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Multinational Corporations

Friends or foes of peace? Multinational Corporations and state capture in Colombia

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Multinational Corporations: Friends or foes of peace? Multinational Corporations and state capture in Colombia

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This thesis is submitted for the degree of Ph.D. in Politics
In the
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Chapter 1: Introduction

The foundations of the liberal peacebuilding model\(^1\) are predicated on market-based economic reforms oriented to promote free trade and globalised markets (Newman et. al., 2009). In this model, multinational corporations (MNCs)\(^2\) play a central role in overcoming conflict\(^3\) and promoting peace and development through business and commerce. Supporters of this view note that thanks to their qualities, MNCs act as ambassadors of their home countries to transfer to their knowledge and expertise to deal with conflict through development (Richmond, 2006). It is largely assumed that MNCs support governance tasks aiming to overcome conflict.

Following such an approach, international organisations (United Nations, 2004 and 2015; World Bank, 2005 and 2006) and international non-governmental organisations such as International Alert (Banfield, et. al, 2003), the United States Institute of Peace (Forrer et al., 2012) and Swisspeace (Iff, A., et al. 2012), agree that MNCs have a

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\(^1\) This expression refers to the liberals’ paradigm for the building of peace through “the promotion of democracy, market-based economic reforms and a range of other institutions associated with “modern” states” (Newman et al., 2009).

\(^2\) MNCs are enterprises established in one country (home-country) operating in two or more countries (hostcountries) whose decisions are governed by one or more decision-making centres in a coordinated way. A common feature of the MNCs approached in this thesis is that they operate in key sectors of the host-country’s economy.

\(^3\) Apart from the ordinary meaning of the term “conflict” when specifically referring to the Colombian conflict one should bear in mind that this is a non-international armed conflict involving multiple armed groups. Therefore, the ICRC’s definition of non-international armed conflict will be considered. According to the ICRC, “non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State.” The ICRC notes that they “(...) include armed conflicts in which one or more non-governmental armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-governmental armed groups or between such groups only” (ICRC, 2008).
fundamental role to play in peacebuilding. Similarly, scholars (Gerson, 2001; Bennett, 2001 and 2002; Fort and Schipani, 2002, 2003 and 2007; Abramov, 2010; Bray, 2009; Jamali and Mirshak, 2010; Zandvliet, 2010; Oetzel et al. 2010; Spector, 2011; Adefolake, 2012; Kolk, A. and Lenfant, F., 2013; Davis, 2013; Ford, J. 2015; Ralph, 2015) have embraced this approach, and the assumptions that underpin it, and have subsequently enthusiastically supported business engagement during peace processes and state-building exercises.

Hence, across policymaking circles, practitioners and academia there is a broad consensus that MNCs constitute relevant actors in overcoming conflict and transforming conflict societies. Some scholars emphasise that this is because of MNC potential to satisfy local people’s needs by generating wealth and stabilising the economy (Gerson 2001; Fort and Schipani, 2002, 2003 and 2007; Newman, E., et al. 2009; Prandi and Lozano, 2011). In sum, the liberal peacebuilding model posits that MNCs play a central role in conflict alleviation and peacebuilding.

However, this approach simplifies and distorts the realities of what happens on the ground with MNCs, in countries where violence and armed groups show enduring and endemic qualities and become part of and deeply rooted in the broader social and political fabric. The liberal model’s over-optimistic assumption towards the role of MNCs in conflict-prone countries is not sufficiently attentive to the fact that MNCs’

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4 The term peacebuilding “(...) defines activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war.” (Brahimi, 2000)

5 This concept refers to countries in which armed conflicts are frequent according to the number of armed conflicts and their length. The Human Security Report 2005: War and Peace in the 21st Century (Mack, 2005) elaborated a ranking of conflict-prone countries following a “conflict-year” criterion and data obtained from 1946 to 2003. Colombia was ranked 14th among the most prone to conflict countries. Referring to some factors making countries prone to conflict, Collier et al. (2009:73) highlight three economic features of countries prone to civil war: “...– low-income, slow-growing, and dependent upon primary commodity exports –”. In addition, they point out that social factors such as small population, ethnic divisions, countries that are mountainous, and those with a high levels of youth are also highly exposed to armed conflicts.
intervention in conflict-related matters may lead to state capture\(^6\), a potential source of violence in countries recovering from conflict. The liberals’ idea of encouraging MNCs’ participation in conflict-prone countries’ governance, specifically in peacebuilding, overlooks how MNCs can take advantage of the host-country’s fragile conditions to deploy their influence and economic power to manipulate the state’s decision-making system in their own interest.

In addition, it overlooks how legal frameworks in host countries rarely compel MNCs to undertake governance collaborative-oriented tasks aimed at conflict alleviation. It means that MNCs’ contribution to the recovery of countries emerging from conflict, far from being compulsory, is essentially voluntary. Therefore, in the best-case scenario, MNCs’ contribution to conflict alleviation belongs to the field of what is known as corporate social responsibility (CSR). Because of this situation, decisions concerning the engagement of MNCs in policies aiming to tackle the host-country’s internal conflict are usually treated by MNCs as a discretionary and voluntary issue.

Consequently, such decisions are usually left to managers and/or representatives of the MNCs, who enjoy wide discretion when deciding whether or not to undertake governance responsibilities for conflict alleviation. Besides, if MNCs’ managers and representatives do decide to undertake such tasks, they still retain the autonomy to decide how they will do so, the extent to which they will cooperate with the host-country’s public policies, how they will oversee the smooth running of their accords, and the manner in which they will report their outcomes.

Such autonomy leaves MNCs’ managers and representatives in a position in which they can take advantage of the MNCs’ political and economic power to deploy

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\(^6\) This is a form of grand corruption in which the MNCs deploy efforts to develop ties and networks through the systemic and strategic use of legal and illegal means, aiming to influence the public decision-making system. Influence in the state decision-making system includes, but is not limited to, obtaining private benefits from shaping formulation of the law, designing or redesigning institutions, influencing decision making in rule enforcement and/or obtaining collective gains. However, as this is a central concept in this dissertation, a more accurate will be provided in the next chapter.
mechanisms and processes at their discretion to influence the public decision-making system. This practice may be used to satisfy their own interests by making unscrupulous decisions in order to be promoted or obtain incentives for performance. It also allows them to weave socio-political networks to satisfy the MNCs’ economic needs, sometimes with the complicity of the MNCs’ headquarters. Furthermore, it allows them to feed the greed of individuals and groups who are willing to support the MNCs’ goals in exchange for a wide variety of favours the MNCs can do. This situation provides MNCs with a relevant source of political power and adds to their tool-kit to capture the state. Hence, the liberal peacebuilding model’s assumption is not sufficiently attentive to the fact that MNCs’ intervention in conflict-related matters may lead to state capture, a potential source of violence in countries recovering from conflict.

This thesis approaches some of the mechanisms through which MNCs engage with governments and analyses the processes through which these mechanisms facilitate the relationship of MNCs with political and social actors to the extent that they lay the foundations of state capture. It demonstrates that the mechanisms and processes through which state capture happens have the potential to feed the existent structures of violence or creates new ones, turning MNCs into perpetrators of violence instead of a source for the pacification of conflict as the liberal peacebuilding model suggests.

As the literature review will show later, there are numerous studies approaching all these mechanisms and processes individually. However, rarely do these studies approach how they operate in conjunction as component parts of entire machinery, allowing MNCs to capture the state. Therefore, this thesis aims to (1) identify how multinational corporations (MNCs) develop ties with different actors to facilitate strategies and mechanisms aiming to influence and/or capture the state for their private benefit and, (2) it will then demonstrate how the different processes carried out by MNCs to influence and capture the state have impacted the Colombian conflict. Therefore, this thesis addresses the following research questions:
(1) What are the mechanisms and processes by which influence and capture of the state by MNCs may occur?

(2) What is the impact of MNCs acting as captors on violent conflict?

Summary and Scope

Liberals argue that MNCs have the potential to prevent international confrontations because the home countries of MNCs will try to avoid entering a war with states in which their corporations, nationals or citizens are carrying out businesses (host countries). Any confrontation may put at risk not only the MNCs’ workers, assets, production, and performance (Brooks, 2005) but also the economic and political stability of the countries involved in the dispute. The liberal view assumes that free trade and globalised markets encourage transnational interdependence, a key element to avoid interstate conflicts. Transnational interdependence diminishes the risk of a country suffering military attacks by commercial partners because, in order to safeguard their mutually beneficial economic interests and avoid conflicts, states will try to achieve peaceful solutions to their differences instead of disrupting their commercial relations through violence (O’Neal, et. al, 1996). Beyond international relations, mainstream liberal models posit that MNCs also have a positive role to play in overcoming civil conflicts, as outlined in the above opening puzzle.

However, within civil conflicts, there is no evidence as to how MNCs’ interventions in efforts tackle the roots of internal conflicts function. Contrary to interstate conflicts, internal conflicts do not involve different countries confronted with each other, but groups in conflict within a single country. These groups have their own interests. MNCs’ interventions in domestic conflict contexts or conflict-prone areas, instead of fostering peace, may, on the one hand, be used to feed the interests of the different
groups in confrontation and, on the other hand, be employed by the MNCs to take advantage from these groups and/or individuals to achieve their private goals. Hence, MNCs are not necessarily peacebuilders as the neoliberal peace model suggests, but they may spoil peace by promoting structures of violence through their interventions.

I argue that in vulnerable and fragile contexts like those of conflict-prone countries, corruption boosts the ties between MNCs and socio-political actors. Le Billon (2003:424) notes, *corruption is both its symptom and the most efficient means for individuals or groups to cope with a political economy of high uncertainty, scarcity, and disorder through the proper cultivation of social relations.* Hence, sometimes corruption happens through illegal means like bribery, but most of the times through the systemic employment of completely legal mechanisms aiming to cultivate social relations that allow MNCs to weave socio-political networks, in their home country and the host country, to achieve their private goals. This thesis aims to demonstrate that MNC engagement with various actors during conflict creates an environment that encourages corrupt practices. These corrupt practices, in turn, weakens the government’s protection of their citizen’s human rights. Overall, this can have the cumulative effect of eroding peace.

Therefore, we cannot understand MNC-state interactions and the processes through which they lead to the promotion or maintenance of violence or violent systems without understanding a form of corruption known as state capture. Broadly speaking, state capture is a form of grand corruption in which individuals interfere in the public decision-making systems to influence the formulation of rules and policies merely with the purpose of obtaining private gains such as profit maximisation and advantageous commercial conditions, even at the expenses of the public interest. In this thesis, state capture is approached as an umbrella term which contains a broad number of factors - mechanisms and processes- which, despite apparently being unrelated, fall under a single common category which is their potential to influence the public decision-making system for the exclusive benefit of the MNCs and their abettors. This thesis traces the mechanisms and processes covered by the umbrella term “state capture” to
understand how MNCs co-opting the state in conflict-prone countries not only encourages incidents of direct violence, but also structural violence.\footnote{For the purpose of this thesis, there is structural violence when the outcome of the MNCs’ meddling in the process of public decision-making creates a negative correlation between the people’s potential level of realisation (that which people would be able to achieve if public decisions were made by the government to satisfy public interests rather than the private interests of MNCs), and the people’s actual level of realisation (the level of realisation which is below the people’s potential level of realisation and occurs as a consequence of the captor influencing the public decision-making system to fulfil its economic expectations).}

State capture is a fundamental concept to understand that in conflict-prone countries, MNCs’ contribution to violence goes beyond the use of direct violence or illegal mechanisms like bribery. It may also compromise MNCs’ meddling in public matters through legal means, trying to divert the public decision-making system in their private interest. State capture leads the government to make decisions based on the MNCs’ economic interests and the private interests of privileged members of society (i.e. former and active politicians, contractors, subcontractors, commercial partners and sometimes illegal groups) who benefit from the networks configured by the MNCs to capture the state while depriving people enjoying their fundamental rights.

Furthermore, state capture snatches people’s right to claim against MNCs who threaten or disturb their fundamental rights, a central issue in the framework of the United Nations Guiding Principles on Business and Human Rights (2011), known as the Ruggie Principles, an instrument approaching MNC’s duties in regards to human rights.

State capture can weaken state institutions that protect fundamental rights more than any form of direct violence because it encourages government representatives to act on behalf of the MNCs and support their interests before any domestic authority instead of representing the public interest, that is the interest of the people who democratically have appointed them.

Therefore, the Ruggie Principles’ three pillars framework and the concepts of direct and structural violence, as they are approached and developed by Galtung (1969), are
central to elucidate the impact of state capture on the host-country’s structures of violence.

In making the above arguments, this thesis identifies a variety of mechanisms and processes through which MNCs capture the state. Mechanisms are the conjunction of actions and procedures available for MNCs to interact with socio-political actors. They are established for a particular purpose, which is not necessarily to capture the state. Mechanisms include lobbying, joint ventures, CSR programmes, political contributions and aggressive foreign direct investment campaigns.

The processes are actions and procedures carried out strategically and systemically by the MNCs through the employment of a mixture of different mechanisms and other means that working together have potential to influence the public decision-making system and capture the state. For example, MNCs entering joint ventures with governmental agencies to facilitate lobbying strategies aiming to develop strong ties with top officers willing to make economic reforms to satisfy the MNCs’ interests in exchange of favours.

**Thesis structure**

This thesis is structured in seven chapters. Chapter one includes a brief introduction and presents a literature review that describes, summarises and analyses three different segments of literature I have taxonomised among a broad collection of research papers and books written by academics and policymakers referring to the role played by corporations, particularly MNCs, in the socio-economic development of the countries facing armed conflicts. It provides a clear indication of research gaps within and between these different sets of literature in order to elucidate the central contributions of this thesis.

The second chapter develops a theoretical framework of state capture and its potential effects on conflict and is organised into six sections. The first section, explores different elements to shape a definition of state capture; section two elucidates the
main actors involved in the state capture process when MNCs play the role of captor; the third section draws the attention to some legal mechanisms through which MNCs may configure socio-political networks facilitating their role as captors; the fourth section describes possible pathways through which state capture may occur; section five highlight factors encouraging MNCs to play the role of captor in societies in which systems of violence are entrenched, and finally, section six establishes a criterion to identify the impact of state capture on conflict.

Chapter three introduces the Colombian case foreshadowing the case study chapters. The chapter outlines the role of the MNCs in the country dating back to early 20th century and it is used to frame a discussion of case selection, both at the level of the country case and of the cases used in the chapters that follow. The chapter also discusses the history of state capture using a reference to the origins of the Banana Republic and it leads up to a discussion of the persistence of corruption and violence over the decades that followed.

Through chapters four to six, this thesis analyses three episodes (embedded sub-cases or sub-units of analysis) within the Colombian single-case study (holistic case), in which MNCs have engaged in attempts to influence and capture the state or have effectively influenced and captured the state impacting the Colombian conflict. This thesis analyses how these MNCs deployed their power to influence the public decision-making system in their private benefit through the employment of different mechanisms that worsened symptoms of structural violence such as the deprivation of people’s socio-political and environmental rights.

Finally, based on the findings of my fieldwork, the final chapter summarises key points and makes some reflections on policy implications and other relevant issues in order to provide some recommendations to address state capture.
Research design and methodology

This dissertation focuses on the mechanisms and processes by which MNCs exerts influence on the public decision-making system and how it contributes to violence. To do that, this thesis examines MNCs’ involvement in Colombia as a single contextual case study. Within the Colombian single-case study (holistic case), this thesis analyses three episodes (embedded sub-cases or sub-units of analysis), in which MNCs have engaged in attempts to influence and capture the state impacting the Colombian conflict. Two of these sub-cases involve MNC operating in the extractive industry: Pacific Rubiales Energy, a Canadian MNC dedicated to exploration and production of oil, and AngloGold Ashanti, the South African gold mining MNC. The third sub-case focuses on Chiquita Brands (CB), the banana North American MNC which has - directly and indirectly- operated in the Colombian agricultural sector for decades. I made this decision because these sectors of the economy have key features increasing the risk of MNCs co-opting the state, for instance, contrary to MNCs operating in other sectors of the economy, extractive MNCs cannot easily move their operations from one country to another different from that one where the natural resources they exploit are located.

Moreover, in these sectors, there is an intense interdependent relationship between the MNCs and the host-country’s government (the Colombian government) which cannot be ignored. MNCs require that the government grant access to the land and/or natural resources. Furthermore, in the case of the oil and mining sectors, the host-country’s government charges royalties for allowing the natural resources being extracted, royalties which are fundamental for the government to achieve the country’s development goals.
The three MNCs approached in this thesis are representative samples of MNCs operating in the mentioned sectors, due to relevant aspects such as the fact they received strong support from their home country's government, their investments in Colombia were substantially higher than most MNCs operating in the same sectors, their operations were significantly relevant for the Colombian government as at some point they were considered essential to achieve the country’s development goals, and they have been involved in disputes with local communities.

These three sub-cases aim to demonstrate that MNCs playing the role of captor employ different mechanisms which individually would not be perceived as harmful. But when considering all them together, as a whole process, it is possible to realise that the way in which they were deployed by the captor was essential to weave a network-integrated by multiple actors named them domestic, foreign, public, private, legal, illegal, state or non-state actors- aiming to satisfy private its interests while snatching people’s most crucial rights to overcome the disadvantageous conditions settled by war.

The thesis unpacks the mechanisms and processes of MNC state capture and its consequences in perpetuating violent conflict in these cases. Rather than generating hypotheses which I will then test, these cases will be used as a plausibility probe (Gerring, 2004) to generate understanding of the complex causal links between MNC’s behaviour, state capture, and violence. Through process tracing, this thesis assesses evidence on the processes, sequences, and conjunctures of events related to the development of ties between the concerned MNCs and other actors to capture the state -cause- and how these MNCs playing the role of captors directly impacted the systems of violence in Colombia -consequences or outcome-.

Process tracing entails constructing “event-event-history maps” that outline complex historical settings and connect a series of events that lead to particular outcomes (Waldner, 2014). It required a historical explanation based on sequential and causal analysis to identify how all these relevant events together configured a “contributing
condition” (cause) for violence (effect) (Mahoney, 2015). To develop an event event-history map, this thesis employs qualitative research methods like semi-structured interviews conducted with key individuals and archival analysis research. This allowed me to have a good knowledge of the sub-cases, and it made possible for me to identify evidence of episodes, situations, practices, and interactions between different actors, diagnostic pieces of evidence, to draw descriptive and causal interferences (Collier, 2011).

Multiple sources of data were consulted in this research to produce evidence of numerous facts. To identify which data was relevant to configure the event event-history map, first of all, I set a timeframe from the moment the MNCs started operations in Colombia to the moment in which the MNC left the country (CB), was liquidated (Pacific Rubiales) or simply stopped temporarily their operations (AngloGold Ashanti). Within such a timeframe, many events were recorded, some of them related to the MNCs’ decisions and operations in their home country and others to decisions made and operations carried out in the host country; some facts strictly related to business and economic matters, while others related to social, environmental and political issues. In order to identify whether a sequence of events was significant enough to be considered a component part of the event event-history map, I employed a theoretical framework which is developed in the next chapter. The framework aims to identify milestones: significant stages or events leading MNCs influencing the public decision system in Colombia to satisfy their private interests.

Sources of Information

**Interviews.** During the fieldwork carried out in Colombia from June 2017 to November 2017, I conducted a total of 14 semi-structured interviews with key individuals such as members of UN staff, members of NGOs involved in investigations related to the concerned MNCs, public officers at the Colombian ministries of mines and environment and victims. I interviewed contractors and employees of the United
Nations Development Programme (UNDP) in Colombia, as this UN agency has been a relevant partner of the extractive sector in their peace-related projects, to understand the expectations of international organisations operating in Colombia towards the role of business in peacebuilding.

I also interviewed representatives of NGOs directly involved in the approached cases such as Colectivo de Abogados Jose Alvear Restrepo, Tierra Digna, Pax Christi, the NGO Centro de Solidaridad, etc., who represent victims and people whose rights have been put at risk by the operations of the MNCs. Moreover, I conducted two interviews with community leaders who were victims of the MNCs. In addition, I conducted interviews with public officers of relevant government agencies such as the Colombian Ministry of Environment and the Ministry of Mines and Energy, to know the position of the official institutions during the periods approached, and former employees of Pacific Rubiales.

