The Economic Accomplices to the Argentine Dictatorship

Outstanding Debts

Edited by

Horacio Verbitsky
Juan Pablo Bohoslavsky

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The Cases of Ford and Mercedes Benz

Victoria Basualdo, Tomás Ojea Quintana, and Carolina Varsky

For decades, and especially in the past few years, trade unions and social and human rights organizations have been denouncing the role played by business groups in the repression. This chapter discusses two emblematic cases that evidence the complicity between a number of large companies and the armed forces during Argentina's last military dictatorship, which have given rise to legal proceedings in the country and abroad: the cases of the car manufacturers Ford Motor SA and Mercedes Benz. After taking a brief look at the particularities of each case, we point out aspects shared by both so we can identify the characteristics of the relationship between the companies and the armed forces in the last dictatorship, and how legal action was taken. Lastly, some of the impacts of these cases on the judicial, historical, and political fronts are briefly analyzed.

THE CASE OF FORD MOTOR ARGENTINA

Ford Motor Company opened its first branches in Argentina in the early twentieth century, initially in Barracas and later in La Boca; the current plant in General Pacheco, in the province of Buenos Aires, was inaugurated in 1961. Toward the mid-1970s, following a period of growth in the country's automotive industry, workers at the Pacheco plant began mobilizing and organizing at the rank-and-file level, represented by some 200 factory delegates who not only stepped up their demands to management but also increasingly confronted their own national leadership at the Union of Automotive Transport Mechanics and Related Workers (Sindicato de Mecánicos y Afines del Transporte Automotor, SMATA). Pedro Troiani, a factory worker and delegate, and a member of the internal commission, was kidnapped and tortured inside the General Pacheco plant in April 1976. Later, when he testified in court, he talked about the implications and the impact of trade union activism on the way the company operated. In his testimony, he clearly explained that the

internal commission received worker complaints that were not only about wages but also had to do with the working conditions and the pace at which they were forced to work, and that in 1975 the commission succeeded in signing an agreement that was highly beneficial to the workers. All of this, he said, had consolidated the commission's position and the workers' bargaining power in the company.[1]

It was in that context that repressive policies were implemented, with increasing force after the March 24, 1976 military coup. Between March and May of that year, twenty-five workers in the plant were kidnapped, most of them members of the internal commission and the rest active unionists, who remained "disappeared" for thirty to sixty days. Some of them were kidnapped from their homes and taken to the Tigre police station, which operated as a clandestine detention center, while the rest were seized directly at the factory, where they were held for hours and then taken to the Tigre police station.

The relationship between company and armed forces in this process of repression of workers became apparent in different ways in the Ford case. First, the kidnapping victims have testified that they were picked up in F100 pickup trucks supplied by the company to the military. Second, there are numerous testimonies indicating that, as well as supporting the armed forces, the company asked the military to kidnap workers and trade union delegates. Arcelia Luján de Portillo, the wife of one of the victims, stated in her testimony that during a meeting she had with a military officer responsible for the kidnappings, whose last name was Molinari, the officer "opened a drawer and pulled out a list typed on a sheet of paper with the Ford logo, which he told me had 'all the names that the company gave us of workers it wanted us to *chupar*,'" using the repression slang term for kidnapping and disappearing (literally, "suck up").[2]

In their statements, several people have testified that the company had "marked" the workers who were to be kidnapped, and that this was done not only by means of the list, but also by providing the workers' IDs bearing their photos, so the military could identify them.

Additional testimony, such as that by Jorge Ernesto Berguier, a conscript who was doing his military service during the years of the dictatorship, have provided a

[1] Written statement by Troiani, dated October 14, 2004, given in the case "Rivero, Santiago Omar y otros s. privación ilegal de libertad, tormentos, etc.," on folios 449/450, case file 142, Juzgado Federal en lo Criminal y Correccional no. 2, San Martín.

