



Center for International
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COLLECTIVE BUILDING OF TRUTH AND RECONCILIATION: THE CONTRIBUTIONS AND CHALLENGES OF PRIVATE SECTOR PARTICIPATION IN COLOMBIA'S TRANSITIONAL JUSTICE PROCESS

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Acronyms

CHCV	Commission for the History of Conflict and its Victims
CNRR	National Commission for Reparations and Reconciliation
CREER	Center for Responsible Business
FARC	Revolutionary Armed Forces of Colombia
MF	Military Forces
IHRB	Institute for Human Rights and Business
IHL	International humanitarian law
HMG	Historical Memory Group
PJ	Peace and Justice Law
TJ	Transitional Justice
TJ System	Integral System for Truth, Justice, Reparation and Non Repetition
LRU	Land Restitution Unit
NAP	Colombia's National Action Plan for Human Rights and Business
NHMC	National Historical Memory Center
NGO	Non-Governmental Organizations
PG	Paramilitary Groups
PA	Peace Accord
SJP	Special Jurisdiction for Peace
SNARIV	National System for Assistance and Reparations for Victims
TC	Truth Commission (Commission for truth, Coexistence and Non-Repetition)
TP	Tribunal for Peace
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
VU	Victims Unit

INTRODUCTION

Colombia's newly initiated transitional justice process arose out of the *Final agreement to end the armed conflict and build a stable and lasting peace* ("Peace Accords") which in 2016 brought an end of a fifty year-long internal armed conflict involving the State and the Revolutionary Armed Forces of Colombia (FARC).¹

This paper begins from a very basic starting point: there has been minimal practice and little study of the overlap between business accountability and transitional justice (TJ). In particular, there is scant understanding of the role of the private sector in the reconstruction of institutions and governance as part of a TJ process, especially as it relates to overcoming distrust that has developed during the years of conflict. Yet, the course of history has revealed that businesses are often present and sometimes very active in conflict zones. Increasingly, academic and media studies, court cases, and NGO reports reveal the ways businesses may be directly involved in or benefitting from the actions of governments or armed groups in armed conflict. Certainly, Colombia's own history reveals this pattern of business involvement in the conflict, leading to some high profile litigation against companies such as those in the extractive and agricultural industries, among others.

Generally speaking with regard to both Colombia and other countries with histories of internal armed conflict, business may be implicated in massive land grabbing, internal forced displacement, killing or disappearance of civil society leaders and other grave human rights violations that directly injure individuals as well as harm the social fabric of local communities. At the same time, there are examples of companies that have struggled to keep their operations viable in accordance with transparent standards of community engagement in conflict regions and despite demonstrating a genuine commitment to operate in a transparent, responsible and legitimate manner find that their operations ultimately suffer from violence and other disruptions. Companies may be drawn into conflicts despite their desire to stay neutral, such as when a contractor engages in irresponsible behavior or is forced through threats to make illegal payments. Armed conflict also weakens the capacity of State institutions to broker disputes, administer justice and ensure general popular participation in political decision-making. This situation presents unique challenges to resolve both disputes from the past as well as new ones that arise between businesses and the communities.

TJ offers a unique opportunity for countries to address the underlying social conflicts between business and communities, while also laying the foundation for preventing, mitigating and addressing future armed conflicts. TJ usually occurs as a part of a political transition away from civil war, apartheid, repressive rule, and other situations marked by widespread human rights violations as well as the break-down of the rule of law and democracy. Its aims include building

¹ <https://www.theguardian.com/world/2015/mar/15/colombia-end-in-sight-longest-running-conflict>

sustainable peace which protects human rights moving forward.² There is no one accepted definition of TJ, however the United Nations defines it as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”³

Approximately forty countries around the globe have taken the path of TJ, employing both judicial and non-judicial approaches to redressing the past, by forming truth commissions as well as setting into motion criminal trials, reparation programs, institutional reform and restorative justice in communities.⁴ Yet, to date, despite the evolution of the TJ field over the last several decades, few of these TJ processes have included any focus on the role of business as non-state actors in violent conflicts. For example, with some rare exceptions, truth commissions have not focused on businesses, with the result of their not being engaged in public hearings, testimony taking and other truth gathering exercises. Reform programs resulting from TJ rarely contemplate how governments should respond to the role of business in its plans for accountability, reform and reconstruction. Prosecutions rarely seek to hold businesses accountable for their role in episodes of violence, resulting in impunity and frustrated justice needs of victims. And finally and most importantly, governments engaged in TJ processes rarely articulate a clear policy on how to assure peaceful resolution of new waves of conflict in affected communities, especially localized social conflict involving companies that can turn violent. Given this lack of experience, there is minimal understanding of best practices or even good practice with respect to the private sector to draw upon in TJ scenarios.

In light of this lack of experience, it is important to explore how business can be included in Colombia’s TJ process which began when the government signed a historic Peace Accord in November 2016 with the FARC after more than five years of negotiations in Havana, Cuba. While the first version of Peace Accord was finalized in Havana, it did not win approval through a national plebiscite. However, a second version with amendments was discussed again and approved after further negotiations, then brought to the Colombian Congress for its final endorsement on November 30th 2016.⁵ In its “Point 5” the Peace Accord includes the *Integral System for Truth, Justice, Reparation and Non Repetition (Integral TJ System)* which spearheads an official TJ process in Colombia that will be encompassed within a larger peace process.

² Rettberg, Angelica. (2005). Introductory reflections on the relationship between peacebuilding and transitional justice. *Between Forgiveness and the Wall: questions and dilemmas of transitional justice.*

³ United Nations Security Council, Report of the Secretary General S/2004/616, ‘The rule of law and transitional justice in conflict and post-conflict societies,’ (23 August 2004), para. 8, 4. Very generally speaking, the field of TJ pertains to “the view of justice associated with periods of political change” after episodes of armed conflict, repression and systematic human rights violations. Ruti Teitel, *Transitional Justice in a New Era*, 26 *FORDHAM INT’L L.J.* 893, 893 (2003).

⁴ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the challenge of truth commissions*, (New York, Routledge, 2011), 256; United States Institute of Peace, Truth Commission Digital Collection, <http://www.usip.org/publications/truth-commission-digital-collection>.

⁵ <http://www.reuters.com/article/us-colombia-peace-idUSKBN13P1D2>

As Colombia now contemplates a new direction on its own path of TJ, there is a unique opportunity to examine how the government should seek to better involve businesses in this process of reckoning with the past to lay the path to sustainable peace. Notably, the inclusion of business was contemplated in the peace negotiations made between the Colombian government and the FARC which seeks the involvement of “civilian third parties” in all components of the *Integral TJ System*.⁶ Although the Peace Accord ultimately did not explicitly refer to businesses, the “third parties” can nevertheless be interpreted to do so.⁷ Notably, the Peace Accord affirmatively establishes that: “The Truth Commission shall have, as its mandate, to clarify and promote the recognition of the human and social impacts of conflict in society, including the impact on (...) livestock producers, businesswomen and businessmen, among others”. Reading these provisions together encourages us to contemplate a role for business in the TJ process.

Despite this possible opening to include businesses in the TJ process, Colombian civil society has sidelined the issue of confronting the role of business at all levels, although working hard to prepare and address other key aspects of the transition.⁸ Thus, despite the limited national focus on business in the TJ process, along with limited international practice (to be discussed in the next section) it is nevertheless an imperative that the Colombian government include this focus, especially given its commitment to adhering to the United Nations Guiding Principles on Business and Human Rights (UNGPs).

Unlike most other TJ processes around the world, Colombia’s is one of the first to take place parallel to the development of global standards related to business accountability for adverse human rights impacts. Specifically, the United Nations Human Rights Council unanimously approved the UNGPs in 2011, providing a useful three-pillar framework that informs our discussion by addressing the role of government, businesses and victims in resolving harms caused or contributed to by businesses. In particular, Pillar I of the UNGPs sets out that the State has a duty to protect human rights and emphasizes that international law requires the State to assure that businesses are held accountable for such harms and that victims have access to adequate and effective remedies. Pillar II of the UNGPs clarifies that businesses have a responsibility to respect human rights, including through company level actions that prevent, mitigate and remedy any such harm. Finally, Pillar III of the UNGPs recognizes the victims’ right

⁶ “[T]he recognition of responsibilities by all direct or indirect participants in conflict and who were involved in serious human rights violations” Joint press statement. Comunicado Conjunto #64, La Habana, 15 de diciembre de 2015. During the negotiations both FARC and Government said that business would be included particularly in the TJ point, but finally the reference in that section of the accord was to third parties in general terms (Although in other sections the accord mention specifically the involvement of companies and entrepreneurs). In conclusion, regarding TJ the third party provision can be interpreted to include them.

⁷ The Peace Accord defines third parties as those who, without forming part of the armed organizations or groups, have indirectly participated in the armed conflict and committed crimes in the context of and on the basis of this. The popular common interpretation is that third parties could be particulars, business, organizations, etc.

