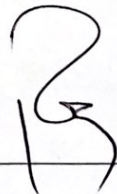


Transitional Justice for Victims of Corporate Abuses:  
New Pathways to Recognition and Accountability in Argentina

By

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A thesis submitted in partial fulfillment  
of the requirements for the degree of  
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A stylized, handwritten signature in black ink, consisting of a large, looping 'R' and a smaller 'D'.

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Professor Robert Dry

*Federico Sor*

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## Abstract

Understanding how some states respond to their history of violence can inform what political and social transformations are necessary to uphold the rule of law and human rights. Transitional justice is one mechanism aimed at achieving these goals. Addressing the atrocities caused during periods of violence requires examining the involvement of all parties responsible for committing crimes, including non-state actors such as corporations.

The thesis also explores how international corporations played a decisive economic and political role in Argentina's *military junta*, both by financing it and by facilitating the commission of crimes against humanity between 1976 and 1983.

How Argentina is responding to the legacies of gross corporate abuses deserves great attention as it tackles domestic and international dilemmas. The example of Argentina sheds light on theories of transitional justice and raises complex questions in many fields including law, history, and international relations. The thesis examines how transitional justice can provide remedies for victims of corporate abuses.

Many civil actors, activists, prosecutors, and the National Commission on the Disappearance of Persons (CONADEP) have fought to give recognition to victims. These actors have struggled to hold companies accountable for their wrongdoing. This thesis tells their story and accounts for their failures and achievements. One of the main reasons for their struggle results from international human rights law that fails to address crimes committed by business entities, leaving victims of corporate abuses without justice.

While scholars have shown that Argentina has innovated to hold corporations accountable, my thesis goes further and proves how Argentine's transitional justice has been more effective than international law in ensuring corporate accountability and providing recognition to victims. Moreover, it contends that Argentina's transitional justice succeeded in uncovering the truth about corporate human rights violations.

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## **Introduction**

Understanding how states respond to their history of violence can inform what political and social transformations are necessary to uphold the rule of law, democracy, and human rights. Transitional justice is one mechanism aimed at achieving these goals. Addressing the atrocities caused during periods of violence requires examining the involvement of all parties responsible for committing crimes, including non-state actors such as corporations.

Corporate accountability for human rights abuses derives from the responsibility of corporations to respect, protect, and remedy human rights violations that occur because of their activities.

To guarantee the legitimacy of a regime, governments should maintain equality before the law. On the one hand, everyone should have access to justice. On the other, anyone that commits a crime should be prosecuted, even when all known crimes were committed in the past. In contrast, while international humanitarian law provides a framework to try individuals, it fails to address crimes committed by business entities, like companies and their subsidiaries. This leaves victims of corporate abuses without justice.

Argentina's response to past corporate abuses tackles domestic and international dilemmas. The example of Argentina enlightens theories of transitional justice and raises complex questions in many fields including law, history, and international relations. By studying the unique case of Argentina, the thesis examines how transitional justice can provide remedies for victims of corporate abuses.

The dictatorship in Argentina between 1976 and 1983 began when a military junta overthrew the democratically elected government of President Isabel Perón. The junta, led by

General Jorge Rafael Videla, established a repressive regime that targeted left-wing activists, students, labor unions, and other perceived opponents of the regime. The military junta used tactics such as torture, forced disappearances, and extrajudicial killings. The dictatorship also imposed strict censorship and suppressed political opposition, while implementing neoliberal economic policies. In 1982, the regime's attempt to assert control over the Falkland Islands led to a war with Britain. The defeat of Argentina weakened the regime's hold on power. As a result of mounting public pressure and international condemnation, the dictatorship ended in 1983, and democratic elections were held later that year.

During the dictatorship, human rights violations were rampant. Many companies facilitated these crimes by collaborating with the regime. They supported the dictatorship financially and provided resources such as transportation and infrastructure for military operations. Some businesses even actively participated in the dictatorship's repression by identifying workers and union leaders who were later kidnapped, tortured, or killed.

After the regime's collapse, it became evident that companies facilitated human rights abuses during the dictatorship. Since 1983, civil society, lawyers, judges, and the National Commission on the Disappearance of Persons (CONADEP) have fought to give recognition to victims and to hold corporations accountable for their involvement in these crimes. These actors took legal action and led campaigns to raise public awareness of the corporate role in supporting the dictatorship. This thesis tells their story and accounts for their failures and achievements.

While scholars have shown that Argentina has innovated to hold corporations accountable, my thesis goes further and proves how the Argentinean transitional justice has been more effective than international law in ensuring corporate accountability and providing recognition to victims. It contends that Argentina's transitional justice succeeded in uncovering the truth about corporate

human rights violations that happened between March 24, 1976 and December 10, 1983. The case of Argentina could inform similar situations of corporate abuses in other countries around the world.

After discussing the reasons behind the failure to prosecute corporate complicity around the globe, the first chapter demonstrates how Argentina innovates to hold companies accountable for committing crimes. To properly address corporate human rights abuses during the Argentine dictatorship, it is crucial to understand the domestic and international legal frameworks that exist for prosecuting such actions. This involves determining how to prove corporations' complicity and how to hold them accountable for their actions. Since companies are not natural individuals, they cannot be prosecuted along the same rules. The first chapter aims to explain this dilemma by examining various mechanisms involved in corporate accountability, including domestic and international legal frameworks, as well as political and social initiatives.

The chapter tracks the evolution of corporate accountability from the Nuremberg trials to the present day. It also explores various transitional justice mechanisms to determine methods of corporate accountability. It analyzes progress on both a global and local scale. By focusing on Argentina, the chapter argues that the country innovates as it has developed a new approach to corporate accountability. This approach relies on combining international frameworks with domestic legal and political strategies to hold companies accountable for their wrongdoing.

In the second chapter, I explore how Argentina's transitional justice accounts for corporate abuses. The chapter reveals that the transition has not been limited to trials initiated and conducted solely by the state. It demonstrates how civil society organizations worked to prove the systemic role that companies played in committing crimes. Thanks to organizations including, but not limited to, the Mothers and Grandmothers of the Plaza de Mayo, the Center for Legal and Social



Studies (CELS), and the CONADEP, Argentina has been able to respond to corporate abuses. While this ‘social transitional justice’ has limited legal implications, it has a powerful impact on promoting democracy and accountability in society.

Proving the systemic role that companies had in facilitating or committing crimes entails posing several questions. How and why did some business leaders ally with the junta? Were they involved in the regime’s crimes directly or indirectly? What interest did companies have in supporting the junta? How close companies were with the regime? What happened to labor union leaders working within certain firms? Did companies commit crimes against humanity? How did Argentina deal with businessmen, companies, and their victims after 1983?

In the third chapter, I examine a specific case that highlights the collaboration between Mercedes Benz and the armed forces during Argentina’s dictatorship between 1976 and 1983. The company has faced legal actions both domestically and internationally. The chapter provides an overview of the cases against the car manufacturer. It also identifies the complicit relationship between the company and Argentina’s military. More specifically, the research analyzes the role of Mercedes Benz in the commission of crimes against humanity and the different ways these crimes can be prosecuted based on Argentina’s domestic laws and US laws. The research explains the challenges to prove corporate complicity in human rights abuses. Furthermore, the Mercedes Benz case illustrates well the efforts of victims, activists and lawyers to advance corporate accountability.

# **I. Challenging Corporate Impunity: Argentina's Innovations**

## *Introduction*

The first major legal cases against large corporations emerged during the Nuremberg Trials. However, the Trials failed to set forth a powerful legal framework to hold companies accountable. Without being able to rely on many legal precedents, victims of corporate abuses have faced many challenges to ensure accountability. Showing the complicit relationship between companies and violent state actors has been complex.

In addition, the few existing international mechanisms for corporate accountability have only taken the shape of soft laws or hortatory guidelines, which made it harder for victims to sue companies for wrongdoing. International organizations like the United Nations have been responsible for institutionalizing corporate impunity.

In contrast, Argentina succeeded in ensuring accountability and providing recognition to corporate victims. It acted actively in implementing transitional justice instead of being a passive “recipient of transitional justice.”<sup>1</sup> Such success stems from the political and legal opportunities of the country to provide incentives for civil society, activists, prosecutors, and a Truth Commission to engage in joint efforts to denounce and try companies involved in the dictatorship. Their efforts have bolstered mechanisms for transitional justice and corporate accountability at the domestic and international levels.<sup>2</sup>

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<sup>1</sup> Kathryn Sikkink and Carrie Booth Walling, “Argentina’s contribution to global trends in transitional justice,” in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, edited by Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge University Press, 2006), 301.

<sup>2</sup> Sikkink and Walling, “Argentina’s contribution to global trends in transitional justice,” 301-302.

## *The Limited Legacy of the Nuremberg Trials*

The Nuremberg Trials held between 20 November 1945 and 1 October 1946 shaped the notion of “transitional justice.” The notion entails holding government officials accountable, rectifying injustices, and advocating for the prevention of future mass atrocities.<sup>3</sup> The Trials involved leaders of Nazi Germany including Hermann Göring, Rudolf Hess, and Wilhelm Keitel, among others, as well as over 40 business leaders accused of offenses such as forced labor, theft of Jewish assets, and providing financial or material support for mass killings. These trials on businesses occurred on the grounds that the Third Reich’s aggressive warfare and concentration camp atrocities were only deemed possible thanks to the help of companies. As a result, the trials offered an opportunity to defend victims’ rights and denounce corporate wrongdoing as a way of preventing similar abuses in the future. However, it is unclear whether the Nuremberg Trials have helped advance corporate accountability around the globe.

When tracing the history of international initiatives to address corporate abuses, most scholars agree to start with the Trials.<sup>4</sup> However, rather than celebrating the outcome of the trials, some authors regret that Nuremberg did not lead to concrete mechanisms of corporate liability. By looking at the trials of four important businessmen (Walter Funk, Hjalmar Schacht, Julius Streicher and Alfred Krupp), authors like Richard Overy, Leigh A. Payne et al. contend that the Nuremberg

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<sup>3</sup> Ruti G. Teitel, *Transitional Justice*, (Oxford: Oxford University Press, 2000), 31.

<sup>4</sup> See for example Gwynne Skinner, “Nuremberg’s Legacy Continues: The Nuremberg Trials’ Influence on Human Rights Litigation in U.S. Courts Under the Alien Tort Statute,” *Albany Law Review*, vol. 71, no. 1 (2008): 327-373; Richard Overy, “The Nuremberg Trials: International Law in the Making,” in *From Nuremberg to The Hague: The Future of International Criminal Justice*, edited by Philippe Sands (Cambridge: Cambridge University Press, 2003), 1-29; Leigh A. Payne, Gabriel Pereira, and Laura Bernal-Bermúdez, “International Pressure for Corporate Accountability,” in *Transitional Justice and Corporate Accountability from Below: Deploying Archimedes’ Lever*, (Cambridge: Cambridge University Press, 2020), 61-112; Horacio Verbitsky and Juan Pablo Bohoslavsky “Introduction: State Terrorism and the Economy: From Nuremberg to Buenos Aires,” in *The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts*, edited by Horacio Verbitsky and Juan Pablo Bohoslavsky (Cambridge: Cambridge University Press, 2015), 1-16.

Trials failed to create a legal legacy that could enable international pressure on businesses to acknowledge human rights duties. Commenting on the verdicts, Payne et al. assert that “With only four defendants and three—controversial—convictions for Nazi business crimes against humanity, it is perhaps unsurprising that the historic Nuremberg Trials left almost no legal legacy in the area of corporate human rights obligations under international law.”<sup>5</sup> In other words, the conviction of such a small sample of criminals explains why the legal momentum did not lead to an enduring framework. The Nuremberg verdicts never led to the codification of corporate human rights responsibility.