[2] Request for preliminary statements in the case "Molinari, Antonio, personal Ford s. privación ilegal de la libertad," brought by Troiani with the legal counsel of Tomás Ojea Quintana. The statement by Arcelia Luján Portillo appears on folio 44 of the case file. Numerous additional testimonies are included, such as that of Elisa Josefa Charlin, the wife of another kidnapping victim who met with Molinari, "who had a list with approximately twenty or thirty typewritten names. I remember the paper had the Ford logo on it." Molinari made it clear then that "'this is the list they gave me,' putting his hand on the list mentioned above" (folios 465/466).

picture of the exchange of favors between the company and the armed forces.[3] The constant presence of military personnel on factory premises was confirmed in very similar terms by other workers, such as Daniel Hagelin, who worked at the factory during the dictatorship:

> There was a strong military presence on the premises, in fact, the sports area, which included the football ground, tennis courts, barbecue area, and workers' changing rooms, was turned into a military barracks; this section was off-limits to workers. But, in addition to that, the plant cafeteria had a specific time in which it only opened for the members of the military posted there; there were even kids doing military service in the factory, as if it were just another unit. I can't say there was a regiment, but there were more than 100 people posted there, there was at least a military company in the factory, and they weren't exactly manufacturing cars. ... They weren't providing security in the installations, the company itself took care of that; their task was specifically repression. The military acted at the request of management, and the one calling the shots there was Galarraga, the institutional relations manager. We can't say that the military gave orders to the workers, but they were there in case any wage demands or other forms of trade union complaints came up. The company's management was pro-military. The situation in the internal commission hit by the coup was notorious: months before the government of Isabel [Martínez de Perón] collapsed, they had an argument with Galarraga, who told them verbatim: "I'm not arguing with you people anymore; from now on take it up with Camps." No one knew who this Camps guy was; after the coup he became chief of police of the province of Buenos Aires, and was responsible for the disappearance of two members of the internal commission.[4]

The company's participation in the repression was not limited to providing logistical support or requesting the detention of some of its own workers. As in other extreme cases, such as the Acindar steel plant (analyzed in Chapter 12), it was a highly organized support. It has been proven that a military barracks operated on factory premises, set up in the sports grounds (in the *quincho* or enclosed barbecue area), with the alleged purpose of combating subversion as part of the criminal plan whose existence was judicially proven in "Causa 13/84" (the 1984 military junta trial) in the Federal Court of the city of Buenos Aires. Some of the workers were illegally detained in that quincho, while others were held in the Tigre First Police Station, and in the Ingeniero Maschwitz police station in the province of Buenos Aires, where they were tortured.

[3] Testimony by Berguier, given on August 25, 2005, on folio 712 of the case "Molinari, Antonio, personal Ford s. privación ilegal de la libertad."

[4] Quoted in F. Domínguez and A. Sayus, *La sombra de Campo de Mayo*, available at www.desaparecidos.org/nuncamas/web/investig/saydom/lasombra/lasombra.htm (accessed March 31, 2013).

Among those detained on factory premises was Juan Carlos Conti, a SMATA delegate who had worked for Ford since 1965 and was kidnapped on April 14, 1976. He was taken in one of the company's pickup trucks to the plant's quincho, with his hands bound together with wire. After his kidnapping, the company accused him of "walking out on the job," and when his wife responded by saying what happened (of which the company of course was aware), he was fired.[5]

Also, Ford personnel members participated in the interrogations of the kidnapped delegates, to extract information regarding trade union activities in the factory. One such interrogation was that of detainee Francisco Guillermo Perrotta, who was not a factory worker but one of the administrative employees, a category that until the mid-1970s had not been represented by a union. As an employee in the cost, material, and inventory analysis division, Perrotta had access to key information about the factory's internal matters. He and another delegate from the financial area were tortured with an electric prod. During the torture session, in which his interrogators mentioned details and names that only very well-informed employees of the firm could know, Perrotta, who was wearing a hood, was able to identify the voice of the factory's security chief, Héctor Francisco Sibilla, among the people present. Sibilla was a member of the armed forces and on July 26, 1978, after the kidnapping of workers, he was promoted to the rank of lieutenant colonel. After his time in the company, he was hired to work in security at the U.S. Embassy, a position he held until 2004.[6]

All of these elements show a clear pattern of a relationship between the company and the repressive forces. In fact, this evidence is added to previous reports indicating that in the past Ford was an accomplice of other authoritarian regimes. In this sense, it has also been reported that during World War II it used prisoners as slave labor. Although the legal action brought in that case was not successful, the company acknowledged the facts and helped compensate the victims. In the case of Argentina, the history of the legal actions brought by workers is a lengthy one, and began as soon as the dictatorship came to an end.

After the return to democracy, Pedro Troiani decided to sue the carmaker for wrongful dismissal, as a few days after his kidnapping his family received a telegram notifying them that he had been fired for walking off the job, like other people

[5] See the report filed in 1998 by the Federation of Workers of Argentina (Central de Trabajadores Argentinos, CTA) in the trial conducted in a Spanish court by Judge Baltasar Garzón for the forced disappearance of persons during Argentina's last dictatorship (p. 14).