These interviews were relevant to identify, on the one hand, how the informal relations between individuals working for the MNCs and the public office were conducted and, on the other hand, to identify how the agreements formally established between the public office and the MNCs were conducted in the ground. This is part of the dissertation’s contribution, as there are not public records providing full detail on how such relations were carried out on the ground. The interviewees provided relevant information to fill gaps as in most of the cases the interviewees were eyewitnesses of relevant episodes. Furthermore, interviews were of paramount importance to clarify situations and events and to connect causes and effects during the process tracing carried out in the case studies.

However, there were some significant limitations in gaining data and relevant information via interviews. For example, because of the sensitive character of this research, around ten people declined to be interviewed or rejected to sign the informed consent form. Therefore, this thesis only considers the interviews recorded with
informed contractual consent. Unfortunately, for security reasons, it was not possible to conduct interviews with victims of AngloGold and Pacific Rubiales. It was not possible to interview employees of CB, because the company is not currently operating in Colombia. Neither was possible to interview employees of AngloGold Ashanti because the representative of the company refused my requests. According to AngloGold, it was inappropriate to facilitate interviews because it was difficult for the MNC to assume a clear position due to the political juncture and the high degree of uncertainty of mining sector at the time of my request. Where interviews were not possible, I sought out the appropriate data or information via other means such as media and archival research.

**Press and media information related to the three cases approached by this thesis.**

I collected relevant data concerning historical events involving the three mentioned MNCs during their respective periods of operation in Colombia. The collected information came from a wide variety of secondary sources: Colombian magazines, newspapers, specialised business publications, websites, but also American and Canadian magazines, newspapers, journals and websites. The purpose of collecting such bulk of the information was to identify the milestones of the MNCs’ operations in Colombia and to provide an overview of the main interactions conducted by the MNCs with socio-political actors of the home and host countries.

**Laws, decrees and judgements of domestic, foreign and international tribunals.**

Data obtained from these documents has been of paramount importance to understanding the legal boundaries within which MNCs operating in the extractive and agricultural sectors carried out their businesses and to identify the framework within which the MNCs’ interaction with socio-political actors was carried out in the home and host countries. In addition, the information provided by these documents has been pertinent to track the public office’s agenda concerning the sectors of the economy in which the MNCs were doing business, such as the government strategies and positions.
MNCs’ official reports and institutional statements. I gathered MNCs’ business reports and institutional documents referring to the MNCs’ goals and business strategies. Most of these documents are available in the MNCs’ websites as most of the information they contain should be published by MNCs trading shares in stock markets for transparency reasons. This information was useful in tracing the MNCs’ business strategies and in identifying the agenda they have followed to develop their business in Colombia.

Furthermore, formal requests for information were addressed to public authorities to obtain data about Public-Private Partnerships, CSR projects and governance programmes jointly developed by public authorities and the MNCs involved in the cases studied. This was done to identify ties between MNCs and the public office and the scope of such ties. Nevertheless, I faced practical limitations when trying to obtain such data because, according to the consulted public institutions, most of this information requested was confidential. Public institutions were reluctant to provide information on the mentioned subjects. Such secrecy and reluctance to make such information publicly available were useful in themselves in understanding aspects of the state-business relationship.

Literature review

MNCs are complex economic, social and political entities whose behaviour is determined by different factors, such as their interests, values, features, and roles. These factors may influence MNCs in different ways depending on the context. Scholars have extensively studied these various factors from several perspectives. Therefore, I have approached a broad collection of academic and practitioner research on the roles played by MNCs in the socio-economic development of countries facing armed conflicts. I have developed a taxonomy of different groups and subgroups of literature which is based on aspects such as the audiences they target, the central topic they are focused on, the academic field of expertise in which they make substantial
contributions. Firstly, there is a set of studies I have called “business literature”. This set of work has been developed by business scholars in specialised books and journals on corporate issues like CSR, business strategies for foreign market penetration, corporate decision-making processes, etc. Within this segment of literature, I identified two subgroups which are fundamental for my thesis: the business and peace (B&P) literature and the business and human rights (B&HR) literature. These subgroups specifically approach two niche areas of my thesis, the business-peace connexion, and the corporations-human rights linking. Research belonging to different fields of business studies, such as business management, business ethics, business anthropology, and business law is key to identifying and understanding MNCs strategies for operating in fragile contexts.

Secondly, I identify research focused on the ethical and legal aspects of corruption, which I have called the “literature on corruption”. This set of literature examines MNCs’ conducts, behaviours, strategies, and practices aiming to exert undue influence on the government’s decision-making system to obtain private gains. This topic is relevant for my thesis for using central concepts like “state capture” and understand the processes through which they are configured.

Finally, I label the third segment of scholarly work the “literature on conflict and violence”. This set of literature is of paramount importance in identifying the impact of MNCs’ operations in fragile contexts and how their wrongdoings, especially the corrupt practices carried out by them, have configured causes and consequences of conflict and violence.

The next section evaluates the mentioned sets of work to identify their substantial contributions and highlight the gaps they leave.

The business literature.

Scholars in the field of business adopt a problem-solving approach in examining MNC strategies to promote certain policies over others. This segment of scholars largely
assumes that MNCs will always have a positive effect on peacebuilding and examine ways to make their operations more effective in this respect. Analysts recommend different forms of corporate-state interaction such as CSR, FDI, lobbying, political funding, pointing out that socio-political and economic deficiencies of societies emerging from conflict can be overcome through the optimum use of such mechanisms. For example, some authors explore key factors shaping the behaviour of MNCs and their rationale when they make investment decisions in conflict-prone areas (Li, 2008; Morrissey and Udomkerdmongkol, 2008; Meyer, et. al., 2011) and the factors determining how they configure networks and linkages with a broad range of different actors to succeed in business (Partridge, 1979; Birley, 1985; Johannisson, 1988; Bucheli, 2004, 2006 and 2012; Meyer, et. al., 2011; Marano and Tashman, 2012; Salvador et. al., 2014).

Others analyse complex structural aspects determining corporations’ decision-making system; how such a system operates on the ground; the role played by shareholders and managers within the system (Kang and Sorensen, 1999; Finkelstein and Peteraf, 2007); the implications of the separation between ownership and control (Fama and Jensen, 1983) and the different power relationships taking place within the corporations shaping their decision-making structure (Zeitlin, 1974; Geppert et. al, 2016).

Moreover, some scholars consider the effects of the geographical dispersion of their operations, such as the dispersion of their supply chain; the fact that they make profit in several countries; how their managerial decisions are made by headquarters usually established in a different country from that where they use to carry out their operations; their strong ties with domestic and foreign politicians; how their actions are governed by domestic and international laws; how their involvement in domestic and international disputes with States and foreign companies; how their operations have international impact, inclusively on human rights (Zerk, J. 2006:304), and analyses the distinction between public and private sectors’ values and accountability (Mulgan, 2000; van der Wal, 2009).
Furthermore, this set of literature approaches the central topics of corporate governance (Levy and Prakash, 2003; Salacuse, 2004; Scherer et. al., 2006; Maak, 2009; Feil et. al., 2008) and corporate social responsibility -CSR-, (Holme and Watts, 2000; Henderson, 2001; Valor, 2005; Schepers, 2006; Zerk, 2006; Benerjee, 2008; Koerber, 2010; Padamon, 2010; Feil, 2012; Adefolake, 2012; Lim and Tsutsui, 2012; O’Riordan and Fairbrass, 2013; Kaeb, 2015; Sharma, 2015; Kolk, 2016); the implications of CSR when it is being conducted by MNCs (Zerk, 2006; Benerjee, 2008; De Colle et al., 2014; Detomasi, 2015); the means through which CSR interventions are measured and reported (Elkington, 1994; Kolk, 2008) and the weaknesses of such means (Norman and Mac Donald, 2004; Utting, 2005; Delmas and Cuerel, 2011; Zalik, 2015).

In addition, the business literature has approached how CSR is developed in specific contexts (Werre, 2003; Maurer, 2009; Bennet, 2002; Jamali and Mirshak, 2010; Koerber, 2010; Okoye, 2012; Mares, 2012; Newman, E., et al. 2009; Prandi and Lozano, 2011; Jayakumar, 2013; Rettberg, 2013), particularly in the extractive industries (Utting and Ives, 2006; Sagebien et al., 2008; Hilson, 2012; Dashwood, 2012; Campbell, 2012; Luning, 2012; Velasquez, 2012; Kemp and Owen, 2013; Pesmatzoglou et. al., 2014; Kirsch, 2016).

However, the most substantial contribution of the business literature comes from two subsets: the business and peace (B&P) and the business and human rights (B&HR) literatures. On the one hand, the B&P literature focuses on the role of business in peace-related matters. This literature is supported and promoted by international organisations such as the World Bank (2005 and 2006) and the UNs’ initiative Business for Peace -B4P- (UN Global Compact, 2010 and 2015). Furthermore, as mentioned earlier, the B&P literature is backed by a wide number of scholars who support the liberal approach of peacebuilding. On the other hand, the B&HR literature analyses the links between business and HR frameworks such as the United Nations Guiding Principles (UNGPs), better known as the Ruggie principles.
The B&P literature.

The cornerstone of this segment of the business literature is the UN Global Compact initiative known as “Business for Peace” (B4P). This literature is relevant to understanding how liberal models of peace view the role of MNCs in conflict-prone zones and for identifying the different factors shaping MNCs behaviour in peacebuilding (Jamali and Mirshak, 2010; Jayakumar, 2013; Rettberg, 2016).

The B&P literature suggests that MNCs’ interventions can be a suitable solution to peacebuilding where “national-state power is on decline” (Scherer et. al., 2006). Supporters of the involvement of MNCs in peacebuilding stress the importance of MNCs’ ties with local actors to support peace-related activities (Miller and Bardouille, 2014; Ralph, 2015). It stresses the potential of MNCs to foster peace and analyses how the governments of societies emerging from conflict may benefit from the strengths of MNCs. It suggests some mechanisms to engage MNCs in conflict alleviation and peacebuilding. For example, much of this literature argues that thanks to their non-violent attributes corporations can support conflict alleviation and peacebuilding with limited to no state oversight or input. They argue that MNC operations, such as corporate citizenship, improvement of the rule of law, and economic development have the potential to make substantial contributions to peacebuilding (Forrer et al., 2013:3).

Similarly, the B&P literature argues that corporations have a central role in the economic recovery of countries emerging from the conflict (Sulzer, 2001; Newman, E., et al. 2009; Prandi and Lozano, 2011). It also promotes an active role of businesses to overcome the social and political challenges peace entails. For instance, some scholars highlight the role of corporations in dispute resolution and crisis management (Bennett, 2001 and 2002; Jamali and Mirshak, 2010). Other authors encourage governments to enter into public-private partnerships (PPP) with MNCs to improve
the public system and promote regional stability (Gerson 2001; Bennett, 2002; Damlanian, 2006; Abramov, 2010; Kolk and Lenfant, 2013; Davis, 2013).

Other scholars argue that it is important to involve MNCs in the construction and enforcement of anti-corruption policies and rules (Ouzounov, N., 2004; Fort and Schipani, 2007; Adefolake, 2012); and there are others that recommend that MNCs take part in diplomatic duties oriented to build capabilities of local workforce, transfer technology, conduct conflict-sensitive operations and develop corporate political activities (Bennett, 2002; Fort and Schipani, 2002, 2003, 2007; Oetzel et al. 2010; Westermann-Behaylo, M.K. et al., 2015). Furthermore, other scholars agree on the potential of business to cooperate with local governments in the prevention of disputes and the reconstruction of society (Bennett, 2001 and 2002; Fort and Schipani, 2002, 2003 and 2007; Bray, 2009; Abramov, 2010; Jamali and Mirshak, 2010; Oetzel et al. 2010; Spector, 2011; Adefolake, 2012; Feil, 2012; Kolk, A. and Lenfant, F., 2013; Davis, 2013; Ford, J. 2015), and consider international organisations such as the World Bank or United Nations key actors to coordinate the engagement of business to achieve peacebuilding goals (Gerson, 2001; Fort and Schipani, 2007; Zandvliet, 2010; Davis, 2013; Ford, 2015).

B&P literature is the most neo-liberal expression of business literature. Scholars belonging to this group of academic work not only are familiarised with most of the liberal assumptions concerning the role of MNCs in conflict-prone zones, but they support their positions on such assumptions, reinforcing the idea that corporations are peacemakers. It largely assumes that MNCs are inherently benevolent. Therefore, the B&P literature is too narrow to explore other possible roles of MNCs towards peace. Where authors critique the possible lack of interest of MNCs in peace-related matters, it enthusiastically finds that the government and international bodies should encourage their involvement in peacebuilding through incentives and rewards (Ballentine and Nitzschke, 2005; Forrer et al, 2012; Ford, 2014 and 2015).
The B&P literature underestimates the importance of MNCs’ motivations when engaging in peace-related matters. This literature tends to consider that MNCs may have multiple motivations in engaging in peace-related activities but discounts them as largely irrelevant in favour of assuming positive outcomes of MNC involvement in peace at any cost. Hence, from this point of view what is deemed to be important is the engagement of MNCs in peacebuilding processes and no matter what considerations they have had to do it because once MNCs are engaged the government will be able to coordinate them and take advantage of their potential to achieve peace-related goals. Therefore, the B&P literature ignores the potential of MNCs’ to use peace-related tasks to exert influence on the government’s decisions in order to pursue profit. In addition, the assumption that a post-conflict government can adequately coordinate MNCs’ efforts to achieve post-conflict development goals, ignores the weaknesses of post-conflict environments, such as the lack of rule of law, the lack of institutional capabilities, high levels of corruption and risk of violence returning to conflict-prone zones.

Partially as a critique of this B&P literature and the assumptions that underpin it, my thesis analyses how such weaknesses may stimulate MNCs’ motivations to engage with the governments of such countries to capture the state. It analyses how MNCs’ socio-political engagement and influence over public decisions of the host-country to achieve their private goals can create conditions MNC activities lead to exacerbating conflict instead of bringing peace, as the B&P literature suggests.

B&HR literature.

The UNGPs on B&HR is the cornerstone of this segment of literature and focuses on state-MNC relations and interactions in promoting good business practices. The UNGPs are built over three pillars: protect, respect and remedy. The “protect” pillar is based on the states’ duty to protect human rights and prevent violations by the state agents or third parties. The second pillar, “respect”, involves the corporations’ duty to respect human rights wherever they operate. This is to say, MNCs should not violate
human rights in their home country or the host country. Finally, the third principle aims to encourage the state to provide effective judicial and non-judicial mechanisms to make business accountable for human rights violation (UNGPs, 2011).

The B&HR literature is focused on developing each of these pillars and their scope, the state duty of protecting (Allebas 2015) the corporate responsibility to respect (Institute for Human Rights and Business, 2011;) and remedies (Ramasasty and Thompson, 2004). It assesses the role of MNCs within the framework of the UNGPs (Davis, 2012) and the risks and impacts of MNC’s involvement in conflict-prone zones and fragile areas (Van Dorp, 2015). This section of the business literature approaches mechanisms to avoid the negative impact of MNCs operations (International Alert, 2005; Amis, 2011) and promote dialogue as a means to avoid business involvement in social conflicts (Zandvliet and Anderson 2009; CSR Europe, 2011; EarthRights and SOMO, 2015 Zandvliet and Anderson 2017).

In addition, the B&HR literature provides a comprehensive analysis of different tools aiming to diminish the impact of business operations in fragile contexts (Iff et al., 2012; DCAF and ICRC, 2016) and suggests mechanisms to assess the possible impacts of business interventions on peace ((Amis, 2011; UNOHCHR, 2012; Natour and Davis, 2013; Shift, 2015). Moreover, it is very critical of the way in which peacebuilding interventions are measured and reported (Scharbatke-Church, 2011; Bachtold, 2015).

However, the B&HR literature assumes that governments use MNCs to commit abuses against people and, therefore, they are more liable for MNCs’ HRs violations than the MNCs themselves. Consequently, the B&HR literature highlights the abuses committed by governments and how MNCs can help curb them. It does not approach the opposite; MNCs using governments to achieve their objectives. Therefore, if MNCs commit any HR violation, the government is responsible for it as it is the government’s duty to enforce MNC compliance with the UNGP framework.
Hence, within this segment of the business literature, most of the attention is paid to the government’s duty to promote MNC compliance with HR laws and frameworks. Therefore, B&H literature does not analyse how MNCs operations can have a negative impact on human rights. Nor does it explore how the power and influence of MNCs vis-a-vis the government allows them to commit abuses. It assumes governments have the capacity to control what the MNCs do, ignoring the possibility of weak governance and how this can lead to an environment where MNCs influence governments’ decisions.

**The literature on corruption.**

Corruption is a multifaceted phenomenon (OECD, 2016). It involves multiple causes and consequences. The “literature on corruption” covers a wide spectrum of works, from different disciplines, approaching the topic from diverse perspectives, such as law, economics, politics and development studies. Hence, the literature on corruption refers to that literature approaching corruption as the central object of study, from how it is configured to its effects.

Scholars in this field, in contrast to the B&P literature above, analyse the potential negative effects of MNCs on corruption and the negative implications of misusing corporate-state interaction to influence government decision-making. The research on corruption points to the risks of corporate-state interaction in captured economies and categorises state capture as a form of grand corruption that can be solved through efficient markets, good governance and transparency. While the business literature above encourages different forms of corporate-state interaction, the literature on corruption makes it clear that corporate-state interactions involve the risk of state capture in countries where illiberal and undemocratic practices are ingrained.

The literature on corruption points to the influence that corporations in developing economies have over government policies and legislation and in facilitating state capture, a form of ‘grand corruption’ (Gray and Kaufmann, 1998; Hellman and
Schankerman, 2000; Hellman et al. 2003; Gambetta 2002; Pedamon, 2010; Kochan and Goodyear 2011; Lazega, E. and Mounier, L., 2012; Durand, 2016). It provides a clear conceptualization of state capture. This is beneficial to this thesis in several ways.

Firstly, it makes clear who can play the role of the captor. State captors may be corporations (Hellman, et al. 2000) but also powerful individuals, institutions, companies or groups (Transparency International, c2018) at the elite level (Holmes, 2015).

Secondly, it identifies how state capture is configured. State capture is carried out through corruption (Transparency International, c2018), which may take the form of illegal means such as bribes (Hellman, et al. 2000; Cuervo-Cazurra, 2016) or violence (Lessing, 2015; Lezhnev, 2016), but also through legal means (Kaufmann and Vicente, 2011). Some forms of corruption can be unethical but not necessarily illegal (Bardhan, 1997; Kaufmann, 2004; Kaufmann and Vicente, 2011). For example, Cuervo-Cazurra (2016) highlights that bribes can be legal in some countries and lobby in the form of payments to politicians, a legal practice in the US can be illegal in other jurisdictions (also see Le Billon, 2003). Some scholars go further and consider that legal or ethical means systemically and strategically to influence institutions can constitute a form of state capture (Lessing, 2013). For instance, mechanisms such as campaign funding, lobbying, and the rotatory door may be used and can actually be more effective in pursuing private interests than corruption or other illegal or unethical means (Campos and Giovannoni, 2007; Durand, 2016). Although this literature focuses primarily on illegal methods (such as bribes and corruption), focus on broader MNC efforts to influence government policies has led scholars to develop the concept of “corporatist efforts” deployed by the captor to achieve its goals, disregarding whether they are illegal/unethical or not (Lazega and Mounier, 2012). The literature on corruption also provides insights how captors relate to other actors to influence state decisions and policies (Raoof and Butt, 1997; Kaufmann 2004; Durand, 2016; Kaufmann 2016; Lezhnev, 2016). In summary, the way the captor co-opts the state can involve a broad number of practices and mechanisms.
Thirdly, the literature on corruption clarifies the purpose of state capture. The classic understanding of state capture notes that its aim is to influence the content of the law (Hellman et al., 2000; Eicher, S., 2009) and/or distort policies or the central functioning of the state (Transparency International, c2018). However, some research on corruption argues that the aim of state capture could be to influence institutions (Lazega and Mounier, 2012; Lessig, L., 2013) or influence systems of violence (Lezhnev, 2016) specifically to obtain private gains at the expense of the public good (Transparency International, c2018). Research into corruption also highlights possible benefits the captor may seek. For instance, a private gain could be to secure property rights (Hellman et al., 2000), to increase the revenues of the company (Cuervo-Cazurra, 2016), to promote tax policies which benefit the MNCs’ economic interests, to promote laws to get access to the land making it possible large-scale investments, and to remove environmental policies which increase the operational costs of the MNC (Durant, 2016), to integrate with the state to make maximum profits by obtaining preference and benefits from the government (Yakovlev, 2006), to evade regulations through lobby in order to resist legal reforms aiming to improve the rule of law and eliminate corruption (Damania et al., 2004).

