CORPORATE COMPLICITY IN ARGENTINA:
A PRELIMINARY ANALYSIS

Tricia D. Olsen, University of Denver
Leigh A. Payne, University of Oxford
Gabriel Pereira, University of Oxford

Paper prepared for the Global and Regional Powers in a Changing World
FLACSO-ISA Joint International Conference
INTERNATIONAL STUDIES ASSOCIATION, Buenos Aires, Argentina, 23-25 July 2014

Very preliminary draft; do not cite without permission of the authors.
'Democracy or Corporations’ were the words that appeared on posters and in graffiti on the 26 March 2014 commemoration of the 1976 coup in Argentina. Those words capture the efforts that the country has begun in holding businesses accountable for their role in the military regime's repressive apparatus. The efforts have even altered the labels for that regime. What was once referred to as the military dictatorship is now called the ‘civil-military’ dictatorship thereby linking military and business sectors in the repressive apparatus.

Argentina is not alone in holding perpetrators accountable for their complicity during past authoritarian periods. The International Military Tribunal following the Holocaust tried and executed businessman Bruno Emil Tesch for supplying the Zyklon B gas used in extermination camps. Other firms, such as BMW and Volkswagen, were held accountable for slave labor. Swiss banks and insurance companies are still under investigation for failing to pay out assets and claims to Holocaust victims. Since the Holocaust, other forms of accountability for corporate complicity have occurred. The International Criminal Tribunal for Rwanda in its ‘media case,’ for example, convicted three businessmen for their complicity in the 1994 genocide. Truth Commissions in East Timor, Liberia, and South Africa investigated business complicity, and Brazil’s current truth commission initiated investigations into similar allegations there. Foreign civil trials against businesses engaged in complicity with repressive authoritarian regimes have been brought in US courts, such as the Khulumani victims’ support group in South Africa against companies’ complicity in apartheid, and the Ongoni peoples’ claims against Shell Oil for collaborating with the national military and police in the murder of political activists. These examples demonstrate that a
range of mechanisms from the transitional justice toolkit have been used throughout the world to address corporate complicity. Nonetheless, systematic analysis of these cases has not yet emerged or produced a compelling theoretical framework for understanding whether, when, where, why, and how corporate complicity should form part of the transitional justice toolkit. This paper aspires to initiate that process.

This is not the first project to consider the relationship of corporate complicity to transitional justice. We draw on existing studies of single countries or single mechanisms in developing our own approach to transitional justice and corporate complicity. However, we attempt to contribute to the ongoing debate regarding corporate complicity by using our original Corporations and Human Rights Database (CHRD, see Appendix) and AHRC-NSF-supported study¹ of ‘alternative accountabilities’ to begin to explain what makes accountability for corporate complicity possible and whether such efforts advance transitional justice goals.

**Explaining Transitional Justice and Corporate Accountability**

Five research questions connect corporate complicity and transitional justice: *whether* and *when* businesses’ past acts should form part of transitional justice, *where* corporate complicity should be included in transitional justice mechanisms, *why* in those cases, and, finally, *how* transitional justice should include corporate accountability.

Transitional justice is defined as “a response to systematic or widespread violations of human rights...[in] recognition for the victims and to promote possibilities for peace, reconciliation, and democracy” (ICTJ, 2009). At first
glance, business violations of human rights during the dictatorship would appear to fall outside the transitional justice focus on the systematic or widespread nature of violence typically associated with state actors. The notion of *corporate complicity*, however, implies a direct link between businesses and systematic and widespread state repression. We use the terms ‘corporation’ and ‘business’ interchangeably and define them as those profit-seeking organizations engaged in commercial, industrial or professional activities. Specifically, this project focuses on when state or privately-owned businesses directly or indirectly collaborate in the state’s systematic use of violence against its opponents during periods of authoritarianism or civil conflict. Moreover, the victim-focus of transitional justice considers its role in delivering justice, reparations, truth-telling, and guarantees of non-repetition (Sandoval et al. 2013). We contend that raising the cost of committing or supporting human rights violations through investigations and civil or criminal trials, thus fulfills commitments to victims. Some argue that the typical way to address business abuses through domestic torts law is insufficient to bring remedy for victims, thereby demanding a fuller set of transitional justice mechanisms (Farah 2013). While we concur, we view domestic civil trials as one of the transitional justice sets of tools to fulfill justice, reparations, truth-telling and guarantees of non-repetition. Corporate complicity is thus consistent with the definition and goals of transitional justice.

When and where corporate complicity should be addressed by transitional justice mechanism depends on the type of complicity. We contend that business complicity should be addressed through transitional justice mechanisms where past state violence, or the extent of violence, would not have been possible without corporate sponsorship, where businesses provided the
legitimacy for violence and the capacity to carry out that violence, and where businesses knowingly contributed to that violence directly or indirectly. These criteria avoid mere moral arguments against companies ‘dirty’ business with repressive regimes and consider legal claims regarding corporate abuses increasingly recognized in international, as well as many state's domestic torts, laws. These laws recognize that states have a duty to protect against, and provide remedy for, human rights abuses, including those carried out by businesses. Distinctions between states and businesses in the commission of political violence, moreover, are not always clear due to state-ownership of some abusive businesses and the close collaboration between states and private businesses in other abuses. Maassarani (2005) usefully identifies four categories of business behavior that implicate corporations in states’ violations: (1) joint criminal enterprises (JCE); (2) business conspiracy to violence; (3) business instigation of violence with knowledge of outcome; and (4) procurement, or profiting from sales or services knowing that it contributes to violence but without necessarily having criminal intent. We argue that where and when corporations have been involved in these four types of activities, they should face accountability for past state violence and thus fall within transitional justice’s remit.

