suggests the salient role of global actors and the pressures that they exert on the state to increase the probabilities of judicialisation of economic actors. It also shows the impact that the participation in the GDP has in the veto power of companies. This suggests that the powerful force of business during times of transition is not based on its role in FDI intake but more generally on their capacity to boost the national economy through their participation in the GDP. This could respond to the fact that the state will rely more heavily on the involvement of national firms in peace building and not on TNCs.

Preliminary analysis suggested that there is little to be learned about the effect on judicialisation of an economic actor operating in the natural resources sector, because the range of probabilities for that variable is small. This is why I focused on finding the effect of global pressures, nationality of the business and operating in the agriculture sector on judicialisation. The strong nonlinear effect of global actors is evident, considering that going from not having global actors involved in a case to having them involved means an increase in the predicted probabilities of judicialisation by .90 from 0.04 when global actors are not present to 0.94 when they are[111].

On the other hand, the following table shows how operating in the agriculture sector and the nationality of the economic actor also have strong nonlinear effects on judicialisation. Firstly, the predicted probabilities in Table 6.4 suggest that in times of transition it is true that the odds of prosecuting economic actors that are important to the economy (in terms of their contribution to the GDP and therefore to peace building) are less than if the economic actor contributes less to GDP. This is evident looking at the difference in the odds of judicialisation when the economic actor operates in the agriculture and in other sectors of the economy. Given the fact that the agriculture sector is the largest contributor to the GDP explains the increased odds of judicialisation if a business is operating in other sectors of the economy.

Secondly, there is an evident nonlinear effect of the nationality of the business (i.e. if the economic actor is registered abroad or in Colombia) on judicialisation. The odds of judicialisation are nearly four times larger when the economic actor is a domestic company or an individual national of Colombia. This confirms the state's reliance on foreign investment to rebuild in periods of transition. Table 6.4 shows the variation in the odds of judicialisation for cases where global actors are involved but there are changes in the company level variables.

[111] We are 95% confident that the increase in the predicted probability of a case being prosecuted associated to global actors being part of the TAN supporting the claim is between 0.69 and 1.10.

Table 6.4 Probability of judicialisation by presence of global actors, nationality of the business and sector where the business operates

	TNC		Domestic company	
	Agriculture	Other sectors	Agriculture	Other sectors
No global actors	0.04	0.01	0.002	0.0008
Global actors	0.94	0.82	0.54	0.23

*** p<0.01, ** p<0.05, * p<0.1

Conclusions

Not all explanatory variables work in concert to produce the judicialisation of economic actors for their involvement in grave human rights violations committed by the paramilitary groups in the course of the Colombian internal armed conflict. The presence of global actors is by far the most important explanatory factor. However, the data does suggest that the veto power of economic actors remains when countries are in contexts of transition, because they rely on their investment for peace building and to push for development.

The CATJ-Colombia data suggests that in times of transition the veto power of companies to evade judicialisation is not defined by their operation in sectors with large FDI intake, but is linked to their contribution to the GDP. In my analysis of the CHRD-Colombia the odds ratios associated with the sector where the company operates were not significant in the model. However, the analysis of the CATJ-Colombia data does suggest that economic actors are more likely to evade judicialisation if they are large contributors to the economy and therefore to peace building efforts.

To sum up, when the sample refers to economic actors (and not only firms) explicitly accused of complicity with violations of physical integrity rights committed by armed actors in the course of an armed conflict, the strength of claimants to push for judicialisations will come from securing global partners who pressure the state to act. This can be explained by the increased sensibility of states undergoing transition to the international surveillance from other states, inter-governmental organisations and international and regional courts like the International Criminal Court and the Inter-American Court of Human Rights. However, any efforts from these strong claimants will be trumped by the type of economic actor that they are facing (Quadrants I, II and III of Table 2.1), as judicialisation will only occur if global forces are facing an economic actor with a weakened veto power (Quadrant IV of Table 2.1), which occurs when the defendant has a relatively small contribution to the national economy (i.e. GDP), independently of its contribution to FDI.

Because of limitations of the data I was unable to test for relationships between the explanatory variables and remedy outcomes. However, the case study in the next chapter (*Chapter 7*) allowed me to further explore these relationships and the mechanisms behind the conviction of economic actors for their involvement in grave human rights violations committed by the paramilitary groups in the Colombian armed conflict. The next chapter includes the case study of the conviction of owners and employees of nine palm oil companies for their involvement in the forced displacement of the Afro Colombian communities of Curvaradó and Jiguamiandó in the department of Chocó. This case allowed me to identify strategies of civil society to increase their power in accountability processes; as well as the strategies of the economic actors to use their veto power to trump these processes. It also presents some explanations of the factors that explain the loss of power of the businesses involved that eventually led to their convictions for forced displacement and links with paramilitary groups.

The following table builds on the findings from *Chapter 5* (See Table 5.9) and summarizes the findings of this chapter for each variable and in terms of the two dimensions that make up the agency-centred approach that I am arguing for:

Table 6.5 Summary of findings CHRD-Colombia and CATJ-Colombia

			CHRD-Colombia	**CATJ-Colombia**
The power of people	TANs	Cases where claimants are able to tap into TANs to pressure the state are more likely to end in judicialisation and remedy	**Judicialisation and remedy**: Still under consideration to be further developed in *Chapters 6 and 7*. Not tested in this chapter	**Judicialisation:** Confirmed. Access to TANs increases the odds of judicialisation.
		Denser TANs will be more successful in pressuring the state to pursue judicialisation and remedy	**Judicialisation**: Rejected. It doesn't seem to be necessary to have great muscle (in terms of the complexity of the TAN) to push for judicialisations.	**Judicialisation:** Confirmed. When the case involves complicity with atrocities committed in the course of the armed conflict, pressure from global actors increases the odds of judicialisation.
			Remedy: Confirmed. A strong muscle (including several nodes and global actors) seems to be required to obtain remedy outcomes once judicialisations are underway.	**I was not able to test the relationship with remedy outcomes.**

			CHRD-Colombia	CATJ-Colombia
		TANs are more likely to pressure for judicialisation and remedy when the economic actor is involved in violations of civil and political rights.	**Judicialisations:** Rejected. The type of abuse doesn't seem to be relevant to explain judicialisation. **Remedy:** Rejected. Although TANs do focus on physical violence abuses, the data suggests that the state is more willing to prosecute and convict the firm when it is involved in violations of economic, social or cultural rights.	**I was not able to test this hypothesis using this data because the CATJ-Colombia only includes physical violence abuses.**
	Political opportunities	When claimants are able to seize political opportunities that shift the power dynamics between victims, the state and economic actors in a given time, this will increase the likelihood of judicialisation and remedy outcomes.	**Judicialisations:** Confirmed. The changes in power dynamics and truth telling mechanisms open a window of opportunity for victims to ask for judicialisation and obtain remedy. **Remedy:** Rejected. The changes in power dynamics open spaces for judicialisation, but do not explain remedy outcomes.	**I did not test this hypothesis with this data.**
The power of business	Importance to the economy	Businesses that are central to the national economy are less likely to be prosecuted for their alleged involvement in human rights violations; and if they are prosecuted, claimants are less likely to obtain remedy.	**Judicialisation:** Still under consideration to be further developed in subsequent chapters. A joint reading of the three tests that I used in this chapter suggest that in terms of judicialisation the veto power of companies is tied to their role in the global economy but more importantly to the size of the firm. However, the interpretation of the results was difficult.	**Judicialisation**: Confirmed. The analysis suggests that the companies that are less important to the economy because of their lower participation in GDP are more likely to be prosecuted.

			CHRD-Colombia	CATJ-Colombia
			Remedy: Still under consideration to be further developed in subsequent chapters. The results from this section suggest that the importance of a firm is determined by its role in the global economy. In this way, domestic firms that operate in sectors with lower FDI intake and lower participation in exports are arguably less important to the economy and therefore more likely to be convicted (independently of their size).	**I was not able to test the relationship with remedy outcomes.**
		The veto power of economic actors will increase in times of transition because of the state's reliance in their investment for peace building	**Judicialisation and remedy:** Still under consideration to be further developed in *Chapter 6 and 7*. Not tested in this chapter.	**Judicialisation:** Confirmed. The data suggests that the veto power of economic actors in times of transition is not only tied to their global dimension but also to their contribution to the local economy.
	Nationality of the business	TNCs are less likely to be prosecuted and convicted because of their economic power.	**Judicialisation and remedy**: Confirmed. TNCs' veto power enables them to elude judicialisation and remedy outcomes.	**Judicialisation:** Confirmed. TNCs' veto power enables them to elude judicialisation outcomes.
	Brand	Companies that have a high visibility brand or name are more likely to be prosecuted for their alleged involvement in human rights violations, and if they are prosecuted, claimants are more likely to obtain remedy and accountability outcomes.	**Judicialisation and remedy**: Rejected. The data suggests that companies are targeted regardless of the visibility of the brand.	**I did not test this hypothesis using this data.**

Chapter 7- Urapalma S.A.: a closer look at remedy and accountability

Introduction

This case study analysis is the last part of the nested analysis design that I described in *Chapter 3*, where the case study is part of the large-N sample and allows for an in-depth investigation of the theory built and tested through the large sample analysis in *Chapters 5 and 6*. This case is found both at the beginning and at the end of the project design. While building the CHRD-LA this case was the one that caught my attention to identify Colombia as an unlikely case where remedy was possible despite what one would expect considering the existing hypotheses in the literature which pointed to Colombia having all structural obstacles to access to justice for victims of human rights abuses by companies. And in this chapter, I come back to this case study to do in-depth investigation of the theory built through literature review and tested in the large-N analysis.

The results from the large-N analysis of the CHRD-Colombia and the CATJ-Colombia allowed me to suggest that judicialisation and remedy outcomes can be explained by the veto power of business and the power of the people to pursue remedy. The quantitative analysis of the CHRD-Colombia and the CATJ-Colombia suggest that the demobilisation of armed actors in the conflict open political opportunities that empower people to bring economic actors to account for human rights violations; and that once this context of transition is in place, pressures from global actors that are part of a larger TAN provide greater leverage to the claimants demands for justice. However, the origins of the power of business to counter the efforts of civil society are less clear. The quantitative analysis suggests that the importance of the economic actor to the national economy does determine its capacity to secure impunity, but the measurement of this importance is contingent on many factors. However, the quantitative analysis did not allow me to test for the possibility of judicialisation and remedy outcomes being the result of an interaction between an increase in the power of people and a decrease in the veto power of business. This case study analysis will allow for a multi-causal explanation that will complement the findings from the large-N analysis and also allow me to improve the measurement of the 'business dimension' of the models.

After confirming that the model tested in the large-N analysis is well specified and the results were robust[112], in this chapter I use process tracing of causal chains across time to conduct 'Model testing small-N analysis'. This exercise helped to improve the quality of measurement instruments and model specifications used in the large-N analysis. It also allowed me to examine within-case processes and/or variation, including company strategies to maintain or increase their veto power, and people's strategy to access TANs and make the most of political opportunities. I was able to answer questions left unanswered by the large-N analysis because of the limitations of statistical analysis and because there was insufficient data to assess statistical relationships, mainly: (i) what explains remedy outcomes in a context of transition? (There was insufficient data) and

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[112] Following Lieberman's suggestion to use residuals to test the robustness of the results from the LNA analysis, I conducted tests to look at the standardized residuals for the different models that I used to analyse the CHRD-Colombia and the CATJ-Colombia data and concluded that, considering the data I am using and the fact that this is a theory building project, the residuals were not high and therefore there is a goodness of fit of the models.

(ii) what are the mechanisms and strategies used by people and business to increase their power in a context of conflict and during transitions?

Not only is this case the only case with remedy that is found in both datasets, but also, its particular characteristics allowed me to see all the players in action: the interactions between the economic actors (palm oil firms and businessmen) and the paramilitary groups to jointly set up a business enterprise (García Reyes 2014; Gutiérrez Sanín and Vargas Reina 2016, 18), as well as the strong mobilisation of civil society (Carroll 2011).

Although I refer to this case as the Urapalma S.A. case, there were several companies involved in the appropriation of the communities' lands. I merely use the name Urapalma to identify it because as the October 2014 ruling of the Juzgado Quinto Penal del Circuito Especializado de Medellin argues, and several former paramilitary leaders have stated, Urapalma S.A. was the first palm oil company to be created and the others were satellite companies that simply imitated or benefitted from the business model implemented by this company.

For this case, I went through the main legal documents in the docket[113], media coverage of the case and conducted 17 in-depth unstructured interviews with the key actors in the conflict leading up to the criminal trial, as well as a businessman who was convicted as a

[113] The docket of the criminal trial was under legal reserve so I could only access the claim and some pieces of evidence that the parties involved in the claim allowed me to review from their personal files.

result of the trial[114]. I contend that the processes and mechanisms found in this case show how in certain cases economic actors that have a marginal veto power (because they are not considered to be important to the economy according to the theories found in the literature) can use a context of armed conflict as a protective shield to increase their power. On the other hand, processes of transition (which occurred in Colombia with the demobilisation of the AUC) and truth telling exercises deconstruct these 'shields', exposing businessmen and women to judicialisation and convictions. However this exposure is not enough to explain the outcomes in this case. The strategies that claimants used to tap into a dense TAN that included INGOs (like WOLA), the Inter-American system of human rights and US public officials are also determinant factors to explain the effective judicialisation and convictions of these businesses.

This chapter is structured as follows: firstly, a contextualization of the social and geographical characteristics of the department of Chocó and the communities involved in the case. Secondly, graphical representation of the company's actions and civil society's reactions; as well as graphical representation of the way the theory operated in this case. Thirdly, an analysis of the companies' veto power and strategies to guarantee impunity. Fourthly, an analysis of the strategies and mechanisms used by civil society to secure convictions. Lastly, I will present some conclusions.

[114] I was unable to interview the rest of the defendants in this case as some of them refused to be interviewed; and others I was unable to contact because the National Prison Authority (INPEC) refused to give me information about the prison where they were being held. I tried contacting the lawyers of the defendants but they did not want to be stigmatized for their role defending "paramilitaries" and would not grant me an interview.