[6] A. Dandan, "Ford Falcon modelo 76," *Página/12* (Buenos Aires), February 26, 2006. One of the lines of investigation followed by the workers and their legal representatives is the relationship between the Argentine branch and the parent company, with the aim of determining the latter's degree of knowledge and participation in the repression.

abducted by the company. The lawsuit was rejected by the Supreme Court of Justice in the 1980s, on the argument that the statute of limitations had expired. In other words, Troiani, according to the Court, should have sued Ford during the military dictatorship.

Despite the fact that legal action appeared to be impossible because of the Full Stop and Due Obedience acts, other trade union delegates also sued Ford for wrongful dismissal. These cases, however, were successful, as the Supreme Court modified its jurisprudence by applying interruptions to the statute of limitations.

Although the lawsuits involved labor claims, they were underpinned by the conviction that Ford was responsible for abductions and torture. This was made clear in Conti's labor trial, when Judge Juan Carlos Morando concluded:

> Dr. Capón Filas, with his vote, has shown that the defendant corporation acted, in the emergency, with exemplary bad faith. What is more, in the course of the proceedings, it attempted to assume the inadmissible position of a disinterested third party with regard to the circumstances in which the claimant and the other delegates were detained, an episode in which, as these proceedings have established to a moral certainty, its officials acted as instigators.[7]

After the impunity laws were declared unconstitutional in 2001, the possibility of bringing criminal action against the perpetrators of the crimes was opened, and Pedro Troiani appeared as private prosecutor (*querellante*) in a criminal case brought in November 2002.[8] From the start the objective of the private prosecution (*querella*) brought by Troiani, accompanied by the rest of the trade union delegates, was to accuse and penalize the Ford managers, who according to the evidence were civilian accomplices of the crimes committed.

Establishing the company's responsibility with concrete proof was a gargantuan effort from the start. The case was prosecuted in the Federal Court presided by Judge Daniel Eduardo Rafecas, but the investigation had been delegated to the prosecutor's office headed by Federico Delgado. However, it was the private prosecution and the Ford workers that furthered and deepened the investigation: they gave testimony along with their family members, called on experts to add elements to analyze the company's track record, requested a search and an on-site inspection of the plant (a measure that was not accepted by the judge or the state prosecutor), and offered documents that were in their possession. One of these documents, containing a

[7] See the court ruling in "Conti, Juan Carlos c. Ford Motor Argentina SA s. cobro de pesos," court file 26,091.

[8] With regard to the unconstitutionality, see Juzgado Federal en lo Criminal y Correccional no. 4, "Simón, J. H. y otros," resolution of March 6, 2001.

speech given by the president of Ford on May 13, 1980, during the inauguration of a truck factory, can serve as an example of the kind of evidence provided:

> As of March 1976 we were facing a challenge. In Argentina a process had begun, a change of system, a complete change in philosophy, which covered individual behaviors and the collective behavior of society as a whole. A change in mentality was necessary. In our case, we had to make a business decision and, with our actions and procedures, we showed what that decision was. Those representatives of destruction with no love of country and no God – whose eradication has cost the nation so much, and who still persist in small numbers – deserve only scorn from the decent men who work and study, day in and day out, to build this nation.

It took several years to gather solid legal proof, and in 2006 the private prosecutors felt that they were ready to call four Ford managers, who had been clearly identified as participants in the crimes, to give their statements in the preliminary investigation. The four officers were: the president of Ford Argentina, Nicolás Enrique Courard; the general manager of the plant, Pedro Müller; the manager of labor relations, Guillermo Galarraga; and the plant's security chief, Héctor Francisco Sibilla. The private prosecutors filed a specific petition to gather their preliminary statements, but the process was delayed by jurisdictional disputes, and the case was finally assigned to a federal court in the district of San Martín under acting judge Juan Manuel Yajl and federal state prosecutor Jorge Sica, where it was stalled, despite repeated petitions and complaints that went unheeded.

In that context, and despite the difficulties and failed attempts, this group of Ford workers was strengthened and took part in other coordinated actions. For example, in one of the traditional March 24 demonstrations, in 2006, the group decided to march carrying a flag where they presented themselves to society as "the Ford disappeared," thus vindicating their history.