Fourthly, research into corruption identifies contextual factors facilitating and/or promoting state capture (Le Billon, 2003; Andvig, 2006; Rose-Ackerman, 2008; Spector, 2011; Lazega, E. and Mounier, L., 2012; Zaum, D. 2013; Hellman and Schankerman, 2000; Tsyganov 2007; Campos and Giovannoni, 2007; Grzymala-Busse, 2008; Rose-Ackerman, 2008; Zaum, D. 2013; Angeles and Neanidis, 2015). It also points out the pros and cons of tolerating corruption for peacebuilding purposes (Fjelde, 2009; Cheng, N. and Zaum, D., 2012; Phil, N. 2012; Mosquera, M. 2014; Neudorfer and Theuerkauf, 2014).

Fifthly, the literature on corruption analyses the effect of corruption on foreign direct investment (FDI) (Phelps, 2000; Kwok and Tadesse, 2006; Allard and Martinez, 2008; Brada et al., 2012; Pinto and Zhu, 2016), and identifies the corrupt practices promoted by the companies and markets (Tanzi 1998; Gray and Kaufmann, 1998; Mulgan 2000;
In addition, research into corruption provides insight into the captors’ rationale when making decisions related to entry strategies (Rodriguez et. al., 2005; Straub, 2008; Teixeira and Grande, 2012). Some authors examine why MNCs operating in developing countries use corrupt practices to achieve their goals (Valor, 2005; Pedamon, 2010; Kochan and Goodyear 2011); others analyse the ethics and values of different individuals inside the organisation (Gambetta, 2002; Nicholson and Snyder 2008; Cuervo-Cazurra, 2016); Tanzi (1998) and Eicher (2009) highlight the main features of corruption when it is committed by private organisations, and others focus on the complexities of the processes carried out by the captor to achieve institutional capture (Lazega and Mounier, 2012, Lessig, 2013).

The literature on corruption does not refer to corporate socio-political engagement as an instrument to capture the state but it provides analysis of different interactions between companies and governments that may lead to state capture (Hellman, J. and Schankerman, 2000; Durand, 2016). It also refers to “corporate social irresponsibility”, which is the misuse of CSR for corrupt purposes (Lange and Washburn, 2012; Keig et. a., 2015). Moreover, it studies the malign influence of corrupt governments in business and the challenges corporations should face in countries governed by corrupt governments.

Nevertheless, much of this literature on corruption seems to suggest that private firms are victims of the market failures provoked by domestic institutions and public officers’ corruption (Leitner and Meissner, 2016). Research in this area rarely refers to the strategies adopted by MNCs to capture the state and when it does, it mainly focuses on MNCs’ strategies aiming to influence economic regulation rather than social policies. Moreover, studies in this area focus on firms operating in economies in transition and assume that firms’ wrongdoings are basically triggered by the
dysfunctional economic and political structure of the host-country (Gray and Kaufmann, 1998; Hellman and Schankerman 2000; Hellman et al., 2000; Ouzounov, N., 2004).

From such a perspective, corporations are victims of governments’ misconducts instead of the other way around. Much of this literature seems to suggest that in captured economies, corporations interact with governments only as a survival strategy. However, corporate-state interaction is necessary for some sectors of the economy (Westermann-Behaylo, M.K. et al., 2015:398) to influence laws, policies and projects to obtain private benefits through mechanisms such as lobbying and campaign funding (Sawyer, S. and Gomez, E. 2008:24). MNCs, rather than victims of the local government’s corruption, may promote and facilitate corrupt practices.

Finally, the literature on corruption highlights the undesirable outcomes of state capture. It notes that state capture has local and international economic repercussions (Marquette, 2003:80); it can constrain the economic activity at supranational, national and local levels (Phelps, N., 2004:16). Moreover, state capture weakens people’s trust in captured institutions (Lessig, 2013). During peacebuilding, state capture has been considered one of the worst risks because it diverts assets to an elite and restricts economic growth (Spector, 2011).

In summary, the literature in this field is useful for elucidation of central concepts. It also links state capture to other social outcomes and analyses the effect of corruption in countries facing an armed conflict and/or moving towards peace. In addition, scholars in this field recognise that the state can be captured not only by politicians but also by firms and industries, and some others highlight that state capture compromises different forms of corruption - petty and grand- and some legal practices. These factors will allow me to understand state capture in specific scenarios where it is carried out by different actors and through several means.

Nevertheless, research in this area tends to classify state capture as a form of grand corruption without saying much about the processes through which it happens. Many
authors analyse state capture as something which is simply given by certain conditions such as the state’s institutional weaknesses and the government’s high levels of corruption and subsequently can have various negative effects. However, the literature on corruption does not analyse the process through which MNCs playing the role of captors influence the state’s decision making-system in conflict-prone areas to satisfy their private interests. There exists little to no analysis of what steps the captor follows nor what actors and/or mechanisms help the captor to achieve its commitment in such contexts. This thesis will contribute to this segment of literature by tracing processes carried out by MNCs aiming to influence the public decision-making system of conflict-prone countries, to identify how different actors interrelate with each other and how some mechanisms -legal and illegal- operate coordinately to make state capture possible.

The literature on conflict and violence.

By the “literature on conflict and violence”, I refer to the work of scholars adopting an empirical approach to understanding the causes and consequences of armed conflicts and the contribution of business actors in worsening conflicts. It also includes areas of research often referred to as “peace studies” or “peace science”. This set of literature is relevant to understand the behaviour of MNCs in conflict-prone areas and during peacebuilding efforts as it empirically examines the effects of MNCs on conflict, their complicity in HRs abuses and their impact on peacebuilding.

Two segments of the literature on conflict and violence, the resource curse theory and neo-Marxist literature, have examined the structural tendencies through which capitalist growth is violent.

Peace studies

Peace studies tend to be critical or cautious of the role of the private sector in peace (Banfield et al., 2003; Barbara, 2006; Le Billon and Levin, 2009; Mihalache-O’keef
and Vashchilko, 2010; Wennmann, 2010). Work in this area notes that the State should be aware of the risks MNCs’ operations may entail and highlights the need of the public institutions controlling MNCs’ operations to avoid the intensification of the conflict.

Scholars in this area point out that in resource-dependent countries inappropriate exploitation of natural resources and inequality in the revenue distribution fuel the conflict. Therefore, the capabilities of public institutions should be enhanced to make them able to manage the country’s natural resources and improve revenues allocation (Lujala and Le Billon., 2010).

It also considers that in fragile states some companies sometimes behave as predators and, therefore, business-related violence cannot be a matter of self-regulation by private corporations. Instead, Ganson and Wennmann (2016) argue, it should be regulated by the state through the creation of a well-articulated and enforceable legal framework.

This set of literature analyses the role of MNCs as promoters of war and spoilers of peace (Hawley, 2000; Herfkens, 2001; Le Billon, 2008; Cockayne, 2010; Otusanya, 2011; Subedi, 2013). Research in this area is often critical of the liberal peace paradigm. It notes that such paradigm is used by domestic authorities to aggressively carry out liberal policies and reforms that allow warlords and predatory states to reach the status of legitimate political operators and exploit the market forces without disruption (Salih, 2007).

Work in this segment recognises that many undesirable practices carried out in countries emerging from conflict are ingrained into the structure of their societies to the extent that MNCs’ strategies necessarily have to coexist with them (Hoenke, 2014). The recognition of such circumstance has led scholars to develop a “hybrid peace governance” model, which is a model of peace aware of the fact that a flexible approach of liberal peace-building should be adopted because some non-liberal practices predominant in the country should necessarily be tolerated during the
implementation of the liberal peacebuilding policy to succeed (Belloni, 2012; Jarstad and Belloni, 2012; Nadarajah and Rampton 2015).

Within this segment of literature, authors describe ways in which some organisations have made use of the global market to obtain economic resources for fuelling the war (Hawley, 2000; Herfkens, 2001; Le Billon, 2008), point out that MNCs, with the complicity of political and economic elites, exacerbate inequality and poverty (Hawley, 2000; Herfkens, 2001; Le Billon, 2008; Otusanya, 2011), note that MNCs affect domestic firms creating barriers to competitors (Hawley, 2000; Herfkens, 2001) and make it clear that political and economic interests of MNCs rarely are aligned with the interests of local communities (Barbara, J. 2006; Gillies and Dykstra, 2012; Idemudia, U. 2014).

In addition, there is a segment of scholars that highlight how MNCs can either serve as an obstacle to peace or serve to fuel further conflict. Some authors describe ways in which some organisations have made use of the global market to obtain economic resources for fuelling the war (Hawley, 2000; Herfkens, 2001; Richani, 2005); others note that MNCs, with the complicity of political and economic elites, exacerbate inequality and poverty (Hawley, 2000; Herfkens, 2001; Le Billon, 2008; Otusanya, 2011); others point out that MNCs create barriers to competitors affecting domestic firms (Hawley, 2000; Herfkens, 2001).

**Resource curse theory**

Resource curse theory focuses on the correlation between natural resources and conflict. It analyses how MNCs in the extractive sector contribute to underdevelopment in natural resource-rich countries (resource curse theory) and war (resource wars theory) (Le Billon, 2001; Switzer, 2001; Ballard and Banks, 2003; Collier, 2010; Di John, 2011; Ross, 2015; NRGI, 2015).
Summarising different views toward such correlation, Ross (2014:17) highlights three key approaches highlighted by the resource course theorists: The first approach considers that natural resource wealth leads to violence by increasing the value of capturing the state. Hence, if natural resources increase the value of capturing the state, therefore MNCs would have to make use of any available mean to compete with other actors to capture the state. For instance, MNCs would have to compete with a domestic business that may have no problem in paying bribes to get access to natural resources.

The second approach points out that rebels use violence as a means to have control over natural resources and get an economic source for fuelling the war. If rebels control natural resources, MNCs operating in those areas would have to build ties and create networks with those rebels to develop their commercial activity.

Finally, the third approach notes that governments cannot make credible commitments to redistribute wealth because of the volatile prices of natural resources. Consequently, if a government promises redistribution of wealth, such a decision would affect MNCs’ income directly and would have to influence policy accordingly.

This type of research overlooks that neither the natural resources nor the different actors involved in their exploitation are negative themselves, but rather the way in which different processes involving natural resources are carried out in conflict-prone countries. Some scholars within this literature (Le Billon, 2001; Collier, 2010; Ross, 2015) are aware of the outcome of such processes but they do not provide a substantial examination of how such processes happen in a sector of the economy where MNCs exert vast pressure on the host-countries government.

**Neo-Marxist literature**

A neo-Marxist literature seeks to theorise the relationship between capitalism and violence arguing that multinational capital facilitates and promotes violence as part of the enforcement of the fundamental capital relations (Richani, 2005; Gordon and
Webber, 2008; Cramer, 2009; Cockayne, 2010; Hristov, 2014; Maher, 2015; Carranza, 2015). This set of literature provides a theoretically informed empirical and historical overview of the relationships between capital (and capitalist social relations) and violent conflict. However, it does not tell us much about the micro mechanisms and the sets of political and social relations through which this happens.

The most persistent concern approached by scholars in this literature centres on the direct impact of MNCs’ operations on violence. Studies focus on how capitalist expansionism has produced systems where MNCs operating in countries facing an armed conflict fuel the war and increase the risk of conflict by conducting repressive actions against counter-hegemonic forces as part of violent state-led counterinsurgency and in conjunction with criminal organisations (Hristov, 2014; Maher, 2015). This neo-Marxist literature stresses how MNC’s use state forces and paramilitary groups to protect their interests (and the interests of capital) against inimical social forces and insurgent groups (Richani, 2005; Gordon and Webber, 2008; Hristov, 2014; Maher, 2015). There is strong evidence of this happening and, MNCs have been held responsible by tribunals for criminal offenses fuelling violent conflicts around the world.

Contrary to most of the scholars of the literature on business and corruption, this neo-Marxist literature considers that peacebuilding is not a technical but a political issue, therefore, MNCs are not just powerful business actors who have the technical features required to overcome the post-conflict reconstruction obstacles as it is argued by the liberal peace model, but they are also dominant actors of the socio-political system and enjoy a relevant political role when imposing a development model based on the spread capitalism and industrialisation after war (Cramer, 2006), a model that may be implemented through violent means and alliances with illegal armed groups (Hristov, 2014; Maher, 2015).

This literature also highlights the way in which illegal organisations have made use of the global market to obtain economic resources for fuelling the war (Cockayne, 2010).
In addition, it identifies that post-conflict reconstruction and development are not technical matters but political ones as they are based on the dynamics carried out by dominant political and economic actors of the society to achieve a form of reconstruction which Cramer (2006) calls a *revolution from above*. Moreover, it notes how MNCs have benefited from the process of dispossessing people from their land and goods -called by Hadley (2003) *accumulation by dispossession*- as dispossessed land and goods end in hands of MNCs after they are taken by violent groups.

Other authors focus on the relationship between businesses and warlords and the illegal conducts carried out by MNCs in developing countries facing armed conflict. This literature is important for my research as it recognises that warlords and political elites can take advantage of MNCs’ economic power to satisfy their particularistic interests and vice versa. This is the case in Colombia, where the links between MNCs and paramilitary groups have been widely demonstrated and documented. Moreover, research in this area does not overlook the enormous political and economic influence of MNCs. These central aspects have been approached in more detail by the studies in this area than by any other studies.

Overall, this more critical literature on conflict and violence is pertinent to understanding the effect of MNCs’ operations in countries emerging from conflict and how MNCs can encourage violence and negatively impact peace. However, there are gaps that this thesis seeks to address.

First, these studies emphasise structural explanations for such systems of violence. They offer little in the way of exploring the specific processes or mechanisms by which this works. Second, this literature on conflict and violence ignores state capture or assumes it is just one of many other negative effects of capitalism. It does not analyse how state capture leaves the door open for MNCs to manipulate the formulation of the rules of the game, not only with the purpose of getting what they want but also to avoid their accountability as much as possible.
Third, these studies mainly focus on the involvement of MNCs indirect violence and their relationships with criminal gangs and terrorist organisations. This largely overlooks the indirect ways in which MNCs can contribute to violence as well as broader contexts in which MNCs operate in tandem with governments to produce these more extreme instances of MNC direct involvement in perpetuating violence.

MNCs have the potential to exert pressure on the host and home countries’ governments through legal mechanisms. This leads such governments to make public decisions that configure and/or enhance structures of violence. This thesis explores these gaps left by neo-Marxists scholars by analysing how such process of influence the government’s public decision system impacts on violence.

The Gap

These diverse sets of literature complement each other to illustrate possible pathways through which MNCs deploy their corporatists’ efforts to develop networks with key actors to influence public decisions and obtain private gains in conflict-prone zones. The business literature and literature on corruption, highlight key aspects of the way in which corporate-state interaction is conducted in fragile contexts and literature on conflict and violence, approaches the impact of powerful foreign business actors on the political landscape of fragile contexts.

However, if taken individually, each of these sets of literature would not offer an accurate answer to the research questions in which this thesis is focused. The view of scholars within the business literature and literature on corruption rely on what Cramer (2006) calls the “liberal fantasy” of liberal states satisfying public needs through commerce and competitive markets (Cramer, 2006:255). Therefore, in practical terms, they do not have profound conceptual differences. This thesis brings together elements of both sets of literature. Both rely on claims that lead to the same conclusion: in fragile states, the weaknesses of legal systems and the lack of transparency are obstacles the government of the host-country should overcome to avoid corrupt practices, including that of corporations turning into captors, and it is a priority of the host-country to
facilitate the optimum performance of MNCs to allow them to contribute to the country’s recovery.

The literature on violence and conflict is very critical of the role of MNCs in conflict-prone zones and the “liberal” assumptions adopted by the business and corruption pieces of literature. Contrary to the liberals’ view on the need of states promoting laws to attract MNCs, scholars in this field consider that states should establish a legal framework to constrain the predatory behaviour of MNCs (Ganson and Wennman, 2016).

Consequently, business and corruption pieces of literature leave a huge gap as they ignore the predatory behaviour of MNCs as a contributor to the malfunctioning of the socio-political system. Despite such gap is narrower in the literature on corruption than in the business literature, it still being there. Most of the literature on corruption approaches MNCs as victims of an ill system in which they are forced to pay bribes and engage with corrupt politicians, illegal groups and other undesirable domestic actors to succeed or at least survive in such a hostile environment. Hence, it ignores the fact that MNCs substantially benefit from the illness of the system and therefore they have incentives to weave socio-political networks in order to have as much control as possible over the system in order to assure the benefits provided by a sick government.

The literature on conflict and violence fills that gap as it approaches the role of MNCs as sponsors of violence and conflict and points to ways in which they have benefited from conflict and violence. For instance, the supporters of the resource curse theory highlight the lack of conflict awareness and conflict sensitivity of MNCs operating in the extractive sector and point out their potential to fuel conflicts, for instance, by causing forced displacement when they try to get access to the property of land in conflict-prone zones.

This opposite approach towards MNCs’ role and corporate-state interaction stem from the fact that business and corruption literature follow different methods of
socioeconomic analysis from that of the conflict literature. Whereas the former is mainly influenced by the liberal’s approach of development, the latter is primarily influenced by the neo-Marxist approach. Therefore, while the business and corruption pieces of literature rely on the economic liberty, global market, rule of law, private contracts and free trade as the formula to solve the problems of states emerging from conflict, the latter relies on the fact that capitalist and globalised national markets are the root cause of the modern social conflict (Schneider, 2013:3).

This discrepancy may be considered as an obstacle to objectively identify whether corporate-state interaction has a positive or a negative impact on conflict alleviation, as it would depend on the position adopted by scholars. Nevertheless, the literature on conflict and violence fills an important gap left by the other two sets of literature, which is the MNCs’ potential to contribute to conflict and violence in conflict-prone zones where they weave the socio-political networks they require to configure a system in which they are able to achieve their private goals.

In sum, the three mentioned sets of literature stress on the role of MNCs in countries emerging from conflict and approach how MNCs are impacted by the armed conflict and the impact of their operations on conflict. However, none of them analyse how MNCs develop their relationships with local actors to gain influence, neither the consequences of doing this, not only for the economy but also for the conflict alleviation.

Hence, there is a gap within the three sets of literature which this thesis will fill by approaching a fragile war context which configures a perfect scenario for MNCs deploying different mechanisms to configure the socio-political networks they require to influence the decision-making system in their private benefit. I will add to the literature by explaining some of the micro-processes that occur in relation to the larger structural processes of capitalist violence in the relationship between governments and MNCs but also other domestic actors.
This thesis passes across each of the mentioned sets of literature in order to explore the role of MNCs in conflict-prone areas and identifies how the interaction of MNCs with and the relation to other actors of the socio-political landscape of the home and the host countries, have been used by them as means to weave the socio-political web which allows them to influence the public decision-making system to the extent that they shape the rules of the game in such a manner that the system is not designed to overcome the fragile societies’ biggest challenges but to place the MNCs in an advantageous position in which they easily can achieve their private interests behind liberal peace façades. That is the reason why this thesis sits in the intersection of three sets of literature: the business literature, the literature on corruption and the literature on conflict and violence, to fill the existent gap the three sets of literature have left.
Chapter 2: Theoretical framework

The liberal peacebuilding model entails MNCs working together with domestic actors of the host country, usually government-linked individuals who enjoy some economic and political power in the host country, to achieve peacebuilding goals. It also involves MNCs working hand in hand with politicians and interest groups of the MNCs’ home-country, who have enough political power to exert pressure on the home country’s foreign policies towards the host country, and who can carry out diplomacy in the host-country on behalf of the MNCs to influence the host-country’s policies.