About the department of Chocó and the Afro-Colombian communities of Curvaradó and Jiguamiandó

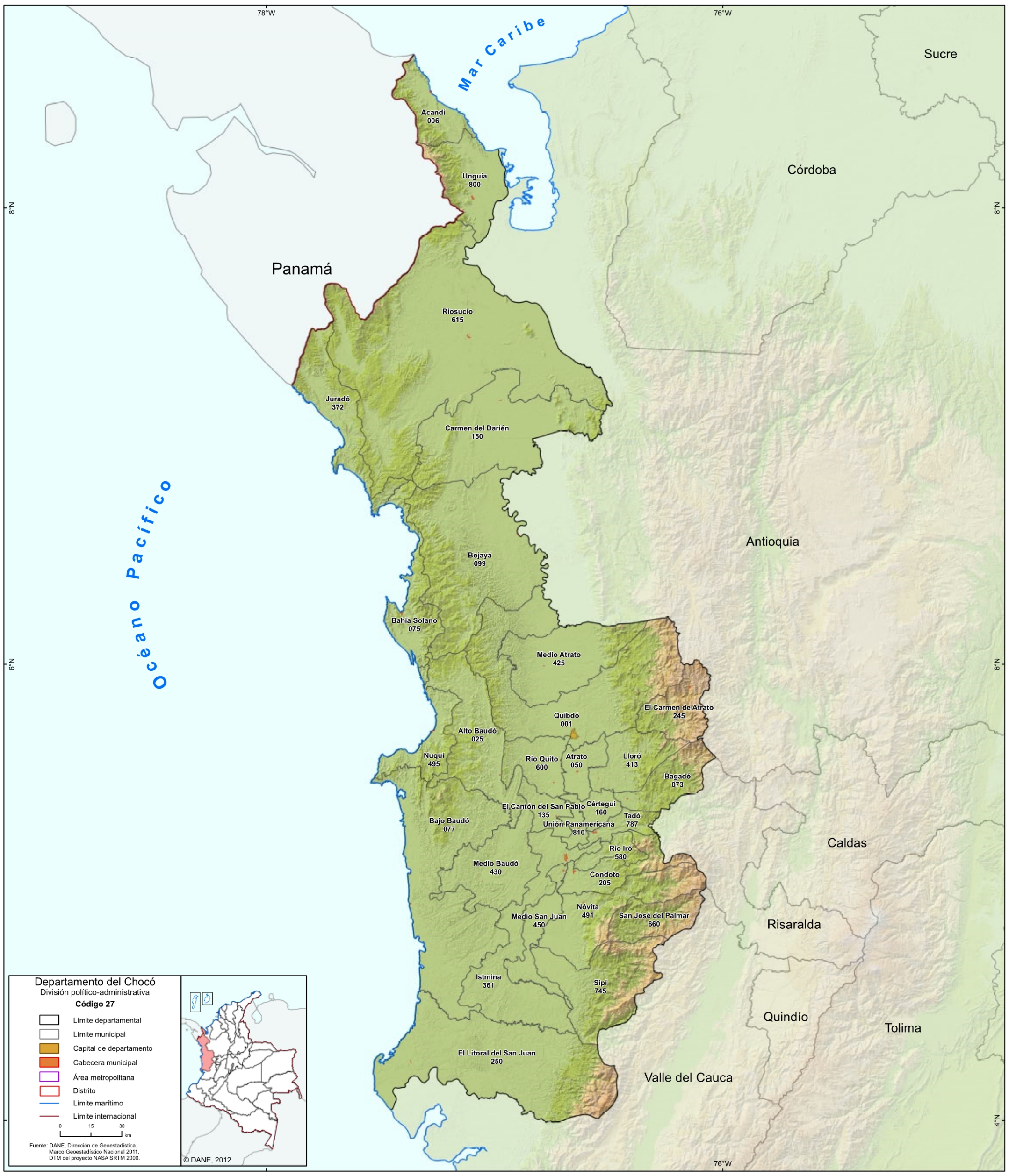
The department of Chocó is located in the North West of the country next to the Pacific Ocean on the border with Panama, and the departments of Antioquia, Risaralda and Valle del Cauca. It has an extension of 46,530 square kilometres with a population of 388,476. The regions of Curvaradó and Jiguamiandó are located in the municipality of Carmen del Darien and are separated by the Jiguamiandó River. They are part of the *Bajo Atrato* (or lower part of the Atrato River) also called *Urabá* Region, which is influenced by a process of colonisation from people coming from the departments of Antioquia and Córdoba. Natural borders and social links tie this region to the Pacific coast of the country (Programa de las Naciones Unidas para el Desarrollo PNUD 2007).

Of the total population of Chocó, 82.1 per cent recognize themselves as Afro-Colombian (Departamento Administrativo Nacional de Estadística 2010, 2, 2012, 34), a population traditionally discriminated against and forgotten/marginalized (Mingorance, Minelli, and Le Du 2004, 86). They represent 7.3% of the total population of Afro-Colombian population in Colombia[115]. There are Constitutional and legal norms that protect these groups.

[115] There is a significant number of Afro Colombian communities, 1219 groups overall with a population of 4,311,575, who represent 10.6% of the total population. They own collective territories that extend across 4 million hectares, 4.13% of the national territory (Departamento Administrativo Nacional de Estadística, 2007, pp. 23–24).

The following map show the Chocó department with all its municipalities, including in the north part the municipality of Carmen del Darien, where the collective lands of the communities of Curvaradó and Jiguamiandó are located (Figure 7.1)

Figure 7.1 Map of the department of Chocó



Source – DANE, 2017

In 1991 there was a National Constituent Assembly in charge of drafting a new constitution (the Constitution of 1991). This Constitution recognized the multi-cultural and pluriethnic character of the Colombian nation, and recognized the right of Afro-Colombians to collective land. In Transitory Article 55 it ordered Congress to "produce follow-up legislation specifically aimed at improving the lives of those it referred to as *comunidades negras* (black communities). Transitory Article 55 (AT55) mandated that Congress enact a law giving *comunidades negras* collective title to the lands they occupied. AT55 designated unused public or state lands (*tierras baldías*) in the rural river zones of the Pacific Basin to be eligible for communal titling. AT55 led to the drafting of Ley 70 in 1993" (The Bernard and Andre Rapoport Center for Human Rights and Justice 2007, 8).

Chocó has 43,9 per cent of all collective lands assigned to Afro-Colombian groups and the largest concentration of Afro-Colombian population in the country (Departamento Administrativo Nacional de Estadística 2012, 35). According to Law 70 of 1993[116], in order for these communities to receive land titles they needed to organise themselves using the framework of *Consejos Comunitarios* (Community Councils) to represent them, and follow an administrative process to request these titles. The law included environmental protections limiting the use of the land in order to preserve traditional practices. It also established that the lands are "inalienable (inenajenable), protected from seizure (inembargable), and exempt from statutes of limitations (imprescriptible). This

[116] See http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=7388, accessed 21 April 2015.

denomination of lands (was meant to) safeguard against the economic, governmental, and armed actors seeking to exploit Afro-Colombian lands by legally prohibiting individuals or community members from selling or otherwise ceding all or part of their land.” (The Bernard and Andre Rapoport Center for Human Rights and Justice 2007, 10). Of particular relevance for the case of Urapalma S.A. is article 52, which stipulates that financial credits should be made available to support community-led economic activities.

Although the richness of natural resources of this department is undeniable, it is one of the poorest areas in the country. It is one of the departments of Colombia where the state has had little or no presence. All development indicators suggest that Chocó is several times behind the rest of the country in terms of GDP per capita and access to basic public services (Bonet 2007; Programa de las Naciones Unidas para el Desarrollo PNUD 2007). This poor performance has been attributed to geographical factors that isolate communities from the rest of the country (including non-existent infrastructure), but more importantly to a colonial legacy that left weak institutions and structural racism and isolation from the economic activities in the rest of the country (its economic base is mining and forestry, with agriculture being mostly used for subsistence) (Bonet 2007; Programa de las Naciones Unidas para el Desarrollo PNUD 2007).

The department is also one of the most affected by the armed conflict. Its strategic location provides a corridor that facilitates drug and arms trafficking, making it a military target for all armed actors in the conflict. Since the early 1970s it has been a stronghold of the FARC, with some presence of the ELN. However, it wasn’t until the 1980s - when the military capacity of these guerrilla groups increased - that the armed confrontation with the army in the area started to increase. And finally in 1996, with the entry of paramilitary groups into the area and increased armed operations of the army, the levels of human rights violations affecting civil society greatly increased (Programa de las Naciones Unidas para el Desarrollo PNUD 2007).

How did 'David' defeat 'Goliath' in the Pacific region of Colombia

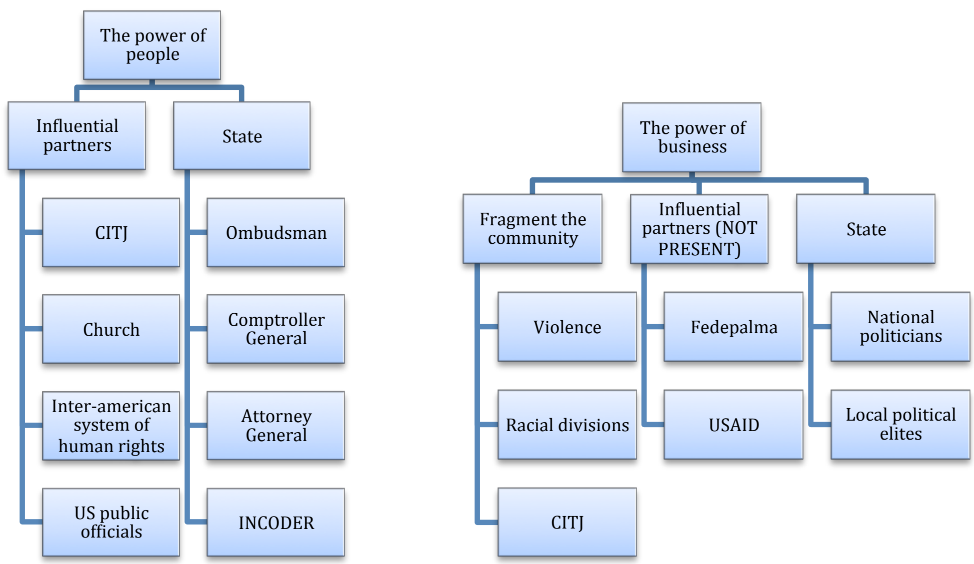
As I said before, the processes and mechanisms found in this case show how the fluctuations in the power of economic actors and of civil society can be determinant to explain the outcomes in terms of access to justice. As this case suggests, it is not enough for David to empower himself to face the powerful force of Goliath, because the veto power of business will have to decrease in order for the increased strength of civil society to impact the outcomes of judicial actions.

Figure 7.2 contains a chronological narrative of the different points in time when the TAN intervened to push for judicialisation and remedy; while Figure 7.3 shows the strategies that economic actors and civil society used to increase their power. It shows how there was a struggle on both parts to capture the resources available to increase their leverage.

Figure 7.2 Flow chart of civil society efforts to push for judicialisation and remedy

Source: The author

Figure 7.3 Summary of the strategies of people and business to increase their power



Source: The author

The Power of Business: Palm oil plantations in the Urabá region of Chocó

This section of the chapter will present three ways in which the businessmen and women in this case strategically entered the area and increased their veto power guaranteed impunity for over a decade[117]. The first one involved seizing opportunities and incentives created by the state to increase levels of investment and productivity of the region. The second one meant relying on violence and the threat of violence. And the third one building strategic alliances with the communities, industry associations and global organisations like USAID. Finally, I will suggest how the businessmen failed to keep building this protective "shield" and found themselves exposed to global pressures from civil society that eventually led to their judicialisation and conviction.

Seizing opportunities: state incentives to invest in the area

The incentive to invest in palm oil plantations in Chocó was not exclusively the characteristics of the terrain and increasing the companies' margins of profits. These businessmen and women entered the area with the "blessing" of state institutions[118]. And this "blessing" materialized itself in fairs organized in Medellin inviting businessmen to invest in the region of Urabá; visits from state officials to the plantations (pictures of

[117] There is evidence of these companies starting to operate in the area in the early 2000 and the first convictions were in 2014 (Interview Jesús Albeiro Parra, 2015) (Semana 2005).

[118] "In the case of the territory of Chocó, because of its biodiversity and its strategic geographic location, it has awakened an unexpected interest from national and foreign businessmen, supported by the national government" (Diocesis de Quibdo 2004).

these visits are part of the evidence presented by the defendants in the trials); and funding from state owned financial institutions to these projects.

The project was partly funded (financially supported) by state institutions[119]. Starting in 2002 there was a public policy from the national government to incentivise agribusiness, and particularly palm oil plantations, and Urapalma S.A., together with the other eight companies operating in the area, made use of all state aid and support to legitimise their economic project.

Also, to show how the companies had state support at the national and local level, they organised an inaugural event where they planted the first palm oil and invited the Minister of Agriculture, the Governor of Chocó and the Major of the municipality of Carmen del Darien. Their attendance can be confirmed from photographs presented by one of the defendants in the criminal trial (Interview Diego Corredor, 2015).

According to Gabriel Jaime Sierra-Moreno, legal representative of the company Palmas de Curbaradó S.A., convicted in the October 2014 ruling, the policy to incentivise the production of biofuels was not only materialised with financial support but also with invitations through AUGURA [120] to specific businessmen to participate in the development of the Urabá region and generating employment. There was also a business

[119] The palm oil project in Chocó coincided since 2002 with the implementation of a policy from the National Government to incentivise the production of biofuels. This policy was regulated by Law 939 of 2004, which was later developed by Decree 1970 of 5 June 2005 and Resolution 00351 of 10 August 2005 of the Ministry of Agriculture and Rural Development (Alfonso Sierra et al. 2011, 47–48).