The why of including corporate accountability in transitional justice mechanisms emerges from the purposes of transitional justice, identified in the definition above as peace, reconciliation, and democracy. These goals depend on the specific tasks of acknowledging wrongdoing, providing rights and remedies for victims, and advancing global and local justice norms in the pursuit of non-repetition. Toward those ends, norms around corporate conduct, underway since the 1970s, recognize the responsibility of businesses to respect human
rights. Firms and industry sectors, in response, have increasingly addressed human rights in their bylaws or voluntary associations. The responsibility of businesses to respect human rights, and the duty of states to protect and remedy corporate abuses, are enshrined in the UN Guiding Principles. Softlaw agreements like these, however, are often seen as preemptive—a means of avoiding costly lawsuits or campaigns—rather than the conditions by which companies will be held accountable. The argument behind including corporate accountability in transitional justice is therefore to acknowledge the universality of human rights, provide victims with redress and remedy, and raise the cost of human rights abuses to enforce and strengthen norms and deter future violations.

The *how*, therefore, resides within existing transitional justice mechanisms. Civil and criminal prosecutorial activity and truth commission investigations acknowledge wrongdoing. Civil and criminal trials further advance the rights of victims to seek redress and remedy for past abuses. By raising the costs of past abusive practice, moreover, prosecutorial activity is aimed at non-repetition and strengthening the global justice norm.

In our previous work, we have argued that simply holding trials is not sufficient to advance these transitional justice goals. Instead, we argue that the trials themselves tend to be a result of a concerted effort involving international pressure, civil society mobilization, and judicial leadership that are able to overcome veto players’ resistance to accountability (Lessa et al., 2014). Transferring this argument to the corporate complicity realm, we expect that international pressure, civil society mobilization, and judicial leadership to overcome the resistance to accountability by states and businesses. Thus, where
businesses are themselves weak or have weak links to the current democratic states, they will prove less likely to fight against accountability for past corporate complicity. Where they are strong or have strong linkages, however, we suspect that they might overpower still weak forms of international pressure, civil society mobilization, and judicial leadership.

In these corporate complicity cases, international pressure would take the form of foreign or international courts to advance accountability. Civil society mobilization would involve victims’ groups and their advocates bringing cases against particular companies or demanding reparations through truth commission recommendations. Judicial leadership would involve finding innovations to get around the particular constraints courts face in bringing cases against companies, specifically statutes of limitations, jurisdictional disputes, intent, and knowledge of wrongdoing. Strong businesses or strong business-state relations include the particular employment, revenue, products, and other resources businesses provide states, as well as their global reach, that allow them to seek and receive protection from home and host states, thereby avoiding accountability for past abuses. Because of this relationship, the democratic state may play a more important role in corporate complicity cases than we found in other types of violations; it can signal to courts its willingness to support and even endorse civil and criminal claims against businesses, initiate truth commission investigations, and sponsor reparations processes.

To test whether our prior approach holds in examining the success of corporate accountability for past human rights violations, we look first at the comparative cases of transitional justice and corporate complicity. Second, given the predominance of Argentina in pursuing these cases, we conduct an in-depth
analysis of corporate accountability there and the factors that explain its advance.

**Global Analysis of Corporate Accountability for Past State Violence**

In this discussion we consider two types of transitional justice for corporate complicity: judicial and non-judicial. Judicial remedy seems to be the most common form of bringing these cases, although we still found only eleven countries that have initiated judicial action. This compares to only five that have included corporate complicity investigations in official truth commissions. Two of those five have also pursued judicial accountability for corporate complicity. Thus, our preliminary results suggest that only 16 of 114 transitional countries, or 14 percent, have pursued judicial or non-judicial forms of transitional justice for corporate complicity. These cases, however, seem to be spreading as models from countries like Argentina initiate innovative efforts. We are also beginning to investigate other forms of non-judicial accountability, particularly reparations and customary justice.

Our preliminary data of judicial responses to corporate complicity suggest that there are currently 58 firms that are, or have been, involved in 61 civil or criminal cases of corporate complicity, as defined above. The vast majority of these cases (65 percent) are civil cases, with over three in ten cases (35 percent) categorized criminal cases.
Perhaps one of the more interesting facets of corporate complicity cases is that they are heard in a variety of jurisdictions (Figure 2). Over half (51 percent) of the cases were heard under the Alien Tort Statue (ATS), a statute that allows foreign citizens to seek justice in US courts for violations committed outside the United States. Nearly four in ten cases (36 percent) are heard in domestic courts while one in ten are heard in foreign courts (11 percent). Only one case—against Radio Télévision does Mille Coulines, a radio company—was heard in an international court, the International Criminal Tribunal for Rwanda (ICTR).
Argentina has the highest number of corporate complicity allegations—22 in total (see Figure 3). These are discussed further below. Eight of the cases are in response to the apartheid era of South Africa in which plaintiffs filed a class-action suit and argued that in selling cars and computers to the government, these companies aided and abetted violations of international law. All of these cases were heard in the United States under the ATS; one case was settled out of court and all others were dismissed.