Looking at US judicial trials against war criminals between 1946 and 1949, Overy reaches a similar conclusion. Overy argues that too many Nazi businesses remained unpunished because of the Cold War. They were powerful white-collar agents who were crucial to rebuild Western Europe and face the Communist enemy. Concluding on the failure of jurisprudence to hold war criminals, including businesses, accountable, Overy says “after this grotesque historical experience, few could doubt, either then or now, that the international community required new legal instruments to cope with its possible recurrence.”<sup>6</sup>

Authors like Anita Ramasastry<sup>7</sup> and Bohoslavsky connect the war crimes trials to the use of the US Alien Tort Statute (ATS).<sup>8</sup> The ATS allows non-US citizens to sue in US federal court for violations of international law. Bohoslavsky argues that the ATS “opens the jurisdiction of U.S. courts to the hearing of cases in which the law of nations has been violated in other countries,

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<sup>5</sup> Payne et al., “International Pressure for Corporate Accountability,” 66.

<sup>6</sup> Overy, “The Nuremberg Trials: International Law in the Making,” 29.

<sup>7</sup> See Anita Ramasastry, “Corporate Complicity: From Nuremberg to Rangoon, An Examination of Forced Labor Cases and Their Impact on the Liability of Multinational Corporations,” *Berkeley Journal of International Law*, vol. 20, no. 91 (2002): 90-159.

<sup>8</sup> Judiciary Act of 1789 § 9, 1 Stat 73, 76-77, codified as amended at 28 USC § 1350.

requires that basic norms of international law have been violated in order to justify this extraterritorial jurisdiction.”<sup>9</sup>

Moreover, according to Payne and Pereira, out of 116 countries that have transitioned from authoritarian government or civil conflict since 1970, only 17 have addressed corporate complicity.<sup>10</sup> These 17 countries are from all regions of the world, which suggests that it is not the case of a specific area. Foreign civil trials are the most common type of litigation to decide on the responsibility for complicity in these countries. The authors find that a large majority of civil cases resort to the ATS (33 out of 39 trials). However, they also find that relying on international or foreign courts does not guarantee corporate accountability. They conclude that “international cases often do not deliver justice.”<sup>11</sup> In most trials, either the courts dismissed the cases or acquitted the defendants, or the defendants settled with the plaintiffs. Arguably, legal settlements are not a form of justice because they do not result in a determination of guilt or innocence. While a settlement can provide a measure of closure for the parties involved, it fails to hold the responsible parties accountable for their actions. They do not provide legal precedents for future similar cases either.

Thus, it seems clear that the Nuremberg trials had only a limited legacy to contemporary efforts to hold corporations accountable for complicity. This outcome results, in part, from the lack of clarity and consensus surrounding international law.<sup>12</sup> Referring to the Argentine dictatorship, Bohoslavsky and Opgenhaffen describe investigating corporate complicity in periods of authoritarianism as an opportunity “to look at the missing piece of the puzzle, to pursue the full

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<sup>9</sup> Juan Pablo Bohoslavsky and Veerle Opgenhaffen, “The Past and Present of Corporate Complicity: Financing the Argentinean Dictatorship,” *Harvard Human Rights Journal*, vol. 23 (2010): 165.

<sup>10</sup> Leigh A. Payne and Gabriel Pereira, “Accountability for Corporate Complicity in Human Rights Violations: Argentina’s Transitional Justice Innovation?” in *The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts*, edited by Horacio Verbitsky and Juan Pablo Bohoslavsky (Cambridge: Cambridge University Press, 2015), 32.

<sup>11</sup> Payne and Pereira, “Accountability for Corporate Complicity in Human Rights Violations,” 37.

<sup>12</sup> Leigh A. Payne and Gabriel Pereira, “Corporate Complicity in International Human Rights Violations,” *Annual Review of Law and Social Science*, vol. 12 (2016): 4.

spectrum of justice for this era, and to understand both the national and international dynamics that contributed to the junta's rule."<sup>13</sup> In short, setting mechanisms for corporate accountability in Argentina could fill in the gaps of international law and set legal precedents for future cases.

### *Proving Corporate Complicity: The Legal Challenges to Ensure Accountability*

Since 1983, when Argentina initiated the first trials against former leaders of the military dictatorship, transitional justice mechanisms have spread rapidly within the Americas and other regions, experiencing significant expansion every decade.<sup>14</sup> New political and legal structures have emerged to hold political actors accountable. However, international mechanisms to prosecute economic actors have fallen behind for two reasons. First, complex legal technicalities have hampered efforts to prove corporate complicity. Second, international organizations like the United Nations have failed to seize opportunities to enforce binding rules on corporate accountability. Instead, the UN has implemented soft laws and hortatory guidelines, which have undermined victims' actions to sue companies for wrongdoing.

The concept of "complicity" in international law presents considerable challenges to hold corporations legally responsible. It seeks to attribute some degree of accountability to companies while maintaining the responsibilities of states for human rights abuses. The term "complicity" refers to MNCs that are allegedly involved in, aiding, or abetting human rights violations committed by host governments. The International Commission of Jurists (ICJ) prefers the term "involvement" over "complicity" for two main reasons. First, complicity has a limited and specific legal meaning in criminal law. Second, criminal law often fails to overarch all the challenges

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<sup>13</sup> Bohoslavsky and Opgenhaffen, "The Past and Present of Corporate Complicity," 160.

<sup>14</sup> Sikkink and Walling, "Argentina's contribution to global trends in transitional justice," 308-313.

involved in “business complicity in human rights abuses.” Involvement represents any form of criminal responsibility that include abetting or aiding in a crime.<sup>15</sup> For example, a company is involved in human rights abuses if it provides material, logistical or financial support that facilitates the crimes. The key difference between involvement and complicity is that involvement encompasses all forms of active participation in a crime, whereas complicity specifically involves assisting someone else to commit a crime. Put differently, complicity is a specific type of involvement.

Payne et al. define corporate complicity as “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.” Payne et al. offer a more restricted definition of corporate complicity than the ICJ.

The authors also decline the type of assistance into various categories: involvement in criminal violence, infringement of labor laws by breaching human rights, funding of repression or war crimes, and engaging in illegal activities like knowingly benefiting from violent actions.<sup>16</sup> Such a complete definition is adequate to describe the companies’ complicity in many authoritarian regimes, including that of Argentina between 1976 and 1983.

Despite these definitions, it is challenging to determine a company’s moral responsibility and the appropriate form of punishment it should receive. Several courts such as the International

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<sup>15</sup> International Commission of Jurists, “Business Complicity and Accountability in the 21st Century,” in *Corporate Complicity and Legal Accountability*, vol. I (Geneva, Switzerland: 2008), 4.

<sup>16</sup> Payne and Pereira, “Corporate Complicity in International Human Rights Violations,” 2.

Criminal Court (ICC) do not even consider corporations as legal entities, which makes it harder to decide whether business leaders or the company should be punished.<sup>17</sup>

Moreover, the legal mechanisms to prove the involvement of a company in a crime rely on elaborate technicalities. In international criminal law, there is an ongoing debate regarding the extent to which it is necessary to demonstrate that an accomplice *knew* that their actions would aid in the commission of a crime. Proving the intent of the individual or entity in facilitating the crime (the “purpose” test) is also controversial. The ‘purpose’ test determines whether the suspect was *aware* of the crime and whether they *intended* to facilitate it. Sometimes, even in the absence of intention, knowledge is enough to show liability. The International Court of Justice (ICJ) holds a company liable if: “[It] actively sought to contribute to gross human rights abuses, or simply [if] it knew that its course of conduct was likely to contribute to such abuses and, even though it may not have wanted the abuses to occur, undertook the course of conduct anyway.”<sup>18</sup> Following the ‘purpose’ test, the ICJ statement underscores the concepts of ‘knowledge’ and ‘intent’ to prove complicity. In Argentine civil law, demonstrating ‘awareness’ is enough to prosecute a company. A company must prove that it was *unaware of* or *could not have been aware of* the criminal activity it was facilitating to avoid charges.<sup>19</sup> This civil law decreases the burden of proof for victims as they do not need to prove the validity of their allegations. The duty to provide evidence of their innocence falls to companies.

Despite its importance, civil liability has significant limitations. It is time-restricted, which means it cannot benefit from the absence of statutes of limitations related to international crimes. This can be problematic in transitional contexts. There can be long gaps between the commission

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<sup>17</sup> Laura Garcia Martin, “Overcoming corporate-related human rights abuses in transitional justice: Lights and shadows from the case of Argentina,” *Journal of Human Rights*, vol. 20, no. 5 (2021): 549.

<sup>18</sup> Cited in Bohoslavsky and Opgenhaffen, “The Past and Present of Corporate Complicity,” 169.

<sup>19</sup> Bohoslavsky and Opgenhaffen, “The Past and Present of Corporate Complicity,” 169-170.



of abuses and the point at which victims can seek justice.<sup>20</sup> Amnesty laws also worsen such a problem as it relieves a group of people from any criminal liability for the abuses they committed. For instance, during 1986-1987, the Alfonsín government introduced new laws in Argentina that restricted the scope and timing of criminal trials related to human rights abuses. These laws, known as “Full Stop” (Law No. 23,492) and “Due Obedience” (Law No. 23,521)) preceded President Carlos Menem issuing executive pardons in 1989-1990, under the guise of promoting “reconciliation” but at the cost of justice.<sup>21</sup> The government passed these laws out of fear that the military would overthrow the democracy again. The Full Stop law imposed a limit of sixty days for prosecution.<sup>22</sup> The Due Obedience law gave immunity to all military except for high commanders. It held that a subordinate who facilitated or committed crimes by following orders cannot be held responsible for wrongdoing. The laws remained active until 2003 when the Senate annulled impunity laws shielding officials implicated in human rights crimes from being prosecuted.

Determining the ‘knowledge’ of a crime is sometimes controversial. Lawyers have often used extraterritorial civil liability to hold companies accountable, particularly through the ATS.<sup>23</sup> For example, in 2004, former Mercedes Benz employees filed a civil lawsuit under the ATS against DaimlerChrysler AG, its parent company. The workers prosecuted the German automaker for allegedly aiding the Argentine military by providing them with lists of workers who later disappeared, were tortured, or killed. The automaker played a part in human rights violations

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<sup>20</sup> Garcia Martin, “Overcoming corporate-related human rights abuses in transitional justice,” 557.

<sup>21</sup> Victoria Basualdo, “Business and the Military in the Argentine Dictatorship (1976–1983): Institutional, Economic, and Repressive Relations,” in *Big Business and Dictatorships in Latin America: A Transnational History of Profits and Repression*, edited by Victoria Basualdo, Hartmut Berghoff, and Marcelo Bucheli (Cham: Springer International Publishing AG, 2020), 36.

<sup>22</sup> Par Engstrom and Gabriel Pereira, “From Amnesty to Accountability: The Ebb and Flow in the Search for Justice in Argentina,” in *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, edited by Francesca Lessa and Leigh A. Payne (Cambridge: Cambridge University Press, 2012), 104.

<sup>23</sup> The ATS allows non-US citizens to sue in US federal court for violations of international law.

during the dictatorship.<sup>24</sup> Yet, the US Court found the company innocent on the ground that there was insufficient knowledge to show its criminal complicity.

Truth commissions are crucial to support legal work in transitional justice because they help collecting evidence of corporate complicity. They also provide a forum for victims to share their stories. They document the abuses that occurred during periods of conflict to create a historical record of the events. Their findings can serve as a basis for legal proceedings, including prosecutions for human rights abuses. In some cases, the reports can include recommendations for reparations for victims, institutional reforms, or other measures to address the root causes of the conflict. The CONADEP's report *Nunca Más* ("Never Again") illustrates the work of truth commissions in transitional justice.<sup>25</sup> Without them and other domestic initiatives, proving complicity is challenging, which undermines victims' efforts to seek justice.