[120] AUGURA is the association of firms and businessmen involved in banana plantations in Uraba. See http://www.augura.com.co, accessed 2 August 2015.

fair in the Palacio de Exposición in Medellín (*Palace of Exhibitions*), called "Urabá Vibra en Medellín" (*Urabá Vibrates in Medellin)*, where they promoted investment in the region (Interview Gabriel Sierra 2015).

Mr Sierra Moreno informed me that Palmas de Curbaradó applied for and obtained the environmental license to operate in these lands from CODECHOCO, the environment authority in the region (Interview Gabriel Sierra 2015). He was convinced that they had acted with the authorization of the state but also that they were encouraged by the state to bring development to the region.

Building business and benefitting from violence

This first paragraph contains a summary of the strategy used by the businessmen and women behind Urapalma and the other companies to use violence and the threat of violence to increase their power (which I will elaborate further in this section): the company identified suitable lands but needed to guarantee cheap access and control over communities that could jeopardize their operation[121]. These two needs could be satisfied by creating strategic alliances with the paramilitaries who had displaced communities therefore guaranteeing access to lands and at the same time weakening community networks[122]. Afterwards, when the communities sought to return to their lands, the

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[121] As former Minister of Agriculture Ruben Dario Lizarralde informed me, once the companies invest in palm oil plantations there is a considerable capital buried in the plantation because they cannot take their business elsewhere and have to wait several years for the palms to be ready for harvest (Interview Rubén Dario Lizarralde 2015).

[122] The media and the parties in the trial presented different interpretations of the chronology in which the abuse took place. The victims and some media reports alleged that the forced

company approached some of the leaders (through FUNPAZCOR, a non-for-profit), asking them to persuade the community to form an alliance with the companies. This would not only deepen the fragmentation of the community, but it would also allow them to access finance opportunities from state owned entities (thus legitimising the project and guaranteeing its financial viability).

This is how the strategy played out in more detail. The Afro-Colombian communities of Jiguamiandó and Curbaradó had the land. They had been occupying unused public or state lands in the rural river zones of the Pacific Basin and so were eligible to apply for collective titles of the lands they occupied. In September 1999, after several episodes of forced displacement by the FARC, the paramilitary groups and the army, the communities filed a request before the *Instituto Colombiano de Reforma Agrario* (Colombian National Institute of Agrarian Reform) - INCORA (from 2003 called INCODER) asking for collective titles and in 2000 the INCORA finally decided in favour of the communities.

Chocó, and particularly the municipality of Riosucio, divided into Riosucio and Carmen del Darien in the early 1990s, was a stronghold of the FARC, which dominated the Urabá

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displacement occurred after the businessmen started meeting with the paramilitaries. E.g. the NGO representing the victims argued that the businessmen determined the initial act of displacement perpetrated by the paramilitaries. However, what the Court found in its ruling was that the paramilitaries violent action of displacement started with no interference of the firms. It concluded that the businessmen started participating in what has been considered an ongoing crime (because the communities have not been able to return to their lands) after the initial act of displacement took place. Nonetheless, they were involved in the act of violent displacement because their occupation of the lands meant an insurmountable obstacle for the return of the communities. Forced displacement is not only considered to be the act of displacement but this is followed by all acts that prevent the return.

region in Chocó up until the mid 1990s. It was a department where the left wing party *Unión Patriótica*[123] obtained some of its highest number of votes. This turned the department and its population into a military target for the state (the XVII Brigade of the Army was located there) and the paramilitaries. It was also a strategic territory to occupy for illegal drug trafficking because it was located next to the Atrato River, one of the main highways to the Pacific Ocean (Mingorance, Minelli, and Le Du 2004, 91).

The region caught the eye of businessmen from the department of Magdalena. In the late 1990s, businessmen who were looking to cultivate palm oil outside their department, where this product had traditionally been harvested, found that the basins of the Curbaradó and Jiguamiandó River in the Chocó department were ideal for its production[124] and export. The particularly favourable characteristics of the region include: hot and wet climate, the right type of soil, cheap land and labour, a location near the Pacific trading ports, and a highway infrastructure connecting the ports to the interior harvest areas.[125] These business people thus proceeded to contact the paramilitaries,

[123] The Unión Patriótica (UP) political party was a left wing party created within the framework of the peace negotiations in the mid-1980s between the Government of Belisario Betancur and the FARC. One of the agreements was the creation of an opposition movement partythat would allow the guerrilla to legally incorporate itself into the political system. By 1986 the UP had 4,6% of the voting for presidential elections, with the highest number of voters concentrated in the regions of Nordeste, Bajo Cauca, Magdalena Medio, Urabá, Chocó, Arauca, Meta and Metropolitan area of Medellín. However, since it was created its members have been murdered systematically to a point where some argue that approximately 6,500 of them were killed. See http://unionpatrioticacolombia.com/historia; (Gomez Suarez 2015).

[124] The main Departments of the country where palm oil is harvested are Meta (36.6%), Santander (16.4%), Cesar (11.5%), Magdalena (10,4%), Casanare (6,5%) and Bolivar (4.8%). The remaining 13.9% is distributed between Norte de Santander, Nariño, Cundinamarca, Chocó, La Guajira, Cauca, Antioquia, Caquetá, Atlántico, Córdoba, Sucre, Tolima, Arauca and Vichada (Agronet Colombian Ministry of Agriculture and Rural Development n.d.).

[125] The lands of the basin of the Curvaradó and Jiguamiandó Rivers were optimal for the harvest of palm oil, and they were sub utilised with traditional harvests (Mingorance et al., 2004, p. 104-113).

particularly their leader Vicente Castaño, to present their business proposal (Interview Manuel Garzón 2015; Juzgado Quinto Penal del Circuito Especializado de Medellin 2014, 68–69; Semana 2005). This is the first case recorded in Colombia where there is evidence of businessmen approaching the paramilitaries with a proposal and not the other way around[126]. The businessmen would bring their know how and the paramilitaries would participate in the business and guarantee that lands would be and remain available throughout the project[127].

There was also, as I mentioned before, a military interest of the AUC paramilitary groups in securing the area. As it was recounted in the trial, in 1996, they started to implement a strategy to drive the FARC out of the region and gain control of the territory, in connivance with the XVII Brigade of the Army. There were several violent incursions into the territory of the communities of Curbaradó and Jiguamiandó, and finally in late 1998, after being approached by the businessmen, the AUC conducted a military operation that was directed at locating and occupying lands to establish the palm oil agribusiness (Juzgado Quinto Penal del Circuito Especializado de Medellin 2014, 11).

[126] Before this case, companies accused of having ties with the paramilitaries, e.g. Chiquita Brands, have argued that they were victims of extortion, i.e. that it was the paramilitaries who approached them. Angelika Rettberg wrote a piece in 2002 where she included the following categories of corporate involvement in the armed conflict, and she did not anticipate or include this new category where companies sought the paramilitaries to pursue business together: passivity; obtaining economic benefit from the conflict; contributing to financing paramilitary groups in exchange for security; support of peace talks and a combination of the latter (Rettberg 2002). Rettberg later referred to this new category of involvement where regional economic elites were actively promoting forced displacement (Rettberg, Leiteritz, and Nasi 2011, 180).

[127] This is the first report of businessmen contacting the paramilitary groups to establish strategic alliances. The rest of cases of complicity between businesses and paramilitary groups, e.g. Chiquita Brands, have been described as the paramilitaries contacting the companies offering security in exchange for financial contributions. In this sense it is a contribution to the historic memory of the conflict.

In this way, forced displacement was not only a war strategy but also satisfied business interests. It guaranteed the availability of the land and was meant to neutralise community mobilisation by not only dislodging communities from their lands but also breaking communal support networks and affecting their capacity for collective action[128].

In 1999 the palm oil project was underway and by 2000, several companies, including Urapalma S.A., started occupying these lands, owning half of the total land by 2005 (Defensoría del Pueblo 2005; Juzgado Quinto Penal del Circuito Especializado de Medellin 2014). In this case, Urapalma S.A. was not the only company accused of being involved in human rights violations. The other companies were Palmas del Curvaradó S.A.; Palmura S.A; Palmado LTDA.; Inversiones Agropalma & Cía Ltda.; Palmas S.A,; Palmas de Bajirá e Inversiones Fregni Ochoa, amongst others. However, Urapalma S.A. was the first and main company operating in these lands and the one setting the strategies that the others followed. This is why this case study focuses on Urapalma S.A.

The INCODER reported that in total 17,000 hectares were harvested with palm oil, out of which almost 10,000 belonged to the Consejo Comunitario de Curbaradó (i.e. 28 per cent of their collective lands) and the remaining 7,000 belonged to the Consejo Comunitario de Jiguamiandó (i.e. 15 per cent of their collective lands) (Juzgado Quinto Penal del Circuito Especializado de Medellin 2014, 165). When communities started returning to their lands in the early 2000s they found them harvested with palm oil and with signs

[128] According to ACNUR, although the Afro-Colombian communities only represent 8 per cent of the Colombian population, they represent 20 per cent of the internally displaced population. See http://www.acnur.org/pais/index.php?accion=tema&id=71&iso2=CO, accessed 23 April 2015.

indicating that Urapalma S.A. and another 8 companies were behind these plantations. According to what was discovered in the course of the trial, the company, with the support of the AUC paramilitary groups, started using threats and legal strategies to obtain legal titles over the lands, paying derisory prices per hectare. Because these lands had been declared collective lands in 2000 and protected against individuals being able to sell them, the company hired lawyers to come up with other legal mechanisms to obtain the titles[129] (Juzgado Quinto Penal del Circuito Especializado de Medellin 2014, 19).

Strategic alliances: legitimising the project

The role of these businesses in the forced displacement of communities and appropriation of lands to operate their business cannot be looked at in a vacuum. The success of the economic project depended of the collaboration and participation of several other institutions, all of which were used to legitimise the project (i.e. give it an appearance of legality).

<u>Alliances with associations of Afro-Colombian farmers</u>:

Although the collective networks of these communities date back to the XVIII century (Instituto Colombiano de la Reforma Agraria 2000a, 2000b), their capacity of collective action was limited because of deep fragmentations that were not only attributable to the physical dislodging from their lands through violence in the 1990s. They were also

[129] E.g. they used a mechanism called "Accesion" which allows the owner of land to acquire the land that is exposed when a river dries up; they used fake documents from deceased community members to pretend they bought the lands before they were declared collective lands.

divided around race (and who had the right to belong to the community[130]) and what they understood as their cultural identity linked to the way that these collective lands should be exploited. Although in the CIJP I interviewed the lawyers leading the case, and they said that the success of these judicial actions rested on the strength of the communities and their high levels of organisation (Interview Manuel Garzón, 2015; Interview Danilo Rueda, 2015), the research I conducted for this thesis suggests that the explanatory factor behind these communities' access to dense TANs is not their capacity of collective action (derived from high levels of organisation and unity) but rather their alliance with the CIJP, an influential partner who, as Priest Albeiro Parra said in his interview (Parra, 2015), had experience litigating similar cases with the Community of Cacarica[131] and had developed strategies to attract the attention of global actors like the Inter-American Commission, the Inter-American Court and Senators from the U.S. Congress. And they were able to access this very influential partner through the support of the Catholic Church, which in Colombia is an important and powerful institution (Mingorance, Minelli, and Le Du 2004, 99). Indeed, it was Priest Albeiro Parra from the Dioceses of Quibdó who contacted the CIJP for legal advice when they realised that businesses were occupying communal lands and that the aid that these communities needed went beyond what they could offer through humanitarian work (Parra, 2015).

[130] According to Juan David Ospina from CINEP, in these territories you find what they call "mestizos" or a mixed-race population who are sons and daughters from afro-Colombian descendants and peasants who migrated from Sucre, Córdoba and Antioquia in the 1960s and 1970s.

[131] This is an Afro-Colombian community also located in the municipality of Carmen del Darien, also displaced by a joint operation between the army and the paramilitary groups in the early 1990s. The CIJP represented them and took the case all the way to the Inter-American Court. In 2013 the Colombian state was convicted for its role in the forced displacement of the community. See: http://www.corteidh.or.cr/docs/casos/articulos/seriec_270_esp.pdf

When these communities returned to their lands, the companies used these divisions to form alliances with community members who did not agree with the CIJP's strategy to bring the case to the courts and who wanted to pursue other strategies to work together with the companies and benefit from the business opportunities that these businessmen had brought to the region. The leaders of the communities were divided. Some, like Ligia Chaverra, Eustaquio Polo and Raúl Palacios, opposed forging any alliance with the companies and wanted to pursue a strategy of truth, restitution of the lands and reparations; while other leaders like Manuel Moya, Graciano Blandón, Manuel Denis Blandón and Hernando Olier Pautt, were convinced of the increase in welfare and development of the region that palm oil would bring. These leaders would congregate the communities and allow the businessmen to come and tell them about the benefits that palm oil plantations would bring to an area in need of development and infrastructure (Human Rights Everywhere and Diócesis de Quibdó 2005).

This division amongst the leaders meant a definite estrangement within the community that weakened collective action. Also, in the midst of these discussions these leaders were associated with the FARC or the paramilitaries, and therefore became military targets of the armed conflict[132]. Manuel Moya, Graciano Blandón and his son were killed by the FARC in December 2009 (Tiempo 2009). Between 2008 and 2012 Orlando Valencia, Ualberto Hoyos, Benjamín Gómez, Argenito Díaz and Manuel Ruiz were presumably

[132] Some have argued that reports from civil society, like La Tramoya from the CIJP (Comisión Intereclesial de Justicia y Paz 2008), incentivised homicides of members of the communities for supporting the companies' productive projects because they turned them into military targets by pointing them as being on the side of paramilitary groups (Interview Juan Sebastian Ospina, 2017; interview Jesús Albeiro Parra, 2015).

killed by paramilitaries for their role in the judicial actions against the businessmen (Peace Brigades International 2012).