In 2012, Alicia Vence was appointed to the bench in the Federal Court of San Martin (Juzgado Federal de San Martín). A few months later she admitted the private prosecution's longstanding request and ordered an on-site inspection of the Ford plant in General Pacheco. This measure was very important from both a procedural and humane point of view. After decades, the workers were able to return to the place from which many of them had been removed at gunpoint by military personnel and to the spot where they had been held after the abduction – the quincho area that had been modified to serve as a detention center. Furthermore, this measure was a clear signal that the Ford case would finally start to move forward.

In late 2012, Judge Vence ordered the four Ford managers identified by the private prosecution as participants in the crimes to appear in the preliminary investigation. The support of the National Secretariat of Human Rights, which also appeared as a private prosecutor and had backed the request for preliminary statements, played an important role. In March 2013, after two cancellations, they were finally summoned. Nicolás Courard, as noted in the case file, had died by then. Guillermo Galarraga refused to give a statement, as did Pedro Müller. Héctor Sibilla, instead, gave a statement and denied the accusations.

After these preliminary statements, a decisive breakthrough was made in the case. On May 20, 2013, Judge Vence initiated criminal proceedings against the three former Ford executives for their criminal involvement in the illegal deprivation of liberty of the factory delegates and workers and the torture inflicted on them. This was a significant step forward in the case, even though the pretrial detention of the defendants was not ordered and they remain free. The next objective is to hold a public, oral trial, where the human rights violations that were committed will be exposed to society.

Meanwhile, in 2004, a U.S. law firm represented by Paul Hoffman agreed to sue Ford Motor Company under the Alien Tort Claims Act (ATCA), which enables foreigners to seek remedies in U.S. courts for violations to the law of nations committed by individuals and companies abroad.[9] This firm worked with the lawyers who had brought the private prosecution, and together they prepared a lawsuit on behalf of the trade union delegates, which was filed in a California court of first instance. The expectations raised by the filing of this case were shot down when the U.S. lawyers decided to withdraw, shortly before the company was notified of the lawsuit. Their decision had been prompted by a recent U.S. Supreme Court ruling that seriously limited future ATCA cases.[10] From Buenos Aires, the workers insisted on moving forward with the lawsuit, but the lawyers' decision was final. The trade union delegates have since been seeking a U.S. law firm interested in filing a lawsuit under the ATCA.

Despite the U.S. Supreme Court's decision in the Kiobel case, which set serious limitations on this kind of lawsuit, the Ford case has an important element in its favor, given that the defendant firm is a U.S. company, a fact that strengthens the question of territorial jurisdiction. In this sense, it is clear that Ford Argentina was a subsidiary of Ford Motor Company and, consequently, the latter is responsible, at least objectively, for the illegal actions of its subsidiary. Two examples that are incorporated in the criminal proceeding serve to illustrate this corporate relationship. First, a few years before the 1976 coup d'état, the president of the U.S. company, Henry Ford III, visited Ford Argentina and toured the General Pacheco plant, taking part in a general inspection. In addition, declassified U.S. State Department documents reveal that the president of Ford Argentina had to make trips to Washington, DC to try to arrange exports of Ford Falcon cars to Cuba, a trade operation that is still banned today under the U.S. embargo.

[9] See Chapter 9 in this book.

[10] See Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659 (2013).

The Ford trade union delegates also feel certain that the parent company based in the United States was ultimately responsible for the illegal actions of which they were victims.[11] However, the enormous challenge faced now is to unravel and promote the necessary mechanisms that will allow justice to be done.

THE CASE OF MERCEDES BENZ

The Mercedes Benz car manufacturer, founded in Germany in 1890, is one of the biggest industrial companies in Europe. Its close ties with the Nazi regime played a major role in its growth and expansion; it not only obtained extraordinary profits by supplying war vehicles and materials, it also benefited from slave labor. The plant in Argentina, the company's first branch overseas, was built in González Catán, in the province of Buenos Aires, in 1951.

The repression in the factory in the mid-1970s was a reaction to the harsh disputes between the company's workers and management. Like workers in other plants, the Mercedes Benz workers mobilized in October 1975 in rejection of the representatives appointed by SMATA, which they considered did not defend their interests. The plant's 4,000 workers held an assembly and elected a new internal commission, made up of nine representatives, who were known as the "group of nine."