⁸ For one of the most significant efforts on peace and development of CSOs see www.redprodepaz.org.co

to access a remedy for human rights violations and abuses no matter what entity causes or contributes to them. Notably, the UNGPs specifically address the role of states and businesses in conflict zones given that these situations lead to a heightened risk of human rights violations and abuses.⁹

Colombia has taken steps to implement a National Action Plan (NAP) pursuant to the UNGPs, including provisions that relate directly to the TJ process now underway (as will be discussed below). In particular, the NAP addresses the goal of non-repetition by addressing the institutional structures and culture that led to tensions, polarization, exclusion, lack of accountability and delegitimization of the State and the private sector. At the same time, while important, the UNGPs are not sufficient to address all of the issues that arise with relation to company contribution to human rights abuses associated with the armed conflict. The NAP still lacks detailed directives on how specific pathways to ensuring remedies for business human rights abuses should be developed in addition to mechanisms for improving interactions between communities, the State and companies.

By better understanding how companies factor into the peace process both through the TJ processes initiated by the recent signing of the Peace Accord as well as the government's pledge to implement the UNGPs, the quest for lasting peace can be better assured. At the same time, the organizers recognize some of the inherent shortcoming of both frameworks for addressing the full justice and reconciliation needs of victims and Colombian society, and hope to identify ways to strengthen both.

Colombia's peace process occurs within a new global reality in which there is more demand for corporate accountability yet there remains many of the same political and social tensions that often foreclose full criminal accountability for a range of actors, including companies.

I. BACKGROUND: THE COLOMBIAN TRANSITION TO PEACE

a. The Early Road to TJ

Colombia's internal armed conflict began in the mid-1960s and spanned some five decades, involving the government, paramilitary groups, crime syndicates, and left wing guerrillas such as FARC. Innocent individuals and communities often bore the brunt of the conflict, with casualties and disappearances numbering in the thousands. While the recent peace negotiations between the Colombian government and the FARC have attracted much international attention to the country's move towards peace, it is important to note that the nation had already begun to engage in this work long before a final peace agreement was

⁹ UNGPs, Principle 7 sets out guidance for states on "[s]upporting business respect for human rights in conflict affected areas."

brokered—making it one of the only countries in the world to resort to TJ mechanisms before the cessation of hostilities.¹⁰ Some of these significant developments included:

- In 2005, the government passed the Peace and Justice Law (Law 975) and established a process of demobilizing the paramilitary.¹¹ Although the law was legally challenged by victims, the Colombian Constitutional Court upheld the law but determined that article 3 of the law required that the search for justice be balanced with the victims' right to truth, justice, reparations and the principle of non-repetition and thus limited the application of amnesties among other aspects of the law.¹² As a result, the government created a special prosecutor's office (Unit for Justice and Peace). If alleged perpetrators offered free, voluntary, spontaneous confessions while assisted by an attorney, they would be granted more lenient sentencing. Through this program approximately 35,000 paramilitaries have been demobilized, and 1,202 have been jailed.¹³ The Law also established the National Commission for Reparations and Reconciliation (CNRR) as well as the Historical Memory Group (HMG). The CNRR helped develop localized strategies and criteria for reparations through consultations with victims that laid the foundation for a more formal program established by future laws (see below). The HMG published various reports authored by academics to help provide a narrative of the causes and consequences of the war.
- In 2008, Decree 1290 established a compensation mechanism for victims whose rights to life, physical integrity, physical and mental health, individual freedom, and sexual freedom were violated by all illegally armed groups. Approximately 18 million pesos were paid to victims in the form of reparations through this law.
- In 2010, Law 1424 was enacted to set up non-judicial truth-seeking mechanisms (known as the Truth Accords) that gave incentives to members of illegally armed groups to confess to lower level crimes in exchange for the truth. The National Historical Memory Center implemented this process.
- In 2011, Decree 1290 was passed to establish mechanisms for prosecuting perpetrators of the most serious and grave human rights violations, further expanding the reparation programs previously established while also continuing to set up additional truth gathering mechanisms.

¹⁰ Lisa J. Laplante & Kimberly Theidon, *Transitional Justice in Times of Conflict: Colombia's Ley de Justicia y Paz*, 28 MICHIGAN JOURNAL OF INTERNATIONAL LAW 49 (2006).

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2158419

¹¹ <http://www.fiscalia.gov.co/jyp/wp-content/uploads/2013/04/Ley-975-del-25-de-julio-de-2005-concordada-con-decretos-y-sentencias-de-constitucionalidad.pdf>

¹² Center for Justice and Accountability, 'Colombia: The Justice and Peace Law,' <http://cja.org/where-we-work/colombia/related-resources/colombia-the-justice-and-peace-law/>.

¹³ Official records indicate that 1,202 individuals have been demobilized and imprisoned and 3,208 who were demobilized but did not face prison time. Dirección Nacional de Justicia transicional de la Fiscalía General de la Nación, November 2016.

- In 2011, Law 1448 (“Victims’ and Land Restitution Law”) set up a series of measures to provide comprehensive reparations for victims, that included both economic compensation, psychosocial assistance as well as the restitution of land. It also includes symbolic measures like public memory sites and a National Day of Remembrance (April 9).
- In 2012, a series of measures were established to continue the work of previous years. They included:
 - 1) The Victims Assistance and Reparation Unit.¹⁴ This agency is in charge of formulating and implementing public policy concerning reparations and of coordinating the National System for Assistance and Reparations for Victims (SNARIV) which organizes various national and regional public institutions and has overseen the Victims Registry, humanitarian aid measures, compensation to victims and individual and collective reparation plans.
 - 2) The Land Restitution Unit.¹⁵ This Unit helped to establish legal procedures for restitution of land and for legalizing the land of the victims taken through land grabbing and theft as well as forced abandonment which includes working with victims to prepare claims to be heard by a land judge to determine the granting of either restitution or payment for lost land.
 - 3) The National Historical Memory Center (established by Law 1448).¹⁶ The mission of the Center has been to guarantee the right of victims and the whole of society to the reconstruction of historic memory. Its mandate includes: "to gather together and recover all the documentary material, oral testimony, and any other material relevant to violations".¹⁷ It also manages a human rights and historical memory program and a memory museum, as well as managing the truth gathering process initiated by Law 1424 aimed at demobilized paramilitary groups.

In order to continue to build on these previous TJ measures, the Peace Accord included Point 5 to further develop these important processes dedicated to the victims.¹⁸ Point 5 includes explicit reference to the need to provide the full truth, repair victims and guarantee the prevention of new harms. In particular, the truth includes an exhaustive and full

¹⁴ This is a government agency with administrative and patrimonial autonomy that falls within the sector of Social Inclusion and Reconciliation, led by the Department of Social Prosperity (DSP).

¹⁵ An independent government agency falling within the Ministry of Agriculture.

¹⁶ International Center for Transitional Justice, ‘Transitional Justice Mechanisms in Colombia,’ https://www.ictj.org/colombia-timeline/index_eng.html.

¹⁷ Centro Nacional de Memoria Historica, ‘About the National Center for Historical Memory,’ <http://www.centrodememoriahistorica.gov.co/en/about-the-national-center-about-the-national-center>.

¹⁸ In Spanish: *Sistema Integral de Verdad, Justicia, Reparación y No Repetición (SIVJRNR)*

account of the circumstances and specific conduct of crimes, as well as necessary and sufficient information to attribute individual responsibility.

Thus, the Peace Accord created a Special Jurisdiction for Peace (SJP) which includes criminal prosecutions among its other TJ goals in order to satisfy the right of the victims to justice and to offer Colombian society the truth while contributing to a stable and durable peace.¹⁹ The SJP will ensure the prosecution of perpetrators of the most serious crimes, but can also offer lower sentences in exchange for the truth. However the obligation to provide the truth does not necessarily include an obligation to accept responsibility, or apologize. The aim of this arrangement is to facilitate the integration of high ranking members of FARC into civil and political life.²⁰

b. The Challenges Ahead

TJ is without doubt a critical cornerstone of the Colombian Peace Accord and is the *sine qua non* condition to peace since it prioritizes victims, assures access to symbolic and material reparations, and accounts for social and cultural diversity of the Colombian territories. Yet, despite all these positive steps, the question still stands whether or not the *Integrated TJ System* will be sufficient for assuring territorial peace, which is understood to be a decentralized approach to reconciliation, based on rights, in all parts of the country that bore the brunt of the conflict.²¹

Part of the challenges facing Colombia's aim to foster reconciliation in the territories may be attributed to:

- a) The many grievances that will not meet the criteria for criminal investigation by the SJP, such as acts rising to the level of being crimes against humanity, yet are still considered an unsettled and unaddressed source of conflict that carries difficult memories and perceptions of abuse in communities and thus could obstruct reconciliation.

¹⁹ Final Colombia's Agreement to End Conflict and Build Peace, p. 146

<https://www.mesadeconversaciones.com.co/sites/default/files/24-1480106030.11-1480106030.2016nuevoacuerdofinal-1480106030.pdf>. Unofficial English translation, <http://www.altocomisionadoparalapaz.gov.co/herramientas/Documents/summary-of-colombias-peace-agreement.pdf>

²⁰ See, Point 4 of the Peace Accord, which is referred to as "Political Participation".

²¹ "To that end, we must complement a rights-based approach to peace with a territorial approach. There are two reasons why we must do this: first, because the conflict has affected some regions more than others; and second, because change will not come if we do not coordinate efforts and mobilize the population in these regions around peace". Sergio Jaramillo, High Commissioner for Peace. Speech given at Harvard University, March 13, 2013.