### *Institutionalizing Corporate Impunity: The Role of the United Nations*

International mechanisms for corporate accountability have only taken the shape of soft laws or hortatory guidelines, which made it harder for victims to sue companies for wrongdoing. To quote Jolyon Ford, "it cannot be said that international human rights law involves direct legal duties for businesses."<sup>26</sup>

Based on post-colonial theories, the advocates of "Third World approaches to international law" criticize international law, which they perceive as a blend of Eurocentric doctrines that

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<sup>24</sup> Daimler AG v. Bauman (2014), No. 11-965, IV.B, 23, cited in Garcia Martin, "Overcoming corporate-related human rights abuses in transitional justice," 557.

<sup>25</sup> The second part of this thesis delves into how important truth commissions and civil society have been in Argentina's transitional justice to account for corporate accountability.

<sup>26</sup> Jolyon Ford, *Regulating Business for Peace: The United Nations, the Private Sector, and Post-Conflict Recovery* (Cambridge: Cambridge University Press, 2015), 37.

originated from European history and were later applied to the non-European world without considering its unique history. They condemn many Western human rights organizations for promoting human rights globally while turning a blind eye to corporate misconduct in developing regions.<sup>27</sup> As a result, international pressure on businesses and human rights norms have focused on non-binding and voluntary principles, rather than mandatory and enforceable obligations.<sup>28</sup>

In the 1970s, companies began implementing corporate social responsibility (CSR) initiatives as a form of self-regulation. These initiatives can have indirectly contributed to a global norm that emphasizes corporate respect for international human rights. Between the 1980s and 1990s, efforts emerged to “control abusive firms and salvage industries’ reputations” after several scandals involving businesses. Although some industry-led initiatives suggested that companies were willing to be monitored and held accountable for complying with global human rights standards, voluntary measures prevailed despite the push for strong regulation by human rights advocates.<sup>29</sup>

The UN’s Global Compact of 1999 and the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights of 2003 were significant developments toward establishing global standards for corporate complicity. The Global Compact urged companies to align their operations with universal principles on human rights, while the Norms highlighted businesses’ responsibilities and obligations to promote, respect, and protect human rights in a binding and enforceable manner. Despite the Norms’ emphasis on binding obligations for businesses to protect human rights, UN member states and

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<sup>27</sup> Wolfgang Kaleck, “International Criminal Law and Transnational Businesses: Cases from Argentina and Colombia,” in *Corporate Accountability in the Context of Transitional Justice*, edited by Sabine Michalowski (London: Taylor & Francis Group, 2013), 174.

<sup>28</sup> John Gerard Ruggie, *Just Business: Multinational Corporations and Human Rights* (New York: W.W. Norton and Company, 2013), 6.

<sup>29</sup> Payne and Pereira, “Corporate Complicity in International Human Rights Violations,” 5.

business stakeholders opposed the Norms. The controversy resulted in the UN renouncing to the Norms. This event illustrates a missed opportunity to establish international pressure for corporate accountability.<sup>30</sup>

Scholars of business and human rights find that international actors have failed to play a greater role in enforcing clear, binding obligations for companies. Payne et al. suggest that “past accountability efforts do not seem to lead such companies to avoid human rights violations in subsequent armed conflict or authoritarian contexts.”<sup>31</sup> According to John Ruggie, the divisive debate between human rights organizations and the business community has impeded the creation of international norms to enforce corporate accountability. Ruggie notes that “the Norms would have imposed on companies [...] the same human rights duties that states have accepted for themselves under treaties they have ratified: ‘to promote, secure the fulfillment of, respect, ensure respect of and protect human rights.’” As he sums up, advocates supported the Norms because they ensured binding obligations on companies under international law while companies rejected what they argue was “the privatization of human rights.”<sup>32</sup> Companies have contended that binding obligations would shift the responsibility for protecting human rights from the state to the private sector. This has led to criticism. Payne and Pereira also note that “businesses argue that they are not bound by international criminal law that is aimed at individuals or international human rights law aimed at states.”<sup>33</sup> Thus they have claimed exemption from being held responsible for their misconduct through any international framework.

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<sup>30</sup> Ibid., 5.

<sup>31</sup> Leigh A. Payne, Gabriel Pereira, and Laura Bernal-Bermúdez, “The Corporate Veto,” in *Transitional Justice and Corporate Accountability from Below: Deploying Archimedes’ Lever*, (Cambridge: Cambridge University Press, 2020), 119.

<sup>32</sup> Ruggie, *Just Business*, 2.

<sup>33</sup> Payne and Pereira, “Corporate Complicity in International Human Rights Violations,” 7.

Ruggie argues that businesses were either unprepared or unwilling to manage the risks of causing or contributing to human rights harm through their activities. Many governments were also unwilling or unable to enact laws to protect their people. Some companies responded with pledges to follow responsible business conduct, which led to the emergence of CSR. Meanwhile, governments pushed for greater deregulation and privatization and promoted private-public partnerships and CSR actions instead of more direct governance roles.<sup>34</sup>

The UN Commission on Human Rights (now Human Rights Council) endorsed the Guiding Principles on Business and Human Rights in 2011, with unanimous approval. The Principles, created by Special Representative John Ruggie, received support from various international organizations, states, and businesses, unlike the Norms. Ruggie was responsible for “identifying what international human rights standards currently regulate corporate conduct, as opposed to the conduct of states and individuals; and clarifying the respective roles of states and businesses in safeguarding these rights.”<sup>35</sup> In contrast with the Norms, the Guiding Principles fail to impose enforceable obligations on businesses. Instead, they promote voluntary soft law to encourage businesses to respect human rights.<sup>36</sup> In short, the UN contributed to institutionalizing corporate impunity by enacting weak guidelines.

The Guiding Principles have received criticism from legal scholars and human rights practitioners. Despite acknowledging that soft law may have been the only viable approach to establishing corporate human rights obligations, these critics believe that the Guiding Principles should specify the exact standards and duties that states and businesses must adhere to comply with international human rights law.<sup>37</sup>

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<sup>34</sup> Ruggie, *Just Business*, 9.

<sup>35</sup> Ruggie, xxi.

<sup>36</sup> Payne and Pereira, “Corporate Complicity in International Human Rights Violations,” 5.

<sup>37</sup> Payne and Pereira, “Corporate Complicity in International Human Rights Violations,” 5.

Eric Posner argues that the approach to business and human rights is not effective in creating international pressure to hold businesses accountable. When denouncing the tenuous treaties, Posner writes “the reason human rights law has failed to improve respect for human rights is that the law is weak— the treaties are vague and inconsistent, and the institutions are balkanized, starved of resources, and unequipped with legal authority.”<sup>38</sup> Arguably, the application of international law to the private sector, which is voluntary and based on soft law, represents a weak form of accountability.

Similarly, Eric Neumayer argues that non-binding treaties cannot deter companies to neglect their duties toward human rights and could therefore get away from abuses without being punished. According to both Posner and Neumayer, relying on soft law is not enough to ensure that companies improve their human rights practices. Instead, they suggest that compelling companies to respect human rights with hard law would be more effective in promoting accountability.<sup>39</sup>

Corporate complicity cases are complex and difficult to win in civil or criminal courts due to the lack of settled international law. The absence of fixed law results in inconsistencies in court decisions, with some accepting arguments of parent companies denying responsibility for their subsidiaries’ actions. For example, in *Chevron Corp. v. Naranjo*, Chevron’s lawyers challenged Ecuador’s jurisdiction over their Ecuadorean subsidiary, citing territorial and legal responsibility. Thus, winning cases involving corporate complicity is challenging.<sup>40</sup>

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<sup>38</sup> Eric Posner, *The Twilight of Human Rights Law*, (Carry: Oxford University Press, 2014), 41.

<sup>39</sup> Eric Neumayer, “Do International Human Rights Treaties Improve Respect for Human Rights?” *The Journal of Conflict Resolution*, vol. 49, no. 6 (2005): 927.

<sup>40</sup> Payne et al., “The Corporate Veto,” 121-124, 132.

In short, due to weak and soft international regulations, companies can violate human rights with near-impunity. In the words of Payne et al. “impunity prevails for corporate complicity in past human rights violations.”<sup>41</sup>

*Argentina’s Innovations: The Legal Underpinning of Corporate Accountability*

Many innovative transitional justice processes are taking place in domestic courts around the world, driven by civil society mobilization. These efforts aim to hold businesses accountable for human rights violations that occurred in past authoritarian regimes or armed conflict situations and make corporate violations more visible.<sup>42</sup> Argentina stands out for actively participating in the implementation of transitional justice.

As of today, there have been very few convictions for corporate human rights abuses in Argentina. Several reasons explain the absence of sentences. First, international justice processes have largely ignored corporate involvement in abuses. In addition, clear legal frameworks are missing to specifically address corporate complicity in international crimes, such as those committed in Argentina. This makes it challenging to incorporate corporate accountability within the country’s domestic legislation. Finally, domestic Argentine law does not hold corporations criminally liable for human rights abuses. Thus, prosecuting only individual cases in domestic courts does not fully tackle the broader challenges faced by victims in post-conflict contexts.<sup>43</sup>

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<sup>41</sup> Leigh A. Payne, Gabriel Pereira, and Laura Bernal-Bermúdez, “Introduction: Transitional Justice and Corporate Accountability,” in *Transitional Justice and Corporate Accountability from Below: Deploying Archimedes’ Lever*, (Cambridge: Cambridge University Press, 2020), 9

<sup>42</sup> Payne and Pereira, “Corporate Complicity in International Human Rights Violations,” 5.

<sup>43</sup> Garcia Martin, “Overcoming corporate-related human rights abuses in transitional justice,” 557.

Argentina's innovations stem from the civil forum that has fought procedural limitations. Civil Society groups, activists, and the CONADEP truth commission constituted the forum. They were the first actors to expose links between the state, corporations and human rights violations in Argentina between 1976 and 1983.<sup>44</sup>

In contrast with the global trend, Argentina innovates in using domestic laws to hold businesses accountable for their actions. For example, Ezequiel González-Ocantos examines how lawyers, judges and civil society organizations interact to create successful accountability results. González-Ocantos demonstrates that interactions should take the shape of both formal litigation and informal mechanisms to be successful. Informal mechanisms include, for instance, human rights organizations advocating for and promoting legal shifts before judges.<sup>45</sup> Emphasizing the uniqueness of Argentina, the author writes:

“NGOs’ efforts removed decisive judicial blockages on the road to truth and justice, generated productive synergies with processes of international norm diffusion, pushed judges and prosecutors to defy the limits imposed by a hostile political environment during key moments in the 1990s, and exploited the possibilities afforded by the rise to power of a supportive political coalition in the 2000s.”<sup>46</sup>

Commenting on Argentina's innovation in legal mechanisms, Payne and Pereira write: “Argentina is using law creatively to find ways to hold businesses accountable for their complicity

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<sup>44</sup> Garcia Martin, “Overcoming corporate-related human rights abuses in transitional justice,” 557.

<sup>45</sup> Ezequiel A. González-Ocantos, “Argentina: Pedagogical Interventions and Replacement Strategies in the Struggle for Human Rights,” in *Shifting Legal Visions: Judicial Change and Human Rights Trials in Latin America*, (Cambridge: Cambridge University Press, 2016), 71.

<sup>46</sup> González-Ocantos, “Argentina: Pedagogical Interventions and Replacement Strategies,” 71.



in past human rights abuses.”<sup>47</sup> The country illustrates “bottom-up” strategies as an effective way to bring about corporate accountability. “Bottom-up” forms of accountability involve domestic courts instead of international courts to try corporations. These strategies have been successful thanks to “institutional investors” who have translated the popular demand for corporate accountability into official reports. Supported by Truth Commissions, institutional investors such as truth commissions, prosecutors, human rights lawyers and judges promoted corporate accountability through the legal system, “creatively blending domestic codes and statutes with international human rights standards.”<sup>48</sup>

Menno T. Kamminga and Saman Zia-Zarifi state:

“more concrete, and therefore more intriguing, examples come from the use of domestic courts to enforce international norms on MNCs (Multi-National Corporations). The advantage of enforcing international law in domestic courts is that they have relatively well-developed systems for addressing corporate entities and levying penalties against them.”<sup>49</sup>

The statement of Kammina and Zia-Zarifi bolsters the argument of Payne et al. that institutional investors at the local level are essential to oppose corporate power and enforce mechanisms of accountability.<sup>50</sup>

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<sup>47</sup> Payne and Pereira, “Accountability for Corporate Complicity in Human Rights Violations,” 36.