SMATA disputed the validity of the election and of the internal commission, and the company dismissed more than 100 workers, including those who would later be kidnapped and disappeared during the dictatorship, with the support of the national automobile union and its secretary general, José Rodríguez.[12]

During the union actions staged to demand the reinstatement of the dismissed workers, on October 24, 1975 the Montoneros guerrilla organization kidnapped the plant's production manager, Heinrich Metz.

The company finally gave in and announced that the workers would be rehired, after which the Montoneros demanded payment of a ransom, which according to the parent company was a sum of US$7 million, while local management said it was US$4 million and the Montoneros's heads of finance claimed was US$2 million. The investigation into the amount that was paid in ransom exposed the fraudulent practices of the company, which took advantage of the kidnapping to claim a much higher amount in its tax declaration in Germany, enabling it to increase its profit margin.

Of the sixteen Mercedes Benz Argentina workers who were kidnapped during the dictatorship, only two reappeared, and their testimony was key in reconstructing

[11] With respect to a parent company's civil responsibility regarding the activities of its subsidiaries in the context of complicity under Argentine law, see Chapter 9 of this book.

[12] See Chapter 14 in this book.

what happened. The two survivors are Juan Martín (detained in April 1976 at the factory, imprisoned and tortured in the San Justo police station, and released nineteen days later) and Héctor Aníbal Ratto (detained in August 1977, also at the factory, by an armed group belonging to the Argentine army, held in clandestine captivity and tortured in the Ramos Mejía police station and later in Campo de Mayo, and released in March 1979). Although they both consider themselves lucky to have survived, they still suffer physical and psychological effects from their time in captivity. There was also a third survivor: Alfredo Martín, who was not a worker but a foreman, and who was detained in December 1976, tortured by Rubén Lavallén in the San Justo police station, and freed a few hours later.

The company's involvement in the repression has been documented in the testimony of several individuals. On August 12, 1977, Héctor Ratto was called to the office of the production manager, Juan Tasselkraut, and that same afternoon he was kidnapped. While in his office, Ratto heard Tasselkraut reveal the address of trade union delegate Diego Núñez to the police. The next day, Núñez was abducted by the security forces. Ratto was tortured with electric shocks, which caused permanent damage. He and Núñez were transferred to the Campo de Mayo detention center, along with other fellow factory workers, where they were all tortured. Ratto was freed, but Núñez and the other delegates are still disappeared today.

Several of these workers were arrested in their workplace without any kind of protest from the factory's managers, who instead cooperated with the repressive groups. Tasselkraut himself revealed the effects that the repression had on the company's internal operations, when in the context of the Truth Trials in the La Plata courts he was asked if he believed there was a link between the reduction in conflicts in the factory, the rise in productivity, and the disappearance of workers and trade unionists. The answer he gave was: "Well ... there's no such thing as miracles."[13]

The case of Rubén Luís Lavallén illustrates the depth of the ties between the company and the repressive forces. In the first few years of the dictatorship, Lavallén was in charge of the commando of the San Justo Investigations Brigade, where a clandestine detention center operated. He was identified by the wife of Alberto Gigena, a Mercedes Benz worker, as one of the men who kidnapped her husband, who remains disappeared. With that service record, Lavallén was hired by Mercedes Benz in 1978 as security chief in the González Catán plant.

After the return to democracy, he was sentenced in 1998 to four years in prison for forging the birth certificate of Paula Logares, the daughter of a Uruguayan couple abducted in Montevideo and held in the San Justo Investigations Brigade, under

[13] Statement by Juan Tasselkraut in the Truth Trials (Juicios por la Verdad) held in La Plata, November 21, 2001.

Operation Condor. The couple was never seen alive again, and the girl was taken by Lavallén and registered as his daughter.[14]

The close relationship between the company's management and the military leadership is best illustrated by the fact that the Argentine army was Mercedes Benz's top client, from which it purchased Unimog trucks, and that Mercedes Benz was in turn one of the twenty highest grossing companies in Argentina and had one of the largest industrial complexes in the country.

According to the information provided by management personnel, as part of its gestures toward the army, the company donated obstetric equipment to be used in Campo de Mayo. The only obstetric installations present in that military center were illegal and were set up for the pregnant disappeared women who gave birth in clandestine captivity.