- b) The communities with tensions and disputes originating in the armed conflict that may fall outside the mandate of the Truth Commission, in part due to limited resources and time.
- c) The many grey areas regarding who should take responsibility for the violation of environmental, security and minority rights that have not been adjudicated to address negative impacts and harms. This situation is due to the fact that it is difficult to tell whether local conflicts, polarization and negative impacts were a consequence of the government and its policy decisions, or of company practices, or both. Conflicts in these communities often arose out of a combination of these factors. For example, some negative impacts arose out of the failure of the State to protect the rights of inhabitants such as through consultative processes or limitations to freedom of expression and assembly due to the armed conflict²².

These shortcomings call for the development of additional spaces and methodologies to address local conflict of multiple origins in a way that complements the work of the Truth Commission.

II. National & International Perspectives on Involving Business in Transitional Justice Processes

Initial research was undertaken to assess how other countries have incorporated the theme of business in their TJ processes in order to help inform our conversation concerning the Colombian TJ process. In particular, the research chose countries that instituted a truth commission, since this commitment clearly signals a TJ process is underway. Each country researched for this project was approached with the UNGPs in mind. However, the recent approval of the UNGPs postdates many of the conflicts that catalyzed the TJ movements in these countries. Unsurprisingly, businesses were afforded very little attention by most of these truth commissions or by criminal tribunals formed in response to these conflicts.

While there have been approximately forty truth commissions documented, the research focused on 29 countries given the availability of data stored with the United Institute of Peace (see Annex).²³ Only 8 out of 29 of the countries studied had created commissions or tribunals that identified specific businesses or particular private sectors of industry within their mandates and incorporated this theme into their TJ process.²⁴

²² There are several cases document by organizations such as 'Verdad Abierta', PAX and the Historical Memory Centre, where communities and their leaders became victims due to their standing in favor or against projects or government decisions enabling business licenses, projects, etc.

²³ The United States Institute of Peace database is located at: <http://www.usip.org/library/truth.html>.

²⁴ See Annex 1, Mauritius, Kenya, Liberia, Timor-Leste, Sierra Leone, El Salvador, Uruguay, Rwanda, South Africa.

For many countries where past conflicts involved one, or several, non-state actors, any investigation into these non-state stakeholders was narrowly defined. Generally, mandates specifically named any non-state actors that would be investigated and most commonly, they were limited to militia groups and not businesses.²⁵ For those commissions addressing the role of business in their country's conflict, they generally focused on either the role of business in labor abuses, economic oppression and exploitation; the role of private business investment in sponsoring state security forces or paramilitary groups; or the role of certain industries in contributing to oppression and an escalation of violence.

Several truth and reconciliation commissions include mission statements which recognized labor abuses, social and economic inequality, and the lack of competitive development as root causes to the conflicts being investigated. For example, the Mauritius Truth and Justice Commission focused on the country's history of labor abuses and exploitation even after the abolition of slavery.²⁶ This focus necessarily implicated those industries that supported and perpetuated these practices. However, the unique mandate of the Commission – examining socio-economic class abuses over more than 370 years (1638-present) – prevented, or made difficult, the task of directly addressing the responsibilities of the current business community.²⁷ In Kenya and Liberia, truth commissions acknowledged that economic oppression and inequality contributed to the abuses committed during the periods under investigation. Correspondingly, the Kenya Truth, Justice and Reconciliation Commission mandated the investigation of economic crimes such as grand corruption and irregular acquisition of land.²⁸ However, after submission to President Uhuru Kenyatta, the report faced serious challenges, including the government's reluctance to publish it widely and several court cases disputing its contents and seeking orders from the High Court to expunge aspects of the report or block the implementation of some of its recommendations.²⁹ Thus, implementation has been difficult.

Exploitation and competition for natural resources by private business entities often intensified the conflicts that plagued several of the countries researched. The conflict in East Timor (Timor L'este), although primarily about independence, resulted in the exploitation and destruction of precious natural resources by private business.³⁰ The Truth Commission called for reparations

²⁵ See Annex 1, for example the Truth Commissions in Chile, Democratic Republic of Congo, Guatemala, and Solomon Islands named non-state actors were militia or guerrilla groups opposing the government.

²⁶ United States Institute of Peace, "Truth Commission: Mauritius," <http://www.usip.org/publications/truth-commission-mauritius> [last viewed 10/1/2016].

²⁷ Ibid.

²⁸ <http://www.usip.org/publications/truth-commission-kenya>

²⁹ Christopher Gitari Ndungú, 'Kenya TJRC Final Report deserves serious analysis and action,' International Center for Transitional Justice (2014), <https://www.ictj.org/news/ictj-kenya-tjrc-final-report-deserves-serious-analysis-and-action>.

³⁰ Chapter 7, section 1, para 6, Chega! The CAVR report. <http://www.cavr-timorleste.org/chegeFiles/finalReportEng/07.9-Economic-and-Social-Rights.pdf>

to be paid by those businesses that profited from the conflict.³¹ Yet, a reparations scheme has yet to be established in East Timor.³² In Sierra Leone, the Truth and Reconciliation Commission concluded that the country's rich diamond deposits were a source of corruption, inequality and violence driven by extensive foreign investment and influence in the country. This concentration of wealth drew multiple non-state actors into the conflict that ravaged Sierra Leone.³³ The Commission called upon the business sector to develop its own Code of Corporate Governance in order to build a culture of ethical business conduct.³⁴

In El Salvador, even though the commission's mandate mainly focused on the responsibilities of the State and paramilitary groups, it acknowledged that these groups likely received private financing in support of their actions. The report noted its concern that "[b]ecause of the clandestine nature of their operation, it is not easy to establish all the links existing between private businessmen and the death squads. However, that the possibility that businessmen or members of moneyed families might feel the need and might be able to act with impunity in financing murderous paramilitary groups, as they did in the past, poses a threat to the future of Salvadorian society."³⁵ The Commission in Uruguay similarly indicated that private banks and private actors helped the military regime to carry out atrocities during 1973-1985 by providing monetary contributions.³⁶

In both Rwanda and South Africa the TJ mechanisms focused on the role of the media in encouraging the targeted racism that precipitated violence and oppression in both countries. In Rwanda, the Truth and Reconciliation Commission was tasked with investigating the role of non-state actors, such as the media, in promulgating racial division. The Commission's recommendations included a proposal for legislation that would punish all forms of discrimination, including those taken by business actors.³⁷ The related International Criminal Tribunal for Rwanda issued a conviction in its "Media Case" for the roles played by three prominent members of the media in "sowing the seeds of hatred" eventually leading to the genocide.³⁸ Similarly in South Africa, the commission investigated whether the independent newspapers and its staff were either victims or perpetrators of human rights abuses, or either directly or by default, playing some part in allowing human rights violations to occur.³⁹

³¹ Chapter 11, section 12.10, Chega! The CAVR Report. <http://www.cavr-timorleste.org/chegaFiles/finalReportEng/11-Recommendations.pdf>

³² Christine Evans, *THE RIGHT TO REPARATION IN INTERNATIONAL LAW FOR VICTIMS OF ARMED CONFLICT* (Cambridge University Press, 2012), 200.

³³ Witness to Truth - Volume Three B, Chapter 1: Mineral Resources, their Use and their Impact on the Conflict and the Country, 36.

³⁴ Witness to Truth - Volume Two, Chapter 3: Recommendations, 64.

³⁵ From Madness to Hope: the 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador, 129.

³⁶ Juan Pablo Bohoslavsky, Another Brick in the Uruguayan Transition Financial Complicity in Corporate Accountability in the Context of Transitional Justice, 200 (Sabine Michalowski ed., 2013).

³⁷ Ibid.

³⁸ <http://www.haguejusticeportal.net/index.php?id=9166>

³⁹ <http://www.justice.gov.za/trc/hrvtrans/submit/inc.htm>

South Africa's Truth and Reconciliation Commission demonstrates the most direct indictment of business activities in perpetuating human rights abuses. In fact, it was one of the first Commissions of its kind to include corporations in its hearings.⁴⁰ The TRC held institutional hearings specifically relating to business and labor asking "whether business had been involved in the violation of human rights, how business related to the State and whether or not business benefited from apartheid."⁴¹

The hearings invited, and accepted submissions from trade unions, political parties, businesses, business organizations, and individuals.⁴² One conclusion of the hearings was that "as part of a system of racial-capitalism...apartheid was beneficial for (white) business because it was an integral part of a system premised on the exploitation of black workers and the destruction of black entrepreneurial activity."⁴³ However, this view was opposed through submissions by businesses that insisted that apartheid made doing business more expensive and impeded economic growth, situating them as victims rather than participants in the regime.⁴⁴ Businesses further insisted that any individual mistreatment of black employees, did not amount to human rights abuses by the business as a whole.⁴⁵ However, many submissions insisted that "[h]istorically privileged business as a whole must...accept a degree of co-responsibility for its role in sustaining the apartheid system of discrimination and oppression over many years."⁴⁶

The hearings differentiated the levels of business involvement and culpability. It concludes that some businesses, particularly the mining and arms industries, were guilty of "first-order involvement" through their active participation in the "formulation of oppressive policies or practices"⁴⁷ or through direct operation and profiting from the regime.⁴⁸ Some businesses were faulted for "second-order involvement" where businesses knew "that their products or services would be used for morally unacceptable purposes."⁴⁹ Finally, "third-order involvement" condemns businesses that "prospered under apartheid...in that they took advantage of a situation which depressed the earnings of black South Africans, whilst boosting their own."⁵⁰

Despite, its analysis of differing levels of culpability, the TRC concluded that (all) businesses were "guilty of acts of omission in that they failed to adhere or live up to the ethics of their

⁴⁰ Julian Simcock, UNFINISHED BUSINESS: RECONCILING THE APARTHEID RECONCILIATION LITIGATION WITH SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION, 47 Stan. J. Int'l L. 239 (2011) 249.