As the case studies approached in this thesis will demonstrate, MNCs have enough influence and economic and political power to allow them to influence policymakers and shape institutions and legal frameworks to fit their needs. This can lead to outcomes that obstruct peacebuilding and, in some cases, contribute to violence. It can also lead to results that are not necessarily in accordance with the interests of the people these policymakers and institutions are meant to represent.

The chapter aims to shape a theoretical framework based on key concepts which will be adapted to specific processes, inferences, and dynamics to trace historical events configuring causes leading to state capture. The chapter is structured in six sections. The first section establishes the definition of state capture as it is approached by this thesis; section two elucidates the main actors involved in the state capture process when it is carried out by MNCs; the third section refers to the mechanisms MNCs may employ to capture the state and draws attention to some legal mechanisms through which MNCs may configure social networks to play the role of captor; the fourth section describes possible pathways through which state capture may occur; section five highlights factors encouraging MNCs to play the role of captor in societies in which systems of violence are entrenched, and section six, establishes a criterion to identify the impact of state capture on conflict.
Section 1: Framing a sound concept of state capture

Hellman, et al. (2000) define state capture as “firms shaping and affecting formulation of the rules of the game through private payments to public officials and politicians”. Transparency International (c2018) points out that state capture is a situation where powerful individuals, institutions, companies or groups -within or outside a country- use corruption to shape a nation’s policies, legal environment, and economy to benefit their own private interests. These definitions take corruption as central concepts because state capture is a form of grand corruption. However, private payments do not constitute the only means through which a state can be co-opted, nor are corrupt practices the only means to influence public decisions.

State capture is the ability of an individual, firm or industry to influence the content of the law (Eicher, 2009:6). Such ability is not constrained to illegal practices and it may involve legal practices. As Bardhan (1997) asserts “Sometimes one invokes legality and almost interchangeably uses the word "corrupt" and "illicit" in describing a transaction. But just as clearly not all illegal transactions are corrupt, nor are all instances of corruption or bribery illegal”. Corruption is not synonymous with illegality and, therefore, some forms of state capture can be unethical but not necessarily illegal.

As Kaufmann and Vicente (2011) highlight, nothing prevents the elite from employing legal means to carry out corrupt practices. Bearing in mind that state capture could be achieved through legal means, some scholars have enlarged the list of mechanisms the captor can trigger to reach its goal. For instance, Durand (2016) points out three “tools of state capture”: campaign funding, lobbying, and the rotatory door. There would be serious ethical concerns about how these practices are carried out in the ground, however, they used to be skilfully employed by business but also tolerated, accepted and regulated in most western societies.

Therefore, to arrive at an accurate and comprehensive definition of corporate state capture, this thesis focuses on concepts which emphasise the ability of the captor to
achieve its goals. The concept of “institutional capture” developed by Lazega and Mounier (2012) is relevant defining institutional capture as the “...corporatist efforts” aiming to “...design or redesign institutions, to influence decision making in rule enforcement and to obtain collective gains for interest groups in these institutions” (2012:125). It is noteworthy that this definition employs the expression “corporatist efforts”, disregarding whether such efforts are illegal or not. Therefore, this thesis pays special attention to the activities, practices, and procedures -legal and illegal- through which the corporatist efforts have been deployed by the MNCs to capture the state.

In addition, Lessig (2013) identifies the concept of “institutional corruption” which outlines the legal practices that may lead to state capture. Lessing defines institutional corruption as “…a systemic and strategic influence which is legal, or even currently ethical, that undermines the institution’s effectiveness by diverting it from its purpose or weakening its ability to achieve its purpose, including, to the extent relevant to its purpose, weakening either the public’s trust in that institution or the institution’s inherent trustworthiness” (Lessig, L., 2013). From Lessig’s definition, it is possible to note that legal and even ethical means of influence can lead to institutional corruption.

Nevertheless, the most important contribution of institutional corruption to the definition of state capture I am proposing in this thesis, is that it makes it clear that legal forms of influencing the decision-making system can be considered as corruption when they are deployed systemically and strategically to divert the purpose of the institutions or weaken the people’s trust in the institutions. Hence, when assessing state capture, this thesis considers not only illegal mechanisms and strategies to influence the state’s decision-making system but also the legal ones when they have been employed by the MNC systemically and strategically to configure the socio-political networks they require to capture the state.

In this thesis state capture is introduced as the ability of MNCs to deploy efforts aiming to develop socio-political ties and networks through the systemic and strategic use (Lessig, 2013) of legal and illegal means (Kaufmann, 2004), aiming to influence the
public decision-making system\textsuperscript{8}. Influence in the state decision-making includes, but is not limited to, obtaining private benefits from shaping the formulation of laws, designing or redesigning institutions, influencing decision making in rule enforcement and/or obtaining collective gains (Lezaga and Mournier, 2012).

Therefore, in this thesis corruption is a central concept when approaching state capture, but what is of paramount importance for this thesis is the analysis of state capture as a form of grand corruption resulting from the ability, aptitude, proficiency and talent of the MNCs to deploy illegal, unethical and legal mechanisms in such skilled way as they were able to influence the public decision-making system to satisfy their self-interests.

There are numerous cases illustrating this situation happening. One of the most popular examples of corrupt networks involving MNCs is that of Unaoil. This company, incorporated in Monaco, developed a global structure where it operated as an “enabler”\textsuperscript{9} for MNCs allowing them to obtain oil contracts. The role of Unaoil was to operate as a lobbyist aiming to obtain lucrative contracts in the Middle East on behalf of western MNCs. Unaoil employed bribery as one of the means to achieve the MNCs’ goal. The clients of Unaoil, MNCs such as Samsung, Siemens, and Rolls-Royce, did not pay bribes directly to the Middle East officers but they did through Unaoil, and the bribes were paid to middle officers who were in charge of distributing the payments to top officers (Sydney Morning Herald, 2017). In 2017, Rolls-Royce paid $1.1 billion to settle corruption probes in the UK and US after confessing it paid bribes through Unaoil in the Middle East (Nick McKenzie, 2017).

Another remarkable example of MNC leading the state capture process involves the government of Nigeria and the Anglo-Dutch company Shell. The relationship between Shell and the regime of the dictator Sani Abacha is long-standing. In 1993, the

\textsuperscript{8} The term decision-making refers to the process of making choices, esp. important choices (Cambridge dictionary)

\textsuperscript{9} Enabler is the term adopted by Kaufmann (2016) to describe that one who facilitates the state capture process.
company obtained protection from the military government of Abacha to repel the attacks of the Ogoni people (Lewis, 2017). Eight years later, in 2001, the Nigerian subsidiaries of Shell and the Italian oil and gas company ENI made a licensing payment to develop an off-shore oil block in Nigeria to the company Malabu Oil and Gas, a private firm owned by Dan Etete, the Nigeria's Minister of Petroleum under the military dictator General Sani Abacha.

The MNCs argued that they made the payment to the Nigerian government instead of doing it to Malabu Oil and Gas. However, strong evidence suggested that Shell and ENI knew about the role of Dan Etete in the transaction and, therefore, they were investigated under the UK and Dutch law for corruption (Balch, 2017). In this case, the relationship between Shell and Etete was built during the Abacha’s dictatorship, it was a legal relationship between the MNC and who was at that time Nigeria’s Minister of Petroleum, the head of one FSI. However, in the 2001 incident, the MNCs took advantage of such an old relationship to reach its goal. The deal between the MNCs and Etete’s company was the vehicle employed by the MNCs to interact with an enabler -Etete’s business- to get access to the natural resources avoiding the path established by the Nigerian Ministry of Petroleum, the Nigerian official institution in charge of making decisions related to the exploitation of natural resources.

An example illustrating how state capture carried out by MNCs through political founding can seriously impact the host-country’s socio-political and economic structure involves the Japanese corporation Hitachi and the South African political party African National Congress (ANC). In 2015, the US Securities and Exchange Commission (SEC) held Hitachi responsible for making improper payments, violating the Foreign Corrupt Practices Act (FCPA). Hitachi seems to have exerted influence over the ANC through financial support to the political party and lucrative dealings with a political-connected company that was serving as a funding vehicle to the ANC. In exchange, the MNC obtained millionaire contracts for the construction of two power stations. The MNC agreed to pay US$19 million to settle the SEC charges (Sec.gov, 2015). However, it did not solve the problem as the poor performance of the mentioned
contracts seriously affected South Africa’s economic growth and restrained business confidence (Wild, 2017).

In all the presented examples, the target of the MNCs was basically the same: to obtain profitable state contracts skipping the formal channels established by the law to grant public contracts. Moreover, there was a pattern in the way in which the MNCs’ allies became powerful individuals, which is their central role during violent conflict. It has allowed them to obtain the political capital and/or economic wealth necessary to become relevant enough to turn into a compulsory partner to anyone interested in influencing the decision-making system without making use of the pathways established by the official institutions.

Furthermore, the way in which MNCs developed their links with other actors to play the role of captor has been quite similar in all the examples. In the Unaoil example, the MNCs hired Unaoil -a Public Relations firm- to carry out lobbying, a legal mechanism to influence decision-making systems. However, Unaoil was acting as an intermediary of the MNCs to pay bribes to the Middle East governments. Therefore, the MNCs, trying to avoid any possible involvement in illegal practices, hired a third party to perform illegal practices. Bribery was the mechanism employed by the MNC to influence the Middle East countries’ decision-making system, but it was not employed directly by the MNCs but through someone else, Unaoil who acted as a facilitator.

Similarly, in the Shell-ENI example, the MNCs made a payment to Malubu Oil and Gas, a legal entity that was created just to act as a vehicle to allow the MNCs to avoid the paths established by the Nigerian official institutions to obtain state contracts. However, the strategy employed to capture the state would have not been possible without the previous relationship between Shell and the Nigerian dictatorship, a relationship which was legal at the time it was established, as such link facilitate the deal between Shell and Etete’s business.
In the Hitachi example, there is also a mixture of legal practices—supporting political parties—and illegal maneuvers—payment of bribes—to influence the public decision-making system. The MNC directly made contributions to the ANC to strengthen ties with the political party and taking advantage of such ties, the MNC built ties with a politically-connected company who acting as an enabler facilitated the MNCs’ payment of bribes to members of the ANC. The politically connected company helped the MNC to obtain lucrative state contracts in exchange for bribes. In this example, as in the Unaoil example, the MNC did not pay the bribes directly to the members of the ANC but through a third party who play the role of enabler.

Most of the time socio-political networks developed between public officers and businesspeople are built through completely legal means and tend to be justified by public officers arguing adoption of liberal policies, business diplomacy or simply friendship. An example of this is the relationship between the family of the president of South Africa, Jacob Zuma, and the Gupta family, an alliance better known as the “Zupta”\(^{10}\).

There is evidence of Jacob Zuma’s family members working for the Gupta family’s corporations (BBC News, 2017) but nothing legally constrains the president’s family working for Gupta’s companies. However, the success of the Gupta family’s businesses in South Africa stems from the closeness of the Gupta family to the president Zuma and other political leaders. Moreover, there is a generalised opinion that there are symptoms that the Gupta family was trying to capture the state to improve their business performance, such as the MNC’s power to hire and fire ministers in South Africa and obtain diplomatic passports (BBC News, 2018). In the Gupta’s attempts to capture the state, the Indian entrepreneurs obtained the support of another MNC, the London-based Public Relations firm Bell Pottinger, which played a central role in the network weaved by the Gupta.

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\(^{10}\) The term “Zupta” stems from the combination of the Zuma and Gupta’s family names.
The role of Bell Pottinger consisted of creating a smokescreen to divert the attention of corruption investigations carried out against one of its clients, Oakbay Investments, a company owned by the Gupta brothers. By manipulating social media, Bell Pottinger created fake online personas who claimed “white monopoly” as the cause of rejection of the operations of Oakbay in South Africa. The London-based firm pretended to turn the corruption scandal involving the Guptas’ company into a racial issue which clearly was fuelling the South African racial conflict. Such misconduct led to the end of the British P.R. MNC, which went into administration for breach of ethical standards (NY Times, 2018).

Influence of the Gupta brothers led to a formal investigation against the “Zupta” for state capture. Such investigation led to pressures to remove President Zuma, who was forced to leave the presidency in September 2017. Despite Zuma being removed, the trust of people in the Zuma’s political party, the ANC, was seriously affected by the Zupta scandal and Cyril Ramaphosa, the new South African president, ANC member and former vice-president of Zuma, is seen with distrust by people who consider that the president Zuma and other top members of the ANC, took advantage of their top position at the government to exchange favours with the Guptas’ emporium (FT, 2018).

Abusing public power, individuals like Zuma play the role of enablers who facilitate state capture. MNCs often require links with a broad number of domestic actors to succeed. However, the ties developed by Zuma and the Guptas’ family seem to have been sufficiently strong as to influence the decision-making system of the public institutions effectively, without other links been required. Referring to the Gupta brothers, the NY Times (2018) notes “By bullying officials and bending regulations to their will, they secured contracts in fields as varied as armaments, mining, and railways”. Hence, the head of the government’s role was central to allow the Gupta brothers to control the FSIs to satisfy their business goals.

This example involving the ANC, not only demonstrates that MNCs engage in business with governments and political parties to capture the state. It also shows
insights into the non-economic consequences of such practice. Gupta’s corporations took advantage of their relationship with the Mandela’s political party, a South African political party that has been in control of the state for more than two decades and represents an important South Africa’s socio-political achievement. They did it just to satisfy their economic interests disregarding the negative impact it could have on the society, not only in economic terms but also in terms of the people’s confidence in the most representative South African political party, one which was established as a national liberation movement in the post-apartheid era (African National Congress, 2017).

Despite the frequent accusations of MNCs influencing the decision-making system by taking advantage of their links and social networks with domestic actors, due to the difficulties faced by prosecutors when trying to obtain evidence against the involved parties and the normalisation of promiscuous relationships between business tycoons and politicians in fragile contexts, such episodes are scarcely investigated, and the involved parties rarely are punished. The mentioned examples are some exceptions to that rule because it was identified that illegal mechanisms -bribery and traffic of influences- were employed by the MNCs to influence the decision-making system, an aspect that called the attention of media and authorities.

However, in most of the corruption scandals involving MNCs, the authorities’ approach towards state capture is narrow. State capture is just an umbrella concept used to describe a complex process that can consist of multiple steps, some of which are illegal while some others are not. Prosecutors often pay too much attention to bribes and other forms of petty corruption having legal repercussions but the process through which MNCs develop their socio-political networks and create the scenario they require to systematically use illegal but also legal means to capture the state is mostly overlooked. The negative impact of unethical relationships between business tycoons and politicians on peacebuilding efforts or the recovery of countries emerging from conflict is also often ignored. Policymakers should be aware of these issues, in
order to highlight the roots of the problem and avoid simplistic solutions that ignore
the complexities of the whole picture.

Section 2: Key actors intervening in the process of Multinational Corporations
playing the role of captors.

State capture is a process involving numerous actors. I have categorized them into
three different types of actors: Multinational corporations (MNCs), Alternative Power
Centres (APCs) and Formal State Institutions (FSI).

Multinational Corporations:
MNCs are large enterprises operating in two or more countries whose decisions are
governed by one or more decision-making centres in a coordinated way and use to
operate in sectors of the economy essential for the development of the host country. They are socially complex organisations that may have different motivations when
deciding whether to support and engage or not in non-business related activities (Rettberg, 2016).

Alternative Power Centres (APCs) or enablers:
APCs (Raoof and Butt, 1997) or “enablers” (Kaufmann, 2016), are individuals, groups
of individuals or organisations, displaying political, economic or social power aiming
to manipulate the public decision-making system or replace such system for a parallel
one to allow MNCs to capture the state. APCs are key players in state capture processes
because they create the necessary conditions for state capture and are in charge of the
well-functioning of parallel processes that MNCs may employ to facilitate state
capture.

APCs may be formal institutions such as other MNCs operating in the same or similar
sectors of the economy, NGO’s, political parties, domestic corporations but also illegal
groups such as paramilitary groups, guerrillas, cartels, criminal gangs, etc. However,

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11 There is no uniform definition of an MNC. The formulation given in the text is based on the definition of a transnational corporation established by the Draft United Nations Code of Conduct on Transnational Corporations (1983) and the description of MNCs given by the OECD Guidelines for MNCs (2011).
usually, APCs are individuals appointed at top positions of the institutions involved, who are willing to support MNCs goals in exchange for favours.

**Formal State Institutions (FSIs):**
They are the groups being captured. FSIs are public entities whose target is to satisfy public interests by delivering public goods and services. They are organised in a hierarchical structure in which top officers oversee the functioning of the institution’s decision-making system. Such officers are responsible for guaranteeing that the decisions are made in accordance with the competencies and purposes established by the law. The public-oriented mission of FSI arises as to the main an obstacle for the captor because it should be diverted by the captor to achieve its private goals, therefore, MNCs playing the role of captor aim to meddle in the public decision-making system of the FSI to divert their purposes and satisfy their private interests.

In conflict-prone countries, there are some factors which negatively impact the conditions in which the relations among the three mentioned actors are carried out and make state capture likely to happen. For instance, the lack of state’s capabilities, poor governance and the absence of regulations during the conflict are factors that negatively impact the performance of FSIs in conflict-prone countries (Kahn and Gray, 2006).

**Section 3: Mechanisms through which MNCs play the role of the captor.**

Usually, to reach its goal the captor employs illegal means. Bribery, trading of influence, bid-rigging, insider trading, peculation, prevaricate, etc., are some examples of illegal mechanisms commonly used by the captor to influence the decision-making system. Furthermore, captors may employ physical violence, but it is usually employed only in those cases where other means do not provide the same effectiveness. For instance, the *plata o plomo* policy employed during the eighties by Pablo Escobar, the drug lord of the Medellín cartel, who opted for violence when public officers, policemen, and politicians rejected the bribes he offered in exchange for favours (Lessing, 2015).
For criminal gangs, violence may be an alternative to exert influence or pressure on the public decision-making system. Nevertheless, that is not the case for MNCs for several reasons. Firstly, unlike cartels and criminal gangs, MNCs are legal entities that may influence the decision-making system through legal means as they can legally have access to top members of FSIs. Secondly, MNCs have a reputation to take care of and their involvement in illegal practices would have unmeasurable corporate damages. Thirdly, when MNCs aim to influence the public decision-making system through violence, it is an APC who is in charge of using violence as a vehicle to influence the decision-making system on behalf of the MNCs rather than the corporation itself as the CB case study will show12.

The process through which MNCs capture the state involves the systematic and strategic employment of several mechanisms. Such process mixes legal, unethical and illegal but broadly tolerated and accepted conducts and practices. Consequently, influence over the decision-making system is not necessarily an illicit phenomenon. State capture may happen through legal dimensions of undue influence (Kaufmann 2004:198).

The next section identifies and approaches legal mechanisms through which MNCs playing the role of captor may influence the public decision-making system in its self-interest. This is the case of aggressive FDI, socio-political engagement, lobbying and funding of political campaigns that may be considered as valid means to involve MNCs in public matters but also strategies MNCs can use to influence the decision-making system to obtain private gains.

12 An example of MNCs directly employing violence as a mean to satisfy their private needs is CB. In 2007, under the Alien Tort Claims Act the US Justice Department fined the American MNC CB for funding Colombian paramilitary groups from 1997 to 2004. In Colombia, the investigations conducted against CB under the law known as Ley de Justicia y Paz precluded. However, in order to continue with the investigations against the MNC and to avoid preclusion of the MNCs’ crimes, in 2017 the Attorney General declared to support paramilitary groups a crime against humanity (Verdadabierta.com, 2017).
Taking into account the plethora of mechanisms MNCs apply to capture the state, the corporate accountability movement has arisen as a significantly critical segment of the academia that recognises the negative implications of corporate social responsibility (CSR) and the huge influence of MNCs in the formulation of public policies serving their own agendas. Referring to such implications, the corporate accountability movement highlights that CSR encourages practices that MNCs may use to carry out regulatory and institutional capture, like lobbying, informal social dialogue, public consultations, public-private partnership (PPP) involving UN agencies and non-governmental organisations (NGOs), and other similar practices allowing MNCs to influence the public policy process (Utting, 2005:384).