As revealed in the trial, the companies worked with FUNPAZCOR, a not-for-profit organisation created by the paramilitaries that donated lands to selected members of the communities to secure alliances. They also guaranteed having peasants to create grass-root associations of farmers who were the only ones who, by law, could apply for the state funding that the company was after and eventually obtained.

Through FUNPAZCOR the company guaranteed having the human capital (i.e. local small-scale farmers) to constitute associations that would apply for funding from the *Banco Agrario* (Agrarian Bank) and *Finagro* (a financial institution attached to the Ministry of Agriculture)[133] (Juzgado Quinto Penal del Circuito Especializado de Medellin 2014, 48). Amongst the defendants in the criminal trial are several Afro-Colombian citizens who appeared as members of the board of directors of these associations and had been recruited by the companies using this scheme (e.g. Mario Leon Villa Pacheco and Orlando Moreno Mora (Juzgado Quinto Penal del Circuito Especializado de Medellin 2014, 35, 56)). Two of these associations linked to Urapalma were the Asociación de Pequeños Cultivadores de Palma de Aceite en el Urabá – ACOPALMA and the Asociación de Antiguos Vecinos de la Cuenca del Rio Curvaradó y Zonas Aledañas.

[133] Finagro, Banco Agrario and the Corporación Financiera Colombiana gave Urapalma S.A., between August 2001 and November 2005 over 2,500 million pesos (Defensoria del Pueblo 2008, 20).

Having alliances with members of the community led to weaker social networks and capacity for collective action, but also allowed them to constitute parallel *Consejos Comunitarios* (Community Councils) to represent the communities before state authorities and in the media. The leaders went to a hearing before the Inter-American Court of Human Rights, asking for protection from the CIJP and the FARC who were forcing them to take decisions against their will regarding their lands, e.g. cutting down the palm trees (Juzgado Quinto Penal del Circuito Especializado de Medellin 2014, 87). During the course of the trial this fragmentation of the community was visible in the testimony of Hernando Olier Pautt, a leader of the Afro-Colombian community of Curbaradó, who testified about the role of Javier Daza Pretelt (a former manager of Urapalma and defendant in the trial) trying to work with the communities and not against them, and also contended that the CIJP was as much involved in the perpetration of abuses as the actors of the armed conflict (Interview Diego Corredor, 2015; interview Hernando Olier Pautt, 2015)[134].

Richard Moreno, President of the *Foro Interétnico Solidaridad Chocó* (FISCH) at the time of the interview in 2015, an association that brings together all the ethnic organisations of Chocó, recognised that some of the leaders in these communities were

[134] "The black, I mean, this one that I am mentioning [Hernando Olier Pautt] for example, or this former assessor of the Ministry of the Interior, they could give you an interesting vision, very different from these NGOs, because these NGOs also have or had or have clear economic and domination interests in the region. I mean, the relationships, they are not as you would think unpolluted because they are called Interchurch and so one tends to think that they are part of the Church, but these characters also have relationships that are non sancta. So it is a power struggle to gain the power in this region, which is a very rich region. So, off course, when someone talks to me about an Interchurch organisation or a priest, then I would say well this comes from the Catholic Church so they must be right, when in reality if you talk to the black communities and with other people, this is not the case."

working with the companies to support their operations in the collective lands (Interview Richard Moreno 2015). However, as I will explain below, the FISCH, CINEP and the Church, different from the CIJP, were supporters of an internal process where it was the communities who were called to decide if they wanted to work with the companies or not. The CIJP argued that a discussion of partnerships or alliances was not appropriate, before a judicial clarification of the abuses that took place (Human Rights Everywhere and Diócesis de Quibdó 2005; Interview Richard Moreno 2015).

Manuel Garzón, a member of the CIJP and attorney for the victims in the trial, also referred to this fragmentation of the community, when he referred to the legal strategy that the company used to appropriate community lands:

> *"Another strategy was to reach "agreements" with the community councils: in 2004 Urapalma and a person who claimed he was the legal representative of the community council of Curvaradó signed an agreement where the community gave the company the right to use the land to establish a palm oil plantation. These agreements were reached through bribes and threats"*[135] (Contagio Radio Hablemos Alguito 2015)

Lastly, the Constitutional Court recognised the issues around representation of the communities of Curbaradó. In a writ of 2010 the Court recognised that there were two community councils. One was registered in May 2010 before the Ministry of Justice and the Interior, and the other was elected in April 2010 by the communities, and had asked to be recognised by the Mayor of the municipality of Carmen del Darien.

[135] This is my translation of the following text in Spanish: Otra estrategia fue lograr "acuerdos" con los consejos comunitarios: hacia el 2004 se firma un acuerdo entre Urapalma y una persona que se hizo pasar por representante legal del consejo comunitario de Curvaradó, se cedia el uso del suelo para desarrollar cultivo de palma. A estos acuerdos se llegó por soborno y amenazas."

To sum up, the fragmentation of the community around how to respond to the occupation of their lands was used by the businessmen to gain legitimacy in two ways: (i) building partnership with some of the leaders, and (ii) using these associations of supporting community members to access state institutions and even international forums like the Inter-American system.

Being accepted in industry level associations: However, it wasn't enough to have the support at the local level. The protective shield needed the business approval from industry level associations. This membership was a necessary step to continue building an image of legitimacy not only before the communities but also amongst the members of the industry in Colombia and abroad. The *Federación Nacional de Cultivadores de Palma de Aceite – Fedepalma (National Federation of Palm Oil Growers)* is the association representing the growers comprised of small, medium and large-scale businessmen and companies who work in the sector. Its role is to defend the interests of palm oil growers and manage funds that are collected as part of payroll taxes called "parafiscales palmeros" and that are devoted to the development of the sector[136].

Urapalma and the other companies applied to be a member of this trade association. A commission of members of the board of directors of Fedepalma visited the plantations and met with some of the executives. However, some members of the board of directors refused to attend because it was not clear who exactly was behind the companies (i.e. there were concerns about company links with paramilitaries). In the end, Fedepalma

[136] See http://web.fedepalma.org/quienes-somos-fedepalma, accessed 24 April 2015.

decided not to accept Urapalma as member (Interview Rubén Dario Lizarralde 2015)[137], although no actions were taken by the Federation to address their concerns and the sector was stigmatised as a result (Interview Ruben Dario Lizarralde 2015)[138]. This was the first stumbling block that the companies encountered. The legitimacy of the business started to be under question and the rejection from its peers was part of the businessmen's downfall.

<u>Accessing international partners:</u> It wasn't enough to establish alliances at the local level. The companies tried to establish a working relationship with the US Agency for International Development (USAID) through a programme of alternative development created by the US Government in 2002, authorising a sum of US$75 million per year. This programme supported collaborative efforts between businessmen and peasants to implement alternative development programmes to replace illegal plantations of coca. These alternative development programmes included palm oil, which is why Urapalma S.A. and other palm oil companies applied, through the associations of Afro-Colombian peasants, to secure this support (Ballve 2009).

[137] "Que yo me acuerde no se. Pero lo que sí se, porque como estuvieron en el ojo del huracán, es que no eran afiliadas a Fedepalma. Es más, cuando ellos empezaron la siembra invitaron a la Junta Directiva de Fedepalma a que fueran a ver lo que estaban haciendo. Hubo un grupo muy grande que ni siquiera fue porque uno si se cuidaba mucho, ¿quienes son? Y como no hubo hasta el momento del viaje total claridad de quienes eran pues la mayoría de la gente no fue. Hubo unos que fueron pero la mayoría de la gente no fue y si se, porque en ese momento yo estaba en la Junta Directiva, que nunca participaron de, no fueron afiliados a Fedepalma." (Interview Rubén Dario Lizarralde 2015).

[138] I contacted Fedepalma to interview their executives and officials about the companies' membership application and the consequent rejection. However, they were not inclined to grant interviews about the case.

However, again the businessmen's aspirations to find legitimacy in external actors fell short. According to Roberto Albornoz[139], a former consultant of USAID who had knowledge of the companies' application, the agency did not support the project presented by Urapalma, nor was it close to funding it, as Teo Ballve suggested in his piece (Ballvé 2009). In order to apply to these USAID programmes, Urapalma had to collaborate with peasants, and this is where the strategic alliances with parts of the community were useful. The interest of Urapalma in applying to these programmes was two-fold: the legitimacy derived from collaboration with a US agency, and the support that USAID gave to its beneficiaries to apply for funding from *Finagro* (State fund to finance the agriculture sector) and other state financial entities.

The application process had several filters and so it is not true that Urapalma's application was nearly approved and only failed to secure funding because of a technicality. After USAID received the application, it did not pass the first screening stage where the Project coordinator would focus on identifying the parties involved in the collaboration (the company and the peasants), and this included a study of the land ownership. Although at the time USAID did not identify the company's links with paramilitary groups or forced displacement, they rejected the application because the evidence of land ownership did not convince them (Roberto Albornoz, 2017).

[139] Roberto Albornoz is a former consultant for USAID who managed the Project coordinators for the different products, which the programme was targeting. He was in that role starting in 2003 and was there when USAID received the application from Urapalma. I interviewed him on 7 June 2017 in Bogotá.

The Power of People: The search for justice

After looking at the company's strategy of "doing business" in the *Urabá Chocoano*, and the context where their search for justice took place, I can now move to the communities' strategy to seek corporate accountability and remedy, particularly tracing the transformation of the conflict and the different agents of transformation that accompanied the communities (Felstiner, Abel, and Sarat 1980).

This section will firstly include a narrative of the process by which the communities named and blamed the companies as perpetrators of the abuses, and then started a path to vindicate their rights. Secondly it will include an analysis of the case in terms of the hypotheses tested quantitatively (*Chapters 5 and 6*). I will conclude by suggesting that the tipping point in this case to increase the power of the people was their access to specific agents of transformation at the local level (the Church and the CIJT), who had the capacity to take the communities' claims to global actors who then pushed the state for judicialisations and reparations.

A path of vindication: Naming, blaming and claiming

Despite division in the communities about how to respond to the companies' presence and what to do about the plantations there was always an agreement on the fact that the presence of the companies in communal lands was injurious (Interview Richard Moreno 2015). This was a shared perception by members of the community that remained in the territories despite the violence and those who were displaced and started to return in the late 1990s (Interview Richard Moreno 2015; interview Jesús Albeiro Parra 2015).

Since 1996 the Church, specifically the Dioceses of Quibdó, started providing humanitarian aid to Afro-Colombian communities displaced by the FARC and as a result of joint operations of the army and the paramilitaries. The department of Chocó was a stronghold of the FARC, and the paramilitary groups, as I mentioned in the section on business strategy to perpetrate the abuse, were interested in the Afro-Colombian communal territories not only as a military target (to decrease the strength of the FARC in the area), but also because of its economic worth.

In 1997 and 1998 the Dioceses started supporting the communities, acting in coordination with ethnic associations like COCOMACIA and SOREWA to provide humanitarian aid and give visibility to the situation of the communities to the state and the international community (Parra 2015). International actors were also involved: ACNUR arrived in 1997, and the Diocese managed to secure the support of the INGO Paz del Tercer Mundo (PTM) which had experience with humanitarian aid in Central America; as well as the Agencia de Cooperación Española and other humanitarian aid INGOs. They focused on recreating the townships and strengthening communities (Parra 2015). The state was not involved.

In June 1998 the Dioceses was contacted by a group of members of the communities who stayed inside the territories resisting the violence, and were trapped by a blockade created by the paramilitaries. This blockade was set after the first displacement operations by the paramilitaries and consisted of blocking all entry points to the territories from the towns of Apartadó, Pavarandó and Murindó. This group called themselves "The Nation's Forgotten" and consisted of around 800 people, including 200 children. They recounted that businessmen from Antioquia had been coming to visit the territories that had been designated for Afro-Colombian community development.

From 2000 the Dioceses started insisting on the need to break that blockade and see what was going on inside the territories. They spoke to Carlos Castaño, leader of the paramilitaries at the time, about the possibility of return of the communities, but he was clear about where they could and where they could not return. He was consistently opposed to the return to the lands previously occupied by the Curvaradó and Jiguamiandó communities. When the group that remained in the territories started reporting to the Diocese that there were companies cutting down trees and starting palm oil plantations in those lands, the Diocese decided to bring all institutions together to break the blockade (including ACNUR, the Ombudsman´s office and the Human Rights office) and to verify the presence of the palm oil companies in the afro-Colombian territories (Parra 2015).

When they managed to enter the territories they found that Urapalma S.A. and other companies had installed banners indicating that the plantations were located in private property belonging to the company. The communities, and their supporters within the Diocese disputed this private property claim from the company.

In 2004 the Church, together with INCODER and other state organisations organised what they called a ‘verification tour’ where they compared the collective titles and the lands where the palm oil plantations were located, and concluded that in effect there was an occupation of the communities’ territories (Diocesis de Quibdo 2004). After this tour, between 2005 and 2007 the INCODER, the Ombudsman’s office, the Comptroller General and the Inspector General issued reports naming the company as illegal occupant of communal lands (Defensoría del Pueblo 2005; Interview Manuel Garzon 2015).

Representatives of the communities contacted the company seeking remedy. And this was when a second process of fragmentation began. For some leaders of the community, allegedly co-opted by the company, remedy was described more like an alliance of the communities with the companies to take advantage of the development and employment that the palm oil plantations would bring to the region. This scheme would allow the companies to remain in the territories, salvaging their investment, which for Palmas de Curvaradó (one of the 9 companies involved) was around 3 million pounds (Interview Gabriel Sierra 2015). This was more of a forward-looking strategy.

For other leaders, remedy could only come with the clarification of the violations, and the communities regaining control of their territories (Interview Danilo Rueda 2015). This strategy meant paralyzing the company’s operations and pursuing legal mechanisms to guarantee truth, justice and reparation for victims. This was a strategy based on the need to look to the past to then look to the future.