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

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

![Figure 3: Count of Corporate Complicity Cases, by Country](image)

Judicial leadership and civil society mobilization were two factors we have considered likely to be able to overcome corporate veto players and facilitate corporate accountability. Measuring both through the trials processes against state actors, we do not find a perfect match. On one hand, several of the countries that have initiated corporate accountability cases are also regional
leaders of guilty verdicts in human rights trials against authoritarian state officials, e.g., Argentina and Chile, Croatia, Indonesia, and Rwanda and the DRC (Lessa et al., 2013). On the other hand, other leaders in guilty verdicts in human rights trials from those regions (e.g., Guatemala and Peru, Czech Republic, South Korea, Ethiopia and South Africa) have not yet initiated corporate accountability cases. In addition, some of the countries that have begun these cases have not successfully held state leaders accountable. Nigeria, Liberia, Syria, Myanmar, and Papua New Guinea, for example, have not held trials against state officials. In other words, the sort of judicial leadership and civil society mobilization that we have seen bring judicial accountability for state perpetrators of past violence is not always transferred to corporate accountability cases. Our findings also suggest, however, that failure in bringing state perpetrators to court is not necessarily an impediment to corporate accountability cases. Corporate accountability cases could be ‘alternative forms of accountability’ that complement or supplement judicial responses to state abuses.

Our findings further suggest that international pressure is also difficult to evaluate. The role that ATS has traditionally played in advancing these cases was stymied last year in the Kiobel decision in the US Supreme Court. Although the decision has not yet been tested, US attorneys and legal scholars assume that cases will not be heard unless they can show that the abuses were directly related to decisions taken in the US by US managers. That over a third of the cases involved either ATS or foreign courts, suggests an important and strong role of international pressure in bringing these cases. That two-thirds do not appear to involve international pressure suggests, however, that international pressure is not a necessary factor for bringing corporate accountability cases.
Our focus on corporate veto players would suggest that some companies—due to the dependence of the state on the resources or revenues they provide—would be likely to avoid accountability in domestic courts. Transnational companies and large companies also have more resources to use to fight accountability, such as effective lawyers, powerful allies in the judiciary, the capacity to claim jurisdiction outside the country or in the country and outside foreign courts, etc. Our data, however, do not present a clear set of patterns in this regard. Firms from all sectors of industry are involved in these cases, including newspapers, car manufacturers, timber companies, and software companies. We accessed firm-level data from BvD/Orbis, one of the most comprehensive datasets of firm financial data to provide some general statistics about the ownership structure, age and size of the firms in our dataset. We found data for 48 of the 58 firms. Nearly half of the companies in the dataset are publicly traded (see Figure 4). A substantial portion (35 percent) of the sample are listed as “other legal form” while eight percent did not include a legal form in its reporting. Only nine percent of the firms in the sample are privately held.

Figure 4: Percentage of Firms, by Ownership
Firms involved in corporate complicity cases also vary substantially in terms of their date of incorporation (Figure 5). These are not only new or very old firms, but illustrate a spectrum. Three companies were incorporated prior to the 1900s. Six companies were incorporated between 1900 and 1925, while a majority of the companies were incorporated after 1976.\(^3\) This indicates that firms of all ages are susceptible to unethical behavior. One might consider that firms that have existed for over 100 years might have adopted ethical norms; our data illustrate otherwise. Firms like the Ford Motor Company (1919) or Chevron (1926) are still implicated in these abuses, despite their long history and success. Indeed, Ford did not seem to learn a lesson from the Holocaust in which it earlier faced allegations of corporate complicity in state violence.

![Figure 5: Count of Firms, by Date of Incorporation](image)

Finally, the firms in the corporate complicity dataset are predominately very large companies (Figure 6). Nearly three in five companies (59 percent) were categorized as such. Interestingly, one in five companies is a small company with the remaining companies distributed across the large and medium categories.\(^4\)
In sum, with regard to the prosecutorial model, we found that larger and older firms—those that should have better allies and resources—were those against whom cases were brought. Corporate complicity cases, therefore, seemed to identify for accountability those companies that might have the resources to provide remedy. They also attracted interest in global and domestic campaigns because of their global reputation. The factors that might be crucial to initiating these cases, however, may not explain successful outcomes. Very few of these cases—only two, according to our database—have reached a final settlement. Thus corporate veto players may not be able to stop the process from moving forward, but they still may be able to avoid legal sanctions. Tracking these cases over time will allow us to refine our findings.