<sup>48</sup> Leigh A. Payne, Gabriel Pereira, and Laura Bernal-Bermúdez, “Transitional Justice and Corporate Accountability,” in *Transitional Justice and Corporate Accountability from Below: Deploying Archimedes’ Lever*, (Cambridge: Cambridge University Press, 2020), 18.

<sup>49</sup> Menno T. Kamminga and Saman Zia-Zarifi, “Liability of Multinational Corporations under International Law: An Introduction,” in *Liability of Multinational Corporations under International Law*, edited by Menno T. Kamminga and Saman Zia-Zarifi (The Hague: Kluwer Law International, 2001), 10.

<sup>50</sup> Payne et al., “The Corporate Veto,” 113.

The situation in Argentina shows the potential outcomes when a nation has a legal system that is willing to investigate those who have committed human rights violations, both domestically and internationally. Argentina illustrates well the insider-outsider coalition model developed by Kathryn Sikkink and Carrie Booth Walling. The insider-outside coalition model is a theoretical framework that explains how social movements can create change by forming coalitions with actors who have access to institutional power. According to the model, social movements are composed of “outsider” groups who lack institutional power and “insider” groups who have access to institutional power but may lack the motivation or legitimacy to push for change. The coalition can leverage the resources and legitimacy of the insider group while maintaining the mobilizing power and grassroots support of the outsider group.<sup>51</sup> Sikkink and Walling use the coalition model to explain how activists contributed to holding military leaders accountable. The model is also useful to analyze activists’ initiatives to hold companies accountable.

Three domestic cases illustrate how creative strategies of corporate accountability can apply in situations that arise after periods of dictatorship or armed conflict.

Two cases, Techint SA and Siderca, combined Argentina’s labor law and international human rights law to get compensation from companies to families for the disappearance of workers in 2012.<sup>52</sup> In the Ingenieros case, María Gimena Ingenieros, the daughter of Enrique Roberto Ingenieros, brought the case to request financial compensation for her father’s disappearance during the civic-military dictatorship. She argued that Techint SA was responsible for her father’s disappearance on their company’s property and should pay compensation. Argentina’s domestic labor law declares that companies are responsible for ensuring the safety of workers when entering

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<sup>51</sup> Sikkink and Walling, “Argentina’s contribution to global trends in transitional justice,” 313-314.

<sup>52</sup> Techint S.A. is a multinational conglomerate company based in Argentina. The company operates in the fields of engineering, construction, energy, and steel production. Siderca is a steel company based in Argentina and is a subsidiary of Techint Group.

or leaving their work sites. By not protecting their workers, companies can be held accountable for the workers' disappearance. However, the company denied the claim, stating that the two-year statute of limitations for worker safety had passed. Despite this, the appeals court disagreed and ruled that statutes of limitations do not apply to compensation claims associated with crimes against humanity, which are recognized and defined under international law. As a result, the family received compensation through an inventive blend of domestic labor law and international human rights law.<sup>53</sup>

In a similar logic to Techint SA, the Siderca case (April 2007) involved Ana Maria Cebrymsky, the wife of Oscar Orlando Bordisso, who disappeared after leaving work in 1977. Cebrymsky claimed compensation from Siderca, her husband's employer, under Argentina's labor law. She argued that the company was responsible for protecting her husband when entering and exiting the work site, as mandated by the country's law. Although Siderca rejected the claim and appealed, the company lost its appeal in the Provincial Supreme Court. The Court ordered compensation for Cebrymsky.<sup>54</sup>

Founded in 1979 by relatives of the disappeared to oppose state terror, the Grandmothers of the Plaza de Mayo also lobbied the Argentine government to include specific provisions in the Convention on the Rights of the Child. They believed that these provisions would increase the success of their domestic trials because domestic law did not provide a legal basis for arguing that the kidnapped children had standing in court. By lobbying, the Grandmothers convinced the Argentine foreign ministry to push for provisions on the "right to identity" in the Convention, which were included as Articles 7 and 8. These articles became known as the "Argentine Articles." Once Argentina ratified the Convention, these articles provided the Grandmothers with the legal

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<sup>53</sup> Basualdo, "Business and the Military in the Argentine Dictatorship," 55-56.

<sup>54</sup> Basualdo, "Business and the Military in the Argentine Dictatorship," 55-56.

basis to argue that children had a right to an identity, making it easier to convict kidnappers and perpetrators.<sup>55</sup>

From the theoretical viewpoint of the insider-outsider model, these cases presented a novel approach that blended domestic labor law and international human rights law to establish companies' obligations to uphold human rights and redress violations. Combining labor and human rights law prevented the cases from being easily dismissed under the statute of limitations for worker safety claims. Although these cases were heard in civil courts, they acknowledged crimes against humanity, held the companies accountable for their involvement in such crimes, and mandated them to provide reparations to the families of the victims.<sup>56</sup> As the Grandmothers' strategy suggests, "domestic groups concentrated primarily on their very active domestic judicial agenda, but they moved with relative ease and fluidity, in foreign, international, and regional institutions as a complement and/or back-up to their domestic work."<sup>57</sup> Undeniably, the success from these groups of activists stems from their perseverance and adaptability.

The cases demonstrate the emergence of new legal approaches to overcome the limitations on accountability at the international level. These approaches often combined domestic laws with international human rights law to win cases against companies.<sup>58</sup>

Argentine social movement activists and government officials are leading innovators in domestic human rights strategies. The country also actively participates in international human rights efforts, and it contributed in shaping the opportunities for human rights activism worldwide. For instance, Argentina played a significant role in the establishment of the International Criminal Court, and a former Argentine attorney who served as the deputy prosecutor in the Junta Trials

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<sup>55</sup> Sikkink and Walling, "Argentina's contribution to global trends in transitional justice," 319-320.

<sup>56</sup> Payne and Pereira, "Corporate Complicity in International Human Rights Violations," 11.

<sup>57</sup> Sikkink and Walling, "Argentina's contribution to global trends in transitional justice," 320.

<sup>58</sup> Payne and Pereira, "Corporate Complicity in International Human Rights Violations," 11.

was appointed as prosecutor of the ICC, which is considered the most crucial position in the Court.<sup>59</sup>

### *Conclusion*

The chapter identified several components of corporate accountability, including domestic and international actors as well as legal and political initiatives. The research showed that proving corporate complicity is challenging, notably due to shortcomings in international jurisprudence. Despite opportunities to act on corporate accountability, international organizations like the United Nations (UN) have pushed for fewer accountability mechanisms. The UN has emphasized the role of self-regulation and voluntary principles while dismissing binding and enforceable norms.

However, evidence suggests that the Argentine transitional justice has been more effective than international human rights initiatives alone in promoting the rule of law and providing recognition to corporate victims. Such success stems from the fact that the country combined international frameworks with domestic legal and political strategies to hold companies accountable for wrongdoing. In particular, domestic actors, including lawyers, prosecutors, the CONADEP and the Grandmothers, joined efforts to advance human rights trials against companies. By doing so, they have paved the way for new corporate accountability mechanisms.

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<sup>59</sup> Sikkink and Walling, “Argentina’s contribution to global trends in transitional justice,” 320.

## II. Accounting for Corporate Abuses: Argentina's 'Social' Justice

### *The National Reorganization Process: The Political Support for Fomenting Crimes*

Argentina fell under the rule of the National Reorganization Process (*Proceso de Reorganizacion Nacional*, or PRN) on March 24, 1976, following the ousting of Maria Estela de Peron in a military coup. The regime governed until December 10, 1983, during which it gained infamous notoriety for its brutal repression. It eliminated any alleged opposition violently and restructured the economy to dispossess workers.<sup>60</sup> Workers and their union representatives faced frequent state violence. Based on the information and figures gathered by CONADEP, 30.2 percent of the people who were abducted or disappeared were blue-collar workers while 17.9 percent were white-collar workers. This implies that nearly half (48.1) of all people who disappeared or were kidnapped during the dictatorship were workers.<sup>61</sup> Although these numbers do not prove that all companies are guilty, they provide reasonable evidence to investigate their role in the disappearance of their workers. CONADEP's research and the juntas' trials helped uncover the truth about corporations involved in human rights violations. Yet, the Truth Commission did not include a specific investigation into corporate actors as part of its mandate.

The military junta's economic policies transformed the country's social and economic power structure, favoring a select few corporate groups linked to the regime. CELS, a human rights NGO, has shown that these companies supported the armed forces by providing resources and personal information about workers who subsequently disappeared, and even by facilitating the establishment of clandestine detention centers within their factories. However, during the early

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<sup>60</sup> Verbitsky and Bohoslavsky, "Introduction: State Terrorism and the Economy," 7-8.

<sup>61</sup> Argentine National Commission on the Disappeared (CONADEP), *Nunca Más (Never Again)* (New York: Farrar, Straus, Giroux, 1986), 448.

stages of Argentina's transitional justice process, which focused primarily on locating missing persons, these issues received little attention.<sup>62</sup>

According to Daniel Feierstein, US policymakers during the Cold War advocated for the implementation of the National Security Doctrine in Latin America, which influenced the military crackdown in Argentina from 1975 to 1983. This ideology aimed to eradicate political "subversion" and charged the armed forces to rebuild their societies in an anti-communist fashion. Following the sudden death of Juan Perón in July 1974, Isabel Perón presided with José López Rega as her unofficial prime minister, leading to an escalation in violence and instability.<sup>63</sup>

In February 1975, the government enacted Decree 261/75 to "execute all military operations necessary for the effects of neutralizing or annihilating the action of subversive elements acting in the Province of Tucumán." These operations, which involved kidnapping, torturing, and slaughtering political dissents, served as a plan for implementing oppressive measures after the military takeover in 1976. An October decree extended the fight against subversion to the entire country.<sup>64</sup>

Following the coup, General Jorge Rafael Videla's military junta carried out methodical repression across Argentina and established over 500 clandestine detention centers. Several companies, including Ford Motor Company, opened their door to the military to set up detention centers within their factories. By trying to prove the systemic relationship with the military, Payne et al. identified nine categories of corporate complicity in human rights violations including: "financing abuses, illegal detention, kidnapping, torture, extrajudicial killing and forced

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<sup>62</sup> Garcia Martin, "Overcoming corporate-related human rights abuses in transitional justice," 547.

<sup>63</sup> Daniel Feierstein, "Political violence in Argentina and its genocidal characteristics," in *State Violence and Genocide in Latin America: The Cold War Years*, edited by Marica Esparza, Henry R. Huttenbach, and Daniel Feierstein (London: Taylor & Francis Group, 2009), 45.

<sup>64</sup> Feierstein, "Political violence in Argentina and its genocidal characteristics," 45.

disappearances, property and environmental wrongs, sexual and gendered violations, slave labor, and indifference or passivity.”<sup>65</sup> All these actions conducted with efficiency and cruelty exhibit a significant amount of practical and ideological preparation. Many victims disappeared without leaving any trace, with their bodies either buried anonymously or discarded in the sea. Despite the official count confirming over 13,000 instances of forced disappearances and murders, human rights organizations estimate that the actual number lies somewhere between 15,000 and 30,000.<sup>66</sup>

### *Restructuring the Economy: A Strategy to Win the Support of Economic Actors*

Once in power, the Videla regime launched a deep restructuration of the country. It enacted neoliberal policies that reformed the economic, social and political landscape.<sup>67</sup> The restructuration resulted in gaining the favor of the corporate business, which facilitated the regime’s crimes.