Aggressive Foreign Direct Investment (FDI) Campaigns

MNCs’ foreign market entry strategies vary between equity and non-equity modes of entry. While the latter is carried out through exports and contractual agreements, the former is carried out through investments in a wholly-owned subsidiary or via equity joint ventures. As equity modes are carried out through the direct involvement of MNCs into the foreign market, the exposure of the MNCs to the host-country’s transactional and contextual risks increases (Pan and Tse, 2000). Hence, MNCs’ decision on whether to expand their businesses to foreign countries or not is not simply an economic decision.

For instance, when deciding the best entry strategy to carry out investments in developing countries, foreign investors should be aware that most of the MNCs founded in developing countries are state-owned MNCs. Therefore, political and strategic factors are relevant when making such a decision (Aykut and Goldstein, 2006). In addition, to consider socio-political risks and assess whether they may impact the investors’ performance or not are compulsory issues. Nonetheless, despite such risks, international organisations encourage governments to promote and facilitate the entry of MNCs through equity strategies. For instance, UNCTAD (2015a, 2015b) points out that FDI represents one of the most important external sources of finance in
developing countries as it contributes to the host-country’s economic performance by promoting employment, improving the balance of payment, increasing the income, facilitating technology transfer, boosting the infrastructure, etc.

These benefits of FDI encourage governments of countries with weak governance and institutions to compete fiercely each other to attract foreign investors to improve their economy and enhance their domestic investors, through measures such as facilitating joint ventures, reducing barriers to entry and promoting a friendly business environment (Udomkerdmongkol and Morrissey, 2008). Hence, governments of these countries encourage FDI through several means, some of the most commonly used are: Use of public development funds, Public-Private Partnerships (PPP), Bilateral Investment Treaties (BITs), establishment of effective regulatory frameworks and standards, adoption of international regulatory frameworks, implementation of new regulatory and institutional reforms, expansion of the existent FDIs, Partner in Joint Venture Projects, initiatives to support local business and the development of linkages with MNCs, building relevant local capabilities, increasing absorptive capacity - entrepreneurship, technology, skills, and linkages- (UNCTAD, 2015a, 2015b).

Governments of developing countries carry out market-based reforms aiming to encourage FDI and promote mechanisms facilitating foreign investors’ businesses. However, when trying to attract foreign investors, countries emerging from conflict are even in a worse position than peaceful developing countries. On the one hand, they have to overcome the obstacles commonly faced by developing countries such as lack of infrastructure, lack of legal and institutional frameworks, lack of competitive markets, etc., and, on the other hand, they have to overcome the difficulties of conflict-prone countries in order to offer at least the minimum safety conditions required by investors to operate without disruptions.

Therefore, countries attempting to overcome violent conflict or emerging from conflict often lead to aggressive strategies to create a better business environment. However, what is better for business is not necessarily so for society. Strategies to promote liberalisation and capital markets may work negatively in certain environments where
elements of conflict have been used by foreign investors to leverage their power and obtain private gains (Maher, 2015). For instance, in countries facing armed conflicts, violence, extortion, forced displacement and the rise of illegal groups, rather than obstacles for investors are aspects that improve MNCs’ performance and simplify the conditions they require to influence public decisions (Maher, 2015).

Similarly, Le Billon (2005:224) notes that MNCs, making use of their economic power, make illegal payments to avoid the disruption of their operations at any cost. Therefore, neither armed conflicts prevent the government to lead aggressive campaigns to accelerate the industrialisation process and spread capitalism, nor prevent MNCs to take advantage of the violent characteristics of globalised capitalism to implement their business strategies successfully (Maher, 2015).

Likewise, in countries where corruption is pervasive, MNCs may take the risks of engaging in corrupt transactions to successfully penetrate such markets through equity modes of entry (Rodriguez et al, 2005). One should be aware that in those countries where corruption is endemic, the system encourages MNCs to use corruption as a tool to unlock the inefficient bureaucratic systems, speed up the decision-making process (Raoof and Butt, 1997) and, therefore, successfully implement FDI strategies.

The proclivity of governments to undertake aggressive FDI campaigns and the risk of MNCs taking commercial advantage of violent conditions do not vanish immediately after the war. Cramer (2016) notes that the liberal peacebuilding project is an expensive project and, therefore, the government requires investors supporting the expensive initiatives the liberal peace project comprises. Such a package of initiatives uses to be negotiated through Bilateral Investment Treaties (BITs) (Cramer, 2006). BITs are employed by developing countries not just for liberalising the market, improving the rule of law and growing the economy, but also as a vehicle to build strong relationships with developed countries and obtain legal favours and benefits such as foreign aid (Salacuse, 2006:245).
Such aid translates in donations and credits. Thus, debt is the means through which the government of the developing country makes the initiatives of the liberal peacebuilding package possible and, in exchange for financial aid, the lender imposes conditions such as market deregulation and other development policies and measures that should be adopted and implemented by the public officers of the borrowing country according to the guidelines established by the lender/donor country (Cramer, 2006:254). In addition, debts and donation promote new power centres: multilateral banks, lender/donor developed countries but also MNCs who are stronger than ever before thanks to the support of developed countries through BITs.

During conflict recovery and post-conflict reconstruction, aggressive FDI campaigns are promoted by such power centres. For instance, bilateral actors bringing financial support to peace-related activities, encourage liberal policies aiming to generate domestic benefits from securing commercial advantages for their corporations (Le Billon, 2001). Governments may offer preferential treatment for companies investing in strategic sectors of the economy, selling the idea of corporative peacebuilding as a strategy linked to making a profit (Rettberg, 2016). Such commercial advantages require a legal framework making them not only possible but also compulsory.

Stimuli like relaxation of labour standards and taxation laws, promotion of favourable market and trade policies, which may work positively when they target the manufacturing sector, are not required at all when they target primary foreign investors in the primary sector as they operate wherever the natural resources are located disregarding whether they are in a zone that is prone to conflict zone (Mihalache-O’keef and Vashchilko, 2010). Unlike the manufacturing sector, they cannot relocate their production (Le Billon, 2001; Mihalache-O’keef and Vashchilko, 2010). Therefore, instead of having a positive effect, such measures increase the power of MNCs to influence rules and policies as they are supported by bilateral actors that can exert diplomatic pressure on the domestic governments to shape the law and make the commercial advantages for MNCs compulsory.
The need for promoting advantageous commercial rules in societies emerging from conflict promotes the emergence of APCs. They are perceived as substitutes of formal institutions to influence the decision-making system because they can influence the system faster and through the means, bilateral actors and MNCs cannot do openly and directly. For instance, APCs can promote rules regulating matters in a confusing way to generate uncertainty and facilitate corruption (Lezhnev, 2016). In addition, they may encourage rules facilitating lucrative subcontracting networks, tax-free salaries of overpaid consultants, aggressive promotion of FDI ventures over domestic entrepreneurship, fire-sale privatization of public assets (Le Billon, P. 2008), and rules endorsing impunity for corrupt practices and behaviours (Kaufmann and Vicente, 2011).

Therefore, market deregulation, free-market liberalisation, and rapid privatisation policies and rules would be adopted without considering whether they may facilitate abuses, state capture and unlawful grabbing of public assets (Le Billon, 2008; Spector, 2011). Furthermore, resource and assets relocation through non-market measures such as the patron-client relationship predominant in wartime would be considered as an acceptable practice if by doing this the investors are not affected by the country’s political instability (Kahn and Gray, 2006). In addition, the elite may take advantage of such legal reforms to legitimate themselves as a valid power centre with the purpose of remaining in the power and getting access to the reconstruction funds (Rose-Ackerman, 2008).

An example of governments promoting aggressive FDI campaigns to create advantageous commercial conditions includes certain strategies employed in the Democratic Republic of Congo. In Congo, the Portfolio Ministry promotes the restructuring of unprofitable Congolese state-owned companies into PPPs (State.gov, 2017). MNCs have seen PPPs as an advantageous way to enter into the Congolese market and develop commercial links with the domestic government. However, many have argued that the main vehicle for corruption in Congo has been the lack of transparency of the relationships between state-owned companies and their foreign
shell company partners (Lezhnev, 2016). In addition, there is evidence of the Congolese government agreeing on contracts which are beneficial to MNCs at the expenses of the local population, agreements in which natural resources are sold at low cost and low revenues and special tax conditions are established, overlooking the social needs and benefiting the MNCs’ private interests (Lezhnev, 2016).

Sierra Leone provides another relevant example to illustrate the negative social impact of aggressive FDI campaigns. The government of Sierra Leone has made special efforts to improve the socio-economic conditions of the country through FDI campaigns to boost the mining industry based on beneficial conditions for mining corporations. However, the social impact of such efforts has not been as positive as it was expected. The findings of the DanWatch’s report (Dieckmann, 2011) shows that in 2010 the mining industry accounted for almost 60% of exports, but only 8% of government revenue. Government revenue from mining accounted for only 1.1% of GDP. The great improvement of the mining industry did not correlate to the country’s socio-economic performance. This situation stems from the fact that, despite the increase in the exploration and exploitation of diamonds, MNCs were benefited with special contracts in which low tax contributions and low royalties were agreed with the government at the expenses of the local population welfare (Dieckmann, 2011).

Nowadays, such a situation has not substantially changed.13 Despite the creation of formal institutions and the adoption of domestic and international anti-corruption policies, mining corporations preserve their privileges and, therefore, there is a substantial loss of economic resources to cover people’s needs due to the low revenues they pay to the government (Sierra Leone Telegraph, 2017).

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13 In 2000 Sierra Leone established the Anti-Corruption Commission. In 2003 Sierra Leone signed the UN Convention against Corruption and ratified it in 2004. In 2008 the government promulgated the Anti-Corruption Act and launched the National Anti-Corruption Strategy (NACS). In addition, Sierra Leone joined the Extractive Industries Transparency Initiative -ETI- in 2008.
Socio-political corporate engagement\textsuperscript{14}.

MNCs can substantially influence -negative or positively- the social system through socio-political corporate engagement. MNCs occupy prominent positions where they can freely and openly influence the socio-political system without the need of making use of illegal means. Socio-political engagement includes different legal mechanisms to capture the state which can be effective and less risky, in economic and reputational terms, than the illegal mechanisms listed above.

The next passages describe two forms of socio-political corporate engagement: CSR ventures and governance ventures. On the one hand, within the framework established by these types of ventures, corporations, civil society, and public office build and develop their ties to carry out socio-political interventions together. Furthermore, thanks to these ventures, corporations play the role of partners of the government in conflict alleviation and peacebuilding processes.

On the other hand, these forms of corporate engagement openly invite corporate actors to participate in the formulation of policies and rules during conflict recovery, an aspect making them highly vulnerable to turn into state capture vehicles as they demand high levels of interaction and closeness between the government and business actors, creating a scenario where MNCs may abuse or divert the purpose of these mechanisms to achieve their economic goals, ignoring the collateral damages such misconduct would produce. This situation is worsened by the fact that economic, social

\textsuperscript{14} This concept has been borrowed from Feil (2012) as I have considered it as an accurate umbrella concept to cover a broad spectrum of initiatives corporations may lead with governments. Feil (2012) notes that corporations’ contribution to the achievement of the nation-state’s socio-political goals is carried out through what she calls “socio-political corporate engagement”. She points out that socio-political corporate engagement may take the form of Corporate Social Responsibility (CSR) and/or governance ventures involving policies and other activities that go beyond the organisation’s ordinary businesses (Feil, 2012).
and political interests converge within the framework established by these ventures, making it difficult to isolate business issues from socio-political matters.

CSR Ventures

According to Holme and Watts (2000:10), "Corporate social responsibility is the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life." Despite such a definition, CSR is a vague concept that in practice may be used by MNCs to label any kind of corporative social intervention. In its origins, CSR referred to those interventions aiming to improve the quality of life of shareholders and employees. In contrast, nowadays CSR focuses on interventions aimed at the responsible management of the relationship between business and society (Feil, 2012: 46; Adefolake 2012: 7).

CSR may cover a wide spectrum of social issues in which the corporations are willing to contribute to the improvement of different areas like economic development, human rights, environmental concerns, labour conditions, etc. The success of CSR interventions mainly depends on the corporations’ determination and commitment because nothing constrains them to carry out CSR interventions or prevents them from aborting an intervention whenever they consider convenient to do it. Therefore, the role of corporations when developing CSR interventions is central because they mainly depend on the company’s will.

Following such an approach, an accounting framework known as triple bottom line (3BL) has broadly been accepted by corporations, NGOs and scholars to assess business performance in social and environmental matters. According to the 3BL framework, in addition to the financial reports, corporations should issue reports measuring, calculating and auditing their performance in social and environmental matters to evaluate their performance in a holistic way (Elkington, 1994).
According to Elkington (1994), the 3BL framework comprises a set of key drivers of the “sustainable capitalism transition”. Such drivers are markets, values, transparency, life-cycle technology, partnerships, time and corporate governance. In Elkington’s view, corporations are central to command these drivers and achieve a “revolution” because they add economic value, but also environmental and social value to the societies wherever they operate. Hence, supporters of the 3BL accounting framework consider that it provides a useful accountability tool for corporations to report what they are doing in human rights and environmental matters because it establishes a set of drivers which are relevant for both, business and non-business actors. Supporters of 3BL assume that there is a consensus between business and non-business actors about the meaning and scope of such drivers.

However, in practice, the mentioned key drivers would have different meanings for business actors and non-business actors. For instance, while the driver “transparency” is understood by business actors as business’ information publicly available at a low cost, transparency is approached by international organisations as an ethic concept through which the behaviour of companies could be audited (Zalik, 2015). Consequently, transparency is measured by corporations based on the volume of information they make publicly available instead of it being measured considering the degree of transparency of the organisation itself when doing business.

The absence of consensus about key concepts may lead the 3BL framework to provide meaningless information and irrelevant data for the stakeholders interested in knowing whether the business actors are performing in a responsible manner or not. Such lack of accuracy instead of being a problem for corporations’ managers appears to be convenient for them as the 3BL rhetoric is funded on vague claims aiming to convince business actors about the importance of CSR as well as to convince some sectors of the civil society familiarised with the CSR jargon about the corporations’ commitment on social and environmental matters (Norman and Mac Donald, 2004).
Referring to the weaknesses of 3BL, Norman and Mac Donald (2004) consider that 3BL can be employed by cynical firms to promote hypocrisy and hide their poor performance. The 3BL framework allows companies to report whatever they want to report, meaningless numerical scores inclusive. In addition, it overlooks the lack of corporations’ rigour when reporting the impact of their operations on the environment or the society and promotes the companies’ arbitrariness when deciding what they want to make public in their reports or keep in secret, as may be the case of trade secrets or confidential information which may negatively impact the reputation of the organisation.

The companies’ excessive level of discretion when reporting their social and environmental performance, makes 3BL an inadequate tool for civil society to monitor MNCs’ behaviour and to evaluate their social and environmental transgressions. However, the discretionary nature of 3BL fits the voluntary nature of CSR and the liberals’ request of diminishing the government’s intervention in markets. One should bear in mind that CSR is mainly concerned with ethics and philanthropy, and it is principally regulated through soft law which means that basically nothing legally constrains MNCs to carry out CSR interventions and, therefore, nothing constrains them to follow a compulsory accounting framework to report the impact of their CSR interventions.

The laxity of CSR has led a segment of scholars known as the corporate accountability movement (CAM) to criticise four aspects of CSR (Utting, 2005). According to the CAM, CSR promotes greenwashing, which is the act of firms with poor environmental performance communicating positively about their environmental performance misleading consumers regarding their actual environmental practices (Delmas and Cuerel, 2011). In addition, CSR encourages avoidance of taxation and labour standards by promoting macro-economic policies with regressive social and environmental implications. Thirdly, CSR facilitates regulatory or institutional capture, a central
concept which will be approached in this thesis. Fourthly, CSR does not provide a compulsory framework because of its discretionary nature, therefore, MNCs may decide whether accomplish or not with CSR as the only thing that compels them to accomplish with CSR is the reputational risk.

To avoid such negative implications and to make CSR relevant for society, the CAM proposes that voluntary initiatives - *soft law* - should be articulated with compulsory rules - *hard law* - making the companies accountable for their misconducts (Utting, 2005:383). It is considered that self-regulation developed in the form of codes of conduct and principles may be used by authorities as an important source for the enactment of a comprehensive framework of bidding rules (Pedamon, 2010). Moreover, the CAM encourages MNCs to involve in structural and macro-policy issues to develop such framework (Pedamon, 2010), arguing that the CSR agenda cannot be separated from policy matters (Utting, 2005:386).

On the one hand, CAM considers the potential risks of CSR but, on the other hand, it considers the necessary alignment between CSR and the host-country’s public policies, which entails turning the CSR agenda in a public policy agenda. Such an approach appears to be contradictory. On the one hand, it is aware of the weaknesses of CSR, an aspect which makes necessary to find a way to make corporations accountable through hard law but, it also suggests a major level of companies’ intervention in the structure of the society through their engagement in the public policy agenda.

If MNCs are involved in CSR interventions having a direct influence on the public policy agenda, MNCs’ potential to capture institutions or the regulatory system, one of the main concerns of the CAM against CSR, would dramatically increase. CSR at such level requires a consensus between the core values of the MNCs and the host-countries’ core values and if the public authorities do not have a clear idea of what values they should represent and promote, there would be the risk of governments
negotiating the society’s values to satisfy the corporations’ requests in exchange of favours. The next section analyses what Feil (2012) calls “governance ventures”, a form of corporate engagement which aims to influence aspects related to structural issues of the host country, just as the CAM suggests.

**Governance Ventures**

Governance ventures aim to create a better world by addressing global concerns through the improvement and well-functioning of the whole social structure (Adefolake, 2012). They go further than CSR as they attempt to impact the entire social system (Feil, 2012). These ventures entail the participation of multiple actors in civil society, including public and private actors, and at the local, national and international levels (Feil 2012, Adefolake, 2012). Governance ventures target the roots of the public system (Feil, 2012) and, as their main aim is to achieve substantial social changes, governance ventures necessarily involve influencing rules and policies. Some examples of governance ventures are the design, development, promotion, and enforcement of rules, and the provision of collective goods (Feil, 2012).

MNCs may lead to governance ventures. However, they require support from multiple sources to succeed. Therefore, any relevant actor -public or private- is welcomed to participate as its contribution is relevant to achieve the desired outcome. For instance, if an MNC is interested in promoting rules regulating economic or environmental matters, it would require the involvement of policymakers and local leaders as such goals cannot be reached through the MNCs’ efforts only. This encourages MNCs to deploy networks and ties with multiple actors to make the goals of governance ventures possible. Hence, MNCs would have to seek domestic and international support to make governance goals possible. Otherwise, they would merely be able to raise issues regarding such matters to build discussion.
Socio-political engagement in conflict alleviation and peace-related matters.

Some scholars highlight business actors’ potential to satisfy local peoples’ needs by generating wealth and stabilising the economy (Newman, E., et al. 2009; Prandi and Lozano, 2011) However, others suggest that corporations’ potential to contribute to conflict alleviation goes beyond their involvement in economic recovery. They encourage business actors’ participation in corporate peace-related activities.

Ralph (2015) observes two groups of corporate peace-related interventions in which corporations may participate: “structural peacebuilding” and “corporate peace-making”. Structural peacebuilding interventions have been broadly supported by corporations around the world because most of them belong to the sphere of their economic activity or can be easily developed through CSR interventions. Conversely, MNCs rarely engage in peace-making interventions as they target the roots of the social system and should be carried out through governance ventures.

Ralph (2015) has designed a model of fourteen forms of corporate peace-making interventions. It is relevant to note that some of these interventions aim to influence armed groups to reduce violence, offer economic and industrial advice to domestic businesses, mobilise support for peace, and handle critical information related to the conflict.\(^{15}\) Such forms of interventions tackle the roots of conflict but they dramatically expose the company to high levels of interaction with domestic actors, exposing the corporation to allegations of bribery and corruption due to the illegal nature of some of the social actors which MNCs would have to deal with.