⁴¹ Truth and Reconciliation Commission of South Africa, 'Report, Volume four, Chapter 2,' para. 2, p. 18, <http://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>.

⁴² Ibid.

⁴³ Ibid, para. 6, 19.

⁴⁴ Ibid, para. 7, 19.

⁴⁵ Ibid, para.13-14, 21.

⁴⁶ Ibid, para.16, 22.

⁴⁷ Ibid, para. 23, 24.

⁴⁸ Ibid, para. 24-25, 24-25.

⁴⁹ Ibid, para. 28, 25.

⁵⁰ Ibid, para. 32, 26.

profession and to accepted codes of conduct,”⁵¹ and that “[b]usiness was central to the economy that sustained the South African state during the apartheid years.”⁵² In its recommendations, the TRC proposes blanket punitive measures against businesses consisting of a wealth tax, a one-time tax on corporate income, and a flat percentage donation from the leading companies in South Africa's stock exchange.⁵³ However, these initiatives have never been implemented.⁵⁴

Interestingly, the commissions that specifically identify economic and social inequality or worker abuses as the root causes of escalating conflicts, produced recommendations that evoked either the State’s responsibility to create legislation correcting past harms by business and preventing future abuses, or the personal responsibility of individuals within the industries implicated in the abuse.⁵⁵ However, generally speaking, the undertaking of TJ processes is often done without domestic prosecutions as a central feature of the government’s policies. Thus there are few examples of domestic TJ processes including prosecutions of individuals implicated in business related human rights abuses. In some instances, such as in the case of Germany, there was litigation against companies implicated in atrocity independent of a truth commission experience, as will be discussed in the next section in greater detail.⁵⁶

III. The Judicial Dimension of the Transitional Justice Process: The Special Jurisdiction for Peace & The Frontiers of Criminal Responsibility of Business

Historically speaking, the field of TJ largely arose as an alternative to criminal justice, given that amnesty laws often foreclosed the possibility of prosecution of any actor (state or non-state). Indeed, one of the foundational debates in the TJ field was framed as *peace v. justice*, in which arch defenders of the need for criminal justice faced off realists who pointed out that political constraints in fragile democracies made trials too risky. Argentina became the poster child for this tension during its TJ process that started with a truth commission in 1983 when military uprising undermined efforts to prosecute human rights violators and eventually led to amnesty measures. After that, truth commissions became a more central feature of TJ processes. Only in a few select examples, like South Africa, were partial and conditional amnesties used simultaneously with trials and truth seeking efforts, as discussed above.

⁵¹ Ibid, para. 74, 211.

⁵² Ibid, para. 156, 252.

⁵³ Simcock, 250 -251.

⁵⁴ Simcock, 253.

⁵⁵ United Nations Guiding Principles on Business and Human Rights HR/PUB/11/04 (2011) , Pillar II: The Corporate Responsibility to Protect Human Rights.

⁵⁶ Sabine Michalowski, ed. Corporate Accountability in the Context of Transitional Justice (2014).

Yet, towards the turn of the century, a significant shift occurred in the field of TJ due in part to normative dictates from international human rights bodies. For example, the Inter-American Court of Human Rights issued a decision in 2001 declaring amnesties to be contrary to international human rights law.⁵⁷ The U.N. General Secretary also recognized that some international crimes could never be subject to amnesty.⁵⁸ Today, there is greater restriction on TJ processes which initially avoided including some form of criminal accountability, thus normalizing the inclusion of criminal liability as part of any TJ process. In fact some countries like Argentina have actually reopened criminal trials against perpetrators even many years after the original crimes.

Notably, these TJ experiences rarely contemplated the criminal responsibility of companies as separate legal entities. Yet, there is some precedent for criminal accountability as seen in the context of the Holocaust.⁵⁹ Companies have been more likely to face civil suits for their involvement in human rights violations including those associated with conflict, as is seen with the rise of cases brought through the Alien Tort Statute in the United States.⁶⁰

With the framework of the UNGPs, a new era has emerged in which the idea of corporate accountability has come into greater focus. Advocates seek ways to address situations where companies and their leaders play a role in causing, contributing to, and benefitting from serious human rights abuses. The UNGPs move beyond the notion of corporate responsibility for human rights abuses as taking only the form of voluntary and ethical standards and refocuses the debate to present a normative framework that is based on principles of responsibility and requires more accountability. Yet, it has not been fully explored how this normative framework impacts TJ processes. Moreover, it is still unclear how accountability may be achieved by more than just the traditional approach of criminal sanctions, and instead can include a wide range of non-judicial redress through mediation, reparations and other restorative justice measures.

In the Colombian context, the theme of criminal accountability played a central role in the peace negotiations between the FARC and the Colombian Government resulting in a concrete path to criminal accountability. The SJP will be composed of a group of judicial bodies responsible for investigating, establishing the facts, and imposing the appropriate penalties, pursuant to the special legal framework, for all of the acts committed in connection with the armed conflict, especially those that constitute serious violations of international humanitarian law and/or grave human rights violations. The SJP aims to:

- Satisfy the victims' right to justice

⁵⁷ *Barrios Altos v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75, (Mar.14, 2001).

⁵⁸ United Nations Security Council, Report of the Secretary General S/2004/616, 'The rule of law and transitional justice in conflict and post-conflict societies,' (23 August 2004), para. 64, p. 21.

⁵⁹ The second tribunal at Nuremberg targeted its prosecutions at Nazi industrialists. Kelly, Michael J., *PROSECUTING CORPORATIONS FOR GENOCIDE*, New York: Oxford University Press (2016), p. 30.

⁶⁰ Richard Meeran, *TORT LITIGATION AGAINST MULTINATIONAL CORPORATIONS FOR VIOLATION OF HUMAN RIGHTS: AN OVERVIEW OF THE POSITION OUTSIDE THE UNITED STATES*, *City University of Hong Kong Law Review* Volume 3:1 (2011) p 2.

- Obtain truth for Colombian society
- Contribute to the reparation of victims
- Contribute to the fight against impunity
- Grant legal security to those who directly or indirectly participated in the armed conflict
- Contribute to the achievement of a stable and long-lasting peace

The competency of the SJP will include:

- Personal competency: The SJP will have exclusive jurisdiction with regard to all of those who have directly or indirectly participated in the armed conflict. It is tasked with providing a differentiated, equitable, balanced, simultaneous and symmetrical approach to prosecuting individuals, including the members of the FARC, State agents, and private third parties who have financed or collaborated with armed groups, among others.
- Material competency: The SJP will have exclusive jurisdiction over the crimes committed because of and in the context of the armed conflict, in particular the most serious and representative of crimes that violate human rights and international humanitarian law (IHL).

In accordance with IHL, possible amnesty or pardon will be granted for political or related/connected crimes. The recently enacted Law 1280 of December 30, 2016 (Amnesty Law) applies to members of the FARC who *have not* committed one of the serious crimes mentioned in Point 5 of the Peace Accord (which include kidnapping, sexual violence, and, in general, war crimes and crimes against humanity). For those who are found to have committed lesser crimes, the SJP will be responsible for punishing them with alternative and restorative penalties if they tell the truth and commit to non-repetition. Although the law will become active in six months from the time of its passage, there are many unresolved questions regarding its scope and how it will be applied.

The SJP will also determine the legal situation of those who directly or indirectly participated in the armed conflict (including third parties) and who are not eligible for amnesty or pardon. The bodies of the SJP will include a special division called the Tribunal for Peace (TP) which will judge and impose sanctions against those responsible for the crimes committed in the armed conflict, particularly the most serious and representative crimes, including crimes against humanity, genocide and grave war crimes, among others. The TP will also have the discretion to offer special treatment such as amnesties and pardons (when appropriate under international law), order protective measures, and even review and issue decisions—in certain cases—with respect to judgments already handed

down in the regular justice system.

The TP will handle two classes of alleged perpetrators:

- For those who assume responsibility for their commission of a crime: The TP will proceed with its prosecution regarding the confessed crimes based on the investigations carried out by the Prosecutor General's Office (*Fiscalía General de la Nación*). It will also rely on information provided by the victims and human rights organizations. For those who recognize their responsibility for the most serious crimes, the TP will impose sentences ranging from 5 to 8 years.
- For those who fail to recognize their responsibility: The TP will conduct trials and deliver the corresponding judgments. It will also define and verify the conditions and modalities for the enforcement of the penalty as well as supervise and certify the fulfilment of the sentence. Those who fail to recognize their responsibility and are declared guilty by the TP will be subject to prison sentences of up to 20 years in ordinary prisons. Penalties will be determined based on the level of participation in the most serious and representative crimes.