Mercedes Benz's involvement in the repression of its workers during the last military dictatorship has been investigated by the German journalist Gabriela Weber, and her findings were laid out in two books and a documentary film.[15] Legal action seemed impossible after the Full Stop and Due Obedience Acts were passed. However, since these crimes could not be tried in Argentina, human rights movements sought to launch investigations and legal proceedings in Europe, not only with the aim of bringing those directly responsible to justice, even if it were outside the country, but also to pressure the Argentine justice system to reconsider the reopening of trials in the country. It should be underlined, however, that while these cases involved direct perpetrators of torture and murder, the broader structure, which had held up the dictatorship, did not figure in the investigations.[16]

In this sense, based on these investigations, in 1999 an action was brought in Germany on behalf of Héctor Ratto, against Juan Tasselkraut, on charges of collaborating and allowing the murder of other kidnapping victims.

Due to the characteristics of the German legal system, it was only possible to file charges against that Ford manager.[17] The Nuremberg-Fuerth public prosecutor began the investigation of the case, which included interviews with several witnesses in the German embassy in Buenos Aires. But on November 27, 2003, the public prosecutor's office suspended the proceedings on grounds of insufficient evidence. It was held that Ratto's testimony had been contradictory, while Tasselkraut

[14] G. Weber, *La conexión alemana. El lavado del dinero nazi en la Argentina* (Buenos Aires: Edhasa, 2005).

[15] Ibid.; G. Weber, *Die Verschwundenen von Mercedes-Benz* (Hamburg: Assoziation A, 2001); and the documentary *Milagros no hay. Los desaparecidos de Mercedes Benz* (color, 113 min., 2003; there is an updated version: 85 min., 2005).

[16] W. Kaleck, "International Criminal Law and Transnational Businesses: Cases from Argentina and Colombia," in S. Michalowski (ed.), *Corporate Accountability in the Context of Transitional Justice* (London: Routledge, 2014).

[17] On the impossibility of holding legal persons criminally responsible, see Chapter 9 in this book.

emphatically denied the allegations. In addition, the public prosecutor's office maintained that the murder of Diego Núñez could not be proven because it was not possible to verify his fate (given that the law in Germany distinguishes between murder and disappearance).[18]

As noted earlier, there is evidence indicating that Mercedes Benz – the Argentine branch – collaborated with illegal repression by identifying the workers who were to be kidnapped. That was revealed by the testimony of different people that implicated Tasselkraut in the events and pointed to his shared responsibility. Giving the police Núñez's address would be, at the very least, an act of collaboration. Given the dates on which the company's workers were disappeared, Tasselkraut could not have been unaware of what the security forces were doing. In statements to Gabriela Weber, Tasselkraut said, referring to that period of time: "Anyone who knew anything about Argentina knew that against all human sense, against human rights, people were being eliminated in Argentina." Nevertheless, the prosecutor's office in Nuremberg concluded that there was not enough evidence of his participation to bring charges.

The prosecutor's office has not considered the need to continue investigating, even though the fate of Diego Núñez and the rest of the disappeared Mercedes Benz workers has not been determined. The office's resolution indicated a reluctance to delve deeper into the reported events. International doctrine and jurisprudence universally holds that the only possible response to systematic human rights violations is to exhaust all possibilities of investigation to uncover the truth about what happened and determine criminal liability.

In this sense, the Nuremberg prosecutor's office has not explored all of the possible leads for investigating what happened and holding those responsible for the disappearance of the workers accountable.

Despite these limitations and difficulties, the legal proceedings had the positive effect of bringing together a group of Mercedes Benz workers and trade unionists who launched numerous activities to bring attention to the case, with initiatives such as placing commemorative plaques at the spots where the kidnappings took place and the holding of public events. At the same time, in 2002 this group initiated legal proceedings in Buenos Aires. On the basis of evidence collected after the Truth Trials held in La Plata, Mercedes Benz was accused of establishing a criminal alliance with then Labor Minister Carlos Ruckauf, and with the SMATA national leadership to kidnap and murder "undesirable" trade union representatives. The Centre for Legal and Social Studies (Centro de Estudios Legales y Sociales, CELS) also joined the action as a private prosecutor in representation of the company's

[18] See Kaleck, "International Criminal Law," and G. Weber, "Mercedes Benz Argentina," available at www.gabyweber.com/prozesse_mba.php (accessed February 21, 2013).

group of victims (case no. 17735/02, "NN s. Asociación ilícita con peligro vigencia Constitución nacional. Homicidio simple, homicidio agravado").