The plan adopted a new neoliberal model that aimed to ensure capital investment and reproduction under the conditions of a new form of capitalism at an international level. In the mid-1970s, Argentine liberals started to challenge what they viewed as a state that interfered too much in economic and social matters. They also believed that trade unions wielded excessive influence. Argentina’s PRN neoliberal economic model resulted in a significant redistribution of income that primarily disadvantaged workers. For instance, in 1981, the government fixed the exchange rate according to a gradual devaluation of the currency. This policy also included import liberalization,

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<sup>65</sup> Leigh A. Payne, Gabriel Pereira, and Laura Bernal-Bermúdez, “Truth-Telling From Below,” in *Transitional Justice and Corporate Accountability from Below: Deploying Archimedes’ Lever* (Cambridge: Cambridge University Press, 2020), 177-178.

<sup>66</sup> Feierstein, “Political violence in Argentina and its genocidal characteristics,” 46.

<sup>67</sup> Gabriela Aguila, “State violence and repression in Rosario during the Argentine dictatorship, 1976–83,” in *State Violence and Genocide in Latin America: The Cold War Years*, edited by Marica Esparza, Henry R. Huttenbach, and Daniel Feierstein (London: Taylor & Francis Group, 2009), 138.



reduced tariffs, and the unrestricted outflow of capital. It favored the wealthiest economic groups while limiting citizen intervention in the reorganized state. It neutralized the influence of unions both inside and outside the workplace.<sup>68</sup> The dictatorship also transformed the financial sector, including by redefining the roles of public institutions like the National Bank (*Banco Nación*). *Banco Nación* funded the armed forces and promoted the growth of critical business sectors. As per various studies, the dictatorship was based on a collaboration between local economic groups such as private banks and international financial organizations like the International Monetary Fund (IMF) and the World Bank.<sup>69</sup> In short, liberalization in Argentina led to a set of policies that reduce government regulations and restrictions on economic activity, such as tariffs, trade barriers, price controls, subsidies, and other forms of government intervention in the market. Though it advanced foreign investments and free trade, it also led to increased inequality and economic instability, as well as negative impacts on labor standards.

Similar neoliberal reforms occurred across Latin America between the 1970s and 1980s, often during authoritarian regimes. Chile, led by General Augusto Pinochet, was one of the earliest examples of this trend. After seizing power in a 1973 coup, Pinochet implemented a series of economic reforms that emphasized privatization, deregulation, and trade liberalization.<sup>70</sup> In the Andean region, military governments in countries such as Peru, Bolivia, and Ecuador implemented neoliberal reforms as well. These reforms involved measures such as privatizing state-owned enterprises, liberalizing trade, and reducing public spending on social services.<sup>71</sup>

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<sup>68</sup> Victoria Basualdo, “Business and the Military in the Argentine Dictatorship (1976–1983): Institutional, Economic, and Repressive Relations,” 44-45.

<sup>69</sup> The International Monetary Fund and the World Bank granted loans beginning just days after the coup.

<sup>70</sup> Carlos Huneeus and Tomás Undurraga, “Authoritarian Rule and Economic Groups in Chile: A Case of Winner-Takes-All Politics,” in *Big Business and Dictatorships in Latin America: A Transnational History of Profits and Repression*, edited by Victoria Basualdo, Hartmut Berghoff, and Marcelo Bucheli (Cham: Springer International Publishing AG, 2020), 91-92.

<sup>71</sup> See for instance Martín Monsalve Zanatti and Abel Puerta Alarcón, “From Business Associations to Business Groups: Business-Government Relations and Corporate Networks During the Military Dictatorship, Peru 1968–

Overall, the implementation of neoliberal reforms under authoritarian regimes led to mixed results. While these policies were often credited with promoting economic growth, they also increased inequality and poverty, and were often accompanied by repression of political opposition and violations of human rights.

The National Reorganization Process transformed the political system by limiting the power of party organizations and by ending the increased social and political mobilization that had occurred in the early 1970s.<sup>72</sup> In such a context, it becomes evident that large companies could benefit from this authoritarian order. The military regime enabled and, arguably, encouraged companies to facilitate or commit crimes. One of the main arguments that explains why the corporate sector supported the government is the fact that the junta implemented a neoliberal economic ideology. According to Mariana Heredia, neoliberal actors, which include the business sector, endorsed the junta because it was willing to liberalize the economy and defeat “anti-Western Marxists.”<sup>73</sup>

The military that assumed control in March 1976 needed the support of a segment of the elite, including domestic and international groups, to advance their reform project. The objectives of the military regime were “the reformulation of the accumulation and development model; the resolution of the bourgeois domination crisis; the establishment of an authoritarian and stable political order; the shaping of a disciplined, immobilized, and fragmented society.”<sup>74</sup> To accomplish this neoliberal program, the military resorted to social and political terror. But it is too

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1980,” in *Big Business and Dictatorships in Latin America: A Transnational History of Profits and Repression*, edited by Victoria Basualdo, Hartmut Berghoff, and Marcelo Bucheli (Cham: Springer International Publishing AG, 2020), 157-183.

<sup>72</sup> Aguila, “State violence and repression in Rosario,” 138.

<sup>73</sup> Mariana Heredia, “Economic Ideas and Power during the Dictatorship,” in *The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts*, edited by Horacio Verbitsky and Juan Pablo Bohoslavsky (Cambridge: Cambridge University Press, 2015): 47-60.

<sup>74</sup> Aguila, “State violence and repression in Rosario,” 138.

simplistic to argue that the authoritarian regime worked alone. Corporate actors that found interest in the program became accomplices. European and American banks financed the dictatorship regime.<sup>75</sup> Newspapers and media entrepreneurs helped to spread propaganda.<sup>76</sup> Businesspersons assisted in workers' disappearances.<sup>77</sup>

Both neoliberalism and nationalism represented the dictatorship's program. The administration exhibited significant division, with the neoliberals eventually taking charge of the economic department, except for the military budget. The nationalists, who were conservative and Catholic, held sway over almost all other sectors, such as internal and external security, education, culture, and so on.<sup>78</sup>

In addition to imposing their will on constitutional order and seizing resources, the military enabled economic actors—in our case corporate actors—from participating in repressing the population and committing criminal violations. During the criminal trial in 2012 investigating the disappearance of multiple workers of the Ledesma sugar mill and the alleged involvement of its business leaders, the judge stated that:

“the jailing, torturing, murdering, and disappearing of individuals by the security forces during the last civilian-military dictatorship were, thus, not only motivated by the desire to

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<sup>75</sup> See Juan Pablo Bohoslavsky and Veerle Opgenhaffen, “The Past and Present of Corporate Complicity: Financing the Argentinean Dictatorship,” *Harvard Human Rights Journal*, vol.23 (2010): 157-203.

<sup>76</sup> See Victorio Paulón, “Acindar and Techint: Extreme Militarization of Labor Relations,” in *The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts*, edited by Horacio Verbitsky and Juan Pablo Bohoslavsky (Cambridge: Cambridge University Press, 2015): 174-185.

<sup>77</sup> See Victoria Basualdo, Tomás Ojea Quintana, and Carolina Varsky, “The Cases of Ford and Mercedes Benz,” in *The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts*, edited by Horacio Verbitsky and Juan Pablo Bohoslavsky (Cambridge: Cambridge University Press, 2015): 159-173.

<sup>78</sup> For further information on this division, see Paula Canelo, *El Proceso en Su Laberinto: La Interna Militar, de Videla a Bignone* (Buenos Aires: Prometeo Libros S. A., 2022); Federico Sor, “The Pedagogy of Revolution and Counterrevolution in Cold War Argentina, 1966-1983.” Order No. 10191829, New York University (2016); Horacio Verbitsky, “The Price of the Church's Blessing,” in *The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts*, edited by Horacio Verbitsky and Juan Pablo Bohoslavsky (Cambridge: Cambridge University Press, 2015): 323-338.

preserve a given ideology, but rather the purpose of the illegal repression was to establish and defend an economic model with neoliberal overtones that would be free of threats from labor demands and claims.”<sup>79</sup>

The judge’s statement underscores the link between the motivations of the state with those of corporate actors. Companies aided the regime in waging a war on subversion for their benefit.

### *Proving the Direct Complicity of Companies*

Extensive evidence suggests that certain civilian sectors actively participated in and profited from the previous military government in Argentina. A former accomplice of the regime, the National Securities Commission (CNV), which is the national body regulating and promoting the capital market in Argentina, published a report to further the slow process of truth, memory and reconciliation. The report was a tribute to Gustavo Cortiñas, a disappeared CNV worker.<sup>80</sup> It labels the regime as a civil-military dictatorship and shows that companies had pivotal roles in assisting with and profiting from the state’s repression.<sup>81</sup> The economic policies issued by the regime resulted in benefiting corporate and economic actors, such as the Central Bank of the Argentine Republic. Many businesspeople worked in the government’s administration, and vice versa. For example, Alfredo Martínez de Hoz presided over the steel factory Acindar before becoming the Minister for the Economy.<sup>82</sup> Another example would be Domingo Cavallo, the

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<sup>79</sup> Verbitsky and Bohoslavsky, “Introduction: State Terrorism and the Economy,” 5.

<sup>80</sup> Maria Celeste Perosino, Bruno R. Napoli, Walter A. Bosisio, *Economía, Política y Sistema financiero: La Última Dictadura Cívico-militar*, (Buenos Aires: Comisión Nacional de Valores, 2013), 11.

<sup>81</sup> Perosino et al., *Economía, Política y Sistema financiero*, 11.

<sup>82</sup> Perosino et. al, *Economía, Política y Sistema financiero*, 109, 126-128.

Central Bank's director, who implemented policies to ease the financial burden of companies that supported the regime. This involved nationalizing the private debt of at least 68 companies, including subsidiaries of multinationals like Cogasco, Celulosa, Autopistas Urbanas, Ford Motor Argentina, Mercedes-Benz Argentina, Bank of America, Deutsche Bank, City Bank, and IBM Argentina.<sup>83</sup>

However, the support of economic actors went beyond financial favors. Studies suggest that several influential companies actively collaborated with the military in repressing workers. At times, these actions took place within the facilities of these companies.

Victoria Basualdo analyzes six of the most notorious cases of complicity between the industrial business community and the repressive forces: those of the companies Acindar, Astarsa, Dálmine Siderca, Ford, Ledesma and Mercedes Benz. The information collected for the six cases demonstrates that there was a common pattern of operation among the factories: the collaboration of the different companies with the repressive forces through the provision of vehicles, infrastructure, money and personnel, the granting of free access to the plants and the removal of any obstacle to the actions of the armed forces, in addition to the hiring of undercover personnel to monitor the workers and receive intelligence reports about their actions.<sup>84</sup>

Several corporate executives are currently facing criminal charges for their alleged involvement in human rights violations. One such high-profile case is the trial of the leaders of the Ledesma sugar mill in Jujuy that started in 2012. The company is facing accusations of complicity in the "Night of the Blackout" (*Noche del Apagón*) that occurred from July 20 to 27, 1976. Reportedly, around 400 individuals, including workers, students, and professionals, were

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<sup>83</sup> Perosino et. al, *Economía, Política y Sistema financiero*, 33, 38.

<sup>84</sup> Victoria Basualdo, "Complicidad patronal-militar en la última dictadura argentina: Los casos de Acindar, Astarsa, Dálmine Siderca, Ford, Ledesma y Mercedes-Benz," *Engranajes* (Buenos Aires: Federación de Trabajadores de la Industria y Afines, 2006), 22.

abducted, tortured, killed, and disappeared. The authorities have arrested four policemen who participated in the repression. The top executives of Ledesma, Alberto Lemos, and Carlos Pedro Blaquier, have been indicted for their participation in violating human rights. They allegedly provided the trucks used to kidnap workers. Moreover, Ledesma is accused of being responsible for causing the blackout to help the military strike. It is also accused of enabling the military to establish a covert detention center, Escuadrón 20, on its property.<sup>85</sup> On March 13, 2023, Ledesma owner Carlos Pedro Blaquier died without being convicted for these events.<sup>86</sup>

Recognizing that businesses participated in the methodical human rights crimes of the regime enables us to argue that corporate complicity is an integral part of transitional justice. Transitional justice refers to the actions taken (both judicial and non-judicial) to ensure accountability for past crimes and enforce the rule of law in a country that has experienced mass atrocities. According to Naomi Roht-Arriaza, it is a “set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law.”<sup>87</sup> This concept suggests that transitions can occur only once a conflict or repression has ended. It also implies that transitional justice mechanisms should encompass all human rights abuses, not just specific civil and political violations. However, in Argentina, the transitional justice processes focused only on

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<sup>85</sup> Payne and Pereira, “Accountability for Corporate Complicity in Human Rights Violations,” 39.