IV. The Non-Judicial Dimensions of Transitional Justice & the Involvement of Business - Creating Viable Scenarios to Co-Design Forms of Reparation and Reconciliation Between Companies and Communities

a. Pathways for Involving Businesses in Non-judicial Reconciliation Processes like Truth Commissions

There are some common characteristics that thread through each of the unique experience of countries that have adopted truth commissions.⁶¹ Most truth commissions focus on taking testimonies from a wide range of stakeholders, but primarily victims, although some seek the involvement of perpetrators. While methodologies may vary, truth commissions often take private statements from individuals dispersed throughout the country as well as hold public hearings. To support these testimonials, truth commissions may also conduct forensic investigations, survey historical and media archives, and integrate studies from academics and NGOs, among other sources. Importantly, civil society often accompanies this official process by working with victims to contribute to the truth commission as well as helping the truth commission identify sources of information. In some cases, civil society

⁶¹ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, (New York, Routledge, 2011).

and victims associations will conduct their own truth seeking activities, such as through art, theater, books and other forms.

In the case of Colombia, there have already been various stages in the pursuit of the truth through the formation of various bodies established to contribute to this quest for truth. Its objectives of Colombia's various truth commissions have included:

- Contribute toward the historical clarification of what happened during the armed conflict;
- Promote and contribute to the recognition of the victims;
- Establish the responsibility of those that were involved directly or indirectly in the armed conflict; and of the society as a whole; and
- Promote coexistence across the country.

The various bodies have included:

- First, as mentioned above, the Law 975 created the Historical Memory Group, which began to collect testimony from victims to construct an official narrative of origins and harms caused by the internal armed conflict.⁶²
- More recently, there was the formation of the Commission for the History of Conflict and its Victims (CHCV) was instituted August 2014, within the framework of the peace negotiations between the national government of Colombia and the FARC on August 26, 2012.⁶³ The Commission, which was formed only for the purpose of the peace negotiations, was composed of twelve experts who were selected through an agreement between the two negotiating parties, with the objective of contributing to an understanding of the complexity of the historical context of the armed conflict and providing inputs for the delegations in the discussion of the different points of the Peace Accord, especially the issue of victims. A report on three key points defined by the parties set out: (a) the origins and multiple causes of the armed conflict; (b) the main factors and conditions that have facilitated or contributed to the persistence of the armed conflict; and (c) the most notorious effects and impacts of the conflict on the population.
- Finally, the Peace Accord expressly contemplates that without truth, there can be no justice and reconciliation. It thus included a provision to establish the Truth, Coexistence and Non-Repetition Commission (referred to as the Truth Commission

⁶² <http://www.centrodehistoriamemoriahistorica.gov.co/en/about-the-national-center-about-the-national-center>
For further discussion, see Emad Ansari et al., Historical Memory in Colombia: The Work of the Grupo de Memoria Historica (2014).
https://www.centrodehistoriamemoriahistorica.gov.co/descargas/IEDP_2012_COLOMBIA_Human_Rights_Report_GMH.pdf

⁶³ All the reports of the Commission are available at the following link:
<https://www.mesadeconversaciones.com.co/comision-historica/ensayos>

or TC hereinafter). The Truth Commission will be an impartial and independent mechanism, of transitory and extra-judicial character, and with a territorial-based approach, that will seek to contribute to the realization of the right to the truth for victims, and for society as a whole.

With regard to the most recent Truth Commission, commissioners will be chosen by a nine-person Selection Committee which will seek nominations from around the country and abroad, and then spend three months vetting the candidates and making its final selection. Unfortunately, the Peace Accord offers little detail about how the selection process will work in practice or other important details about how the Truth Commission will function. Moreover, although the Peace Accord has reconciliation as a core aspiration in general terms, it does not frame the participation and role of all actors, nor does it set procedures to ensure in practice that all actors contribute the truth. It is important to recognize that despite the fact that there is very little international practice to build on, Colombia will have to create new pathways and processes to involve business in the truth building process.

That said, The Peace Accord states that the TC will have as its general mandate to “...clarify and promote the recognition of the human and social impact of conflict in society, including the impact on business”. The implication is that the Peace Accord accepts that the armed conflict has impacted business (although not necessarily in the same way as on direct victims and their families) and that the implementation of the TC needs the participation of business to contribute to fostering the economic and social conditions that lead to peace. The common aspiration of the parties to the Peace Accord appears to be the desire to “turn the page” and jointly work on territorial reconstruction where business enterprise can play a legitimate role and can work towards gaining a social license to operate.

b. Truth Building & Reconciliation – Is it Possible and Why Is It Important for Communities and Businesses?

As recognized above, one of the primary aims of a TJ process is to establish “the truth” about the past. This aim arises out of the desire to set the record straight through an official and objective report usually produced by a truth commission that concisely explains the causes and consequences of past episodes of political violence. This process also helps to guarantee the victims’ right to truth which is now a recognized human right.⁶⁴ However, it is often the *process* of constructing the truth that matters as much as the final *product*. The idea being that victims often feel empowered and may even have a cathartic experience through the act of telling their truth, and not because they desire only to have their story

⁶⁴ Sam Szoke-Burke, Searching for the Right to Truth: The Impact of International Human Rights Law on National Transitional Justice Policies, *Berkeley Journal of International Law*, Vol. 33, Issue 2 (2015), pp. 526-578.

end up in a final published report. In fact, some countries find that victims continue to find ways to “tell their truth” long after a TC ends its work thus signifying a greater need to have one’s experience heard, acknowledged and recorded.

At the same time, there is much debate as to whether the truth telling process is necessarily helpful to victims. In addition, there is disagreement as to whether a full and complete truth can ever be achieved through a TJ process. More controversial is whether the process leads to reconciliation, and whether that goal is even appropriate to ascribe to the work of a truth commission. Implicit in this assertion is that there is not always a clear idea of what reconciliation actually means in a TJ context, since it can actually mean different things to different people. Thus while the South Africa experience put great emphasis on individual victims and their families forgiving perpetrators in the name of reconciliation; Peru understood the complexity of that goal and chose instead to view reconciliation as repairing truth between the governed and the government.

Additionally, there are important questions regarding the connection of truth building, reconciliation and business participation found in the Colombian Peace Accord and yet there is still not much guidance on how the two will relate. The signing of the agreement does not automatically mean that the social stigma faced by business in the conflict regions – as contributors and benefactors of the conflict - will vanish automatically. Signing of any peace agreement does not equate with full peace immediately. Yet, in Colombia there are no explicit considerations on how reconciliation should be understood, especially as it relates to business-community conflict. Nor are there clear standards of business behaviour that should mark a difference with the past and in which way business as a societal force will contribute locally to territorial peace. It remains to be explored whether conditions for reconciliation and resolving disputes are assumed to be built into the TC process or are outcomes derived from other aspects of the Peace Accord, especially those related to rural reform and citizen participation.

There needs to be much more guidance on how to establish the conditions and pathways to create a positive and productive interplay between reconciliation and truth as it relates to business. Without clear incentives for the business sector to participate in truth building and reconciliation, except in those cases where businesses are called to face the Tribunal for Peace in their position as third parties who contributed in crimes falling within the court’s jurisdiction, there is no guarantee that business will cooperate or collaborate with the Truth Commission especially since they may worry about reputational risks. Yet without business involvement, Colombia will be left with only a partial truth of the past, which could undermine both reconciliation and territorial peace.

c. *Reparations: Pathways for Involving Businesses in Reparation Programs*

Reparations programs feature as another central component of any TJ process. While a few truth commissions have included reparations as a part of their work, most of them typically include recommendations for reparation programs as a part of their final report. The governments of those countries must then pass laws and set up government offices to register victims and distribute reparations.

Importantly, these programs help to guarantee the right to reparations held by victims. International human rights bodies, like the Inter-American Court of Human Rights, have helped to solidify recognition of this right, while providing some general guidance on implementing reparations. In particular, the United Nations *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Basic Principles), approved by the U.N. General Assembly in 2005, further solidifies this developing norm.⁶⁵

Overall, jurisprudence has stressed that reparations must be victim-focused so as to avoid any new forms of victimization. Importantly, the manner in which reparations are implemented can also have a reparative impact, especially if communities are involved in the design of reparation programs. The inclusion of victims is important for meeting the general guidance provided by the Basic Principles which establishes that reparations should be “adequate, effective, prompt and appropriate.”⁶⁶ One of the challenges of meeting these still evolving parameters is to contemplate the many different types of human rights violations that result in a wide spectrum of harms that need to be repaired. Moreover, there may be large numbers of victims as well as different regional impacts.

Colombia has and will deal with some of the challenges and complexity of designing reparation programs to address a wide range of human rights violations as well as categories of victims which includes those who individually and collectively have suffered harm due to events that occurred during the armed conflict and that resulted in a violation of international humanitarian law and serious violations of international human rights law. It will also need to give special attention to women, children, the elderly, indigenous people and Afro-Colombian communities. At the same time, it will face the complicated task of taking into account the previous reparation programs outlined above, while also identifying their shortcomings.

⁶⁵ General Assembly Resolution, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,; A/RES/60/147 (16 December 2005), http://www.americanbar.org/groups/law_students/about_us/leadership/leadership_opportunities.html#liaison.