As mentioned above, non-judicial accountability has taken place in five countries in the form of truth commissions. Our data show that truth commissions have investigated corporate complicity in South Africa, Liberia, East Timor, Brazil, and Argentina.
The South African Truth and Reconciliation Commission included corporate complicity in its “Institutional Hearings” (South African TRC, vol 4). The summary of these hearings reflect a mixed view regarding corporate complicity. While the TRC seems convinced that businesses profited from apartheid, it also notes that some businesses profited more than others, some tried to implement changes, and some even felt that they would have profited more from an egalitarian system that developed skilled labor. The accusations against corporate complicity is summarized best by this statement to the TRC from Professor Sampie Terreblanche:

Business should acknowledge explicitly, and without reservation, that the power structures underpinning white supremacy and racial capitalism for 100 years were of such a nature that whites have been undeservedly enriched and people other than whites undeservedly impoverished.

These forms of collaboration create and promote a context that leads to the systematic execution of gross human rights violations. It contributes to the emergence of an economic and political structure – a culture and a system which gives rise to and condones certain patterns of behaviour. (TRC, Vol.4, 23)

One of apartheid’s policemen, Craig Williamson, further identified the direct collaboration by business in apartheid violence: “Our weapons, ammunition, uniforms, vehicles, radios and other equipment were all developed and provided by industry. Our finances and banking were done by bankers who even gave us covert credit cards for covert operations. Our chaplains prayed for our victory and our universities educated us in war. Our propaganda was carried by the media and our political masters were voted back into power time after time with ever increasing majorities” (TRC, volume 4, 24)

The TRC identified key sectors of business that had committed human rights abuses directly, such as the labor conditions in mining operations, and
indirectly through the provision of arms and funding for the repressive apparatus. While the TRC included language about the importance of “accountability” for both sets of activities, it did not go beyond condemnation to follow up on proposals for creating a mandatory contribution by businesses who had participated in the apartheid era to provide remedy for victims.

The Liberian Truth and Reconciliation Commission had the investigation into economic crimes as central to its mandate, particularly how corporations promoted corruption, bad governance, and the exploitation and abuse of natural resources for greed. These economic crimes were viewed by the Commission as the reason behind the conflict itself, its continuation, and its escalation. The industrial sectors targeted included logging, maritime, banking, and communications. Nineteen corporations were identified for further investigation and possible prosecution, although as far as we can tell this has not yet occurred.

The Timor Leste Commission for Reception, Truth and Reconciliation (known by its Portuguese initials, CAVR) issued a 2500-page report on the Indonesian illegal invasion and occupation. It highlights the role that nations and the arms trade played in escalating the atrocities committed. Rather than demanding justice, however, it recommended that nations and corporations pay reparations to the victims of human rights violations as part of their duty to "uphold the highest principles of world order and peace" (Indonesian Human Rights Committee 2005).

The ongoing National Truth Commission (NTC) in Brazil has begun to consider corporate complicity in the dictatorship initiated after the 1964 coup. The Brazilian Secretary of Justice called on the NTC to “investigate the corporations that financed the dictatorship” and acknowledge the private
sector’s responsibility for repression during the dictatorship. The NTC created a task force to do so. NTC member and criminal lawyer Rosa Cardoso claimed that the group could establish “institutional accountability” for business behavior during the coup and the dictatorship, showing that Brazil faced “not a military coup, but a civil-military coup that involved the entire business class.”

Several of the more than 100 subnational truth commissions also took up the call to investigate corporate complicity as well. The president of the Rubens Paiva São Paulo State Truth Commission, Adriano Diogo, expressed the view that business leaders had carried out the same activities as state actors, and thereby shared responsibility for those violations.

Official and unofficial truth commissions called on academic, legal, and media researchers to conduct investigations and documents, articles, videos, studies and seminars have proliferated as a result.

These investigations have revealed multiple layers of corporate complicity in Brazil. Brazilian and transnational business elites actively supported the coup itself and sustained the dictatorship through legal and illegal (corrupt) financing. Companies in Brazil benefitted with ill-gotten gains from their collaboration with the regime.

More direct participation in the violence involved the creation of blacklists of workers considered to be “subversive elements,” who faced subsequent detention, torture, and death or disappearance in the repressive apparatus. Manoel Fiel Filho, for example, was picked up in the middle of the day at his job in the Metal Arte factory, taken to the torture center, and was dead within an hour or so due to blows to his head. As in the case of Boilesen, businesses also supplied the instruments of repression, i.e., vehicles, weapons, installations, and torturers themselves.
Argentina has advanced much more dramatically than any other country in prosecuting corporate complicity, as we show below. Nonetheless, some movement around truth commissions complements this activity. For example, the Frente por la Victoria has proposed a bill to create a truth commission to investigate business involvement in human rights violations during the dictatorship. According to one of the proponents, the aims of the truth commission will be to investigate the consequence of the de facto government’s financial, economic, monetary and commercial policies; the identification of the economic actors supporting the authoritarian government; and the companies who profited from the illegal government. In addition, the Comisión Nacional de Valores (CNV) prepared a report revealing efforts to prosecute business people involved in subversive financial activities (Dandan 2013).