Processing path: legal mobilisation of the communities

When the Dioceses of Quibdó verified that the companies were occupying the territories and that they were alleging to hold legal titles over the lands, they realised that the communities needed legal support and this was when they contacted the Comisión Intereclesial de Justicia y Paz (CIJP), because of their successful experiences litigating cases representing other displaced communities located in the Cacarica river basin, Chocó, as well as the Peace Communities of San José de Apartadó (Interview Jesús Albeiro Parra 2015). The CIJP was seen as technical experts, with experience at the national and international level.

The Diocese turned over to CIJP the control over the case, but continued working with the communities. The work of the CIJP helped reinforce the fragmentation of the community, because it rejected any attempt from the leaders to negotiate directly with the companies. This created tensions with the Church, and ethnic organisations such as ASCOBA and the Foro Interetnico Solidaridad Chocó – FISCH, who, despite not agreeing with any negotiation with the companies, and recognising that there were rumours that some of these leaders were in the company's payroll, were more interested in strengthening the communities' organisational capacity and allow them to make the decision (Interview Richard Moreno 2015). The Church produced a short story about the operation of palm oil companies, seeking to persuade the communities to decide against any alliance with the companies (Human Rights Everywhere and Diócesis de Quibdó 2005). And FISCH worked on capacity building and informing the community about their options so that they could make an informed decision, and be able to resist the pressure from the companies (Interview Richard Moreno 2015). However, these two organisations were willing to support an alliance with the companies if this was the decision of the community.

Despite this tension regarding the processing paths to seek remedy, the CIJP went ahead with the legal mobilisation. They first sought a visit in loco by the Inter-American Commission of Human Rights (IACmHR) (Interview Manuel Garzón 2015; interview Danilo Rueda 2015). The Commission visited the area to verify the violations committed against the communities by all actors, and in 2002 issued precautionary measures ordering the state to establish security measures to guarantee the life and physical integrity of these communities. The case was then moved to the Inter-American Court of Human Rights (IACtHR), which in 2003 issued provisional measures requiring the state: (i) to investigate the abuses against the communities, (ii) guarantee the restitution of lands and (iii) guarantee the legal recognition of the humanitarian refugee zones where these communities had been gathering on their struggle to return to their lands. These were areas where no armed actor was allowed to enter (Contagioradio.com 2015).

In 2005 the CIJP presented a criminal complaint against the palm oil companies that were occupying the lands, naming all individuals involved in the business enterprise[140]. By that time the CIJP had collected evidence through testimonies, but also from third party

[140] In Colombia it is not possible to file a criminal complaint against corporations as juridical persons. In this sense, all criminal investigations prosecute individual company employees or executives and examine their role in the crime. Although the company is not convicted, in the *ratio decidendi* or deciding arguments of the Court there is an indication of the accountability of the company as a whole in the crime.

reports issued by state entities and regional bodies that strengthened their position in the trial. The communities had secured a decision from two organisations at the international/regional level (the IACmHR and the IACtHR), as well as decisions from state entities including a Resolution from the Ombudsman's Office in 2005 (Resolución No. 39), which required the companies to stop their operations and the Ministry of Justice to guarantee the restitution of the lands to the communities (Defensoría del Pueblo 2005). There was also a report by INCODER in 2007 that recognised the relationship between paramilitary groups, forced displacement and palm oil companies[141]. Also decisions of the Contraloría General de la Nación (Comptroller General) and the Procuraduría General de la Nación (Inspector General) regarding the use of public funds to finance companies that were occupying lands that belonged to Afro-Colombian communities. Finally, there was a decision from the Tribunal Contencioso Administrativo de Chocó (Tribunal Contencioso Administrativo del Chocó 2009), and another by the Constitutional Court in favour of the communities, ordering Companies to stop operations and the state to guarantee the restitution of their lands (Contagio Radio Hablemos Alguito 2015; Corte constitucional 2004; Corte Constitucional 2009, 2010).

In 2007 the Prosecutor[142] started hearing testimonies from the defendants and in April 2011 he closed the preliminary investigation and filed charges to start the trial stage (Contagio Radio Hablemos Alguito 2015). The trial started on 23 July 2012 involving several former executives of the company (and of the other companies and non-for-profits) and on 30 October 2014 there was a ruling from the *Juzgado Quinto Penal del*

[141] See Resolución of INCODER number 2424 of 10 September 2007.
[142] The case was moved from a local prosecutor in Chocó to the National Unit of Human Rights, therefore improving the case profile.

Circuito Especializado de Medellin with a guilty verdict for all but two of the defendants (Contagio Radio Hablemos Alguito 2015; Juzgado Quinto Penal del Circuito Especializado de Medellin 2014). The *Tribunal Superior de Medellin* confirmed this ruling on 4 November 2016. Later, in June 2017 the same Tribunal revoked a decision from a lower court and convicted Antonio Nel Zuñiga-Caballero, a businessman who had been named by several of the people involved in the case (who I interviewed) as one of the leading actors behind the strategy of dispossession and displacement of these communities. This decision definitely showed that the economic elite is not "untouchable" and that there are ways in which victims can bring them to account for their role in human rights violations.

However, these were not the first rulings in the case of Urapalma S.A. In 2013 a former company worker, Carlos Daniel Merlano, had accepted a plea bargain and received a reduced sentence. Mr. Merlano would later appeal the decision saying that he wished to take back the confession (Corte Suprema de Justicia Sala de Casación Penal 2013). He was the lawyer who structured the legal strategy used by the company to acquire the lands. Although I was not able to interview Mr. Merlano, the CIJP and one of the lawyers of the defence involved in the case argue that he confessed either out of pressure from the people with real economic and political power behind the company, or because he was promised a reward for taking the fall or acting as a scapegoat and was later abandoned when those pressuring him realised or found a way to be kept out of the investigation (Interview Diego Corredor 2015; interview Danilo Rueda 2015). In any case, his confession helped as evidence against the other defendants, and was used as the basis of the convictions of October 2014.

One point to highlight regarding the criminal trial is the strategy used by most of the defence lawyers during the trial: They argued that the CIJP and the communities had connections with the FARC, and that the humanitarian refugee zones were in fact a tactic to facilitate the guerrilla's return to the area. They denied the claim by contending that the companies were good faith occupants who had altruistic interests to incentivise the development of communities that had been forgotten by the state (Contagio Radio Hablemos Alguito 2015; Juzgado Quinto Penal del Circuito Especializado de Medellin 2014; Interview Gabriel Sierra 2015). This same idea of 'bringing development to the region' seems to be partly shared by some leaders of the community who were looking for a way to take advantage of the infrastructure and plantations that the companies had already invested in to bring development to the region (Pautt 2015).

Finally, there is the issue of who are the defendants in the trial. It appears to be that the company was structured in such a way as to minimise blame for those who effectively controlled the company[143]. As Franco and Restrepo argue in their research, Urapalma S.A. was a company controlled by a single family (the Zuñiga-Caballero family), and nonetheless they were not amongst the ones convicted in the October 2014 decision (Franco R. and Restrepo E. 2011, 287). Both the lawyer of the CIJP and the lawyer for

[143] The concept of blame avoidance is used by Professor Christopher Hood to refer to government entities, but this organisational blame avoidance strategy can be transferred to explain corporate strategies by those who control the company to avoid blame. See Hood, Christopher (2011). The Blame Game. Princeton University Press.

one of the defendants in the trial, i.e. opposing sides, assert that the economic elites behind the company were not amongst those convicted (Interview Diego Corredor 2015; interview Manuel Garzón 2015; Interview Danilo Rueda 2015). Instead, some of the defendants claimed to be mere employees, including one who claimed to be a company driver (Juzgado Quinto Penal del Circuito Especializado de Medellin 2014, 103). According to the arguments of several defendants, the corporate structure allowed those controlling the company to hide behind the corporate veil and leave exposed others who knowingly or not knowingly took the risk.

Some of the businessmen convicted consider that the criminal trial resulted in the conviction in 2014 of those who did not have political protection and therefore took the fall. For example, Diego Corredor, defence attorney of Javier Daza Pretelt (former manager of Urapalma), argued that his client was one of the scapegoats used by the Prosecutor and the Court to show results. He argues that the authorities failed to take the investigation all the way up to the top of the power structure behind the company. According to Mr Corredor, when the investigation started the company appointed an attorney to represent all the defendants, mainly because those at the top thought that the investigation would escalate and reach them. However, when they realized this would not happen, which was when the Prosecutor filed charges excluding them (including Mr Zuñiga-Caballero) and the trial stage began, they dropped their support and Mr Corredor was called in to represent Mr Daza Pretelt (Interview Diego Corredor 2015).

He argues that the state is willing to seek justice but only amongst low-level officials in the firm. However, this was not always the case. In the case of Mr Gabriel Jaime Sierra Moreno, manager of Palmas de Curvaradó S.A., he was the owner of the company, and former member of the board of directors of Colanta, one of the largest dairy products company in the country. He was not a low-level official and he was directly involved in coming up with and developing the business strategy which, according to him, was meant to benefit everyone because it would bring development to the region, employment to community members, who would be able to return to their lands, and the businessmen who were making a sound investment (Interview Gabriel Sierra 2015).

Table 7.1 Defendants in trial, positions and outcomes

Name	Position	Outcome
Gabriel Jaime Sierra-Moreno	Owner of Palmas del Curvaradó	Convicted, ruling October 2014
Mario León Villa-Pacheco	Member of the Afro-Colombian communities. Representative of an association of farmers that sold lands to Urapalma.	Convicted, ruling October 2014
Juan José Palacios-Palacios	Worker of Urapalma	Convicted, ruling October 2014
Manuel Gregorio Denis -Blandón	Member of the Afro-Colombian communities. Representative of an association of farmers that sold lands to Palmas del Curvaradó	Convicted, ruling October 2014
Mario Alberto Vélez-Giraldo	Lawyer who	Convicted, ruling

Name	Position	Outcome
	acted as an intermediary between the paramilitaries and Palmas del Curvaradó to acquire lands.	October 2014
Sor Enid Ospina-Rendón	Legal representative of Inversiones Agropalma, a satellite company of Urapalma.	Convicted, ruling October 2014
Javier José Daza-Pretelt	Legal representative of Urapalma	Convicted, ruling October 2014
Katia Patricia Sánchez-Mejía	Legal representative of Urapalma	Convicted, ruling October 2014
Hernán Iñigo de Jesús Gómez-Hernández	Shareholder and legal representative of Urapalma	Convicted, ruling October 2014
Sor Teresa Gómez-Alvarez	Founder of FUNPAZCOR and manager of Urapalma	Convicted, ruling October 2014
Gabriel Segundo Fernández-Navarro	Member of the Afro-Colombian communities, leading an association of local farmers who obtained funding from state institutions.	Convicted, ruling October 2014
Orlando Moreno-Mora	Founder of an association of farmers linked to Urapalma and used to secure state funding.	Convicted, ruling October 2014
Remberto Manuel Álvarez-Vertel	Founder of an association of	Convicted, ruling October 2014

Name	Position	Outcome
	farmers linked to Urapalma and used to secure state funding.	
Dagoberto Antonio Montiel-Mercado	Demobilised paramilitary and founder of an association of farmers linked to Urapalma and used to secure state funding.	Convicted, ruling October 2014
Robin Manuel Galongue-Alcalá	Demobilised paramilitary and founder of an association of farmers linked to Urapalma and used to secure state funding.	Convicted, ruling October 2014
Antonio Nel Zúñiga-Caballero	Main shareholder of Urapalma and Palmura	Convicted, ruling July 2017
Luis Fernando Zea-Medina	Lawyer who helped structure the acquisition of lands by Palmadó.	Convicted, ruling July 2013
Héctor Duque-Echeverry	Legal representative of Palmadó	Convicted, ruling July 2013

Source: Juzgado Quinto Penal del Circuito Especializado de Medellin 2014

In 2014 the Court decided to convict more than a dozen businessmen, four of them former employees of Urapalma S.A. (Mario León Villa Pacheco, Javier José Daza Pretelt, Katia Patricia Sánchez Mejía and Hernán Iñigo de Jesús Gómez Hernández) to ten years in prison and a fine of 2,650 minimum wages at the time of the ruling (i.e. £430,000). Regarding remedy for victims, the Court ordered the defendants to pay compensation of approximately 20 million pesos (i.e. around £5,300) to each victim of forced displacement, and ordered several state entities to guarantee and monitor the process of restitution of lands to the communities of Curvaradó and Jiguamiandó (Juzgado Quinto Penal del Circuito Especializado de Medellin 2014, 349–56). The Tribunal Superior de Medellín confirmed this decision in 2016. And in June 2017 the same Tribunal convicted Antonio Nel Zúñiga-Caballero, proving that the state is able to bring to account the highest economic powers behind these cases of abuse.

When all they had was the 2014 ruling, the CIJP saw this case as a partial success story, because the case against Zuñiga-Caballero had been filed and the Tribunal hadn't resolved the appeal that they had lodged. Partial because, as Manuel Garzón and Danilo Rueda argued, those with real economic and political power had not been convicted (Interview Manuel Garzón 2015; interview Danilo Rueda 2015). However they did find that the ruling had significant value in terms of truth, reconstruction of the historical memory of the armed conflict, and to facilitate the reconstruction of these communities (Contagio Radio Hablemos Alguito 2015; Interview Manuel Garzon 2015). The ruling expanded the scope of the crime of forced displacement to include not only all actions directed to force communities out of their lands (which are usually attributed to armed actors), but also all actions directed to preventing the return of communities and benefiting from their condition of IDPs (which is where corporations come in). This approach allowed the Court to convict former company employees for the crime of forced displacement[144].

[144] I refer to this case as a success story because of the outcomes in terms of judicialisations and remedy. However, I cannot ignore the impact that this judicial action has had in deepening the

The ruling is also valuable because of its contribution to historical memory and because it is one additional element that communities can use to continue to pursue the restitution of their lands. Now that Mr. Zuñiga-Caballero has also been convicted, this case is also an important step towards the guarantee of non-repetition as it is evidence of the state's unwillingness to accept all behaviours in the name of profit. The case against these businessmen and women in Chocó is as a case where business accountability and victim remedy were possible. This then begs the question of why this case was able to reach this outcome and other cases of corporate complicity human rights violations in Colombia have not?