⁶⁶ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

The new TC will begin its work contemplating a wide range of reparations measures that the government has tried to provide. The Colombian Government, through the Victims Unit, created a collective reparation program (Law 1448 of 2011) to ensure that affected groups would have access to comprehensive reparations. For example, this law established the Victims' and Land Restitution program which led to measures of:

- Restitution
- Compensation and indemnization
- Rehabilitation both physical and psychological
- Satisfaction: which focuses mainly on moral reparations
- Measures of non-recurrence.

Thus, Colombia is one of the first countries to begin a peace process that will take into account the effects of the internal armed conflict on "subjects of collective reparation." In particular, Law 1448 established the definition of "collective victims" to include ethnic and non-ethnic communities, groups, organizations and social movements which experienced a negative impacts due to the armed conflict. Some of these harms include harms to their community organization, culture, possibilities of access to education and health and even their livelihoods.

Based on these antecedents and given that these reparation measures are currently in operation, the Peace Accord contemplates the strengthening and continuity of these measures through an approach called "Measures of integral reparation for the construction of peace" with emphasis on:

- Concrete actions to contribute to reparation by the FARC
- Early acts of recognition of responsibility for harms against individuals and communities
- Land restitution
- Collective processes of returning individuals to the lands they had to abandon
- Psycho-social rehabilitation

It may be that businesses may contribute to development in communities impacted by the armed conflict. Development often overlaps with collective reparations, especially when they take on a development-like feel, which has led to some controversy when victims feel the government is sidestepping its obligations to provide reparations. Yet, focusing on collective reparations and development may be one avenue for involving business. And the Peace Accord even contemplates this arrangement in section 6.1.3 ("...other measures to help ensure the implementation of the peace accord"). In order to help ensure the implementation of the Peace Accord, the drafters viewed the participation of the business sector in raising productivity, market access and sustainability in general as a way to sustain peace. The practical consequence of this agreed text is the recognition of the role of

business in local development and its connection with the ultimate goal of the Peace Accord to help the country overcome poverty and economic and social exclusion.

V. Looking Beyond the Peace Process: Laying the Groundwork for Responsible Business Conduct in a Peaceful Colombia

a. Institutional Reform in the Territories: Better and More Functional Participation and Oversight of Business

One aim of TJ is to build the rule of law, a culture of rights and sustainable peace. Often truth commissions will issue recommendations for institutional reform that goes towards solidifying these goals, including the reform of the judiciary, the police, education and other State institutions. Yet, less often do they issue recommendations on how businesses may need to conform to new norms or even be regulated to assure lasting peace.

The UNGPs provide an important bridge for framing what this institutional reform might look like with regard to changing the legal norms and culture as it relates to businesses. Pillar I requires States to regulate businesses to assure that they respect human rights. This basic requirement mirrors the requirement of human rights treaties which also recognize the State duty to protect individuals from the harmful impact of non-state actors, including business. Some of the affirmative changes required by the UNGPs support the same type of reform recommended by TC's that address the way that business activities may exacerbate or prolong conflict. Indeed, the private sector continues to have a prominent presence in many of the communities affected by the armed conflict in Colombia.

The Government of Colombia has committed to implementing the UNGPs and was the first Latin American country to adopt a "National Action Plan" (NAP) on business and human rights in 2015.⁶⁷ The NAP covers a wide and ambitious range of steps. The Government is now in the implementation phase, starting with work on access to non-judicial remedies. Thus there is still time for the TJ process to shape the implementation process of the NAP to support the peace process.

⁶⁷ http://www.ohchr.org/Documents/Issues/Business/NationalPlans/PNA_Colombia_9dic.pdf

b. Strengthening the Corporate Responsibility to Respect Human Rights to Ensure Non-repetition

Pillar II of the UNGPs calls upon business to respect human rights and outlines specific measures that companies can take to prevent, mitigate and remedy negative human rights impacts. In the case of the Colombian NAP, there is special emphasis on businesses participation in the exercises of historical memory – a backward looking exercise. Yet, as discussed above, it is not entirely clear how the TC will involve businesses in this exercise of truth-gathering. At the same time, there is a focus on forward looking measures since the Office of the High Commissioner for Peace began to develop additional programming with relation to the peace process to expand upon the NAP to promote a much more active role on the part of business in the peace process.

This initiative is supported by the NAP which highlights two dimensions of business involvement in the post-conflict process. First, it calls on businesses to integrate victims of the conflict into the labour force. Second, the NAP emphasizes that it is of “particular interest to the Government of Colombia that companies that operate in areas historically affected by the armed conflict, are especially careful in the management of their risks and possible impact on human rights.” It builds on the UNGPs approach of “do no harm” by recommending that companies implement human rights policies as well as an active approach to human rights due diligence in order to manage their human rights impacts aimed at preventing or mitigating new conflicts. In this way, the UNGPs may also help to support the TJ process with its aim of non-repetition. Essentially the government recognizes that post-conflict zones can be vulnerable to an increase in social conflict related to business activity without such preventive measures.

The NAP recognizes that joint efforts between the State, business, trade unions, civil society and the international community can improve the management of human rights impacts at the company level and provide for remediation. These preventive measures will help reduce localized conflict as the country moves forward with the implementation of the Peace Accord.⁶⁸

Yet, many of these recommendations are still rather broad. Left unanswered is how companies can proactively take on measures to respect human rights in Colombia moving forward.

c. Addressing Business and Community Conflicts: Access to Judicial and Non-judicial Remedy

Pillar III of the UNGPs focuses on victims by ensuring they have access to adequate remedies in response to harms caused or contributed to by companies. One pending issue that is not

⁶⁸ NAP, pp. 6-7

entirely clear in the NAP relates to the question of how to ensure access to non-judicial remedies, whether they be provided by the State or company. Additionally it is unclear what is the proper form a remedy must take in addition to the proper contour of its substantive content. In Colombia there is no unified criterion of what remedy means in the context of business and human rights.

Indeed, The UNGPs introduced the concept of companies offering their own non-judicial grievance mechanisms (“operational level grievance mechanisms”) to help to assuage new cycles of local conflicts and respond to grievances. However, there is currently debate as to whether these are appropriate for handling more serious human rights abuses; or alternatively there are still questions with regard to what must be in place for companies to manage more serious human rights claims, such as procedural protections and review by a state entity.

Additionally, the Colombian NAP does not include much guidance on how to strengthen the capacity of individuals and communities to use these remedies. Yet, studies of TJ settings reveal that one of the key challenges to transforming communities (both those impacted by the armed conflict and tensions with companies) relates to their lack of empowerment because they do not have the capacity, knowledge and skills necessary for effectively advocating for their rights and for resolving conflicts peacefully as they arise. This lack of capacity directly impacts community relations with companies. Countries like Peru have seen an explosion of social conflicts due to this situation, leading the Ombudsman to establish a special office to seek solutions to this issue. Practitioners working in this area recognize that one important step in assuring accountability of businesses and assuring they respect human rights depends on the preparedness of affected individuals and communities to advocate for their rights and access justice mechanisms.⁶⁹

Additionally, one challenge relates to the accessibility of remedies for victims and communities with grievances related to business activities. Often state remedies are inaccessible due to a range of factors, including distance, language, lack of legal counsel and socio-economic barriers, among others. In the framework of business and human rights, non-judicial mechanisms presents a series of advantages when compared to more formal mechanisms which tend to be more adversarial, slower and less focused on involving all stakeholders.

For that reason, Colombia has committed to a focus on non-judicial remedies between business and communities as part of its NAP, whether implemented by the State or company. In Chapter III of the NAP, “Effective Participation of Civil Society” (Participación efectiva de la sociedad civil), section 3.4 signals:

⁶⁹ Building on the business and human rights concepts established in the 2011 U.N. Guiding Principles on Business and Human Rights (UNGP).

Through the Integrated System of Prevention and Resolution of Conflicts, the National Government will create mechanisms of social dialogue and agreement between the government at various levels and communities and businesses. The goal will be to create formal spaces for intervention between actors of different interests. These initiatives will support the construction of peace and respect for human rights in the territories of the State.

The NAP prioritizes the development of mechanisms, both institutional and at the company level, to ensure that victims have access to a remediation system for all conflicts or possible problems reported by the community.

Non judicial mechanisms in the context of TJ can include local mediation between companies and communities, indigenous forms of mediating conflict and other forms of resolving disputes outside of formal courtroom litigation.

Potential Advantages of Using Non-Judicial Mechanisms for Remedy as Compared to Judicial Mechanisms

Some of the advantages for the State:

- Diminish conflicts
- Fulfill the duty to protect rights
- Minimize the need for judicial intervention whenever possible
- Prevent and mitigate resort to litigation
- Build constructive dialogue in the territories
- Build and strengthen relations with territorial institutions that do not pertain to the judicial branch but are key to assuring a remedy.