These truth commission efforts do not particularly help in determining the factors that raise the possibility of corporate accountability for past state violence. They do not as a set suggest a strong link to international pressure, judicial or political leadership, civil society mobilization, or the weak role of corporate veto players. With only five examples, moreover, we cannot contend that there is increasing interest in using the truth commission model for exposing links between businesses and past state repression. Nonetheless, the recent examples of Argentina and Brazil suggest that interest is growing in examining those linkages as part of the transitional justice model. Corporate accountability has been added to the transitional justice toolkit.

Argentina: a Case Study of Domestic Corporate Accountability Mechanisms
No other country has gone as far as Argentina in transitional justice or has innovated as much. It is perhaps, then, unsurprising that corporate complicity is a new innovation in Argentina’s transitional justice toolkit. In our preliminary investigation into corporate complicity cases around the world, 50 percent of those cases under investigation in the world occurred in Argentina. In addition, Argentina is using law creatively to find ways to hold businesses accountable for their complicity in past human right abuses. These efforts attempt to fulfil transitional justice goals of truth, justice, remedy, and non-repetition through criminal and civil suits. The efforts can be categorized in the following four creative uses of law: (a) businesses’ direct involvement in human rights abuses; (b) businesses’ failure to protect workers under labour law; (c) businesses’ financing of illegal activities; and (d) businesses engagement in illegal economic activity. We provide some illustrations below.

a. *Businesses’ direct involvement in human rights violations*¹³

A number of top officers from several companies face criminal prosecution for their alleged participation in human rights violations. The emblematic case in this category involves the trial of the corporate leaders of the Ledesma sugar mill in 2012 in Jujuy. The company is accused of being complicit in the well-known “Noche del Apagón” (“Night of the Blackout”) between July 20-27, 1976. An estimated 400 workers, students, and professionals were allegedly kidnapped, tortured, killed, and disappeared during this incident. Four policemen were detained for their involvement in the repression. From Ledesma’s top management, Alberto Lemos and Carlos Pedro Blaquier were indicted for the firm’s involvement in human rights violations, including providing the trucks used in kidnapping workers. In addition, the company is
accused of having caused the blackout by cutting off electricity to facilitate the military operation. The company further allowed the armed forces to set up a clandestine detention center, Esquadron 20, on its grounds. As a result of their involvement in these abuses, the firm’s directors are now barred from traveling outside the country during the investigation.14

Two automobile manufacturers—Mercedes Benz and Ford Motor Company—have also faced investigation for direct human rights violations. The charges against Mercedes Benz involve the company’s creation of a ‘blacklist’ of workers who were subsequently kidnapped. These workers were members of the internal workers committee. A criminal action was opened in 2002 but there have been no indictments so far.15 In October 2013, an Appeals Court confirmed the charges against three former Ford Motor Company executives (Pedro Muller, Guillermo Galarraga, and Hector Francisco Jesus Sibilla) for their crimes against humanity due to targeting union leaders for kidnapping and torture. They stand accused, and are under house arrest, for having helped the repressive security apparatus in the illegal kidnapping and torture by providing names, national identification numbers, photographs, and home addresses. The Army forces seized two dozen union workers off the Ford factory floor to be tortured and interrogated and sent to military prisons. Bail is set at $142,000.16

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

In terms of an explanation for which cases are brought, the Argentine model seems to focus on large transnational companies and those associated with particularly egregious and well-known offenses. These cases are emblematic. They draw attention to the complicity of particular firms in the state’s repressive apparatus and therefore play an educative role.

b. Company failure to protect workers

The creative use of Argentine labor law has accused certain companies of failing to protect their workers’ safety. In February 2012 in the “Ingenieros” case, an Appeals Labor Court dismissed the statute of limitations claims of a legal action brought to the court. Maria Gimena Ingenieros, the daughter of Enrique Roberto Ingenieros, brought the case. She requested financial compensation for her father’s disappearance during the civil-military dictatorship. She claimed that Techint SA, owing to its co-authorship of the crime of disappearance on the company’s grounds, should pay compensation. The company has denied the claim and further contends that the work safety law, under which the case was brought, has a two-year statute of limitations that had long ago run out. The Appeals Court rejected that claim, declaring that statutes of limitation do not apply to compensation claims linked to crimes against humanity.17

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

These cases illustrate an innovative use of law in transitional justice. They involve a blending of domestic labor law and international human rights law to identify the company’s duty to respect and protect human rights, and remedy abuses. In these cases, the importance of judicial leadership played a key role in holding companies responsible for failing to protect employees from the hazards posed by a violent workplace environment. They do not appear to involve any international pressure or civil society mobilization.

c. Corporate financing of human rights abuses

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

A similar case was brought to courts in 2010. The Garragone case was filed by Martin Garragone, the son of one of Argentina’s disappeared, against Citibank and the Bank of America. Mr. Garragone argued that the banks’ loans to
the dictatorship were crucial for its abuses of human rights. Mr. Garragone cited a report prepared by Juan Pablo Bohoslavsky, an Argentine expert on financial complicity at UNCTAD, demonstrating that the banks were aware that the funds transferred to Argentina would be used to support the illegal infrastructure used to commit human rights violations. The case is in its early stages; the court still needs to declare that it has jurisdiction to review the case under procedural law.18