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\(^{15}\) (1) Corporate collective action; (2) Peace process support strategy; (3) Lobbying advocacy and mobilising support for peace; (4) Economic industry advice for the public and peace processes; (5) Providing positive inducements; (6) Coordination of non-business peace-making efforts; (7) Early-warning information; (8) Shuttle diplomacy good offices or access to armed groups. Supporting initiatives that bring conflict parties and communities together at (9) grassroots, (10) middle and (11) top levels. Actively participating in initiatives that bring conflict parties and communities together at (12) grassroots, (13) middle and (14) top levels.
Hence, the deeper the MNCs’ intervention, the higher the risk of MNCs interfering in the configuration of the social structure. The central problem arises when it is not clear whether the desired outcome of the governance ventures (the substantial social change they aim to achieve) is the improvement of the social structure or the adjustment of the social structure to satisfy the MNCs’ private interests.

Governance ventures, as state capture, require MNCs’ efforts to develop social networks and strong ties with different actors in order to influence policies, rules and structural aspects of the social system with the help and support of such actors. However, there is a substantial difference between the former and the latter. While governance ventures aim to reach governance goals to satisfy the needs of the entire society, a state capture is a form of grand corruption in which the captor aims to achieve its private gains only. However, due to their similarities, governance ventures provide a source of valuable resources for state capture such as socio-political networks and relationships with government’s agents.

**Lobbying**

Transparency International (c2018) defines lobbying as “Any activity carried out to influence a government or institution’s policies and decisions in favour of a specific cause or outcome. Even when allowed by law, these acts can become distortive if disproportionate levels of influence exist — by companies, associations, organisations, and individuals.”. While in some countries lobbying is regulated in other countries it has been a source of corrupt practices (Cuervo-Cazurra, 2016). It has been the case of lobbying in most of the African jurisdictions where such practice has not been regulated, allowing international lobbyists working for politicians without restriction to pursue unethical goals (Center For Global Development, 2017).

Scholars recognise the important role of lobbying to capture the state (Frye, 2002; Campos and Giovannoni, 2007; Rosenau et al. 2009; Kaufmann and Vicente, 2011; Durand, 2016; Cuervo-Cazurra, 2016). Campos and Giovannoni (2007). They note that firms prefer lobbying instead of bribing to exercise political influence.
Nevertheless, as Holmes (2015) notes, one cannot generalise and label lobbying as a form of corruption. Hence, to identify whether lobbying is a form of corruption or not, it would be necessary to examine the specific case in detail as there are some in which lobbying is employed by transparent organisations for the achievement of legitimate causes (Holmes, 2015).

Lobbying involves many activities and strategies MNCs can employ to influence the decision-making system. Hence, this chapter lists many procedures, activities, and strategies commonly associated with lobbying that MNCs may employ directly - when MNCs lobbying by themselves- or indirectly -through a professional lobbyist acting on behalf of the MNCs-.

**Main lobbying strategies**

Lobbying may include the following strategies: (1) Direct consultations to state officials at local, regional and national levels (2) joining business or professional organisations with similar business interests; (3) employing mass media campaigns; (4) using personal ties with domestic public officials; (5) relying on the company’s union organisations (Frey, 2002). In addition, there are other strategies that private firms may use to reinforce their lobbying arsenal but are kept in secret when employed due to their unethical nature (Bardhan, 1997). Some business practices that may belong to this category are: (6) gift-giving by lobbyists to politicians, (7) post-retirement jobs in the private sector to public officers (Bardhan, 1997), (8) revolving door, (9) clientelism, (10) facilitation payments, (11) patronage (Transparency International, c2018), and (12) corporate hospitality (Kochan and Goodyear, 2011). Bearing in mind that this is not an exhaustive list of strategies, some other practices may be identified in the case analysis chapters.

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16 The order in which the strategies are listed corresponds to the results of the survey employed by the Paper of Frye (2002). Frye’s study is based on the answers obtained from a survey conducted with private firms operating in Russia. The firms were asked to select from the mentioned list of activities, how frequently they use them when carrying out lobbying.
Instead of adhering to one single master plan, lobbyists vary their lobbying choice depending on the context of the country in which their strategies are going to be implemented (Baumgartner, F., et al., 2009). Therefore, MNCs’ choice of lobbying strategy is determined by external factors. Incentives (i.e. high probability of succeeding) and deterrents (i.e. punishment) influence lobbyist strategic choices.\footnote{It could happen that specific strategies are prohibited by the law but MNCs do not discard to use them as they know that local institutions are so weak, and the negative consequences are irrelevant when compared to the possible benefits they can obtain from using them.} This is particularly relevant when analysing fragile and political unstable societies. Such societies are highly vulnerable to lobbying strategies involving illegal practices. Enterprises are likely to replace bribery for lobbying (Harstad and Svensson, 2006) or make use of bribes as a complement of lobbying (Damania et al., 2004). In addition, lobbying may be used to promote the formulation of new rules and to avoid the formulation of new rules for the purpose of preserving the existing private privileges.

Geographical\footnote{Kochan and Goodyear (2011) note that there are countries which are considered by businesspeople to be “synonymous with corruption”. They note that these countries are badly ranked by transparency indexes and widely regarded as corrupt by businesspeople, to the extent that they are included in black lists.} and sectoral factors determine the lobbyists’ choice of lobbying strategy but also the degree of corporations’ exposure to corrupt practices (Kochan and Goodyear, 2011). For instance, while in some countries to avoid bureaucracy by taking advantage of personal ties or by giving presents to public officers would be considered corruption, in other countries, such practices could be unethical but tolerated, accepted and encouraged by locals (Bardhan, 1997). Therefore, whereas in the first scenario the lobbyists may have to avoid such kind of strategies, in the second scenario they would be able to use them systematically and strategically without any serious consequence.

**Political contributions.**

In most cases, political contributions are legal. However, depending on the legal system concerned and under certain specific circumstances they may be considered a criminal offence or simply an administrative infringement. Political contributions...
involve contributions in cash or in-kind given to politicians, political parties and/or political campaigns aiming to support a political cause (Transparency International, c2018). Most of the literature on lobbying includes political contributions as a component part of the arsenal of mechanisms available for lobbyists to influence public decisions.

Resource curse theory has identified a resources-politics correlation. There is a correlation between the way in which the natural resources are managed and the way politics work, therefore, a malfunction of the former may lead to the malfunctioning of the latter and vice versa (Collier, 2010). This correlation stems from the fact that in resource-rich countries, revenues represent a significant source of income for the improvement of the country’s economy and the achievement of socio-political goals.

Due to the resources-politics relation, the poor performance of the MNC directly impacts the political agenda and the politicians’ performance. Politicians’ dependency on revenues makes politicians highly vulnerable to the power of MNCs as they rely on the revenues to accomplish their political campaign promises and maintain the power (Collier, 2010). An example of how an imbalance in such correlation affects the society is clearly illustrated in Sierra Leone where the low revenues of the mining industry have negatively impacted the accomplishment of Sierra Leone’s socio-economic goals (Dieckmann, 2011).

Democracy encourages people to participate in politics, but political campaigns are expensive and require a wide variety of supporters. This incentivizes politicians and political parties to compete fiercely for the economic resources of the wealthy actors of the social system and big business. Such actors are crucial campaign donors and key actors in the political scenario (Durand, 2016). MNCs’ economic muscle allows them to decide which political cause they are willing to support, and their choice will depend on the benefits offered by the politicians if their campaigns succeed.

Campaign contribution differs from bribery in two aspects. Firstly, the latter may be legal while the former is always illegal and, secondly, the latter aims in changing
existing rules and policies while the former is an attempt to get around the existing rules and policies (Harstad and Svensson, 2006). Therefore, MNCs may take advantage of political contributions to substantially influence the decision-making system through legal means as they can support a political cause and in exchange get the whole package of benefits offered by a politician or a political party.

MNCs may use political contributions as a form of investment (Durand, 2016) through which they hire politicians to work as agents of the MNCs within the structure of the state. Such agents will be influencing rules and policies on behalf of the MNCs, allowing them to satisfy their private interests without being exposed to the economic and reputational risks that entail to develop ties with domestic actors and use illegal mechanisms directly to influence rules and policies.

A good example of MNCs’ political contributions to capture the state is the corruption scandal involving the Brazilian MNC Odebrecht. On December 2016, the US Justice Department initiated a formal investigation against Odebrecht for its involvement in corrupt practices in twelve Latin American countries between 2002 and 2016 (Reuters, 2017). In Brazil, according to the MNC’s chief executive Marcelo Odebrecht, the MNC’s donations to Dilma Rousseff’s 2014 campaign was around US$ 48 million (BBC, 2017).

Colombia is one of the countries involved in the scandal. According to the investigation, the Brazilian company made contributions to the political campaign of former president Santos for the 2010 and 2014 presidential elections (La Silla, 2017a). Moreover, there is evidence that in 2014 the MNC contributed to the political campaign of Santos’ opponent, Oscar Zuluaga, a candidate supported by the former president Alvaro Uribe (Semana, 2017a). In addition, Marcelo Odebrecht confessed to the Brazilian authorities the organization paid extortions to criminal organisations in Colombia (El Espectador, 2017a).

The Odebrecht example shows how political contributions have been employed to satisfy corporations’ private interests, such as obtaining public infrastructure contracts.
However, this case also demonstrates the lack of political commitment of business actors when supporting a political ideology. Corporations rarely care about the political project they are supporting if they can foresee that the outcome of one or other candidate achieving the power is likely to be the same. Therefore, they know that the greatest number of candidates they support, the higher their chances to be involved in the socio-political network they should be involved to succeed. Hence, to avoid being excluded from business, they opt for supporting as many candidates as possible or at least the leading favourites.

Much has been said in the media about Odebrecht’s payment of bribes to Latin American presidents and top officers to obtain public contracts. However, the extent to which the scandal has weakened the people’s trust in institutions, a consequence of institutional capture (Lessig, 2013), has completely been ignored. For instance, in the case of Colombia, the extent of the Odebrecht scandal is still unknown. However, it goes beyond the economic boundaries because disregarding whether Santos’ campaign was involved or not in the corruption scandal, it negatively impacted the people’s trust in the political system.

Section 4: Describing the process of MNCs playing the role of captors in countries emerging from conflict.

The economy, rather than being devastated during war adapts to existing tough circumstances of war (Berdal and Mousavizadeh, 2010:42), and where there is a lack of FSIs or the available ones are inefficient and weak, corruption emerges as a practical pathway for MNCs satisfying their economic needs. In such a scenario, multiple informal and extra-legal processes may arise as a consequence of the socio-economic adaptation to the conflict. Such informal and extra-legal processes are widely accepted by locals who turn them into legitimate and valid means to achieve what they need, therefore, they tend to persist over time (Berdal and Mousavizadeh, 2010). These processes are administered and operated by APCs who benefit from them. Hence, one
may consider that state capture is enabled by the parallel structures engendered as part of the adaptation process of the economy to the hostile war conditions.

In environments where, due to violence and institutional weaknesses, informal and formal systems merge in a single environment, MNCs can easily turn into captors. They have the potential to attract APCs seeking for businesses such as politicians, illegal groups, domestic business, and public officers. This context facilitates MNCs exchanging favours with APCs to achieve their business goals at any cost through unethical and illegal -but socially accepted and tolerated- means.

This section aims to describe and explain the state capture process when MNCs play the role of captors in a nation-state in which systems of violence are entrenched. In addition, it illustrates, through some examples, how corporate socio-political engagement has been used by MNCs as a means to facilitate such a process.\(^{19}\)

\(^{19}\) The state capture process, as it is described in this chapter, is based on the description of the dynamics of corruption developed by Raoof and Butt (1997) and the study of Lezhne (2016) about violent kleptocracy in the Republic of Congo (Enough Project, 2016).

Raoof and Butt (1997: 34) note that “Corruption affects the organization of involved systems. It produces multiplicity of power centres located between the formal and naturalized informal systems. Power centres have dynamic character and they develop and then collapse when they have outlived their usefulness. Corruption constructs a parallel network of power centres. At sometimes, individual actors can establish themselves as power centres with a network of associates without necessarily being known as a leader. Corruption creates new poles of attraction in any organization and thereby decreases the effectiveness of hierarchy. It provides multiple points of connection with civil society that may eventually outweigh the formal and institutional powers links in any society. These points constitute APC that cater to the parasitic business needs of their clientele and provide to an international business organization, alternative points of influence on the decision-making systems of any society”.

Lezhnev (2016) highlights that top officials in Congo and their associates have created seven “pillars” of violent kleptocracy. They are: 1. Let the security forces pay themselves, 2. Stay in power, or possibly lose everything, 3. Ensure there is little to no accountability for regime-connected elites, 4. Create parallel state structures and co-opt rebel groups to weaken political threats, 5. Ensure that high-level officials benefit from corruption, 6. Personally profit from natural resource deals, underspend on services, and hijack reforms, and 7. Confuse everyone by creating uncertainty on policies in order to increase corruption.
MNCs develop strong ties with the host-country’s government by taking advantage of the legal means provided by globalisation and free markets such as the trade agreements and/or by making use of the legal means available for MNCs and to build commercial relations with the host-country’s government such as through joint ventures, PPPs, governance ventures, commercial agreements, etc. However, the mentioned means alone would not allow MNCs to develop the platform they need to monopolise the public decision-making system.

Hence, during the state capture process, MNCs strategically combine the legal mechanisms mentioned and simultaneously employ multiple illegal mechanisms to reach their goals, such as bribery, trading of influence, kickbacks, peculation, etc. However, if illegal practices are exposed, the MNCs’ attempts to capture the state would be frustrated because state capture is a complex process which can easily be spoiled if the captor abuses of illegal means. Therefore, it is unlikely for the MNCs to rely only on illegal mechanisms to influence the decision-making system, they would prefer to manipulate the legal mechanisms available to avoid legal and reputational damages.

Similarly, MNCs would prefer to rely on legal enablers such as public officers and legitimate businesspeople willing to play the role of APCs. It demands powerful networks and a high degree of coordination between both, captor and APCs, to maximise their chance to succeed. MNCs and APCs agree on the means to be employed and how they will be supported, approved and accepted (Kaufmann, 2016). For that reason, the involvement of top officers from the home and host countries through the entire state capture process boosts the captor’s chances to reach its target.

State capture process comprises three different moments or levels. The first level entails the support of the government of the MNC’s home country before the MNC initiating its business operations in the host country. This is the first level of the state capture process because the home country’s government, through foreign trade policies and diplomatic means that only it can deploy, paves the way to allow MNCs enter the host-country in advantageous conditions. This is achieved through many different
strategies. For instance, obtaining the support of international organisations interested in developing and improving, according to their criterion, the legal framework of the sector where the MNC operates, or through diplomacy achieving favourable terms in the Bilateral Investment Treaties (BITs) or Free Trade Agreements (FTA) negotiated between the government of the home country and the government of the host country. At this level, the risk of state capture is low because MNCs do not have direct access to the host-country’s decision-makers to make their requests and they do not have how to exchange favours with them.

If the MNCs are backed by their home country's government, international organisations and/or by people enjoying political influence in the home and host countries, then the MNCs would be able to develop formal links with the host-country’s government and local business actors through a wide variety of legal means such as PPPs, CSR, commercial agreements, joint ventures, etc. This is the second level of state capture, where the MNCs can deal directly with top officers and people enjoying economic and political power in the host country. At this level, the risk of state capture is relatively high because MNCs could take advantage of the legal mechanisms available to intervene the social structure of the host country and develop networks and ties with top officers and decision-makers to achieve their goals.

Once such links and ties are well-developed, MNCs are in a position where they can make special arrangements with individuals or group of individuals in top positions of government and other organisations to achieve mutual benefits. This is the third level of state capture. At this level state, capture is highly plausible because the MNCs’ agents are in a position where they can deal directly with individuals capable of playing the role of APCs. Therefore, at this level, MNCs’ agents can make requests to top officers of the host-country’s government without intermediaries.

These top state agents are individuals who held the authority of making decisions within the public office and can play the role of enablers of long term strategies to facilitate state capture, such as to promote or avoid regulations on key issues, to promote the formulation of weak legal frameworks or to support the creation of useless
formal institutions to ensure there is little to no accountability for regime-connected elite (Lezhnev, 2016).

Therefore, on the one hand, the legal mechanisms developed to enhance MNCs and government’s ties arise as an opportunity for MNCs to develop trust relationships with key domestic actors and to be involved in the social networks they should be involved to successfully operate in the host-country (Johannisson, 1988), especially in environments where social networks are compulsory for long term success (Salvador, et al. 2013).

However, on the other hand, such mechanisms promote scenarios dominated by informal relationships between businesspeople and top state agents, in which it is difficult to distinguish whether the MNCs are supporting the government’s goals or simply taking advantage of doing business with top officers and whether the individuals at top positions in the government are fulfilling their duties or playing the role of APCs to satisfy the MNCs’ requests. The following figure describes the state capture process. It goes through the different levels the process compromises, from that level in which the most transparent means are employed by the home country to build commercial ties with the host country, up to that level in which MNCs achieve secret and/or confidential arrangements with top agents of the government.
Section 5: Factors leading to state capture:

An MNC cannot argue that it has accidentally captured the state. At some point, it necessarily involves the captor’s mental process leading to the decision of deploying a set of actions in such a way that all together influence the public-decision making system in its self-interest. Hence, state capture is not an incremental and/or unplanned process but one that requires a mental process aiming to achieve a specific goal which is to shape the public decision-making system to obtain private gains.

Such a mental process is carried out by their managers or representatives. They act as agents of the MNCs. Therefore, it will be necessary to track the agent’s intention to identify how the state capture process was carried out. It may require tracing clues to identify evidence of events from which one would be able to deduce that there was such an intention. To search for clues, the next section identifies some factors leading MNCs to make the decision of playing the role of captor in countries emerging from
conflict. These factors are divided into two different sets: firstly, factors directly related to the MNCs’ features and, secondly, factors related to the context where the MNCs perform.

Regarding the factors directly related to the MNCs’ features, I have classified them into two groups: the MNCs’ intrinsic features and the MNCs’ extrinsic features. The intrinsic features are the reasons encouraging the MNCs’ agents to choose some mechanisms instead of others to build the MNCs’ ties with the government agents. On the other hand, the extrinsic features refer to those factors determining the manner in which the MNCs externalise their choices, this is the factors leading the MNCs to deploy the mechanism chosen in one specific way rather than another.

Concerning the factors related to the context where the MNCs perform, they refer to the environment where the MNCs carry out their businesses, the context of the host country. Contextual factors may establish conditions that facilitate and stimulate the MNCs’ decision of capturing the state, i.e. the specific singularities of the Colombian armed conflict, the illegal and unethical but accepted and tolerated conducts and patterns employed by the MNCs to interact with the Colombian public office and other actors, etc.

MNCs’ decision-making processes carried out taking advantage of these factors (The MNCs’ features and the host country’s context) will be closely tracked in the case studies approached in the next chapters because they would be considered as signs or clues of the MNCs’ agents’ intention to capture the state. For example, MNC’s decision of rewarding public officers’ loyalty taking advantage of its economic power and the host-country’s endemic corruption.

**MNCs’ intrinsic features:**

These features establish the fundamental reasons in which MNCs base their policies and course of action. Therefore, intrinsic features configure the common strategy that different entities belonging to the MNC should follow when doing businesses
(subsidiaries, sister companies or daughter companies). This rationale is strongly influenced by the MNCs’ system of values and it shapes their decision-making system. Hence, these features govern the MNCs’ behaviour, one which is dominated by their ethical ambiguity: On the one hand, they have a global reputation to care about as their involvement in misconducts may have dramatic repercussions for the corporation at several levels and in many different markets, however, on the other hand, entrepreneurs tend to be reluctant to consider other goals different to the economic ones (Valor, 2005; Pedamon, 2010) as their main driver, like any business entity, is to make profits rather than to achieve social commitments (Friedman, 1970).

Such ethical ambiguity is reinforced by the way in which the MNCs’ scale of values uses to be shaped. Contrary to public organisations, integrity and transparency play a secondary role in the private sector as managers only have a general duty to conduct MNCs’ affairs according to the law and the shareholders’ best interest (Mulgan, R., 2000). Therefore, unethical but legal maneuvers aiming to satisfy the shareholders’ best interest may be accepted, tolerated and approved by the board of directors. Consequently, managers and shareholders may tolerate or promote corrupt practices if by doing this the economic efficiency of the MNC is improved (Gambetta 2002; Kochan and Goodyear 2011).