For businesses:

- Build legitimacy in the territories where they operate
- Reduce conflicts
- Prevent and lessen risks of litigation
- Prevent and mitigate reputation and legal risks

For communities:

- Reduce costs and time on processes in order to effectively remedy any possible damage caused to them
- Win the recognition of rights
- Gain effective solutions and opportunities
- Build and strengthen the capacity of communities to sustain effective dialogue about rights

Currently the Center for Responsible Business (CREER), in partnership with the Presidential Council for Human Rights, is running the project "Elements of a system of access to non-judicial remedy for business and human rights" as a step toward developing this program pursuant to the NAP. This project has as its fundamental purpose the development of the necessary components to establish a coherent system that can provide efficient and effective access to non-judicial remedy mechanisms for interested parties or affected communities in the context of business operations, with a focus on the mining, infrastructure and agro-industrial sectors.

In striving to contribute standards for non-judicial remedies, CREER has determined through research that non-judicial remedies includes three essential elements:

- *Access* is about mechanisms that allow for the early identification and registration of situations of potential harm (human rights abuses) caused or contributed to by companies.
- *Attention* means through a combination of actions and measures, such as through spaces for dialogue, the parties can reach agreement about harms that will result in apologies, restitution, rehabilitation, economic and non-economic compensation and administrative sanctions, among others.
- *Non-Repetition* signifies that an indispensable consequence of the concept of remedy is to prevent new harms. This means that it is important to identify "typical situations" that lead to harm and the corresponding measures necessary to prevent and eliminate those conditions.

All of these outcomes theoretically contribute to reconciliation at the local level. Thus, the government's commitment to developing non-judicial remedies presents an important opportunity for the TJ process to facilitate much needed reconciliation between business and communities at the most local level. With relation to non-judicial remedies, whether established by the State or a company, it is important to assure that they resolve conflicts as opposed to create new ones. Moreover, they should adhere to certain benchmarks outlined in Principle 31 of the UNGP ("Effectiveness Criteria for non-judicial grievance mechanisms") which establishes that to be effective these mechanisms must be

legitimate,⁷⁰ accessible,⁷¹ predictable,⁷² equitable,⁷³ transparent,⁷⁴ rights compatible,⁷⁵ and a source of continuous learning.⁷⁶ The provisions in Principle 31 (h) specifically includes criteria for operational level mechanisms that are set up by companies, requiring engagement and dialogue with the individuals or communities that will use these channels to bring disputes.⁷⁷ This criteria serves as a type of quality control of non-judicial remedies yet still need further development to be of use in practice.

⁷⁰ *Id.* at art. 31(a) (“enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes”).

⁷¹ *Id.* at art. 31(b) (“being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access”). The Commentary speaks to barriers to access. GP 31 Commentary. This was also treated in GP Principle 26.

⁷² *Id.* at art. 31(c) (“providing a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome”). The Commentary conflates trust and predictability, suggesting that the mechanisms should “provide public information about the procedure it offers. Timeframes for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed.” GP Principle 31 Commentary.

⁷³ *Id.* at art. 31(d) (“seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms”).

⁷⁴ *Id.* at art. 31(e) (“keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake”).

⁷⁵ *Id.* at art. 31(f) (“ensuring that its outcomes and remedies accord with internationally recognized human rights standards”).

⁷⁶ *Id.* at art. 31(g) (“drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms”).

⁷⁷ *Id.* at art. 31(h) (“focusing on processes of direct and/or mediated dialogue to seek agreed solutions, and leaving adjudication to independent third-party mechanisms, whether judicial or non-judicial”).

Annex 1: CILP Research of Truth Commissions

COUNTRY	Business/non-state actors in mandate?	Business/non-state actors in final report?
1. Argentina	No	No
2. Bolivia	No	N/A – no report released ⁷⁸
3. Chad	No	No
4. Chile	No, more focused on actions of the military state - the report concluded that state agents were responsible for 95% of rights violations and 4% by leftist armed groups. ⁷⁹	No. Also, the report does not name perpetrators. ⁸⁰
5. Democratic Republic of the Congo	Yes, DRC's unstable period was known as "Africa's World War" and many militia groups fought each side of the conflict. ⁸¹ For example, international and national rebels like Mai-Mai, Interhamwe, RDR, ALiR, UPC, MLC and many more involved in DRC's internal conflict and mentioned in its report. ⁸²	N/A – the Commission did not open a single inquiry. ⁸³
6. East Timor/ Timor-Leste	Yes, the Commission for Reception, Truth, and Reconciliation (CAVR) recognized that non-state actors participated in violence in addition	Yes, CAVR decries a violation of the right of peoples to freely dispose of its natural wealth and resources. ⁸⁵ The report

⁷⁸ United States Institute of Peace, 'Truth Commission: Bolivia,' < <http://www.usip.org/publications/truth-commission-bolivia>>.

⁷⁹ Hayner, Priscilla, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS, (New York, Routledge, 2011), p. 47-48.

⁸⁰ Report of the Chilean National Commission on Truth and Reconciliation (Notre Dame, Indiana: University of Notre Dame Press, 1993), vol. I/II, p. 16.

⁸¹ United States Institute of Peace, 'Truth Commission: Democratic Republic of Congo,' <<http://www.usip.org/publications/truth-commission-democratic-republic-of-congo>>.

⁸² Ibid.

⁸³ UN Mapping Report – DRC: Mapping human rights violation 1993-2003, p. 478 <http://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf>.

⁸⁵ Common Article 1(2) of the ICCPR and ICESCR, but Indonesia did not ratify either of these covenants until 2006. Commission for Reception, Truth, and Reconciliation, CAVR, Part 7.9, para. 4, p. 3 <<https://www.etan.org/etanpdf/2006/CAVR/07.9-Economic-and-Social-Rights.pdf>>.

	to the primary perpetrators – the Indonesian security forces. ⁸⁴	notes that “unsustainable and destructive extraction of natural resources by government officials and their business partners” exploited and permanently depleted much of Timor-Leste’s natural resources. ⁸⁶ The report also discusses the extensive displacement from land appropriated by private businesses for construction of government offices or housing, markets, logging concessions, sugar plantations and plywood plantation, all with little or no Compensation and enforced by Indonesian security forces. ⁸⁷ Finally, the CAVR recommends that “Indonesian business companies which profited from war and related activities in Timor-Leste between 1974 and 1999 make financial contributions to the reparations trust fund recommended elsewhere in this Report.” ⁸⁸
7. Ecuador	No	No
8. El Salvador	No, the conflict was between the State and leftist guerilla group, Farabundo Martí National Liberation Front (FMLN). ⁸⁹ The commission concluded that 95% of the abuses were committed by government forces. ⁹⁰	Yes, but only in passing. The report notes that, “because of the clandestine nature of their operation, it is not easy to establish all the links existing between private businessmen and the death squads.

⁸⁴ Hayner, (n. 2) p. 41

⁸⁶ CAVR, Part 7.9, para. 6, p. 3

⁸⁷ CAVR, Part 7.9, para. 69-70, p. 25

⁸⁸ CAVR, Part 11, para. 10.17, p. 34 <<https://www.etan.org/etanpdf/2006/CAVR/11-Recommendations.pdf>>.

⁸⁹ Hayner, p. 49.

⁹⁰ Ibid, p. 50.

		However, that the possibility that businessmen or members of moneyed families might feel the need and might be able to act with impunity in financing murderous paramilitary groups, as they did in the past, poses a threat to the future of Salvadorian society. ⁹¹ The report recommends that links between atrocities and private business be investigated, ⁹² but this task was never undertaken.
9. Germany	The second tribunal at Nuremberg targeted its prosecutions at Nazi industrialists. ⁹³ The Commission to investigate the SED Dictatorship in East German only identified the government as perpetrator of abuses. ⁹⁴	The defendants in the second tribunal were ultimately tried as individuals rather than charge the companies – although academics argue that this decision did not indicate a lack of legal standing to do so but rather was made for political purposes. ⁹⁵
10. Ghana	No	No
11. Guatemala	No, more focus on the State - Commission for Historical Clarification, Conclusions and Recommendations (CEH) states that “[a]cts of violence attributable to the guerrillas represent 3% of the violations registered by the CEH. This contrasts with 93%	

⁹¹ UN Security Council, ‘From Madness to Hope: the 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador,’ S/25500 Findings, p. 129 (1993) <<http://www.usip.org/sites/default/files/file/ElSalvador-Report.pdf>>.

⁹² Ibid, p. 230.

⁹³ Kelly, Michael J., PROSECUTING CORPORATIONS FOR GENOCIDE, New York: Oxford University Press (2016), p. 30.

⁹⁴ United States Institute for Peace, ‘Truth Commission: Germany 92,’ <<http://www.usip.org/publications/truth-commission-germany-92>>.

⁹⁵ Kelly, p. 30-31.

	committed by against of the State, especially the Army.” ⁹⁶	
12. Haiti	No	No
13. Honduras	No	No
14. Kenya	Yes, the Commission mandate included major economic crimes and violations of socioeconomic rights, such as grand corruption and irregular acquisition of land. ⁹⁷ It also considered the actions of non-state actors, especially militia groups such as Mungiki, Chinkororo and the Sabaot Land Defense Force. ⁹⁸	
15. Liberia	Yes, TRC’s mission included investigation into economic crimes that occurred between January 1979 and October 2003. ⁹⁹	Yes, the report focuses on human rights violations committed non-state and external state actors in Africa, North America and Europe, who participated, supported, aided, abetted, conspired and instigated violence, war and regime change against constituted authorities in Liberia and against the people of Liberia for political, economic and foreign policy advantages. ¹⁰⁰

⁹⁶ Commission for Historical Clarification, Conclusions and Recommendations, ‘Guatemala Memory of Silence,’ para. 128, pg. 42 <https://www.aaas.org/sites/default/files/migrate/uploads/mos_en.pdf>.