Factors and causal mechanisms that explain the outcome of the criminal action

This in-depth case study allowed me to use a theory testing approach to explain remedy and accountability outcomes, as well as to explore the causal mechanisms that link the independent variables with the dependent variable of interest. It was also an opportunity to refine the definition of the independent variables for future comparative analysis. After interviewing the main actors in the criminal trial, I concluded that the outcomes of this case are explained because it is located in Quadrant IV of Table 2.1, i.e. there is a

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fragmentation of the community and what some have suggested has been a "capture" by civil society organisations of the decision making process that only belongs to the community. This case highlights the deep problems of the organisational process that begun with the Constitution of 1991 to protect these communities but that has in the end eroded them around land ownership and decisions about their future (Interview Juan Sebastian Ospina 2017; interview Jesús Albeiro Parra 2015; interview Richard Moreno 2015).

combination of the strong power of people with the weak power of business, which allowed for judicialisation and convictions.

When business has weak veto power

While the business community in Colombia has a strong veto power (*Chapter 4*), there are certain factors that decrease the veto power of certain businesses or business sectors, exposing them to judicialisation and convictions. Some have argued that judicialisation and remedy outcomes will depend on specific characteristics of the economic actor on trial, for example if it has a high visibility brand or name, then the company will be more likely to engage with the court or directly with the claimants to guarantee remedy (Clapham 2006, 206; Deitelhoff et al. 2010). There are also strong political economy claims suggesting that the likelihood of remedy and accountability will be greater when a company operates in a sector that is not strategic for the economy (like e.g. national security or public utilities), or that is not integral to the national economy (because of the sector's share in GDP and/or FDI) (Aaronson 2003; Clapham 2006; Olsen and Payne 2013).

Through this within-case analysis I was able to refine this measurement. It was evident from the Urapalma case that a more fine-grained look at the company's role in the economy was necessary in order to capture the role of company level characteristics in remedy outcomes. In this sense, the hypotheses should not refer to how integral or strategic the sector is to the economy (e.g. agriculture, or oil, gas and coal), but rather look at the importance of the individual company to the national economy in a particular point in time. This finding shows the importance of mixed methods research where the small-N analysis complements the results from the large-N analysis.

In the case of Urapalma S.A., this was a purely domestic company (with no foreign capital), operating in a subsector (palm oil) of agriculture that, although listed by the state as an important sector to develop[145], it was not at the time an important part of the GDP and was mostly made up of domestic capital (Interview Rubén Dario Lizarralde 2015). Palm oil represents only 3 per cent of the agriculture GDP and less than a third of the agriculture exports[146]. Currently foreign direct investment in agriculture is very low, 0.6% of the total FDI flow recorded by the Central Bank for 2012.

And within the palm oil sector, Urapalma S.A. and the other companies operating in Chocó had a very small share of the market. While at the time there were around 300 or 350 thousand hectares in the country harvested with palm oil, the hectares harvested by Urapalma S.A. and the other companies were around 4,000 (Interview Rubén Dario

[145] According to the statistics of the Ministry of Agriculture (Agronet Colombian Ministry of Agriculture and Rural Development n.d.), Colombia is the first country in Latin America and the fifth in the world in palm oil production, with plantations extending over 452,000 hectares and a production of almost 1.2 million tons per year, corresponding to 3.3% of the agricultural GDP (El Universal 2012). The last two administrations (2002-2014) have followed development plans for the rural areas of Colombia based on promoting national and foreign investment in large-scale agro industrial projects See national development plan for 2002-2006 called 'Hacia un Estado Comunitario', available at: https://www.dnp.gov.co/PND/PlanesdeDesarrolloanteriores.aspx, accessed 14 January 2014; national development plan for 2006-2010 called 'Estado Comunitario: desarrollo para todos', available at: https://www.dnp.gov.co/PND/PND20062010.aspx, accessed 14 January 2014; and national development plan for 2010-2014 'Prosperidad para Todos', available at: https://www.dnp.gov.co/PND/PND20102014.aspx, accessed 14 January 2014.

[146] The total exports for 2011 amount to USD$77 billions out of which 12.5% corresponds to the agricultural sector and 0.4% to the category 'Aceites y grasas animals y vegetales', where the palm oil industry is located. This same category corresponds to 3.9% of the Agricultural exports.

Lizarralde 2015), and their production was still not being exported or sold to multinationals (Interview Danilo Rueda 2015).

These characteristics of the company could have facilitated the momentum that was given to the judicialisation and criminal trial because the state was not compelled to protect the company in order to safeguard the flow of foreign direct investment, which the government development plans from 2002 to 2014 include as one of the most important components for development (Departamento Nacional de Planeación 2006, 2010; "Plan Nacional de Desarrollo 2002-2006 Hacia Un Estado Comunitario" n.d.).

So, despite the fact that the Uribe government was seeking to expand the country's participation in the international market of palm oil and was therefore incentivizing the increase in the number of harvested hectares to 600,000[147]; this same government was able to press for the judicialisation of these companies precisely because of their marginal role in domestic production and the lack of impact on foreign direct investment.

This case also revealed the way in which companies with weak veto power (according to the hypotheses extracted from the literature) can use violence and the armed conflict to increase their strength and guarantee impunity. As I stated before, the economic actors involved in this case used violence and legal strategies to build a protective shield that allowed them to operate for years in communal lands after the allegations from the

[147] In a speech in Cartagena in September 2003, President Uribe said (my translation): "I am confident in the future of palm oil. This government has committed to the increase of competitive production of palm oil. We are looking to substitute palm oil imports and to penetrate international markets." (Mingorance, Minelli, and Le Du 2004, 48)

communities were known to the Church in the late 1990s. Nonetheless, the strategy of part of the communities to bring these companies to account allowed the claimants to deconstruct each part of this protective shield, therefore weakening the powerful force that they had constructed through strategic alliances and the use of the law. This process would not have been possible without the demobilisation process that opened up spaces of vindication and left the businessmen and women unprotected.

When civil society power is strong

While civil society, and particularly victims, has a relatively weak power to face economic actors in trial, there are also certain factors that allow them to increase their strength. In this case, claimants' power changed because they empowered themselves through networks and exploiting political opportunities that arose at the time of the trial.

The success that these communities have had in the courts is puzzling because they managed to obtain convictions and orders of restitution of their lands, despite having suffered several processes of fragmentation starting with their forced displacement. These processes affected their capacity for collective action, but as I found in my research those who remained actively invested in the use of judicial mechanisms to seek remedy and accountability were bound by a sense of collective identity and social networks that allowed them to continue to mobilise despite the fragmentation. However, I found that an important factor to explain the outcomes of this case is the role that local organisations (mainly the Church and the CIJP) had to tap into a dense TAN that included global actors that pressured the state to act.

As I mentioned before, the Dioceses of Quibdó was an important agent throughout the process of vindication, and remains today an important actor supporting the reconstruction of these communities and the local economy. Also, the Dioceses of Apartadó is particularly focused today on supporting collective agricultural projects (Interview Edwin Guardia Calderón, 2015). And the CIJP used its technical expertise not only to litigate the case but also to build a network of global support around the case.

This case is a standard example where domestic actors activate international networks to bypass the state and search for international allies (either other states or intergovernmental organisations) to bring pressure on their own state. It is an example of leverage politics where local groups called on powerful actors to affect a situation where weaker members of a network are unlikely to have any influence (Keck and Sikkink 1998). But how did they manage to tap into these dense TANs that involved a whole set of global actors (including WOLA, the Inter American system of human rights and US public officials)? They appealed to a transnational topic: the protection of communal lands of Afro descendants. This meant that the case was not only about peasants in Colombia, but more about a global (transnational) concern with the protection of the civil rights of minorities. This appeal expanded the possibility of partnership and the strength in solidarity links with political communities outside Colombia that could bring pressure to bear on the state. This finding highlights a handicap that other victims of business complicity encounter to give traction to their cases, because there is no current global network around the issue of business involvement in human rights abuses, which is why activists are forced to reinterpret the violations to fit into the agenda of other existing activist networks.

The global actors whose pressures partly explain the outcomes in this case are Inter-American Commission of Human Rights and the Inter-American Court of Human Rights, as well as members of the U.S. Congress.

Decisions from international bodies: The communities obtained support from the Inter-American system of human rights (i.e. the IACmHR and the IACtHR). According to Manuel Garzón, the changing point in the case of these communities was when the IACmHR did an in loco visit to the region and verified the forced displacement and the presence of the company in the collective lands (interview Manuel Garzón 2015). On 7 November 2002 the IACmHR granted precautionary measures ordering the state to implement measures to protect the life and physical integrity of over 500 families of the Community Council's of Curvarado and Jiguamiando. The Commission also required the state to investigate and prosecute those responsible of the abuses (Inter-American Commission of Human Rights 2002, para. 45). Since the Commission kept receiving information about abuses against these communities, in March 2003 it requested the IACtHR to adopt provisional measures[148]. The Court ordered the state in broad terms to

[148] The Inter-American system of human rights has two organs: the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights. The decisions of the Inter-American Commission, including the adoption of precautionary measures, are not binding on the states, while the decisions of the Inter-American Court are. This is why when the Commission

protect these communities, guarantee the restitution of their lands and prosecute those responsible for the abuses committed against the communities (Inter-American Court of Human Rights 2003).

Having precautionary and provisional measures from the Inter-American system ordering the state "to investigate the acts that gave rise to the adoption of these provisional measures in order to identify those responsible and impose the corresponding punishment" (Inter-American Court of Human Rights 2003, 8)[149], allowed the communities to have a pressure point on the government to pursue the judicialisation not only of state actors but also non-state actors.

> *"So, of course when there are provisional measures the state moves a lot more because the OAS, I mean the Court constantly requires the state to present reports and they have to show advances. So it is as a result of this international pressure that these cases start to move."*[150] (Interview Manuel Garzón 2015).

The pressure on the state was of such magnitude that in 2009, in a statement from the state to the IACtHR, it recognised the use of violence by companies to appropriate the lands of the communities[151].

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noticed that the state was not taking steps to comply with the precautionary measures, it went to the Court to ask them for provisional measures. For more information on the Inter-American system see http://www.oas.org/es/cidh/ and http://www.corteidh.or.cr/index.php/en

[149] Similar wording is in the precautionary measures granted by the IACmHR: "effectively investigate the acts of violence and threats justifying the adoption of precautionary measures; and prosecute and punish the perpetrators." (Inter-American Commission of Human Rights 2002, para. 45).

[150] This is my translation of the following text in Spanish: *"Entonces claro, cuando hay de por medio unas medidas provisionales el Estado se mueve mucho más, porque la OEA, sí, la Corte, constantemente requiere la presentación de informes, y ellos tienen que mostrar avances. Entonces claro, es a raíz de esa presión internacional que hay, que los casos empiezan a moverse."*

[151] See http://www.corteidh.or.cr/docs/asun- tos/jiguamiando_03_05_10.pdf

The United States Congress: The free trade agreement was being debated in the US Congress at the time the criminal action was taking place, and there were concerns about Colombia's human rights record. Also, in 2010 the Congress had to review the funds given to the Colombian government for national security and development through the Plan Colombia scheme. It was the first allocation of funds to Colombia from the Obama administration, and in the draft legislation Senator Patrick Leahy had included a clause prohibiting any funding to palm oil plantations that caused forced displacement of communities (Ballvé 2009). Senator Leahy had been contacted by the Washington Office on Latin America (WOLA), an INGO working closely with the CIJP. The development funds of Plan Colombia were administered by USAID and that agency had considered financing palm oil companies in Chocó, including Urapalma S.A. The agency therefore was at risk of being involved in the abuses (Interview Manuel Garzón 2015).

The Communities seized this opportunity and lobbied the US Congressional Black Caucus. Several Congressmen approached the Uribe Government about the palm oil plantations in Chocó, including Donald Payne, who was particularly active in pressuring the government to push the criminal investigations (Interview Danilo Rueda 2015).

> *Laura Bernal: And why these investigations in particular? Why did Attorney General Iguaran give momentum to these investigations?*
> *Danilo Rueda: Because of the pressure that we made. How did we achieve this pressure? Because we found an ally in the US Congress and in WOLA, an organisation in the US. So the particular relationship established between the Afro community in Colombia and Donald Payne, who is deceased, he is the one who was forcing and forcing, and pressuring and pressuring until*

> *after two meetings with the Attorney General he had to make the decision"*[152] (Interview Danilo Rueda 2015).

Both Danilo Rueda and Manuel Garzón from the CIJP recognize the importance of the pressure of US Congressmen in the advances of the criminal investigation and the need of the Colombian state to produce results.

In the words of Manuel Garzón:

> *"We met several people, mostly democrats. At the beginning the US supported this [palm oil plantations]. This also has to be seen in macroeconomic terms right? [It] is very interesting in some of the testimonies of palm oil businessmen how they speak of a project. There is a project that I had no idea about, they call it the 2020 project, which was that by 2020 the dream that many [global] agribusiness leaders had in 2000 or a little before was to have 20 million hectares of palm oil so that this would substitute traditional fuel sources, I mean oil and petrol, oil basically, and substitute them with palm oil. When we started taking the case to the Americans, [we said] look what is happening, this [project] that you have been incentivising so much in Colombia is done through all these horrible things that are happening there [in Chocó]. And of course, they, with their sometimes clean face and clean discourse, started asking the Colombian state [about] what was happening there [Chocó] […] And of course, after that we were able to move the system a lot and we could move the case a lot in the US. And I tell you, it's not even the fact that they put pressure, we have had experiences where it is enough if they ask: Hey, what is going on with this? And they [the Government] run, run and fly to show advances."* [153] (Interview Manuel Garzón 2015).