Furthermore, managers are given performance pay, which means the more profits they make for the company, the better payment they will receive (Nicholson and Snyder, 2008). Therefore, they may take any kind of risk if by doing it they will be rewarded, even to undertake the risk of making deals with APCs to achieve the MNCs’ economic goals (Gambetta, 2002). Such misconduct is boosted by the system of property rights that pushes managers to maximise economic returns for shareholders (Benerjee, 2008).

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20 An example of this is Enron Corp. The involvement of the company in corruption scandals leads the MNC to collapse.
Moreover, in countries emerging from conflict, despite the separation between decision management and decision control\(^{21}\), managers enjoy a wide discretion to make decisions on behalf of the corporation because: (1) managerial activities are complex, (2) there is uncertainty about the outcome of implementing managerial activities and (3) it is difficult for the stakeholders to observe how the managerial activities are carried out (Finkelstein and Peteraf, 2007). These situations make it difficult for shareholders to follow up how the MNC’s businesses are being performed on the ground.

However, such managerialism may be relative when business tycoons – top business agents and/or shareholders enjoying formal authority and social influence- strongly influence the MNC’s decision-making process. Business tycoons’ power to influence the decision process of the company does not stem from their percentage of equity but from their formal authority, social influence, and expertise to capture property rights and their capabilities to influence firm performance (Kang and Sorensen, 1999). Hence, as managers know that their chances of succeeding by following the business tycoon’s opinion are higher than if they ignore them, they rely on the formal authority and social influence of powerful shareholders to increase the effectiveness of decision management (Kang and Sorensen, 1999:140) but also to maintain a close relationship with powerful shareholders to preserve their privileges as members of the dominant class (Zeitlin, 1974).

In sum, despite the separation of ownership from control, large corporations’ decision control systems are based on formal decision hierarchies in which the decision initiatives of lower-level agents are passed on to higher-level agents (Fama and

\(^{21}\) The separation of ownership from control has called the attention of scholars for decades. This separation entails the no intervention of ownership in the corporations’ decision process. According to Fama and Jensen (1983), decision process is composed by four steps -initiation, ratification, implementation and monitoring- divided in two different types of decisions - decision management and decision control-. Normally, large corporations’ managers oversee identification and implementation functions as they belong to decision management functions, and ratification and monitoring are allocated in other agents as these steps are risk-bearing functions that belong to decision control functions (Fama and Jensen, 1983).
Jensen, 1983). Therefore, despite of MNCs’ complex decision-making structures, when operating in conflict scenarios top business agents and influencing shareholders (business tycoons) say to the MNCs’ managers what should be done, but managers’ discretion seems to be huge as they are free to decide through which means the business tycoons’ requests will be implemented.

**MNCs’ extrinsic features:**

MNCs’ extrinsic features are those characteristics MNCs may exhibit when interrelating with other actors of the host-country’s social system. Such features have the potential to turn MNCs into captors but also to allow them to perform as effective lobbyists.\(^{22}\) Thanks to such features they have unrestricted access to the right people at the right moment and in the desired way (Cohen, 2000).

First of all, MNCs are powerful business actors at domestic and international level and their decisions have local and international repercussions. The most important decisions concerning their operations are usually made by their headquarters in the developed countries where they are established, but most of such decisions are to be carried out abroad in the countries where they operate (Zerk, 2006). Secondly, due to the different roles attributed by liberals in regard to the global governance goals, the engagement of MNCs in public issues is deemed compulsory to achieve the host-country’s socio-political commitments. Thirdly, due to MNCs’ global presence, they have networks with domestic and foreign power centres through which they can influence the host-country’s decision-making system. A way in which MNCs develop such networks is through business associations.

MNCs promote different forms of business associations such as trade organisations and unions to bring together business owners belonging to their economic sector.

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\(^{22}\) Frye (2002) notes that the lobbyists with more chance of success meet the following features: (1) they are large firms, (2) they belong to key economic sectors (ie. the fuel or telecommunications sectors), (3) they have monopolistic power, (4) they are state owned firms and (5) they are members of business associations.
These business associations leverage their bargaining power to exert pressure on the nation-state and achieve their collective goals. By joining them, MNCs increase their chances of influencing the public office effectively, this is a lobbying strategy commonly used by MNCs to overcome the collective action problem inherent to lobbying (Frye, 2002). Cohen (2000) notes that organisations such as chambers of commerce and trade organisations have more lobbying power and chance to succeed than lobbyists acting individually. Therefore, MNCs can employ business associations as a vehicle to capture institutions and to obtain collective gains for interest groups (Lezaga and Mournier, 2012:125).

Fourthly, the enormous power of MNCs is even bigger when they operate in crucial sectors of the economy of the host country. Governments of host countries focus on attracting MNCs operating in sectors of the economy that represent a relevant source of wealth and development for their country. That is the case of the extractive industry in resource-rich countries. In such countries, the competitive bidding for getting access to natural resources demands a high degree of political influence to have a favourable outcome which promotes bribery of top officials and politicians (Kochan and Goodyear, 2011:109).

However, that is just the beginning of a long-term relationship that is highly vulnerable to corrupt practices. Once MNCs initiate their operations, their interaction with public officers is necessary during the entire life of the project. This is mainly due to the central role of government in deciding how the natural resources should be managed and the substantial contribution of resource revenues in the economic growth and politics of the host-country (Collier, 2010). These aspects encourage MNCs becoming a powerful lobbyist in countries where there is a high dependency on natural resources (Durand, 2016).

Finally, MNCs control a significant share of the market and enjoy monopolistic power. MNCs operating in the natural resources sector have an oligopolistic position in the world market and a monopolistic position when entering domestic markets because, in most resource-rich countries’ natural resources are controlled by state entities and
exploited through joint ventures between MNCs and state-owned companies (Sornarajah, 2010:64). Therefore, MNCs operating in the natural resource sector hold a monopolistic power that makes them powerful lobbyists (Frye, 2002).

The power of MNCs acting as lobbyists is boosted by the fact that concentration of supply in the hands of a few companies influences the degree of the country’s dependence on the investment of such companies (Le Billon, 2005:222). Moreover, the joint ventures scheme between state-owned companies and MNCs, dominant in the extractive industry, allows MNCs to enter a monopolistic market and enjoy the benefits of a monopolistic position such as a share of monopolistic profit (Sornarajah, 2010:64).

**Context.**

In countries emerging from conflict number of factors related to the conflict itself influence the conditions in which public-private ventures are carried out. Firstly, one should bear in mind the dark origins of domestic business actors. Cramer (2006) notes that in wartime actors such as military officers, politicians, and entrepreneurs, make use of corrupt manoeuvres to reach a dominant position in the society and, taking advantage of such position, they acquire commercial assets and lands. After the war, thanks to the wealth and connections they have gained during the conflict, such actors continue to enjoy a dominant position. Therefore, post-conflict scenarios are characterised by the presence of elites who have benefited from the structures of violence configured in wartime and have the power to preserve the existing privileges to maintain their status quo (Galtung, 1969).

After the war, such elites are often the main business partners of MNCs because (1) they have the economic power required to take advantage of the privatisation process carried out during post-conflict reconstruction (Cramer, 2006); (2) they are powerful businesspeople because during the war they have already captured a significant segment of the local market to satisfy their political and economic needs (Mosquera,
M. 2014:41); and (3) they have the political and economic power required to compete fiercely for access and control over natural resources (Zaum, 2013). As a result, they are the main source of help and guidance of MNCs in the host-country which means that they have the power to influence the nature of the firm (Birley, 1985) when leading governance ventures.

Moreover, top government agents often behave like criminal gangs willing to play the role of APCs in exchange for economic favours or top positions in the private sector. As a consequence, they employ codes of communication commonly used by the criminal world to advertise the services they trade but also to keep their unethical and illegal activities in secrecy (Gambetta, 2009).

Societies with high levels of government’s involvement in businesses are highly vulnerable to state capture because it promotes scenarios where government agents can establish such codes of communication to offer their unethical and illegal services to business actors. For instance, government agents may abuse the power conferred by the law to negotiate advantageous measures with friends’ corporations in exchange of favours, such as tax relief, contracts or monopolies, etc., and/or impose burdens such as taxes and market restrictions if a profitable deal cannot be reached (Hellman and Schankerman, 2000). These kinds of practices are widely tolerated where corruption is deeply rooted in the structure of the entire society.

During the war, unethical practices are often systematically performed, tolerated and accepted by the society, to the extent that they turn into a component part of the people’s lives, beliefs and perceptions (Keig et al., 2015). Such an environment induces informal relations between entrepreneurs and political elites which facilitates the participation of business tycoons in politics (Tsyganov 2007: 132). In such contexts, business regulation imposes an enormous burden of bureaucracy and bribery is considered a valid means of alleviating such a burden (Martini, 2009). In societies where corruption is endemic, the legal framework and public policies instead of preventing or fighting corruption, preserve the legal status of unethical practices and the interests of the elite (Kaufmann and Vicente, 2011).
In such contexts, APCs emerge as relevant actors aiming to satisfy the economic needs of other actors where, for any reason, FSIs are not available or simply cannot fulfill the economic expectations of such actors in the way they wish. The lack of institutions and/or the weaknesses of the existing ones during or after the conflict, promote APC configuration. These contextual factors make FSIs highly vulnerable.

According to Cramer (2006), the spread of capitalism and liberalisation of markets are fundamental component parts of peacebuilding that demand the government to adopt measures and policies aiming to make the liberal fantasy of peacebuilding possible. It worsens the position of the FSI as they can be seen by the government as an obstacle to make the liberal peacebuilding project possible.

The FSIs themselves and the procedures they oversee can be perceived by the government as obstacles to achieving the liberal fantasy of peacebuilding. For instance, the adoption of a zero-tolerance corruption policy may be considered as an unrealistic goal which could be ignored if by doing it the government can solve important social needs that cannot wait longer (Phil, N. 2012:41). Hence, FSIs may have to tolerate corruption if it is necessary to reach the humanitarian and reconstructive goals that liberal peacebuilding involves (Cheng and Zaum, 2012:22).

In such a context, the government may justify the wrongdoings of MNCs by arguing that they are necessary to achieve vital goals. Hence, because post-conflict reconstruction is an opportunity for rulers to draft laws, determine powers, and functions, and decide how to allocate state resources (Grzymala-Busse, 2008).

Furthermore, in such scenario legal frameworks aiming to make weaker FSI can be supported to facilitate state capture. Therefore, rulers playing the role of APCs can create useless FSIs (Lezhnev, 2016), merge several FSIs to operationalise systemic corruption by concentrating the decision-making power in one single FSI (Andrev 2008) or eliminate key FSIs to create many FSIs taking over the functions of formers, promoting institutional fragmentation and bureaucracy, and creating possible scenarios where many different APCs would compete for establishing themselves as
the key actor to influence as much FSIs as possible (Kahn and Gray, 2006). Hence, during post-conflict reconstruction, FSIs are highly exposed to policies based on the consensus of a few powerful actors (Cramer, 2006).

Furthermore, in countries where at some point the government has been involved with third parties in incidents of violation of human rights, the government agents instead of making available the necessary means to protect effectively human rights create institutions and legal frameworks to promote impunity and create obstacles to the effective access to justice.

These practices commonly happen in countries where the government commits crimes with the complicity of MNCs, or where the government plays the role of enabler by acting as an abettor of the MNCs’ wrongdoings (Kaufmann, 2016), or where the government merely acts as an eyewitness of the MNCs’ abuses. In any of these scenarios, the pillars of the United Nations Guiding Principles on Business and Human Rights (UNGP) -to protect, to respect and to remedy- instead of being guarantee through the so claimed socio-political engagement are seriously put at risk.

The following figure summarises the factors described in this chapter. It represents the basic equation to capture the state without illegal means being required: the sum of MNCs’ intrinsic and extrinsic features with contextual factors. The more factors added to the equation, the most likely the state being captured by MNCs.
FIGURE 2: FACTORS LEADING TO STATE CAPTURE IN COUNTRIES EMERGING FROM CONFLICT

- Ethical ambiguity
- Managerialism
- Award Scheme
- Scale of values
- Top agents and shareholders' authority

<table>
<thead>
<tr>
<th>MNCs intrinsic and extrinsic features</th>
<th>Contextual factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Powerful business actors</td>
<td>MNCs do not need illegal means to capture the state as state capture could happen through legal means</td>
</tr>
<tr>
<td>Operate in crucial sectors of the host country's economy</td>
<td></td>
</tr>
<tr>
<td>Control a significant share of market</td>
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</tbody>
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- Dark origin of domestic business actors
- Top members of the public office play the role of APCs
- Endemic corruption
- Post-conflict configuration of APCs
- Highly vulnerable FSIs
Section 6: Impact of state capture on conflict

MNCs’ decision on whether to play or not the role of captor is made on the basis of the managers’ assessment of the potential advantages the corporation would obtain by doing it and/or the extent to which their interests would be affected if they do not do it. However, before making such a decision, they assess the legal and reputational risks of playing the role of the captor. If state capture does not involve negative reputational or legal consequences for the company or it could be carried out through legal and/or unethical but widely accepted and tolerated practices, MNCs tend to overlook the possible consequences state capture may have on the civil society and take the risk of playing the role of the captor.

However, contrary to criminal gangs, paramilitary groups or guerrilla rebels, MNCs playing the role of captors do not aim to fuel conflict. Nevertheless, when the MNCs decide to play the role of the captor, the collateral damages it may entail are foreseeable. For instance, the negative consequences of capturing a democratically elected institution for the taking away from the people their right to decide on issues which may affect their fundamental rights, those that the government must protect and respect. It is foreseeable that it will deprive the people’s right to achieving the aspirations it would be able to achieve through a well-functioning democratically elected institution.

Following Galtung (1969), one may say that MNCs playing the role of captors contribute to structural violence. It occurs in those cases where the MNCs’ intervention in the public decision process creates a negative correlation between the people’s potential level of realisation -one which they would be able to achieve if the public decisions (rules, judgements, policies, etc.) were made in such a way that they aim to satisfy the public interests rather than the MNCs’ private interests- and the people’s actual level of realisation –one that is substantially below the people’s potential level.
of realisation as a consequence of the captor influencing the public decision-making system to fulfil its own economic expectations, disregarding the impact of such behaviour on the host-country’s society.

However, for the effect of evaluating the impact of MNCs playing the role of captors on conflict, the society’s aspirations in conflict-prone zones cannot be considered equal to the aspirations of a peaceful society because the already ingrained war conditions and the involvement of other actors of conflict have limited the people’s prospects to achieve their potential level of realisation before the MNCs arrival.

For that reason, I argue that the foundational principles of the United Nations Guiding Principles on Business and Human Rights (UNGPs) -protect, respect and access to remedy- provide a valid representation of what the civil society would expect of MNCs operating in a conflict-prone country, as such principles recognise the MNCs’ obligation of respecting human rights and the State’s duty to protect, respect and facilitate access to remedies in case of MNCs breaching human rights.

Hence, when evaluating the possible consequences of state capture on structures of violence, it should be borne in mind that it is relevant only to consider the mechanisms, processes, strategies carried out by the MNC to influence the decision-making system that has negatively impacted the people’s human rights the government must protect and respect. Therefore, for identifying the impact of MNCs playing the role of captors on the Colombian conflict, this thesis will be focused on the three pillars of the UNGPs’ framework: protect, respect and remedy.

The UNGPs (2011) refers to the three pillars in the following terms:

Protect: States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations, and adjudication.
Respect: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

Access to remedy: As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

As the impact of state capture is unforeseeable, because it can change from one case to another, these three pillars will be useful to have a sound framework to fit the multiple consequences identified in the case studies within a consistent framework. It will allow me to analyse how state capture have impacted the three fundamental pillars of the global reference on business and human rights. Therefore, UNGPs’ pillars establish a suitable framework to identify the impact of state capture on conflict. They are the main general duties the home and host-country’s governments should observe to avoid people being constrained to enjoying their fundamental rights as a consequence of the MNCs’ misdeeds. Moreover, these principles encourage governments to facilitate legal actions against the MNCs to obtain fair compensations.

Finally, it is important to highlight that before 2011 there were no Ruggie Principles. Therefore, at the time in which many processes analysed in this thesis occurred they were not considered an internationally recognised framework yet. However, it does not mean that at that time the three pillars in which the framework is based could have been ignored by the state or the MNCs because the UNGPs did not create new legal duties, but they just confirmed duties already recognised by international law (Davis, 2012:963)
Conclusion

This chapter has developed a theoretical framework of the process through which MNCs play the role of captors. Based on sets of works of literature belonging to different disciplines, this chapter shaped the concept of state capture; identified and defined the different actors involved in the state capture process; highlighted the pathway through which state capture is carried out by MNCs and the mechanisms MNCs may employ, direct and indirectly, to capture the state. This chapter aimed to elucidate the main components of the state capture process, a relevant aspect to understand key issues before approaching the case analysis in the next chapters.

Moreover, the framework proposes how these concepts can be operationalized and adapted to specific processes (Bennett and Checkel, 2014). To do this, it established a framework to identify what events, among all the events recorded during the fieldwork, should be closely tracked. The framework is based on two components: the main mechanisms through which MNCs develop their ties with governments and the theorisation of the process through which MNCs interrelate with actors who allow them to play the role of captors (enablers or alternative power centres). Therefore, a milestone -this is a relevant event which should be traced- will be any event in which the MNCs employed such mechanisms or an event in which they interrelated with enablers or alternative power centres.

Another set of milestones to elaborate the event-event-history map are situations in which the MNCs had the intention of playing the role of the captor. State capture involves the captor’s mental process of making the decision of deploying a set of actions in such a way that they influence the public-decision making system in its self-interest. Such mental process is carried out by their managers or representatives who act as agents of the MNCs.

Tracing the agent’s intention of deploying a set of mechanisms and processes to capture the state requires tracing clues to identify evidence of events from which it
would be possible to deduce such intention. The theoretical framework developed in this chapter highlights two different sets of factors: firstly, those directly related to the MNCs’ features and, secondly, those related to the context where they perform. The MNCs’ decision-making process carried out by taking advantage of any of these factors will be closely traced when approaching the case studies in the following chapters because they would be considered as a sign or clue of the agents’ intention to capture the state.

Finally, the theoretical framework developed in this chapter establishes a criterion to assess whether the sequence of events (event-event-history map) leading to state capture (cause) impact structures of violence or not (effect). This criterion is based on the three pillars of the United Nations Guiding Principles on Business and Human Rights (UNGPs): protect, respect and remedy as they represent the minimum expectations of any society in regards the MNCs’ duty to respect the fundamental rights of host-country’s people.

In order to further explore the mechanisms and processes involved in state capture and the impact of state capture on violent systems, chapters four, five and six analyse three episodes of the Colombian context to illustrate the real-life plausibility of the pathway I have theorised in this chapter. The case studies show that state capture is not merely an isolated act of corruption like bribery, but the outcome of a complex process carried out with the complicity of APCs, which is configured through illegal, unethical but also absolutely legal mechanisms which are strategically put together by the MNCs to achieve their goals and that is facilitated because of the intrinsic and extrinsic features of the MNCs and the context where they perform.

Through the analysis of the three case studies, and following the theoretical framework proposed in this chapter, this thesis aims to identify mechanisms and trace processes leading to state capture. Furthermore, it aims to find out how such mechanisms and
processes, as they have been deployed by the MNCs involved in the case studies, have impacted the Colombian conflict.
Chapter 3: The Colombian case study

The early 20th century

Since their arrival in Colombia early 20th century, MNCs have had a strong relationship with the Colombian government. Different governments have employed aggressive strategies to attract foreign investors and they have made as much as possible to protect foreign investors even in war times. However, the government has not clearly established what the boundaries of such support are. Conversely, the top government agents are willing to do anything they can do to keep a good relationship with foreign investors as they are considered an important source of wealth not only for the country but for politicians, business tycoons and themselves.

Therefore, the Colombian government’s unconditional support to MNCs is not a new trend. An infamous episode called the Bananas Massacre provides evidence of the government being influenced to exert violence against their own citizens merely to satisfy the private interests of one single MNC, the United Fruit Company (UFC). UFC may be considered a brutal example of an MNC playing the role of the captor. The company, abusing of its political connections and economic power, influenced the government to the extent that it made the decision of making use of the Colombian Army against the workers of the company just to avoid disruptions of the company’s operations. The outcome of such a decision was the Bananas Massacre, which was just the outcome of combining several factors.