Cases in this category deal with the crucial question of the financing of the illegal state apparatus. It goes beyond company’s investment opportunities and into knowledge of the use of those funds to finance illegal activities. State violence would not have been possible without this corporate sponsorship. Further, accountability for financial complicity offers an opportunity to provide remedy for victims. And raising the cost of financing repression may deter future corporate complicity. The first of these cases represents mobilization on the part of victims. The second considers international factors that may have increased the pressure to bring the suits. And they both demonstrate a willingness on the part of the judiciary to develop these cases. However, despite all of these propitious factors, both cases are “frozen” due to a number of legal technicalities. Thus even when all of the conditioning factors are present these cases may not proceed.

d. Corporate involvement in illegal business transactions with human rights abuses

In an additional creative legal turn, Argentine courts have begun to investigate companies’ involvement in illegal business transactions. The Papel Prensa case is illustrative. Some observers consider the case to be an example of
the Kirchner government’s political misuse of transitional justice in order to punish and weaken the government’s current political opponents; others see it as an important case for correcting the wrongs of the previous regime and its corporate allies. After an initial flurry of activity around the case, it somewhat died down until the end of 2012 when files related to the case were discovered along with other military regime files in an Air Force headquarters.

The case involves events following the death in 1976 (in an airplane crash) of David Gaiver, the owner of the Papel Prensa newsprint company. Gaiver had alleged links to the left-wing urban guerrilla Montonero movement opposed to the dictatorship\(^{19}\) After his death, Gaiver’s wife, Lidia Papaelo, and some months later, his brother, Isidoro Graiver, were abducted and tortured by the state security forces. These heirs to the company were allegedly coerced under torture to sell the company to FAPEL (Fábrica Argentina de Papel) that was later sold to the three biggest Argentine newspapers, securing their monopoly over news production in the country during the dictatorship: La Nación, Clarín, and La Razón. What remains in debate in Argentina is whether this is a clear case of state terror and control over media or another battle in the war between the Kirchner government and their journalistic adversary, Clarín. The recovered Air Force files could provide the evidence necessary to the case. Due to the controversy surrounding it, worries about evidence tampering have surfaced. The criminal trial is in its early stages, and the investigation is allegedly frozen.\(^{20}\)

A second judicial case relates to the commission of human rights violations and money laundering. In the Vildoza case, several military officers and civilians are accused of the illegal procurement of property from detained
individuals and the sale of the real estate to private individuals and companies connected to the military. The investigation was initiated by the public prosecutor and private partners and later included the Unidad de Información Financiera, the state agency in charge of investigating money laundering activities. The controversy about the case is whether a money laundering law initiated in 2004 could be applied to a case from the 1970s. This has been resolved by showing that the profit from the sale of the real estate transaction continues to benefit the individuals who initially seized the property.

Cases in which corporate involvement in illegal business transactions with human rights abuses are investigated relate to the degree of knowledge of violations. These companies are alleged to have operated in close cooperation and/or sponsorship of the state. They did not necessarily involve international pressure or civil society mobilization. Instead they seem to be most closely linked to judicial innovation.

We have suggested that strong international pressure, civil society mobilization, and judicial leadership, along with weak veto players, should advance corporate complicity cases as they have done so for state cases. In Argentina, however, we did not find extensive use of foreign or international courts to advance accountability. In fact, only one case was brought to US courts and the US Supreme Court dismissed it in early 2014. The plaintiffs Bauman et al., a group of 23 Argentinian citizens, accuse Daimler Chrysler AG (now known as Daimler) and its subsidiary, Mercedes Benz Argentina, of cooperating with authoritarian security forces to kidnap, torture, illegally detain eight workers and kill nine others that were employees of the company and thought to be
labour organizers and union leaders. The Supreme Court dismissed the case on the grounds that there were insufficient ties between the violations and the US branch of the company to prove the US federal courts had jurisdiction to hear the suit and made a decision.

Expectedly, civil society mobilization has been strong in relation with these new types of cases. The human rights organizations that played a crucial role in the advancement of state accountability policies in Argentine have also been involved in several corporate accountability cases. In addition, most of the cases were brought to courts by victims and their relatives rather than through prosecutorial discretion.

Similarly, judicial leadership has been another key factor. As discussed above, the prosecutorial model followed in Argentina does not only relied on criminal prosecutions, as it happens in most countries or in Argentina itself for cases related to state agents. The business complicity cases have been brought to labor and civil courts, which reveals an innovation in terms of judicial accountability. Additionally, the prosecutorial investigations, indictments and the few final judgments in cases of business complicity in Argentina have been grounded in a very innovative interpretation of the effect of crimes against humanity in domestic criminal law. In broad terms, the legal reasoning suggests that any regular illegal activity connected to the commission of crimes against humanity is regarded, from a legal point of view, as a crime against humanity. That reasoning permits prosecutors to bring cases against non-state actors and in which the illegal act itself is not categorized as a crime against humanity.