⁹⁷ Truth, Justice and Reconciliation Commission of Kenya, ‘TJRC Final Report – Volume IIIB,’ (2013) Forward, p. iii,

⁹⁸ Hayner, p. 74.

⁹⁹ United States Institute of Peace, ‘Truth Commission: Liberia,’ <<http://www.usip.org/publications/truth-commission-liberia>>.

¹⁰⁰ The Truth and Reconciliation Commission of Liberia (TRC) Final Report Vol. I: Findings and Determinations, p. 5-6, http://trcofliberia.org/resources/reports/final/volume-one_layout-1.pdf.

16. Mauritius	Yes, tasked with inquiry into the legacy of slavery and indentured labour during 370-year period. ¹⁰¹	Yes, recommends increased economic and social justice, particularly related to land issues and equitable and judicious use of the environment. Specially, the report recommends the establishment of an audit of public and private employment. ¹⁰²
17. Morocco	No	No
18. Nigeria	No	No
19. Panama	No	No
20. Paraguay	No	No
21. Peru	Yes, the CVR identified The Shining Path and the Tupac Amaru Revolutionary Movement anti-government militia groups as perpetrators of violence. ¹⁰³ The CVR also identified the State as a primary perpetrator.	The CVR acknowledges the co-optation of social organizations such as trade unions, to perpetuate the violent ideologies of non-state actors and the State. ¹⁰⁴
22. Rwanda	Yes, the TRC focused on some non-state actors but not business specifically. The media was a focus of investigations – the ICTR "Media Case" in 2003 was the first judgment since the conviction of Julius Streicher at Nuremberg after World War II to examine the role of	No

¹⁰¹ United States Institute of Peace, 'Truth Commission: Mauritius,' <<http://www.usip.org/publications/truth-commission-mauritius>>.

¹⁰² Ibid.

¹⁰³ La Comisión de la Verdad y Reconciliación, 'Final Report,' <<http://www.cverdad.org.pe/ingles/ifinal/conclusiones.php>>.

¹⁰⁴ United States Institute of Peace, 'Truth Commission: Peru,' <<http://www.usip.org/publications/truth-commission-peru-01>>.

	the media in the context of international criminal justice. ¹⁰⁵	
23. Serbia & Montenegro	No, the Yugoslav Truth and Reconciliation Commission was mandated to research the social, inter-communal and political conflicts in the period from 1980 to 2000 but was ultimately disbanded before fulfilling its mandate. ¹⁰⁶	No. Additionally, the ICTY, established to redress violations through criminal charges, has jurisdiction over individuals, not organizations, political parties, army unit, administrative entities or other legal entities. ¹⁰⁷
24. Sierra Leone	Yes, the TRC investigated external actors that provided support to either the government or the RUF including nation states, regional organization, international organization and non-state actors such as private security firms. ¹⁰⁸	Yes, the TRC concluded that the diamond industry as an indirect cause of the war in Sierra Leone. ¹⁰⁹ The report recommended that the general international business sector develop its own Code of Corporate Governance in order to build a culture of ethical conduct. ¹¹⁰
25. Solomon Islands	Yes, the commission is tasked to engage stakeholders in reconciliation, and to examine the nature, antecedents, root causes, responsibility for, and the extent of the impact on human rights violations or abuses, which occurred between January 1, 1998	Yes, but only to the extent that the final conclusions of the report state that the Solomon Islands are a nation “struggling with unequal distribution of development investments and the massive immigration to Guadalcanal as a result of

¹⁰⁵ Outreach Programme on the Rwanda Genocide and the United Nations, ‘Background Information on the Justice and Reconciliation Process in Rwanda,’

<<http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>>.

¹⁰⁶ United States Institute for Peace, ‘Truth Commission: Serbia and Montenegro,’

<<http://www.usip.org/publications/truth-commission-serbia-and-montenegro>>.

¹⁰⁷ United Nations International Criminal Tribunal for the Former Yugoslavia, ‘Mandate and Crimes under ICTY Jurisdiction,’ <<http://www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction>>.

¹⁰⁸ Witness to Truth - Volume Three B, Chapter 1: Mineral Resources, their Use and their Impact on the Conflict and the Country p. 36, <http://www.sierraleonetr.com/index.php/view-the-final-report/download-table-of-contents/volume-three-b>.

¹⁰⁹ Ibid.

¹¹⁰ Witness to Truth - Volume Two, Chapter 3: Recommendations p. 164,

<http://www.sierraleonetr.com/index.php/view-the-final-report/download-table-of-contents/volume-two>.

	and July 23, 2003. ¹¹¹ State authorities and militia groups were the only identified stakeholders.	concentration of public services in Honiara.” ¹¹²
26. South Africa	<p>The South Africa Truth and Reconciliation Commission held institutional hearings on Business and Labor.¹¹³ The hearings accepted submissions from trade unions, businesses, individuals, political parties and business organizations – some which refused to participate or simply did not offer submissions.¹¹⁴</p> <p>The report differentiates business involvement in abuses as “first-order involvement,”¹¹⁵ “second-order involvement,”¹¹⁶ and finally, “third-order involvement.”¹¹⁷</p> <p>The South Africa Truth Commission also focused on the media, specifically Independent Newspapers. The TRC investigation whether the company and its staff were either victims or perpetrators of human rights abuses, or either directly or by default, played some</p>	<p>Yes, “The huge and widening gap between the rich and poor is a disturbing legacy of the past, which has not been reduced by the democratic process. It is morally reprehensible, politically dangerous and economically unsound to allow this to continue. Business has a particularly significant role to play in this regard.”¹²³</p> <p>The Commission found that businesses were “guilty of acts of omission in that they failed to adhere or live up to the ethics of their profession and to accepted codes of conduct.”¹²⁴ Additionally, the TRC concluded that “[b]usiness was central to the economy that sustained the South African state during the apartheid years.”¹²⁵</p>

¹¹¹ United States Institute for Peace, ‘Truth Commission: Solomon Islands,’ <<http://www.usip.org/publications/truth-commission-solomon-islands>>.

¹¹² Solomon Islands Truth and Reconciliation Commission, ‘Confronting the Truth for a better Solomon Islands: Final Report,’ p. 49 <<http://pacificpolicy.org/files/2013/04/Solomon-Islands-TRC-Final-Report-Vol1.pdf>>.

¹¹³ Truth and Reconciliation Commission of South Africa, ‘Report, Volume four, Chapter 2,’ <http://www.justice.gov.za/trc/report/finalreport/Volume%204.pdf>.

¹¹⁴ Ibid, para. 5, p. 18.

¹¹⁵ Ibid, para. 23, p. 24.

¹¹⁶ Ibid, para. 28, p. 25.

¹¹⁷ Ibid, para. 32, p. 26.

¹²³ Ibid, para. 38, p. 318.

¹²⁴ Ibid, para. 74, p. 211.

¹²⁵ Ibid, para. 156, p. 252.

	<p>part in allowing human rights violations to occur.¹¹⁸</p> <p>In October 2007, a United States Court of Appeals ruled that it had jurisdiction to hear a case concerning multinational corporations accused of “aiding and abetting” apartheid.¹¹⁹ The lower court ruled that the plaintiffs could amend their complaints against Ford and IBM to “provide evidence that the companies' activities “touch and concern” the territory of the United States” as required by the Supreme Court after the <i>Kiobel</i> decision.¹²⁰ Daimler and Rheinmetall were dismissed from the case.¹²¹ Unable to meet the high threshold set by the court, the Second Circuit Court of Appeals dismissed the claims against Ford and IBM in July 2015.¹²²</p>	
27. South Korea	No	No
28. Uganda	No	No
29. Uruguay	Yes, The Comssion indicated that private banks and private actors helped the military regime to carry out atrocities during 1973-1985. For example, private banks gave	No

¹¹⁸ Ibid, ‘Report, Volume five, Chapter 8,’ para. 157, p. 253, <http://www.justice.gov.za/trc/report/finalreport/Volume5.pdf>

¹¹⁹ Business and Human Rights Resource Centre, ‘Apartheid reparations lawsuits (re So. Africa),’ (2012), <https://business-humanrights.org/en/apartheid-reparations-lawsuits-re-so-africa#c138382>.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Sarah A. Altschuller, ‘Alien Tort Case Development: Second Circuit Affirms Dismissal of Claims Against Ford and IBM,’ (31 July 2015), <http://www.csrandthelaw.com/2015/07/31/alien-tort-case-development-second-circuit-affirms-dismissal-of-claims-against-ford-and-ibm/>.

	money to the military dictatorship to fund its military. ¹²⁶	
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¹²⁶ Juan Pablo Bohoslavasky, 'Another Brick in the Uruguayan Transition Financial Complicity in Corporate Accountability in the Context of Transitional Justice,' Sabine Michalowski ed., CORPORATE ACCOUNTABILITY IN THE CONTEXT OF TRANSITIONAL JUSTICE (New York: Routledge, 2013), p. 200.