After five years of investigations, the Federal Criminal and Correctional Prosecutor's Office of the city of Buenos Aires (Fiscalía Federal Criminal y Correccional de la ciudad de Buenos Aires) concluded that certain key representatives of Mercedes Benz and SMATA had been aware of the crimes, but considered the evidence to be insufficient to demonstrate their role in them. At this point the case was referred to the Federal Court in San Martín, in the province of Buenos Aires (as the crimes had been committed in that jurisdiction), the same court hearing the action of the delegates of the Ford Pacheco plant, which is currently halted.

Owing to these difficulties, in 2004 a group of workers and delegates decided to file a civil lawsuit in the United States against DaimlerChrysler AG, the name of the Mercedes Benz parent company at the time, to demand reparations for the serious human rights violations committed by the firm during the military dictatorship. Although the court of first instance in the district of San Francisco dismissed the case, the court of appeals reversed the decision, and finally, on April 22, 2013 the U.S. Supreme Court agreed to hear the appeal, to decide whether DaimlerChrysler AG had to respond in a U.S. court for the lawsuit against its branch in Argentina. This represented a major step forward for the case.

CONCLUSIONS

The cases of Ford Motor Company and Mercedes Benz are high-profile examples of the close collaboration that existed between a number of large companies and the armed forces in the repression of workers during the last dictatorship. Both clearly show the direct involvement of top executives in the kidnapping and disappearance of representatives of rank-and-file workers who had fostered new lines of organization and activism. These workers not only questioned the orthodox union leadership of SMATA, they also introduced major changes in the internal functioning of the factories, altering the previous balance of labor relations, a change that had important repercussions beyond their specific workplaces. These developments make it possible to conclude, furthermore, that an essential motivation underlying corporate complicity with crimes against humanity was the aim of 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 margin in the industrial activity that the two carmakers carried out in Argentina during that time period.

The two cases also show the enormous difficulties that workers had to overcome when it came to bringing legal action against their employers for their involvement in the events of that time. In a context that was especially adverse for trials regarding

crimes against humanity in Argentina, they turned to courts in other countries with the aim of obtaining justice and reparations for the serious human rights abuses that were committed. Although to date no sentence has been handed down in any of these cases, there have been advances in the framework of the criminal justice system. For instance, the possibility of holding legal persons, including companies, responsible for these crimes is an issue that is now being debated. Under Argentine criminal law, these collective actors cannot be charged. But progress has been made toward making managers or owners accountable in the case of companies involved in crimes against humanity perpetrated against their workers.

From our perspective, any civil action seeking reparations for crimes against humanity must also follow the principle of non-applicability of statutory limitation that governs criminal actions. This is particularly necessary in the case of legal persons, which, as such, were involved in some way in this kind of crimes, beyond the responsibility of individuals who held executive positions. Otherwise there would be scant possibilities of effectively bringing legal persons to justice and, consequently, of generating mechanisms to prevent further abuses.

Both cases have made it possible to identify collusion with the repression on the part of civilian actors belonging to economic groups, which not only benefited from the dictatorship's economic and labor policies, but were also accomplices in the kidnapping and torturing of workers and trade union delegates and leaders. The crimes committed during the dictatorship must be thoroughly investigated, and that entails investigating what happened, who was directly responsible, and also what the collaboration from other sectors of society was.

Because they are crimes against humanity, forced disappearances entail an obligation to investigate them, prosecute the perpetrators and bring them to justice, and reveal to the families of disappeared individuals and to society everything that can be established about the fate and whereabouts of the victims – an obligation that continues to exist as long as there is uncertainty about what happened to them.

To these are added other cases, including, most notably, the November 15, 2012 prosecution of the president of the Ingenio Ledesma sugar mill, Carlos Blaquier, and the company's manager, Alberto Lemos, for home invasion, unlawful deprivation of liberty, torture, and homicide in a case involving thirty-two victims; a sentence handed down in March 2012 ordering an investigation into the responsibility of the board of directors of the Loma Negra cement plant and its complicity with the military dictatorship; and the prosecution, confirmed by the Salta Federal Court (Cámara Federal de Salta) on April 8, 2013, of businessman Marcos Levin, owner of La Veloz del Norte, accused of instigating the kidnapping of trade union delegate Víctor Manuel Cobos, who was tortured. Lastly, the ruling handed down in the V. Cuerpo case by the Bahia Blanca Federal Oral Tribunal (Tribunal Oral Federal de Bahía Blanca), ordering the extraction of testimony about publications by the

newspaper *La Nueva Provincia* with the aim of investigating the commission of crimes against humanity by its directors.[19]

The cases involving the responsibility of companies in the commission of crimes against humanity not only open a new dimension in the trials for human rights abuses perpetrated under state terrorism, they also underscore the importance of incorporating economic and social dimensions into the analysis of the impacts of the last military dictatorship in Argentina.