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[152] This is my transation of the following text in Spanish: *"Laura Bernal: ¿Y por qué en estas investigaciones en particular el Fiscal Iguarán fue el que impulsó las investigaciones? Danilo Rueda: Por la presión que le hicimos ¿Cómo se logra esa presión? Porque encontramos un aliado en el congreso de los Estados Unidos y una organización en los Estados Unidos que es WOLA. Entonces la relación particular que establece la comunidad Afro-descendiente, afro-mestiza con Donald Payne que ya murió, es el que va forzando, va forzando, va presionando, va presionando, hasta que después de dos reuniones con el Fiscal tiene que tomar una decision."*

[153] This is my translation of the following text in Spanish: *"Nos reunimos con distintas personas, sobre todo de la bancada demócrata. En un principio Estados Unidos impulsaba resto porque eso también hay que verlo en términos de macroeconomía ¿no?, de cómo, y es bien interesante en algunas versiones de los mismos empresarios palmeros cómo ellos hablan de un proyecto.*

The US Congressional Black Caucus expressed its concern about palm oil plantations in the territories of Afro-Colombian communities, and *"in late 2007, Attorney General Mario Iguarán announced an investigation into allegations that twenty-three palm company representatives in Chocó, including Urapalma's, worked with paramilitaries to seize community-owned land."* (Ballvé 2009). Although the Attorney General is part of the judiciary and therefore in theory independent from the Executive, Congress elects him from a shortlist presented by the President. In this way his decisions could be subject to direct or indirect pressure from the Executive (i.e. although he/she may be institutionally independent, this is not necessarily the case at a personal or political level).

On the other hand, considering that, as discussed in *Chapter 3*, political opportunities emerge from social processes that restructure existing power relations, I argue here that the social process that opened spaces for the Communities of Curvaradó and Jiguamiandó to present their claims is the justice and peace process with the AUC paramilitaries, where several leaders were interested in the state bringing to account all actors involved in abuses committed during the armed conflict, including companies. In 2003 the state

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Hay un proyecto que yo no tenía idea, lo llaman el proyecto 2020, que era que para 2020 el sueño que tenían muchos agroindustriales hacia el 2000 o un poquito antes era tener 20 millones de hectáreas sembradas en palma para que fuera el sustituto de los combustibles tradicionales, pues la gasolina y petróleo, petróleo básicamente, y sustituirlos por palma aceitera. Cuando se les empieza a llevar a los gringos, vea pero lo que está pasando es que esto que Ustedes están incentivando tanto en Colombia se hace a partir de estas cosas horripilantes que están sucediendo allí. Y pues claro, ellos digamos con ese medio lavado de cara medio lavado de discurso entonces también le pedían al Estado colombiano ¿qué está sucediendo acá? [...] Entonces, pues claro a partir de eso se puede mover mucho en el sistema y se pudo mover mucho en Estados Unidos. Y ya te digo, es siempre la, ni siquiera es que ellos presionen, hemos tenido experiencias en que ellos simplemente preguntan: Oiga ¿qué ha pasado con esto? Y ellos corren, corren y vuelan y pues muestran avances."

started negotiations with the AUC paramilitaries to demobilize. In 2005 the Justice and Peace Law was enacted[154]. According to this law, those who demobilized would receive a reduced prison sentence if they contributed to truth telling and reparation for victims. This truth telling process is referred to as *versiones libres*, and the hearings are ongoing, since the Attorney General's office has them scheduled up to June 2015.

Although it cannot be said that the communities or the CIJP formed an alliance with the AUC paramilitaries to bring the company executives to account, there is an argument to be made regarding the convergence of interests at a particular time when it was in the paramilitaries' best interest to speak about all actors involved in the armed conflict, including companies. It was a strategy to diffuse responsibility of human rights violations to other groups of society.

According to Manuel Garzón, the paramilitaries started talking about their links with businessmen because they were in prison, being held accountable for the crimes they had committed, while the businessmen who had worked besides them in the region were enjoying the profits[155]:

[154] Some have referred to this law as a transitional justice mechanism

[155] Fomer paramilitary leader Hebert Veloza, Alias HH, said during his testimony in the justice and peace process about the businessmen who owned the banana plantations in Uraba: *"they [businessmen] were the ones who benefited from the war. None of them is paying for it, none of them are detained, none of them are being investigated, none of them has given a dime for reparation and they were the ones who really benefitted."* My translation of the following text in Spanish: *"ellos fueron los que se beneficiaron de la guerra. Ellos ninguno está pagando, ninguno está detenido, ninguno está investigado, ninguno ha puesto un peso para la reparación y ellos fueron los que realmente se beneficiaron"* (Tribunal Superior de Bogota Sala de Justicia y Paz 2013, 238).

> *"But even, in these trials it is interesting that many of these businessmen have been convicted or prosecuted because the same paramilitaries from the military wing of the organisation feel betrayed, or at least say this man and I had a company together, we did everything together. How is it after all these years that he is going to pretend that I am an assassin in charge of removing people and that he simply had no idea of what he had gotten himself into? When we were all in the same boat."*[156]

The convictions of former company executives were based in large part on the testimonies of the paramilitaries involved in the business project of palm oil in the Urabá Chocoano, including Raúl Emilio Hasbún-Mendoza, Ever Veloza García, alias "HH" (Tribunal Superior de Bogota Sala de Justicia y Paz 2013, 227), Jesús Ignacio Roldán-Pérez, alias "Monoleche" and Rodrigo Alberto Zapata Sierra, alias "Ricardo".

However, there are several cases in the CHRD-Colombia and the CATJ-Colombia datasets where the paramilitaries have confessed to receiving funding from companies and killing union members following company instructions, but no accountability/remedy has yet been possible, e.g. the case of Drummond in Colombia, in which the company has been accused of being involved in the killing of several union members by paramilitaries. There is also the known case of Chiquita Brands. The company admitted to the U.S. Justice Department paying a right-wing Colombian paramilitary group (Autodefensas Unidas de Colombia - AUC) $1.7 million from 1997 to 2004. The company pleaded guilty in 2007 to U.S. criminal charges and settled the criminal complaint with the U.S. Government paying a US$25 million fine (with no reparation for victims). Since 2007,

[156] This is my translation of the following text in Spanish: *"Pero inclusive, en estos juicios es interesante que muchos de esos empresarios han podido ser condenados o se les abren causas porque los mismos paramilitares militares sienten una especie de traición, o por lo menos decir este tipo y yo teníamos la empresa juntos, hacíamos todo juntos, ¿cómo transcurridos los años va a pretender que yo era el matón asesino que me encargaba de sacar a la gente y él simplemente no tenía idea en qué estaba metido? Cuando todos estábamos montados en lo mismo."*

families of victims of the paramilitary groups in Colombia have filed a large number of lawsuits before U.S. Courts under ATCA, which are still pending to be resolved.

In Colombia, the prosecutor's office also started a criminal investigation against Chiquita Brands. However, in March 2012 the Prosecutor precluded the investigation against former executives of the company in Colombia, considering that they were victims of extortion. This decision was in line with the company's defence strategy both in the U.S. and Colombia. However, it contradicts several decisions issued by judges in the course of Justice and Peace processes involving former paramilitary leaders, including Raúl Hazbún (alias 'Pedro Bonito') and Freddy Rendón Herrera (alias 'el Alemán'). In their confessions these leaders suggest that the company's involvement with the AUC was greater than the company recognises, and this has lead the Special Justice and Peace Prosecutor's Unit (Unidad de Justicia y Paz de la Fiscalía General de la Nación) to request the competent authorities (i.e. other prosecutor's offices) to start new investigations and judges ordering precautionary measures on the assets of the company for the reparation of victims (El Tiempo 2012).

Conclusions

Cases of accountability and remedy need to be seen through the lens of multi-causal explanations. In the case of Urapalma S.A. and the other palm oil companies, there is not one single factor or causal mechanism to explain why there were convictions and reparation for victims (in this case, compensation and the restitution of lands). The literature on obstacles to access to justice in Colombia mainly points to structural hurdles that make it highly unlikely for victims to obtain remedy and accountability. However, this case study highlights how remedy outcomes in cases of business involvement in human rights abuses is explained by agency and the role that different actors have in the judicial action.

The factors that explain the outcome in this case were: a company that on the one hand did not have a profile that attracted the state protection and on the other failed to attract the acceptance/legitimacy from its peers (Fedepalma) or global actors (USAID); and claimants with local partners (Church and CIJP) with the technical expertise and the technology to access dense support networks that included global actors.

Moreover, was this the case of a fight between 'David and Goliath'? The results from this case study suggest that in cases where economic actors are accused of being involved in complicity with grave human rights violations two conditions are needed to explain judicialisation and remedy: first that the claimants face an economic actor whose veto power is decreased either by business level characteristics (e.g. the nationality firm, its contribution to the national economy) or a change in the context where the business is operating; and second, that the claimants manage to tap into dense transnational activism networks that include global actors with enough muscle to pressure the state to act (Quadrant IV Table 2.1).

The following table summarises the findings from this case study regarding the hypotheses tested in this thesis and provides a comparison of the findings from the two previous empirical chapters (*Chapters 5 and 6*).

Table 7.2 Summary of findings of empirical chapters, including findings from the Urapalma case study

			CHRD-Colombia	CATJ-Colombia	Case-study: Palm oil companies in Chocó
The power of people	TANs	Cases where claimants are able to tap into TANs to pressure the state are more likely to end in judicialisation and remedy	**Judicialisation and remedy**: Still under consideration to be further developed in *Chapters 6 and 7*. Not tested in this chapter	**Judicialisation:** Confirmed. Access to TANs increases the odds of judicialisation.	**Judicialisation and remedy:** Confirmed. TANs act as amplifiers of the claims, provide technical support and pressure the state to act.
		Denser TANs will be more successful in pressuring the state to pursue judicialisation and remedy	**Judicialisation**: Rejected. It doesn't seem to be necessary to have great muscle (in terms of the complexity of the TAN) to push for judicialisations.	**Judicialisation:** Confirmed. When the case involves complicity with atrocities committed in the course of the armed conflict, pressure from global actors increases the odds of judicialisation.	**Judicialisation and remedy:** Confirmed. This case suggests that the types of nodes in the network are more relevant to explain outcomes than the number of nodes. I found that the pressures from global actors were important to explain the outcomes.
			Remedy: Confirmed. A strong muscle (including several nodes and global actors) seems to be required to obtain remedy outcomes once judicialisations are underway.	**I was not able to test the relationship with remedy outcomes.**	
		TANs are more likely to pressure for judicialisation and remedy when the economic actor is involved in violations of civil and political rights.	**Judicialisations:** Rejected. The type of abuse doesn't seem to be relevant to explain judicialisation.	**I was not able to test this hypothesis using this data because the CATJ-Colombia only includes physical violence abuses.**	**I was not able to test this hypothesis because this requires a comparative exercise. This case focused on physical violence abuses (i.e. forced displacement).**
			Remedy: Rejected. Although TANs do focus on physical violence abuses, the data suggests that the state is more		

			CHRD-Colombia	CATJ-Colombia	Case-study: Palm oil companies in Chocó
			willing to prosecute and convict the firm when it is involved in violations of economic, social or cultural rights.		
	Political opportunities	When claimants are able to seize political opportunities that shift the power dynamics between victims, the state and economic actors in a given time, this will increase the likelihood of judicialisation and remedy outcomes.	**Judicialisations:** Confirmed. The changes in power dynamics and truth telling mechanisms open a window of opportunity for victims to ask for judicialisation and obtain remedy. **Remedy:** Rejected. The changes in power dynamics open spaces for judicialisation, but do not explain remedy outcomes.	**I did not test this hypothesis with this data because all the cases in the CATJ-Colombia were named in the course of the transition that came with the demobilisation of the AUC paramilitary groups.**	**Judicialisation and remedy:** Confirmed. In this case the power of the people was increased by the truth telling process, which exposed the companies and provided evidence of the companies' role in the violations.
The power of business	Importance to the economy	Businesses that are central to the national economy are less likely to be prosecuted for their alleged involvement in human rights violations; and if they are prosecuted, claimants are less likely to obtain remedy.	**Judicialisation:** Still under consideration to be further developed in subsequent chapters. A joint reading of the three tests that I used in this chapter suggest that in terms of judicialisation the veto power of companies is tied to their role in the global economy but more importantly to the size of the firm. However, the interpretation of the results was difficult.	**Judicialisation**: Confirmed. The analysis suggests that the companies that are less important to the economy because of their lower participation in GDP are more likely to be prosecuted.	**Judicialisation and remedy:** Confirmed. This case suggests that the businessmen and women in this case were convicted partly because they were not considered central to the national economy, and partly because they lost the veto power that they had managed to build through violence and strategic alliances.

			CHRD-Colombia	CATJ-Colombia	Case-study: Palm oil companies in Chocó
			Remedy: Still under consideration to be further developed in subsequent chapters. The results from this section suggest that the importance of a firm is determined by its role in the global economy. In this way, domestic firms that operate in sectors with lower FDI intake and lower participation in exports are arguably less important to the economy and therefore more likely to be convicted (independently of their size).	**I was not able to test the relationship with remedy outcomes.**	
		The veto power of economic actors will increase in times of transition because of the state's reliance in their investment for peace building	**Judicialisation and remedy:** Still under consideration to be further developed in *Chapter 6 and 7*. Not tested in this chapter.	**Judicialisation:** The results from the quantitative analysis do not allow me either confirm or reject this hypothesis. The regressions do not allow me to test for an increase in the likelihood given a particular change in the context where the trials take place (i.e. in times of transition). I developed this hypothesis in *Chapter 7* with the case study analysis.	**Judicialisation and remedy**: Rejected. Not all companies' veto power will increase in times of transition because the state can "do without" some companies for peace building.