<sup>86</sup> In 2012, Carlos Pedro Blaquier was prosecuted by the federal court of Jujuy as an accomplice in 26 cases of unlawful sequestration for having provided the trucks to carry out the transfer of the kidnapped to clandestine detention centers and for the 36 kidnappings followed by murder and disappearance during the Blackout. In March 2015, the Federal Chamber of Criminal Cassation, unanimously, revoked the prosecutions of Carlos Pedro Blaquier and Alberto Lemos, and ruled that both had no merit, understanding that in no way had it been possible to prove any type of participation of the defendants in the facts investigated. In July 2021, the Supreme Court reversed the decision of the Federal Court and reactivated Blaquier’s prosecution. After Blaquier’s death, the National Human Rights Secretariat demanded that the debate against Alberto Lemos be urgently initiated. See “Como Consecuencia de las Demoras del Poder Judicial, Murió Impune el Empresario Carlos Blaquier,” Argentina.gob.ar (Ministerio de Justicia y Derechos Humanos, Secretaría de Derechos Humanos, March 13, 2023), <https://www.argentina.gob.ar/noticias/como-consecuencia-de-las-demoras-del-poder-judicial-murio-impune-el-empresario-carlos>.

<sup>87</sup> Naomi Roht-Arriaza and Javier Mariezcurrena, *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge: Cambridge University Press, 2006), 2.

the severe and systematic violations of civil and political rights and was limited in time.<sup>88</sup> Specifically, President Raúl Alfonsín declared that “[t]he trials should be limited to a finite period during which public enthusiasm for such a program remained high.”<sup>89</sup> During 1986-1987, the Alfonsín government enacted Amnesty laws (“Full Stop” and “Due Obedience”) that restricted the scope of criminal trials.<sup>90</sup> The laws remained active until 2003 when the Senate annulled impunity laws shielding officials implicated in human rights crimes from being prosecuted. The annulment enabled lawyers and activists to resume the process of transitional justice.

According to a Human Rights Watch (HRW) report, as of June 2021, there have been 3,493 people charged, 1,030 convictions and 159 acquittals or dismissals. Among 631 investigations into human rights crimes, judges ruled in 256 of them. As of August 2021, 130 children missing were identified and returned to their families. In all cases, defendants were either perpetrators or abettors of human rights crimes committed between 1976 and 1983.<sup>91</sup> Defendants included a Catholic priest, policemen, the military, agents of security forces, a civilian minister, two banks, and several large corporate groups. Human rights associations of victims’ relatives, notably the Mothers of Plaza de Mayo, played a critical role in pushing for the punishment of those crimes. The absence of a mandate or explicit institutional framework has not discouraged civil society organizations from advancing justice and corporate accountability.<sup>92</sup>

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<sup>88</sup> Clara Sandoval, Leonardo Filippini, and Roberto Vidal, “Linking Transitional Justice and Corporate Accountability,” in *Corporate Accountability in the Context of Transitional Justice*, edited by Sabine Michalowski (London: Taylor & Francis Group, 2013), 11.

<sup>89</sup> Carlos Nino, *Radical Evil on Trial* (New Haven, Conn.: Yale University, 1996), 67 cited in Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004), 134.

<sup>90</sup> Victoria Basualdo, “Business and the Military in the Argentine Dictatorship (1976–1983): Institutional, Economic, and Repressive Relations,” in *Big Business and Dictatorships in Latin America: A Transnational History of Profits and Repression*, edited by Victoria Basualdo, Hartmut Berghoff, and Marcelo Bucheli (Cham: Springer International Publishing AG, 2020), 36.

<sup>91</sup> World Report 2022: Rights Trends in Argentina,” Human Rights Watch, January 13, 2022, <https://www.hrw.org/world-report/2022/country-chapters/argentina#:~:text=Of 631>.

<sup>92</sup> Kaleck, “International Criminal Law and Transnational Businesses,” 177.

Argentina has been a democracy for four decades now, yet the nation is still grappling with demands for accountability regarding the human rights violations that occurred during the military regime. According to Ruti G. Teitel, transitional justice involves a non-linear perception of time that is frequently demonstrated by legal responses, which may involve postponed litigation. When reflecting on contemporary transitional justice, she notes that “transitional justice tends to be backward-looking, responsive always to the last conflict.”<sup>93</sup> Thus, the term transitional justice underscores the prolonged efforts to account for crimes over long periods. As the case of the Ledesma sugar mill suggests, the corporate sector faces great pressure to answer to the atrocities committed. Even after forty years, human rights organizations are still seeking justice. These organizations include CELS, the Mothers and Grandmothers of Plaza de Mayo, the Permanent Assembly for Human Rights (APDH), Relatives of the Disappeared and Detained for Political Reasons, the Argentine League for Human Rights, the Ecumenical Movement for Human Rights (MEDH), and Peace and Justice Service (SERPAJ).

Although transitional justice resonates with legal proceedings, alternative mechanisms can also promote the right to truth. According to Sandoval et al., truth and reconciliation commissions (TRC) “achieve a more comprehensive reconstruction of the past than that which can be achieved judicially.”<sup>94</sup> For the authors, TRC is the most prevalent approach to addressing the truth of past atrocities. They define TRC as “a commission of inquiry created by the state (usually the executive

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<sup>93</sup> Ruti G. Teitel, “Transitional Justice in a new era,” *Fordham International Law Journal*, vol. 6, no. 4 (2002): 905.

<sup>94</sup> Sandoval et al., “Linking Transitional Justice and Corporate Accountability,” 17.



or parliament) to investigate heinous crimes committed during conflict or repression and to produce recommendations for dealing with the consequences.”<sup>95</sup>

CONADEP fits the definition of TRC as it was charged to inspect the crimes of the regime. Greg Grandin notes that truth commissions, “while technically charged with examining the specifics of individual acts of violence according to accepted norms of national and international jurisprudence, came in fact to be concerned with the larger historical meaning of collective political repression.”<sup>96</sup> The CONADEP illustrates such an observation. In 1983, the Alfonsín administration issued Decree 157/83, mandating CONADEP to investigate the disappearances that occurred during the seven years of the junta. The mandate gave no authority to CONADEP to subpoena or confiscate evidence, limiting greatly its investigative scope and, allegedly, hampering its work for accounting for corporate crimes.<sup>97</sup>

Moreover, scholars have argued that CONADEP dissipated perpetrators’ responsibility while acknowledging violent acts. Grandin, for example, accused CONADEP of denouncing crimes while explaining them in a way that justified them. He described such a dual position as “the ‘doctrine of the two demons’: a refusal to attach historical importance to the repression conducted by the previous regime apart from the belief that political violence is a symptom of illiberal intolerance.” Arguably, CONADEP took this dual position as it feared to provoke the still-powerful military.<sup>98</sup>

Nevertheless, the commission remained relevant as it provided a comprehensive historical narrative of the events. In the “Never Again” report, CONADEP identified human rights violations,

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<sup>95</sup> Sandoval et al. “Linking Transitional Justice and Corporate Accountability,” 17.

<sup>96</sup> Greg Grandin, “The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala,” *The American Historical Review*, vol. 110, no. 1 (2005): 47.

<sup>97</sup> Decree 157/83, 15 December 1983, [www.derechos.org/ddhh/arg/ley/conadep.txt](http://www.derechos.org/ddhh/arg/ley/conadep.txt).

<sup>98</sup> Grandin, “The Instruction of Great Catastrophe,” 53.

root causes of conflict and repression, and perpetrators.<sup>99</sup> The commission also provided evidence and testimonies to the prosecutors during the trials. To use Grandin's words, CONADEP both worked according to "norms of national and international jurisprudence" and promoted a "larger historical meaning of collective political repression."

By examining how civil society and the Argentine truth commission mobilized, we can learn valuable lessons for countries with similar situations. The testimony of victims was a crucial factor to prove corporate complicity. Adolfo Omar Sánchez delivered a powerful testimony in the CONADEP report that described an upsetting incident that took place at the Ford Motor factory in General Pacheco, Buenos Aires province. Sánchez was tortured at a detention center located within the Ford plant after a union meeting with the labor relations manager. During the meeting, the manager informed the union representatives that the company would no longer acknowledge worker delegates and threatened as they left "Say hello to my friend Camps when you see him," alluding to the infamous police torturer in Pacheco. According to Sánchez, the individuals who arrested him were searching for union leaders and inquired specifically about Juan Carlos Amoroso. "They were going to kill us both and all the Peronists, and throw us into the river," Sánchez testified.<sup>100</sup> Such a testimony, like others, uncovered the truth about the physical and moral threats that faced the twenty-four workers at Ford. It also evidences that there were detention centers within the factory facilities.<sup>101</sup>

The report provides thorough coverage of the victims' torments. The truth about corporate complicity in the regime would not have been included in the final report if it were not for the efforts of CONADEP staff. They gathered testimony from victims of corporate abuse and

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<sup>99</sup> Argentine National Commission on the Disappeared (CONADEP), *Nunca Más (Never Again)*, Editorial Universitaria, Buenos Aires, 1984.

<sup>100</sup> Comisión Nacional sobre la Desaparición de Personas cited in Payne et al., "Truth-Telling from Below," 178.

<sup>101</sup> Payne et al., "Truth-Telling from Below," 177-178.

incorporated it into the report. Their work contributed to guaranteeing corporate accountability, which advanced transitional justice. To quote Payne et al., “Without consciously or deliberately playing the role of innovators, commission staff exposed a truth about corporate complicity in past violations.”<sup>102</sup>

The account of the work of CONADEP contrasts with the role of truth commissions depicted by Grandin. According to him, “truth commissions serve as modern-day instruments in the creation of nationalism and embody what Benedict Anderson describes as nationalism’s enabling paradox: the need to forget acts of violence central to state formation that can never be forgotten.” Based on what we learnt from CONADEP, the Argentine commission worked to reveal the truth—and not forget it—and ensure the accountability of the state and corporations.<sup>103</sup>

Another form of transitional justice includes publicly exposing businesses for their past abuses as it is an effective way to increase public awareness about corporate complicity. Payne et al. discuss the use of public protests (“*escraches*”) in Argentina to hold human rights violators accountable for their actions. Initially organized to oust state criminals, these protests have been extended to corporate leaders. The leaflets that circulate before the event include details such as the perpetrator’s name that should be ousted, date, time, and location of the march, and the reason for the *escrache*. Civil society organizations (notably the daughters and sons of the disappeared or, H.I.J.O.S.) lead the oustings. *Escraches* have become a popular way to combat impunity for past human rights violations and hold perpetrators accountable when the courts have failed to do so.<sup>104</sup> Payne et al. conclude that “They are oriented toward popular justice—popular corporate

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<sup>102</sup> Payne et al., “Truth-Telling from Below,” 202.

<sup>103</sup> Grandin, “The Instruction of Great Catastrophe,” 48.