The path to accountability of business complicity encounters obstacles posed by corporate veto players. Most of the cases involve companies that
remain powerful in society. Some of them are transnational, e.g., Ford and Mercedes Benz and other large national companies such as Grupo Clarín. Thus, this new accountability wave occurs despite the presence of powerful veto players. To understand that phenomenon, we consider the relationship of these companies to the state.

The presence of the state in human rights trials in Argentina has been constant but largely limited to public prosecutor officers and an agency of the Executive Power, the Secretaria de Derechos Humanos. However, the involvement of the state has been more concentrated in several cases related to business complicity. In some cases other state agencies are formal parties in prosecutorial processes, such as the Unidad de Información Financiera in the Papel Prensa and Vildoz cases mentioned above. Also, the state has provided valuable information for the development of prosecutorial investigations, such as in the Paper Prensa, in which the Unidad de Información Financiera wrote a report accounting for the alleged involvement of the Grupo Clarín in the illegal sale of a paper mill company and the disappearance and torture of individuals.

Conclusion

These early stages of accountability for corporate complicity in dictatorships have not followed clear pathways that lead to easy analysis of the factors explaining success in bringing them forward. Mobilized civil society has allowed for victims to bring claims domestically and internationally. They could not advance these claims, however, without judicial will and innovative strategies to circumvent statues of limitations and other barriers to justice for past atrocity. The Argentine case further suggests that political will may play as significant role
as judicial will in pursuing private sector accountability. The degree to which these cases overcome corporate veto players may depend on signaling by the state. The degree to which the state is willing to risk losing powerful corporate allies may depend on already existing tensions within state-corporate relations. Indeed, the “democracia o corporaciones” slogan on the day of memory did not only reflect a widespread societal demand for justice, truth, remedy and non-repetition. It also involved an alliance with the Kirchner government, in opposition to the corporate enemies of that government, and in favor of a model of development free from corporate control. This kind of alliance between civil society and the state against corporations is less obvious in other parts of the world where businesses play a more influential role in current governments. Nonetheless, the Argentina model suggests that transitional justice offers a way to check corporate abuses historically by raising the cost of past acts and committing to a new future in which businesses respect, protect, and remedy human rights. We see the beginning of similar efforts in other parts of Latin America that may, like the transitional justice processes initiated in the region, catch on elsewhere in the world.
Bibliography


Appendix: Corporate Human Rights Database (CHRD)

While scholarship has proliferated, corresponding to the increased attention to the problem and possible remedies, scholars and policy makers still lament the lack of systematic data and analysis on corporate human rights abuses. Some see this absence as impeding the process of tracking such abuses and developing policy initiatives and models to reduce them (Ruggie 2010). Others consider the absence of “systematic knowledge” as an obstacle to hypotheses testing and theory-building (Zimmer 2010, 59). As a result of the absence, data tends to be partial and conclusions are thus tentative.

The existing research has tended to focus on single firms in a particular country or region of a country or small-N comparison of firms or of business sectors. This research tends to consider not only abusive behavior but also often entails a normative approach to how firms or sectors might or should contribute to positive change: peace, security, environmental protections, improved working conditions, or community development.

There are some recent large-N studies that attempt to explain corporate human rights violations. These too are limited in various ways that our project attempts to overcome. The study conducted by Bernhagen and Mitchell (2010), for example, focuses on 2000 of the largest firms on the Forbes Global 2000 list. This list tends to concentrate analysis of firms in strong democracies (94 percent of the sample), particularly Europe and the US (as well as Japan and India). The researchers, moreover, were mostly interested in the effectiveness of the UN Global Compact in changing firms’ behavior. They used Innovest’s Global 100 list of countries that complied with environmental, social and political standards for the firms’ sector. Lim and Tsutsui (2012) analyzed 99 developing and developed countries in their study to examine the degree to which CSR is ceremonially or substantively enforced by governments. Scholars at Darmstadt University of Technology and the Peace Research Institute Frankfurt, including Deitelhoff and Wolf, studied business behavior in conflict zones between 2005 and 2009 to determine when firms are likely to engage positively in Corporate Security Responsibility. Mwangi et al. (2013) focus primarily on the impact of international voluntary principles on corporate behavior. John Ruggie analyzed 320 allegations of corporate abuses between February 2005 and December 2007.21

We attempt to improve on these large-N studies with our own by expanding both the scope and the time horizon of this new dataset. To create the Corporations and Human Rights Database (CHRD), we have begun with a pilot project focused on Latin America. Our unit of analysis is a corporate abuse allegation (CAA). A team of graduate students code each CAA documented in the Business and Human Rights Resource Centre, an archive of allegations of corporations’ human rights violations in all countries of the world from 2000 to the present. This archive has been used in scholarly, legal, and policy-oriented projects due its strength in documenting the alleged abuse and the response. It thus provides a good starting point for tracking changes in violations over time.