LATEST JUDICIAL DEVELOPMENTS

With respect to the Mercedes Benz case, after five years of investigations, the Sixth Federal Criminal and Correctional Prosecutor's Office of the city of Buenos Aires (Fiscalía Federal Criminal y Correccional de la ciudad de Buenos Aires) concluded that certain key representatives of Mercedes Benz and SMATA had been aware of the crimes that were being committed, but considered that the evidence furnished was insufficient to demonstrate their role in the crimes, and therefore the victims and their families are currently trying to obtain additional evidence. It also considered that the justice system of the Federal Capital did not have jurisdiction to investigate the crimes. As a result, by court order, the case was referred to the Federal Court of San Martín, Buenos Aires province, which was the jurisdiction in which the crimes had been committed. As noted earlier, this is the same court prosecuting the Ford Pacheco plant case. The defendants in the Mercedes Benz case – members of the armed forces – are Santiago Omar Riveros, Reynaldo Benito Antonio Bignone, Ángel Rubén Omaechevarría, José María González, Carlos Eduardo José Somoza, Julio San Román, and Hugo Miguel Castagno Monge. However, on July 21, 2014, the Federal Court of San Martín declared the partial lack of jurisdiction with respect to certain victims in the case and its referral to La Plata, thus confirming the lack of jurisdiction declared by Judge Vence, in line with the decision adopted by the La Plata Federal Court. Meanwhile, in August 2014, the private prosecutors were summoned under Section 346 of the National Code of Criminal Procedure and requested to state whether they agreed to bring the case to trial.

At the same time, the U.S. Supreme Court, which had accepted the case to consider whether DaimlerChrysler AG® could be sued in that country based on charges against its branch in Argentina, finally decided in January 2014 that the company could not be sued in California for crimes in which Mercedes Benz Argentina was implicated, because the alleged offenses had occurred outside U.S. soil.

[19] See Chapter 21 in this book.

With respect to the Ford case, as of September 2014, the criminal case against three managers of the Argentine branch for complicity in crimes against humanity committed during Argentina's last dictatorship is in the preparation stage for the public oral trial. All of the parties have presented to the court the list of evidence that they hope will be produced. The court must now decide which evidence it will admit and which it will reject. Subsequently, the court will have to set a time and date for the start of the trial.

Originally, the parties involved in the investigation were the state prosecutor's office and the Ford workers as private prosecutors – that is, as a sort of accusing parties. Later, the National Secretariat of Human Rights and the Secretariat of Human Rights of the Province of Buenos Aires joined as private prosecutors, or accusing parties. The three prosecuted managers, along with their private defense lawyers, are the three defendants. Thus, in total, there are seven parties in the Ford trial.

The number of parties and, consequently, the volume of evidence that has been furnished will undoubtedly require that the court take more time in deciding on the admissibility of the evidence. Taking this into account, and the court's involvement in other trials currently underway, the prospects are that the Ford trial could start in February 2015; that is, if the defendants refrain from using any more dilatory tactics, as they have already attempted by asking for the annulment of the investigation, which was duly rejected.

In December 2014, the trial court took the testimony of two unionists who are in delicate health and who might not be in a condition to participate in the coming trial. In their testimonies, they highlighted how they were kidnapped and tortured inside the Ford factory in the locality of Pacheco. These early testimonies have had the effect of generating the necessary climate to begin the trial.

The holding of the Ford trial and the progress in the Mercedes Benz case are essential for completing the process of memory, truth, and justice in Argentina, given that nearly forty years after the events in question, and with abundant evidence of the involvement of business sectors in the repression against workers, no sentences have yet been handed down for the responsibility of corporate executives in crimes against humanity. The efforts to move the Mercedes Benz case forward and to reach the stage of a public oral trial in the Ford case have been enormous; but an even greater effort will be needed to achieve a conviction. If that is accomplished, the legal channels to hold the Argentine subsidiaries, and possibly the parent companies, accountable will be more accessible. Ultimately, it is the companies themselves that will have to be held accountable for what happened, above all, so that these companies will never again, here in Argentina or anywhere in the world, seek profits at any cost.