<sup>104</sup> Payne et al., “Truth-Telling from Below,” 206-207.

accountability—as an outcome, an end in itself. In the process, they fill a void left by the invisibility of truth commissions’ findings on corporate complicity.”<sup>105</sup>

Challenging corporate complicity in facilitating human rights abuses is an arduous process that does not guarantee legal remedies or reparations to victims. Transitional justice does not always signify delivering justice. In that sense, the transitional justice carried out by civil society has a restrictive form, where social initiatives to promote justice for past abuses are as essential as legal actions. To quote Anja Mihr, “transitional justice never attains justice in a philosophical or ethical sense, but rather in an institutional one, when increasing or leveraging the trust in public institutions and, by doing so, strengthening the rule of law in any given country.”<sup>106</sup> In that sense, the case of Argentine showcases a form of ‘social’ transitional justice that has limited implications but has a powerful impact on promoting democracy and accountability in society.

### *Conclusion*

By joining forces, the military regime and corporate actors established violent systemic repression, committing human rights abuses. Arguably, the corporate sector benefited from this partnership with the military in order to increase production and benefits.

However, the close ties between the regime and companies have not gone unnoticed. The Argentine ‘social’ transitional justice has recognized that human rights abuses resulted from systemic injustices. Civil society organizations, CONADEP and other actors have worked to create lasting changes in the power structures of the country to remedy to human rights violations. This

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<sup>105</sup> Payne et al., “Truth-Telling from Below,” 210.

<sup>106</sup> Anja Mihr, “An Introduction to Transitional Justice,” in *An Introduction to Transitional Justice*, edited by Olivera Simić (London: Taylor & Francis Group, 2016), 10.

includes measures such as reparations for victims, institutional reforms, and the creation of spaces for dialogue and participation of affected victims. By addressing the root causes of corporate human rights abuses, Argentine civil society organizations have shown to the world that corporate abuses will not remain unpunished.

### **III. Exhausting All Legal Avenues to Prosecute Mercedes Benz**

#### *Introduction*

For many years, trade unions and social and human rights organizations have criticized the involvement of business groups in repressive actions. In this chapter, I examine a specific case that highlights the collaboration between Mercedes Benz and the armed forces during Argentina's dictatorship between 1976 and 1983. Legal actions related to the company have been pursued both domestically and internationally. The chapter provides an overview of the cases against the car manufacturer and identifies the nature of the relationship between the company and Argentina's military. Specifically, the research analyzes the role of Mercedes Benz in the commission of crimes against humanity to compare Argentina's domestic laws with US laws. The research sheds light on the challenges to prove corporate complicity in human rights abuses. As the first chapter of this thesis argued, measuring knowledge to prove corporate complicity in the commission of human rights crimes is complex.

#### *Background: The Role of Mercedes Benz in Committing Human Rights Crimes*

Victoria Basualdo et al.'s "The Cases of Ford and Mercedes Benz" investigate the role of Ford and Mercedes Benz in aiding the regime to commit crimes against workers and their union representatives as a way of stifling labor demands.

In the mid-1970s, tensions between the workers and management of the Mercedes Benz factory led to a repressive response by the company. The Mercedes Benz workers protested against the appointed representatives of SMATA (the Mechanics and Automotive Transport Workers'

Union) in October 1975 as they believed that the representatives did not defend their interests. The workers elected a new internal commission, consisting of nine representatives. However, SMATA disputed the election's validity, and the company dismissed over 100 workers, including some who were later kidnapped and disappeared. The automobile union and its secretary general, José Rodríguez, supported the company's decision. Following several events, including the kidnapping of the plant's production manager, Heinrich Metz, by the Montoneros guerrilla on October 24, 1975, the company eventually relented and announced that the workers would be rehired.<sup>107</sup>

During the dictatorship, the military kidnapped and tortured sixteen workers from Mercedes Benz, allegedly thanks to the support of the company's managers. Only two workers and one foreman were found alive, but their testimonies were critical in piecing together the events that occurred. The first survivor is Juan Martín, who was taken into custody in April 1976 at the factory, then imprisoned and tortured at the San Justo police station for nineteen days before being released. The second survivor, Héctor Ratto, was seized in August 1977 by an armed group linked to the Argentine army at the factory. He was held in a clandestine detention center, tortured at the Ramos Mejía police station, and later in Campo de Mayo, before being released in March 1979.<sup>108</sup> The third survivor, named Alfredo Martín was arrested in December 1976 and tortured by Rubén Lavallén at the San Justo police station. He was released a few hours after his arrest.<sup>109</sup>

The specificity of the case of Mercedes Benz stems from the fact that the company did more than take part in the workers' repression. It provided systematic support to the military regime. Mercedes Benz had a close relationship with the military leadership, as evidenced by the fact that the Argentine army was their top client. The company benefited from this relationship and

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<sup>107</sup> Basualdo et al., "The Cases of Ford and Mercedes Benz," 166. In this chapter, all translations from Spanish to English are my own, unless otherwise specified.

<sup>108</sup> Kaleck, "International Criminal Law and Transnational Businesses," 179-180.

<sup>109</sup> Basualdo et al., "The Cases of Ford and Mercedes Benz," 167.

became one of the twenty highest-grossing companies in Argentina with a large industrial complex. Management personnel also revealed that the company donated obstetric equipment to Campo de Mayo, a military center, as a gesture to the army. However, the only obstetric facilities at the military center were illegal and used by pregnant women who had no choice but to give birth “in clandestine captivity.”<sup>110</sup> In the center, women were killed, and their children were illegally adopted by military families or people with military connections.

The factory managers did not raise any objection when some employees were apprehended while working, and they even worked with the oppressive organizations. Juan Ronaldo Tasselkraut, the former production manager of Mercedes Benz, revealed in the Truth Trials in La Plata court how the company’s operations benefited from the repression. When questioned about the correlation between the decrease in conflict, the increase in productivity, and the disappearance of workers and union members, he answered “Well ... there’s no such thing as miracles.”<sup>111</sup> In short, to increase corporations, corporate managers were willing to repress workers violently.

After Alfonsín government enacted the Full Stop and Due Obedience laws, victims could not prosecute the company for its crimes in Argentina. A legal case was initiated in Germany in 1999 on behalf of Héctor Ratto against Tasselkraut. The charges were related to allegations of Tasselkraut’s collaboration in the murder of other kidnapping victims. In addition, testimonies revealed that the car company aided the workers’ repression by identifying those to kidnap, torture and make disappear. Testimonies revealed that the car company aided the workers’ repression by identifying those to kidnap, torture and make disappear. Giving personal information about the workers to the military should suffice to prove the managers’ liable knowledge of the workers’

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<sup>110</sup> Basualdo et al., “The Cases of Ford and Mercedes Benz,” 168.

<sup>111</sup> Statement by Juan Tasselkraut in the Truth Trials (Juicios por la Verdad) held in La Plata, November 21, 2001, cited in Basualdo et al., “The Cases of Ford and Mercedes Benz,” 167.



fate. For Basualdo, “Tasselkraut could not have been unaware of what the security forces were doing.”<sup>112</sup>

However, due to the specifics of the German legal system, only the Mercedes manager could be prosecuted. On November 27, 2003, the public prosecutor’s office halted the proceedings citing insufficient evidence. They argued that Ratto’s testimony was inconsistent and Tasselkraut vehemently denied the accusations. Furthermore, the prosecutor’s office maintained that the intention to murder Diego Núñez could not be verified since German law distinguishes between murder and disappearance.<sup>113</sup>

Despite the challenges and constraints, the legal proceedings had a positive impact as they united a group of Mercedes Benz employees and trade unionists who organized several initiatives to raise awareness about the case. For example, they placed commemorative plaques at the locations where the kidnappings occurred and held public events. In 2002, this group initiated legal proceedings in Buenos Aires and accused Mercedes Benz of colluding with the Labor Minister Carlos Ruckauf and the national SMATA leadership to abduct and murder trade union representatives considered “undesirable.” CELS acted as a private prosecutor representing the victims of the company.<sup>114</sup>

After five years of investigation, the Federal Criminal and Correctional Prosecutor’s Office in Buenos Aires concluded that some high-ranking officials from Mercedes Benz and SMATA were aware of the crimes. However, they considered the evidence insufficient to demonstrate their direct involvement in the abductions and murders.<sup>115</sup>

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<sup>112</sup> Basualdo et al., “The Cases of Ford and Mercedes Benz,” 169.

<sup>113</sup> Kaleck, “International Criminal Law and Transnational Businesses,” 181-182.

<sup>114</sup> Basualdo et al., “The Cases of Ford and Mercedes Benz,” 169-170 and Kaleck, “International Criminal Law and Transnational Businesses,” 182-183.

<sup>115</sup> Kaleck, “International Criminal Law and Transnational Businesses,” 183.

As Kaleck argues, however, these cases sparked a discussion about the responsibility of civil and economic actors in the regime's crimes. In 2004, a group of surviving unionists and relatives filed a civil lawsuit against DaimlerChrysler AG in the United States, seeking compensation for the company's involvement in human rights violations against the victims. Although the initial court deemed the claim inadmissible, the appellate court granted permission for the proceedings, which was a significant victory for the plaintiffs.<sup>116</sup> Ultimately, the Supreme Court dismissed the charges against the company.<sup>117</sup>

Even though legal proceedings failed to account for corporate involvement in the commission of human rights trials, the case of Mercedes Benz underscores a "paradigm shift." After years of prosecutions against dictatorship officials, human rights organizations in Argentina are emphasizing the involvement of civil and economic actors in the authoritarian regime. As the case of Mercedes Benz illustrates, they are exhausting all legal avenues to bring charges against economic actors.

### *The Limited Legal Outcome in Foreign Trials: Daimler AG v. Bauman*

Corporate victims of human rights abuses are often unable to obtain justice through their domestic legal system. The courts may lack the capacity or expertise to handle their cases, or the government may fail to act against those responsible, such as security forces or the military.<sup>118</sup> The United States has witnessed an increase in legal action against corporations for breaches of international law under the federal Alien Tort Statute (ATS). These lawsuits are a means for

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<sup>116</sup> *Bauman v DaimlerChrysler Corp*, 644 F.3d 909 (9th Circuit, 2011).

<sup>117</sup> *Daimler AG v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624, 24 Fla. L. Weekly Supp. 503 (2014).

<sup>118</sup> Ramasastry, "Corporate Complicity: From Nuremberg to Rangoon," 92.

“home” states to exercise jurisdiction over large companies and influence their conduct abroad, while also seeking to secure compensation for victims.<sup>119</sup>

Twenty-two Argentine residents filed a lawsuit in California Federal District Court against DaimlerChrysler Aktiengesellschaft, a German public stock company, accusing Mercedes Benz Argentina of collaborating with state security forces during Argentina’s Dirty War. The plaintiffs alleged that the company kidnapped, detained, tortured, and killed certain workers, including themselves or people closely related to them. The lawsuit included claims under various laws, including the Alien Tort Statute and the Torture Victim Protection Act of 1991. The plaintiffs argued that California had jurisdiction over Daimler based on the state’s contacts with Mercedes Benz USA, another Daimler subsidiary.<sup>120</sup>

The central issue was whether the United States has jurisdiction over Daimler in this case, based on the due process clause of the Fourteenth Amendment, since there was no connection among the alleged atrocities, perpetrators, and victims in the complaint and California. The plaintiffs relied on the court’s general jurisdiction, arguing that Daimler could be sued in California for any claim against it, regardless of where the claim originated.

The District Court dismissed the case for lack of personal jurisdiction, and the Ninth Circuit reversed the decision, stating that Mercedes Benz USA (MBUSA) was Daimler’s “agent” for jurisdictional purposes. Eventually, the Supreme Court held that Daimler was not subject to California’s jurisdiction for actions that occurred entirely outside the United States. When Justice Ruth Bader Ginsburg delivered the opinion of the Court, she noted that there was insufficient evidence to support the plaintiffs’ claims. The judges argued that a court may assert jurisdiction over a foreign corporation “to hear any and all claims against [it]” only when the corporation’s

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<sup>119</sup> Ramasastry, “Corporate Complicity: From Nuremberg to Rangoon,” 92.