			CHRD-Colombia	CATJ-Colombia	Case-study: Palm oil companies in Chocó
	Nationality of the business	TNCs are less likely to be prosecuted and convicted because of their economic power.	**Judicialisation and remedy**: Confirmed. TNCs' veto power enables them to elude judicialisation and remedy outcomes.	**Judicialisation:** Confirmed. TNCs' veto power enables them to elude judicialisation outcomes.	**I was unable to test this hypothesis in this case study.**
	Brand	Companies that have a high visibility brand or name are more likely to be prosecuted for their alleged involvement in human rights violations, and if they are prosecuted, claimants are more likely to obtain remedy and accountability outcomes.	**Judicialisation and remedy**: Rejected. The data suggests that companies are targeted regardless of the visibility of the brand.	**I did not test this hypothesis using this data.**	**I was unable to test this hypothesis in this case study.**

Chapter 8- Conclusion: A new understanding of the 'David' and 'Goliath' struggle in the business and human rights struggle from accountability

So how do claimants manage to bring economic actors to account for their role in atrocities committed in the course of an armed conflict? Are they doomed by structural obstacles to access to justice? In this thesis I used emergent literature on business involvement in human rights violations and transitional justice to propose an agency-centred framework to understand the possibilities that claimants have to access to justice. This work sought to contribute to the much-needed scholarly literature to understand access to remedy, which has been referred to as the "forgotten pillar" of the UNGPs. I also finish this thesis at a time when Colombia is undergoing a process of transition, which is why the findings are meant to inform policy makers and civil society of the possibilities to expand access to justice for victims of complicity, while also revealing the persistent barriers to justice for those abuses.

My work started with an interest in investigating the unexpected outcomes of convictions of businessmen and women operating in the palm oil sector in Chocó (and reparations for victims) for their role in the forced displacement of marginalised Afro-Colombian communities. The questions that guided this thesis are: What factors explain the judicialisation of economic actors when they have been accused of involvement in human rights abuses? What factors explain remedy and accountability outcomes once judicialisations are underway? And how do these factors behave when looking specifically at cases of business complicity with grave human rights violations committed by the paramilitaries in the course of the armed conflict?

So far, the works looking at the economy in and of armed conflict have focused on illegal economies (like drug trafficking or contraband) or the use of economic activities by armed actors to support their military activities. However, little is known about the role that economic actors, operating in the legal economy, have had in the violence. In Colombia, although some studies have been conducted, no systematic analysis exists about the extent of the complicity between economic actors and armed actors in the conflict like paramilitary forces and left-wing guerrilla groups. This thesis will contribute to fill this gap by using two new datasets that allow for a more systematic look at the phenomenon, and a clearer understanding of the war in Colombia, in all its dimensions.

The two datasets that I used in this thesis are the CHRD-Colombia and the CATJ-Colombia. As I mentioned in Chapter 3 of this thesis, these are two of the most comprehensive datasets in existence to investigate the phenomenon of business involvement in human rights violations. However, they are not without limitations, and these restrict the universe of cases and the generalizability of the findings. Because these datasets include certain types of cases of business involvement in human rights violations, I am unable to make assertions about access to justice for all cases of business involvement in human rights violations. Particularly the CHRD-Colombia only includes cases whose characteristics make it more likely for the BHRRC to identify them and include them in their website. And the CATJ-Colombia only includes cases of business complicity with paramilitary violence when a higher evidentiary threshold was met (beyond the mere mention by the paramilitary leaders in the confessions). While these limitations are considered in the analysis of the data, the findings are not without significance. The types of cases that are captured by the BHRRC and by the Justice and

Peace Tribunals in their rulings do represent two large groups of cases that show a picture that has not been seen before regarding the role of businesses in human rights violations, and particularly in complicity with the conflict.

On the other hand, efforts to understand access to remedy for victims of complicity have focused on building a framework around structural obstacles that make it unlikely that we should see judicialisations and remedy outcomes in the courts. These obstacles include for example corruption (i.e. capture of the judiciary or other state authorities by companies), difficulty to produce evidence that clearly demonstrates the links between the company and the abuse, as well as issues around who has jurisdiction to prosecute corporations when they are registered abroad. This framework suggests a static and mainly institutional view at the problem, which neglects to consider the role that the agents participating in these cases (i.e. claimants and defendants) have on the outcomes of trials. In this thesis I presented these trials as a stage where two forces collide: the power of business and the power of people. And the outcomes of this collision are explained by identifying variations in the relative power of each one.

In this work I reviewed the existing and still emergent literature on business and human rights, as well as works on the convergence between business and human rights and transitional justice, to identify a set of hypothesis that could explain the variations in the relative power of claimants and defendants in the course of a trial. Regarding the power of people, I tested the role of two factors: transitional processes as political opportunities that change the power dynamics of the conflict, and the role that TANs have to empower claimants. And regarding the power of business, the literature suggested that factors like the firm's importance to the national economy, its nationality and its brand could explain the extent of its veto power to guarantee impunity[157].

The field of business and human rights is still an emergent field where academics and practitioners have only recently started bringing together two sets of literature that have so far developed independently: business and human rights (which include discussions about business accountability for their involvement in human rights violations), and transitional justice (which studies the responsibility of state actors in past atrocities committed in authoritarian regimes and armed conflicts). This thesis contributes to building the field in two ways: Firstly, it proposes a new framework to evaluate access to justice for business involvement in human rights abuses. This framework does not contradict existing works, but rather complements those that have focused on the structural (social, political and legal) obstacles that claimants face. The BHRRC has said that the "doors are closing on judicial remedies for corporate human rights abuses". However, my research shows that there are opportunities to use judicial actions to obtain remedy for victims, and seeks to inform policy makers to take steps towards levelling the playing field for actors involved in these trials. The results of my thesis also suggest that civil society should focus on creating a transnational activist network (including specialized international institutions) around business and human rights that can support their claims for justice when all domestic opportunities are closed. At this point, no such TAN exists and so activists have had to rely on TANs that have developed over the years around other issues like minority rights or lands.

[157] A summary of these hypotheses is found in Table 2.1 (*Chapter 2*).

Secondly, this thesis expands the field by providing empirical evidence of another dimension of the link between the economy and armed conflict that has been overlooked so far: the role of legal economic actors in the violence. In this way, by understanding war in all its dimensions we are better equipped to advance peace. Because I finish this work at a time when Colombia is designing and thinking about the implementation of transitional justice mechanisms to deal with past atrocities committed by all actors in the armed conflict, including economic actors, its findings contribute to discussions about truth, justice, reparations and guarantees of non-repetition.

Main contribution of this thesis

The main contribution of this thesis, as I mentioned before, is the agency-centred framework to understand access to justice. I asked: what is it about the relative power of the actors involved in these trials that explain the outcomes in terms of accountability and remedy? The first finding that underpins the interpretation of the results from the empirical chapters is that the power of claimants and defendants is ever changing. It is not accurate to refer to economic actors as a single actor with the same veto power; or to claimants as all having the same power.

Despite the limitations of the data, this thesis used two of the most comprehensive datasets of business involvement in human rights violations in Colombia. From the empirical work of this thesis I found that not all hypotheses had an impact on the outcomes. Some of the hypotheses were rejected and others were confirmed. Following the results in Table 7.2 dense TANs seem to be an important factor to explain judicialisation of cases of complicity recorded in the Justice and Peace rulings, most of which have not reached the public eye and therefore need the support of TANs for judicial actions to be initiated. When cases already reached a certain level of notoriety (and are therefore captured by the BHRRC), the role of dense TANs moves from explaining judicialisation to explaining remedy outcomes. In this sense, the presence of a dense TAN (with global actors) does increase the odds of judicialisation and remedy. Processes of transition are also relevant but not enough to explain the outcomes on their own. These processes do empower civil society and provide space to disempower businesses. On the other hand, evidence suggests that a weakened veto power of the economic actor is required to explain outcomes. The likelihood of judicialisation and remedy decreases when the business is important to the national economy (because of its contribution to GDP and/or FDI). The fact that the brand of the firm is well known does not seem to be a relevant factor to explain judicialisation and remedy.

Regarding the type of abuse, the results in Colombia contradict what the literature has suggested so far: that physical violence abuses are more likely to end in convictions. What I found is that in Colombia the state is more willing to prosecute and convict a firm when it is involved in violations of socio economic rights. These results can be explained because of the great power of indigenous people and the Constitutional Court in developing a set of strong precedents regarding the right to prior and informed consultations of communities[158].

Quadrants I, II and III of Table 2.1 suggest that strategies to empower civil society are needed but not enough to guarantee both judicialisation and remedy. As Quadrant IV

[158] The cases recorded in the CHRD-Colombia where the Constitutional Court ordered the company to stop its operations because they had not conducted prior consultations include: the case of Muriel Mining Company and Rio Tinto’s operations in Chocó.

shows, the factor that I suggest needs to be added to the rest to explain remedy is the weakened veto power of business. In this sense, the results from the empirical analysis, as well as the predictions in Table 7.2 suggest that civil society's strategies to pursue accountability of businesses through the courts need to focus on: building dense TANs but also tackling the sources of the veto power of economic actors. In times of transition, although state reliance on economic actors for peace building and development remains as an important obstacle, civil society can use truth telling exercises to tackle other sources of power that come from the businesses' alliances with violent actors in the conflict.

Going back to the research puzzle that started this academic enquiry, how did these isolated Afro-Colombian communities manage to access justice? The answer is the strategic use of resources to increase their relative power in the courts and to make the most of the decreased power of the companies. The case study analysis showed the important role of the Church to liaise these communities to the *Comisión Intereclesial de Justicia y Paz*, a local NGO with knowledge, skill and a learning processes from their work with other communities who had been displaced by paramilitary groups (Ganz 2009). This NGO, supporting a sector of the community, strategically used the available legal and political resources. They used the language of human rights, race and dispossession as a political tool to influence the interests of global actors (like US Senators of the Black Caucus and the Inter-American Court of Human Rights) who had the resources and power they needed to push for judicialisation.

This case study was the last part of the nested analysis. It was selected on the basis of the dependent variable (i.e. because it was a case where judicialisation and convictions were present). As I said in *Chapter 3*, although some argue that selecting based on the value of the dependent variable can bias the results of a study, this critique is directed to the use of comparative case study analysis to explain a phenomenon with some degree of generalizability. However, in this case I did not use the case study to generate a theory, but rather used it to explore and describe the mechanisms and strategies behind the outcomes of access to justice in this case. In future research I will expand the small-N analysis to other case studies for causal analysis (Mahoney and Goertz 2004, 655).

In terms of policy and litigation strategies, the results from the empirical analysis in this thesis suggest the importance of (i) creating precedents that civil society can use to pursue business accountability and (ii) having institutions committed to revealing the truth of complicity of economic actors with the conflict and therefore more prone to creating these precedents. These two elements will contribute to tip the balance in favour of claimants by increasing their power and also decreasing the veto power of businesses. In Colombia the Constitutional Court has helped build strong precedents regarding the respect of economic, social and cultural rights in the extractive industry; and the *Tribunal Administrativo de Antioquia* has taken important steps to establish precedents on the role of economic actors in forced displacement, but much work is still needed.

Because one of the goals of civil society is to secure precedents from state institutions, following the results found in this thesis, civil society should strategically tap into TANs, but more importantly they should prioritise cases against economic actors with weakened veto power to increase the odds of convictions. And then use these convictions as precedents to target businesses with greater veto power. There is a "moral hazard" with this strategy that might mean that companies with the most resources and power might get away with grave human rights violations. However, in the long term the precedents might (i) deter these companies from engaging in complicity and (ii) increase the power of claimants to seek convictions.

While this thesis contributed to furthering the discussion about business involvement in human rights violations and access to justice for these abuses, future research should involve more in-depth work to test the framework with other case study analysis, as well as efforts to construct a more complex index to improve the measurement of the importance of an economic actor to the national economy. There is also work to be done to complement the CHRD-Colombia and the CATJ-Colombia with the new data that will come from the truth telling mechanisms created after the peace process with the FARC guerrilla group.

List of in-depth interviews

1. Danilo Rueda, human rights defender, senior lawyer at the *Comisión Intereclesial de Justicia y Paz*, (2 March 2015 and 22 July 2015)
2. Carlos Julio Díaz Lotero, Director of the *Escuela Nacional Sindical* (2012-2019), (24 July 2015)
3. Viviana Colorado, Advisor of the Human Rights Defense Area, *Escuela Nacional Sindical*, (24 July 2015).
4. Andrés Celis, Coordinator of the Protection unit of UNHRC in Colombia (2011-2016, Leader of the UNHRC office in Honduras (February 2016 – to date), (10 August 2015).
5. Diego Corredor, attorney of defendant Javier José Daza Pretelt in the Urapalma criminal trial, (17 March 2015).
6. Daysi Jaramillo, *Prosecutor of the Justice and Peace Unit of the Fiscalía General de la Nación*, (13 March 2015).
7. Edwin Guardía Calderón, Leader of the social support programme for the Communities of Curvaradó and Jiguiandó of the *Diocesis de Apartado,* (30 July 2015).
8. Hernando Olier Pautt, Community leader of the Community of Curvaradó, (16 June 2015 and 28 July 2015).
9. Manuel Garzón, human rights defender, leading criminal lawyer at the *Comisión Intereclesial de Justicia y Paz* in the Urapalma case, (16 March 2015).
10. Jesús Albeiro Parra, Catholic priest from the *Diocesis de Quibó* who supported the Communities of Curvaradó and Jiguamiando and contacted the Comisión Interclesial de Justicia y Paz, (29 July 2015).

11. Ruben Dario Lizarralde, Director of the Colombian Chamber of Oil Services (CAMPETROL) (2014 to 2016), Minister of Agriculture (2013-2014), former member of the Board of Directors of Fedepalma (1995-2005) and General Manager of Indupalma S.A. for over a two decades (1994-2013).
12. Richard Moreno, President of the *Consejo Comunitario Mayor de la Asociación Campesina Integral de Atrato – COCOMACIA (Community Council of the atrato region)*, Delegate Attorney General for Choco (2017 – to date) (29 July 2015).
13. Gabriel Jaime Sierra, businessman from the Department of Antioquia convicted in the October 2014 ruling for links with paramilitary groups and forced displacement (31 July 2015).
14. Juan Sebastian Ospina, anthropologist from CINEP (Centro de Investigación y Educación Popular) working in the Atrato region (2 June 2017).
15. Uldi Teresa Jiménez, Magistrate of the Justicia y Paz Tribunal in Bogotá (2009- to date), (25 May 2017).

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