Beginning with a pilot project on Latin America, the CHRD currently includes data on allegations of human rights abuse toward companies in three specific sectors: oil and gas, mining, and apparel/textiles. For each allegation of corporate human rights abuse, our team collects and codes publicly-available
information about the alleged abuse (who was affected, where and when it occurred). We also code whether the primary abuse falls into four categories: Development and Poverty (e.g., access to basic needs, development of local economy; exploitation of land; license to operate; freedom of association/expression); Environment (water, air, land contamination; deforestation; destruction of natural resources); Health (health concerns generally related to corporate activity and/or pollution); and Labor (forced labor, child labor, right to unionize, substandard working conditions). We also capture whether the allegation relates to a particular type of abuse (e.g., arbitrary detention, deaths, disappearances, violence). Next, we code information about the state’s involvement or response to the allegation. We also gather data on the corporation’s response, if any. Finally, we also code information about any judicial or non-judicial remedy associated with the allegation. With these data, we are able to uncover broad patterns and trends about allegations of corporate human rights abuse.

1 We have received generous support from a number of sources that we wish to acknowledge. The National Science Foundation (Grant No. 1228519) and the Arts and Humanities Research Council (Grant No. AH/K502856/1) supported our project “Alternative Accountabilities for Past Human Rights Abuses.” Any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the National Science Foundation or the Arts and Humanities Research Council. The British Academy and the Leverhulme Trust, as well as the John Fell OUP Research Fund No. 121/482, provided funds for a pilot study on Latin American business and human rights. The University of Denver’s PROF, Faculty Research Fund, and Internationalization Grants were also instrumental in the data collection efforts for Latin America. We are grateful for the use of the Business and Human Rights Resource Centre archive to construct the CHRD database, see www.business-humanrights.org/. We are also indebted to Kathryn Babineau and Laura Bernal-Bermúdez for their research for this project, as well as the assistance from Luisa Murphy and Joan Timoneda.


3 Note that we only have data for 21 firms for Figure 4.

4 These categorizations are used by BvD/Orbis. “Very large” is defined as a firm with an operating revenue > 100 million EUR (130 million USD) OR total assets > 200 million EUR (260 million USD) OR Employees > 1,000 OR are listed; “Large” is defined as a firm with an operating revenue > 10 million EUR (13 million USD) OR total assets > 20 million EUR (26 million USD) OR Employees > 150; “Medium” is defined as a firm with an operating revenue > 1 million EUR (1.3 million USD) OR total assets > 2 million EUR (2.6 million USD) OR Employees > 15; and “Small” are those firms that do not fit into the above criteria.


7 In Diogo’s words, “Defendemos a punição aos torturadores e aos militares, mas, fazendo analogia, as empresas das quais estamos falando cometeram ou induziram aos crimes, fizem crimes análogos ou participaram dos mesmos crimes que os militares perpetraram ao povo brasileiro.” Gombata, “Comissão da Verdade.”

8 For summaries of these investigations, see Ibíd.; Felipe Amorim e Rodolfo Machado, “Elite econômica que deu golpe no Brasil tinha braços internacionais, diz historiadora,” Operamundi, 2 March 2014 accessed on 2 April 2014 at http://m.operamundi.uol.com.br/conteudo/reportagens/34196/elite+economica+que+deu+golpe+no+brasil+tinha+braços+internacionais+diz+historiadora.shtml; and ongoing investigations of Odebrecht Construction Company in “Ministro determinou ajuda para empreiteira durante a ditadura,” Folha Transparencia, 7 March 2014 accessed on 2 April 2014
Journalist Denise Assis has investigated business support for the coup through finances, and particularly the propaganda network. She finds 125 individuals and 95 entities involved, with five economic groups (Listas Telefônicas Brasileiras, Light, Cruzeiro do Sul, Refinaria e Exploração de Petróleo União e Iomci) providing more than 70% of the financial contributions. These funds were funneled to several advertising agencies -- such as Promotion SA, Denisson Propaganda, Gallas Propaganda, Norton Propaganda and Multi Propaganda -- that made at least 14 propaganda films. See Gombata, "Comissão da Verdade.” For corruption activities, see Guilherme Amado, “Ditadura foi um oceano de corrupção,” Correio do Povo, 16 March 2014 accessed on 2 April 2014 at http://www.correiodopovo.com.br/blogs/juremirmachado/?p=5770. This is an article based on the research carried out by UFRJ historian Carlos Fico.


Investigations into the role business leaders played in creating Oban (Operação Bandeirante), located at 921 Rua Tutóia in São Paulo that was once the well known torture center DOI-Codi (Destacamento de Operações de Informação do Centro de Operações de Defesa Interna), a structure replicated throughout the country. Today this building is a police station (36º Distrito Policial da Polícia Civil). Petrobras has been accused of providing installations used as torture centers. In addition, General Motors allegedly provided DOI-CODI torturers with earplugs to more effectively carry out their work. See Gombata, “Comissão da Verdade.” See “Empresários que apoiaram o golpe de 64 construíram grandes fortunas,” Correio do Brasil, 27 March 2014. Accessed on 2 April 2014 http://correiodobrasil.com.br/noticias/brasil/empresarios-que-apoiaram-o-golpe-de-64-construiram-grandes-fortunas/694263/.

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


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


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


The cases were found in the Business and Human Rights Resource Centre archive (http://www.business-humanrights.org).