<sup>120</sup> Daimler AG v. Bauman, 571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624, 24 Fla. L. Weekly Supp. 503 (2014).

affiliations with the state in which the suit is brought are so constant and pervasive “as to render [it] essentially at home in the forum State.”<sup>121</sup> In short, Daimler’s affiliations with California were insufficient to support the exercise of the ATS over Mercedes Benz.

Moreover, the plaintiffs made several claims against Mercedes Benz, alleging that the company collaborated with Argentina state security between 1976 and 1983. The plaintiffs brought these claims under the ATS and the Torture Victim Protection Act, as well as claims for wrongful death and intentional infliction of emotional distress under the laws of California and Argentina. However, the incidents described in the complaint occurred solely at the Mercedes Benz plant in Gonzalez Catan, Argentina. As a result, the plaintiffs could not prove any links between the subsidiary company in Argentina and the United States. None of the subsidiary’s alleged collaboration with Argentine authorities occurred in California or any other part of the United States, leading the US Supreme Court to conclude that the plaintiffs failed to meet their burden of proof.

The international ramifications of this dispute are important. International human rights laws encourage democratic countries to adjudicate and redress human rights abuses. However, the US Supreme Court decisions in *Daimler AG v. Bauman* curtailed plaintiffs’ opportunities to seek justice in foreign courts. The case sheds light on two significant legal drawbacks. Firstly, it is becoming increasingly challenging to establish jurisdiction over a corporation for activities that are not directly related to its business or involve only subsidiaries. Secondly, the Court has the final say on the matter it addresses, which may differ from the issue the parties had focused on. The case was presented to the Court as a matter concerning the interplay of agency and general jurisdiction. It involved a German corporation, Daimler, being sued in California by Argentine

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<sup>121</sup> *Daimler AG v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624, 24 Fla. L. Weekly Supp. 503 (2014).

plaintiffs for human rights violations in Argentina. The Ninth Circuit upheld jurisdiction by attributing the conduct of Daimler's indirect subsidiary, MBUSA, to Daimler due to its extensive business activities in California. However, Circuits have disagreed over when such conduct can be attributed to a parent corporation. Daimler's lawyers argued that the Ninth Circuit had made it too convenient to ascribe the behavior of one corporation to another. Finally, the Supreme Court argued that California did not have general jurisdiction over Daimler.<sup>122</sup>

*'Megacausa Campo de Mayo': The Legal Linchpin for Domestic Justice*

In a similar context, since 2010, the '*Megacausa Campo de Mayo*' represents one of the largest judicial processes to prosecute those responsible for crimes in Argentina. The magnitude of '*Megacausa*' is unprecedented, it has included more than 340 hearings, 581 witnesses, more than 700 victims of kidnappings, torture and murders, 52 defendants (32 of them with a life sentence), and more than 169 cases of crimes against humanity.<sup>123</sup> In April 2019, the public hearings of the so-called Causa Campo de Mayo evidenced Mercedes Benz's involvement in state repression. In particular, the hearings helped to decide on Juan Ronaldo Tasselkraut's role in the commission of crimes against humanity.

Similarly to the US case, Judge Alicia Vence of the Federal Court of San Martín dismissed five of the seven counts against Tasselkraut "despite the knowledge that he might have had about the arrests of the workers and the members of the internal commission of Mercedes Benz."<sup>124</sup>

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<sup>122</sup> Willia Baude, "Opinion recap: A Stricter view of General Jurisdiction," SCOTUSblog, January 15, 2014, <https://www.scotusblog.com/2014/01/opinion-recap-a-stricter-view-of-general-jurisdiction/>.

<sup>123</sup> Jorge Foa Torres and Shams Selouma, "Juridismo, Memorias y Subversión: Un análisis político dela Sentencia de la "Megacausa La Perla-Campo de La Ribera," *Revista Direito e Práxis*, vol. 12, no. 2 (June 2021): 949.

<sup>124</sup> "Complicidad Civil En Dictadura: La Justicia Sobreseyó a Un Exgerente De Mercedes Benz," *Página/12* (Buenos Aires), 22 April 2022.

Tasselkraut was accused of being involved in the kidnapping of seven workers and the disappearance of six of them. On March 2022, 2023, CELS and the Argentine Ministry of Justice and Human Rights successfully appealed the decision. The Argentine Supreme Court will hear the case and decide on the Tasselkraut case.<sup>125</sup>

The cases of Mercedes Benz workers who were kidnapped, tortured and disappeared during the last civil-military dictatorship were among the first to be held in the Campo de Mayo ‘mega-case’. The trials have involved a group of twenty defendants, all of them members of the security forces during the years of State terrorism. CELS is participating in the debate as an institutional plaintiff. Federico Efron, one of CELS’ lawyers, emphasized, “In these cases [the defendants] are not the only ones responsible.” The lawyer aims at finding names not only among the military, but also among civilians. The lawyer added:

“The witnesses’ accounts will add evidence to demonstrate that the Mercedes Benz workers were victimized for their union militancy within the company and that the crimes committed against them could not have been carried out without the complicity of businessmen.”<sup>126</sup>

The hearings sought to confirm the involvement of the management of Mercedes Benz in the persecution of workers committed to the union struggle. The case evidenced that Ratto witnessed when one of the factory’s managers gave the military the address of one of the members of the

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<sup>125</sup> Franco Mizraji, “Complicidad con la dictadura: Dos querellas recurren a la Corte por el rol civil en el caso Mercedes Benz,” *el Destape*, 24 March 2023, <https://www.eldestapeweb.com/politica/24-de-marzo/dos-querellas-recurren-a-la-corte-por-el-rol-civil-en-el-caso-mercedes-benz-20233240554>.

<sup>126</sup> Ailín Bullentini, “Los crímenes de Mercedes Benz en el juicio por la megacausa Campo de Mayo,” *Página/12*, 28 May 2019, <https://www.pagina12.com.ar/196603-los-crmenes-de-mercedes-benz-en-el-juicio-por-la-megacausa->

internal commission. According to Efron, such a fact suggests that the company and its management created a “blacklist” that identified the workers according to their role in the union.

The hearings also show that the military was present inside the facility and even infiltrated the workforce. Efron has argued that the company directly benefited from the kidnappings. It needed uninterrupted production, notably that of trucks for the military.<sup>127</sup> These arguments suggest a close link between Mercedes Benz and the dictatorship as one dealt with the other to maintain high production of materials useful for the junta.

### *Conclusion*

The collaboration between Mercedes Benz and the armed forces in repressing workers during the last dictatorship in Argentina is a high-profile case that demonstrates the direct involvement of top executives in kidnapping and disappearing worker representatives. These changes changed the internal dynamics of the factories, altering the balance of labor relations and affecting workplaces beyond the factories themselves. This suggests that corporate complicity in crimes against humanity aimed at strengthening “the position of corporate management, with the objective of exercising a tight control over workers and their trade union representatives, increasing work paces, and boosting the profit margins” of the carmaker in Argentina.<sup>128</sup>

The cases involving Mercedes Benz also highlight the significant challenges that workers faced in bringing legal action against their employers for their involvement in the repression. In an environment that was particularly unfavorable for prosecuting crimes against humanity, workers sought justice and reparations for the serious human rights violations that occurred by

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<sup>127</sup> Ailín Bullentini, “Los crímenes de Mercedes Benz en el juicio por la megacausa Campo de Mayo.”

<sup>128</sup> Basualdo et al., “The Cases of Ford and Mercedes Benz,” 170.

turning to courts in other countries, including Germany and the United States. In both cases, however, plaintiffs lost their cases. While the Court's decision in *Daimler AG v. Bauman* clarified the limits of jurisdiction over a foreign corporation in the United States, it also established a stricter standard for general jurisdiction over corporations. The German and US verdicts are blowbacks for victims seeking corporate accountability in foreign trials as it restrains their potential legal avenues.

While no verdicts have been issued to date, there have been developments within the framework of the criminal justice system. For example, there is ongoing discussion regarding the possibility of holding legal entities, such as corporations, responsible for their crimes. In Argentina, efforts to hold corporate managers accountable for crimes against humanity have progressed. If successful, it could lead to new domestic legal avenues for pursuing justice against Argentine subsidiaries, as well as parent companies.

The cases involving Mercedes Benz have exposed the involvement of civilian actors from economic groups in collaborating with the dictatorship's repression. These actors benefited from the regime's economic and labor policies and were complicit or involved in the kidnapping, torture, murder, and permanent disappearance of workers and union leaders. It is crucial to investigate all parties involved in crimes committed during the dictatorship. As Basualdo et al. point out, since forced disappearances are crimes against humanity, there is an obligation to investigate, prosecute, and bring the perpetrators to justice. It is important to reveal everything that can be established about the fate of the victims to their families and society, as long as there is uncertainty about their whereabouts.<sup>129</sup> By exhausting all legal avenues to bring charges against economic actors, the joint

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<sup>129</sup> Basualdo et al., "The Cases of Ford and Mercedes Benz," 173.



effort of victims, CELS and other civil organizations like the Grandmothers of the Plaza de Mayo, are proving perpetrators that violations will not be forgotten until justice is done.

## Conclusion

When examining human rights violations, prosecutors investigate the legal culpability of all actors, including economic ones. After the military junta's rule in 1983, the legal proceedings in Argentina have become an example for human rights organizations and legal professionals worldwide. In Argentina, civil and criminal lawsuits have prompted public discourse, activist participation, and scholarly studies. They investigated the underlying motives behind the brutal actions of companies during the regime. My research finds that companies colluded with the military junta in Argentina. They provided material and financial support to the dictatorship. By doing so, they aided and abetted the commission of crimes against humanity.

The current international legal and human rights framework offers limited instruments to hold economic actors responsible for their past human rights violations. These instruments include, for instance, UN Guiding Principles, Human Rights Law, and the ATS. Nevertheless, they are weak and often fail to guarantee justice for victims. From the Nuremberg trials until today, this research suggests that proving corporate complicity is challenging. Yet, it is a required step to ensure accountability. Studying the progress of transitional justice in Argentina proves that these international tools are only relevant when coupled with domestic actions. Argentina has succeeded in making progress toward prosecuting corporate prosecutors by combining international frameworks with domestic legal and political strategies to hold companies accountable for wrongdoing. Thus, international mechanisms alone are not enough to secure accountability. Argentina's transitional justice has been more effective than international human rights initiatives in promoting the rule of law and providing recognition to corporate victims.

The thesis shows that holding individuals accountable for their actions is easier than holding corporate entities responsible for their crimes. The case of Juan Ronaldo Tasselkraut, for example, suggests that perpetrators were the figureheads and representatives of economic entities complicit in the commission of human rights violations. Despite a lack of consensus on how to define corporate complicity in human rights abuses, judicial proceedings in Argentina have held economic actors—mostly individuals and not companies—accountable for their involvement in such abuses.

The documentation and reporting of the transitional justice process in Argentina suggest that a new narrative of the country's history of human rights abuses has emerged. This narrative emphasizes the importance of accountability and justice for victims of the dictatorship. It acknowledges the significant role played by civil society, human rights organizations, and legal professionals in transitional justice. The narrative does not follow a linear path for ensuring the respect of human rights. First, Argentina initiated trials against the dictatorship leaders. Then the country rendered legal actions virtually mute by enacting Amnesty laws. Finally, after waiting for nearly two decades, legal avenues opened again when Néstor Kirchner's government repealed the Amnesty laws.

Groups of activists were essential in guaranteeing justice. My research demonstrates that the fight against corporate impunity was not solely the work of legal actors, let alone of the executive or legislative branch. Transitional justice actors like CELS, the Mothers and Grandmothers of Plaza de Mayo and the CONADEP truth commission helped initiate legal procedures. They collected victims' testimonies that were invaluable to prosecute perpetrators. They also lobbied legal authorities, exhausted all legal pathways possible, and opened new legal avenues. Their actions have honored the victims and proved to perpetrators that violations will not

be forgotten until justice is done. These actors have paved the way for new legal mechanisms ensuring corporate accountability.

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