These factors can be summarised in four: (1) the context in which the MNC was carrying out its business, (2) the backing of the MNC’s home country, (3) the MNC’s dominant position in the home country’s market, and (4) the linkages between government agents and top executives.
1) Firstly, concerning the context in which UFC was carrying out its business, UFC was established in Colombia in 1899 but it could not initiate operations immediately because of an internal conflict known as the Thousand Day’s War (1899-1902) a battle between supporters of the liberal and conservative political parties. However, instead of affecting the company’s performance, such a delay was beneficial for UFC as it entered Colombia at a moment in which the government was focused on adopting measures aiming an industrialization process to make it possible the economic recovery. It involved creating incentives to attract foreign investors and develop a strong infrastructure. UFC could take advantage of both the government’s approach towards foreign investors, but also the infrastructure the government had developed during post-conflict recovery (Partridge, 1979).

Hence, in 1899 the government granted to UFC plenty control over the railway, a crucial infrastructure to transport bananas to the port. The government was motivated with this transaction as it expected UFC would continue with the further development of the railway infrastructure. However, it never happened (Brundgart, 1987). Similarly, the irrigation system of the banana region, essential infrastructure for the banana production developed by the government, was operating thanks to the public expenditure (Viloria, 2009). It shows that the contribution of the MNC to the development of the infrastructure was minimum in comparison to the degree in which the company benefitted from it.

2) Concerning the backing of the home country’s government, the UFC’s agenda was always aligned with the foreign policy of the US government in regard to Latin America. Therefore, the company’s agenda coincided with the socio-political and economic project the US government (Bucheli, 2006:32). It means that the MNC’s decisions were oriented to support local landowners,
top army officers, local political elites, and oppress the working class to avoid an early expansion of communism in Colombia (Bucheli, 2006).

3) UFC enjoyed a dominant position in the market. It was established in 1899 from merging five companies, Colombian Land Co., Tropical Trading and Transport Co., Boston Fruit Co., Snyder Banana Co., and Fruit Dispatch Co. This merger transaction turned the company into the leading player of the bananas market, at domestic and international level, enjoying a monopolistic position in Latin America. This allowed the company to rule the bananas business in the entire region and to control a significant share of the global market.

Brundgart (1987) notes that the power of the company was of such a dimension then that if Colombia had imposed obstacles to the company, it would have taken its business down and blocked entry of Colombian bananas to the American and British markets. It led the government to consider the interests of the company a national interest issue. In addition, UFC was the only company having the infrastructure required for massively exporting bananas thanks to the company’s know-how that comprised techniques of storage and transport of bananas, and the skills required for marketing the fruit in the European and North American markets, key assets which the Colombian traders did not have at that time.

The dominant position of the company in the global market led to a huge imbalance between UFC and the local suppliers of bananas. Such an imbalance allowed UFC to impose disadvantageous contractual conditions on local traders. Bucheli (2004) notes that the competitive advantage of UFC was strengthened through a strategy based on three pillars: timing, third party enforcement, and harsh loan conditions on local traders.
Concerning the timing, UFC followed a schedule for doing contracts. The company signed out contracts simultaneously with all its banana providers. Through this strategy, the company avoided local providers working together to develop their own business strategy during the period in which they were without a contractual relationship with the MNC. Regarding enforcement, UFC employed agreements drafted in Boston to impose severe restrictions to its providers such as prohibiting them to sell bananas to other companies or block any attempt of its providers to export bananas directly. To enforce such agreements, UFC was supported by the American and British authorities who confiscated the bananas of the local traders when arriving at their ports. Finally, concerning the third pillar, local providers obtained loans to acquire properties and develop their business under disadvantageous contractual terms unilaterally imposed by UFC. Thanks to such a strategy, the company gradually increased its share of the Colombian bananas market to create a monopsony (Bucheli, 2004).

4) The fourth factor facilitating UFC’s abuse of power was the fact that it was a politically connected company in both the host country and the home country. Concerning the political linkages in the host country, employing disadvantageous contractual terms UFC did not aim to ruin local traders but to configure a banana-grower clientele (Partridge, 1979). Through such a manoeuvre, UFC configured a network of commercial partners who were politically connected individuals that enjoyed UFC’s exclusive business opportunities in exchange for political favours.

For instance, UFC’s local partners had access to loans to acquire lands and invest in their own businesses. In addition, thanks to such agreements local traders did not face the risk of losing enormous amounts of bananas. Therefore,
it is important to bear in mind that local traders were not victims of the MNC at all. On the contrary, they were an exclusive segment of the society, an elite strongly tied to the government who had the privilege of doing business with UFC (Brundgart, 1987).

Regarding the political linkages of UFC in the home country, the company’s interests were backed by foreign governments because the people serving to the interests of the MNC were appointed in important diplomatic positions. Before explaining this statement, it is important to mention that that before UFC obtaining the concession of the railway in 1899, it was transferred from Roberto Joy and Julian de Mier -the constructors of the railway- to Santa Marta Rail Company (SMRC) in 1886 and then, it was transferred from SMRC to UFC. These transactions were useful to strengthen the relationship among the parties involved in the railway concession to the extent that it would be considered one of the first episodes of revolving door involving an MNC operating in Colombia.

In 1908 Mansel Carr, who worked as manager of SMRC, married with the sister of Roberto Joy and then he was appointed as a diplomatic representative of Great Britain in Santa Marta and manager of UFC. Joy’s business partner, Julián de Mier, was appointed as vice-consul of the U.S. and France in Santa Marta. Years later, another manager of SMRC, Phillip Marshal, replaced Carr as consul of Great Britain at Santa Marta, and then Marshal was replaced by Thomas Bradshaw, (Brundgart, 1987), who played a central role in the Bananas Massacre as such an episode occurred when Bradshaw was the manager of UFC.

The appointment in relevant diplomatic positions of UFC and SMRC’s managers, was of the paramount importance for the MNC to influence the Colombian government, as the company was able to gain the support of foreign
governments to exert pressure on the Colombian authorities. Hence, the success of the Colombian foreign affairs was conditioned by how well it served to the American business’ interest and it would be considered that a failure in doing it would lead to a diplomatic crisis with western countries.

Contrary to the local elite, small businesses were negatively impacted by UFC. The company made a unilateral decision on whether to buy or not the small farmers’ bananas and it established the purchase conditions without any kind of negotiation being carried out. Regarding the people without land, the MNC recruited thousands of them to work in tough labour conditions (Partridge, 1979). The workforce was outsourced by the MNC to avoid dealing directly with workers. Local traders were benefactors of the outsourcing scheme employed by UFC as they provided the workforce to the MNC. Therefore, the staff was mainly composed by day laborers employed during peak periods (Brundgat, 1987) who had no labour rights like the UFC’s formal employees (Elias, 2011). Hence, people who were not part of the elite were simply exploited by the MNC.

**The Bananas Massacre**

The company systematically committed abuses against workers, which led to the banana zone strike of 1928. That is the beginning of the Bananas Massacre. The labour conflict began after a petition of workers asking for the improvement of labour conditions. It was addressed to Thomas Bradshaw who ignored workers’ claims and, as a consequence, workers made the decision of refusing to work and spoiling the smooth-running of the banana business’ operations. Bradshaw and UFC’s local partners reacted sending telegrams to the government requesting it to take action to put the strike down as the national resources were in risk (Partridge, 1979).

Responding to the traders’ requests, the Colombian Minister of War, Ignacio Rengifo, established that the government was against any sign of subversive behaviour as it was
a demonstration of communist propaganda (Brundgart, 1987), and issued a Decree declaring the state of siege in the banana area and sent the General Cortés to the banana zone. The lack of clarity of the decree, regarding the scope of Cortés powers, led Cortés to make the decision of issuing a decree establishing his own powers to control the strike (Coleman, 2015).

This pathway led to the Bananas Massacre, a remarkable incident of violence which took place between December 5 and 6, 1928 in Cienaga, Magdalena, when the troops commanded by Cortés opened fire against a multitude of workers to take control over the situation. From the government’s point of view, the workers’ petition was as a communist’s request. Therefore, workers were treated as communists, the strike was handled by the government as a subversive attack commanded by rebels, and the military force’s extermination of workers and their families was seen by the government as a heroic act of the military force to re-establish the rule of law in the banana zone (Coleman, 2015: 121).

Hence, UFC’s economic interest was assumed by the Colombian government as a national interest matter and the military force’s carnage, the restoration of the national sovereignty. Evidence of this is the fact that after the massacre Cortés was received as a national hero by the government and was appointed as Chief of the National Police (El Tiempo, 1991).

On December 5, 1928, the US ambassador to Colombia, Jefferson Caffery, sent a telegram to the US government informing about the situation in the banana zone and letting the U.S. Secretary of State know that the Colombian government offered unconditional support to protect the American interests involved in the conflict and it promised that the leaders of the strike would be sent to prison. On December 6, the ambassador sent another telegram asking for the U.S. government’s support through a ship of the U.S. Navy being sent to the Colombian north coast because he considered the Colombian troops were powerless to control the strikers (Cedesip, 2016).
On January 16th, 1929, the ambassador sent a telegram to the U.S. government detailing the outcome of the massacre: “(...) The Bogota representative of the United Fruit Company told me yesterday that the total number of strikers killed by the Colombian military exceeded one thousand” (Las2orillas, 2017). However, the number of victims of the massacre is unknown up to date.23 Even nowadays, the discussion whether they were dozens or hundreds, is accommodated in the discourses of left-wing and right-wing politicians in such manner that it fuels arguments from both sides of the political spectrum. Despite the company’s involvement in the Bananas Massacre, UFC continued doing business without in Colombia without disruption, until it left the country at the beginning of WWII.

In 1947 UFC returned to Colombia to recover its operations in the banana zone in the department of Magdalena. However, many things had dramatically changed. The Colombian government and the local growers had taken control over UFC’s business in Colombia. The Colombian government took control over the railroad, which was exclusively controlled by UFC before leaving the country. In addition, the government forced the company to negotiate fair contractual terms with local growers that had invaded the company’s land. Furthermore, the MNC was required to provide financial and technical assistance to such local banana growers, which were not poor peasants but the local elite, wealthy families who had taken advantage of the UFC’s absence to invade the MNC’s properties (Partridge, 1979:497).

A few years later these families developed their own corporations to commercialise the fruit. Bucheli (2004:201) notes, they copied and followed the patterns established by UFC. Partridge (1979) highlights that “These corporations were composed of the same grower families that had produced bananas for the company before the war, and between 1941 and 1947 these same families took over the plantations owned by UFC”.

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23 Despite the Banana Massacre being extensively approached by different scholars, there is not a uniform opinion about the number of victims yet. Dozens, hundreds or thousands, the number depends on the position and interest of that one who is telling the tale.
Instead of UFC being against these families’ business, it started looking for new partners to continue with its operations. This was easy for UFC because, despite the partnership scheme and the contractual conditions being basically the same they used to employ before leaving the country, many local traders preferred to deal with UFC instead of its Colombian competitors due to the vast experience of the MNC in foreign markets and the reputation of the company abroad (Bucheli, 2004).

However, the company was unhappy with the new business scenario in Magdalena as banana production was more expensive in Colombia than in Central America (Partridge, 1979). Therefore, in 1959 the company made the decision of moving to another Colombian banana zone, Urabá (department of Antioquia), but before doing it, the company tried to recover as much as it could from its investments in Magdalena. However, the company could just sell a small portion of its properties and faced serious difficulties in recovering the money owed by local growers to the company.

In 1969, after years of negotiation, UFC finally achieved an agreement with the National Institute for the Agrarian Reform (INCORA, an FSI) according to which the government “(…) would cover the outstanding balances of loans to planters’ current accounts, and sale of the farms” (Bucheli, 2004:204). Bucheli (2004) notes that it was a beneficial deal for UFC but a disadvantageous agreement for the government as it paid the company but never was able to recover payments from the growers.

In Urabá UFC followed a different business model to that one it used in Magdalena. Bucheli (2004) notes that instead of the MNC being a banana producer, its role was circumscribed to offer services to local traders. Hence, it was a financial institution, technical advisor and marketing operator, which was useful to avoid excessive expenditures in infrastructure and land acquisition.

Moreover, when acting as a financial institution, UFC did not borrow money to local traders directly as it used to do in Magdalena, but it was borrowed through Colombian financial institutions, diminishing the risk of debts being unpaid. Hence, the MNC
transferred its money to Colombian banks who, after the evaluation of UFC and its approval, provided loans to local growers.

Thanks to the UFC’s new strategy, the company was able to leave Antioquia at any time, without having to deal with problems such as the invasion of its properties by locals or the sale of its properties at a low cost. Moreover, as the loans were granted through Colombian banks, local traders were not directly the MNC’s debtors, therefore, it would not have to face the difficulties of enforcing contracts and recovering the money owed by local growers as it happened in Magdalena. However, the UFC’s new strategy substantially diminished the power of the MNC to capture the state for two reasons:

Firstly, the UFC’s lack of massive ownership on land created obstacles for the MNC when it tried to impose restrictions in relation to the use and access to the land to local growers. As an example, when the MNC claimed exclusive access to the canals for banana transportation, such claims were rejected by the government and it had to allow local traders to use the canals. Moreover, because in Colombia landowning has been synonymous of power, the company was not perceived as the powerful actor it used to be in Magdalena where it owned vast extensions of land and ruled the land policy.

Secondly, concerning the indirect relationship of the MNC with debtors, it diluted the strong position of the company to impose unfair terms in exchange for credits. Credits were granted after a technical assessment carried out by the MNC, however, after they were granted UFC had no power to use the credit to exert pressure on the growers. In addition, there was a low dependency on the MNC’s credits and investments for the development of local business who had multiple sources of finance.

Despite diminishing financial and economic risks successfully, the new business strategy adopted by UFC in Urabá also diminished the MNC’s power to capture the state. It seems to suggest that the higher the financial and/or economic risks assumed by the MNC, the more likely the probability of it deploying its corporatist efforts to capture the state in order to diminish the risks of financial or economic loss.
Due to the unfavourable commercial scenario and the armed conflict between the military force and left-wing guerrillas, UFC sold its business to local entrepreneurs. In 1982 the company left Colombia and it decided to be focused on its banana plantations in Central America (Bucheli, 2004).

The late 20th century and the early 21st century.

Because of the socio-political transformations faced by Colombia during the last century, one may consider that such an abuse of power like that of UFC cannot happen again. Nevertheless, as the case studies will show, similar episodes still happening. The case studies approached in this thesis clearly show that several methods and strategies like those employed by UFC one century ago still valid nowadays. This aspect and other factors justify Colombia as a suitable single contextual case to illustrate the causal links this thesis approaches.

Contrary to other countries facing armed conflicts, Colombian armed conflict has not been an obstacle for the successful implementation of economic liberal policies in the country. Since the 90’s Colombia has adopted policies aiming to attract massive FDI and encouraged powerful MNCs to operate in conflict-prone areas. The Colombian case study, therefore, is an example of implementing a neoliberal development model during the conflict and it illustrates the implications of doing it.

One of the implications of implementing neoliberal policies in such an environment is that it may require the intervention of illegal enablers of the neoliberal model. This is the case of the infamous paramilitary groups known as “Convivir”, a parallel structure of security services providers created by the Colombian government in the nineties to bring security to conflict-prone areas. The Convivir dramatically worsened the Colombian conflict. They were private security squads which operated with the support of the government and the army.
The Convivir were created by the law looking for solving the security problem faced by landowners. In 1993 the Colombian Congress issued the Law 61 of 1993 to provide the president with the faculties required to issue a statute on private security and surveillance. Such statute was issued in 1994 by the Colombian former president Cesar Gaviria (1990-1994), through the Decree 356 of 1994. The next year, in 1995, the Ministry of Defence appointed by the president Samper (1994-1998), Fernando Botero, conceived necessary to involve civilians in military tasks to defeat guerrillas. According to Botero, "No country in history has been able to overcome the problem of rural crime only with the efforts of the Armed Forces. The contribution is required of the organized civil population" (Cinep, 2004). Therefore, the Convivir squads were created through the Superintendence of Surveillance and Private Security’s Resolution # 368 of 1995.

The superintendent of Security and Surveillance, Herman Arias-Gaviria, was the government agent in charge of supervising the Convivir. He was appointed in that position by former president Ernesto Samper (1994-1998). Before Arias being appointed as superintendent, he occupied an executive position in the National Association of Industrial (ANDI) and worked for an American Multinational (El Tiempo, 1995a). His father, Jose Manuel Arias-Carrizosa, ministry of Justice during Virgilio Barco’s presidency (1986-1990), was president for more than four years of the banana traders’ guild known as Augura, the lobbying branch of the Urabá’s banana traders. Performing as the president of Augura, Arias-Carrizosa was responsible for handling the relations between the banana industry, workers and state agencies.

Arias-Carrizosa represented the interests of the Colombian banana growers at the Union of Banana Exporting Countries at the time the WTO dispute between the US and the EU for the restrictions imposed by the later on the exports of Latin American bananas, known as Banana War, was starting (El Tiempo, 1993). According to Chomsky (2008:196) when Arias Carrizosa was the president of Augura, “he was an outspoken supporter of the creation of civilian paramilitary self-defence committees”.
In fact, in 1987 Arias-Carrizosa openly supported the civil self-defence committees because, in his view, farmers and landowners had the right of organizing themselves to defend their lives and assets from guerrillas (Americas Watch Report, 1989:50).

However, despite the position of Arias-Carrizosa, when the former president Barco identified that the paramilitary groups were out of control, in a desperate move to stop their crimes and abolish self-defence organisations, Barco issued the Decree 1194 of 1989 to impose penalties on those who created paramilitary groups without the permission of the Colombian president. The interest of the Barco’s government in stopping the proliferation of paramilitary groups was replaced by the interest of the Gaviria’s government in making them legal organisations again. Hence, Gaviria issued Decree 356 of 1994.

Therefore, ten years after the above-mentioned intervention of Arias-Carrizosa before the Colombian parliament, his son, Arias-Gaviria, was appointed as the man in charge of inspecting, controlling and supervising the Convivir. The superintendent Arias-Gaviria considered the Convivir “(...) simply a form of citizen participation in the face of a problem that directly affects it.” (El Tiempo, 1996). In addition, like his father, the superintendent Arias-Gaviria was enthusiastic with the idea of promoting civil self-defence groups.

In an interview, Arias-Gaviria held, (...) “I wish there were 5,000 Convivir in the country and that nobody could commit a crime without being denounced by an association. We would end crime and guerrilla with the information provided by the cooperatives and the action of the Public Force” (El Tiempo, 1996). Such support of the Colombian government led some MNCs to trust in the security services provided by the Convivir and, therefore, they started to pay for their security services.

MNCs operating in the department of Antioquia were sympathetic with the security policies adopted by the Antioquia’s governor, Alvaro Uribe Velez, who supported the Convivir. However, former president Uribe (2002-2010) was not the architect of such organisations. As mentioned above, the legal framework which made the Convivir
legal organisations was elaborated by several governments that made these organisations a legal alternative to fight against guerrillas. However, due to their systematic abuses, after years acting as legal groups, the Convivir were declared paramilitary groups and consequently, they were considered terrorists by the US government. However, they continued providing security services to local traders and MNCs in the shadow.

According to the Netherlands’ based NGO Pax Christi, there is vast evidence of two Swiss-based MNCs -Glencore and Drummond- involved in an alliance with paramilitary groups. Pax Christi (2014:28), in the document entitled “The Dark Side of Coal: Paramilitary Violence in the Mining Region of Cesar, Colombia”, notes that “(...) it can be argued plausibly that between 1996 and 2006 the JAA Front committed at least 2,600 selective killings in the area mining of Cesar.” Moreover, the Pax Christi’s report notes that the mentioned MNCs did not avoid such incidents of violence and, on the contrary, they were directly involved acting as abettors of the paramilitary groups’ crimes. In an interview with Rodrigo Rojas, Pax Christi’s Colombian representative, he noted that “(...) these companies sponsored, supported and shared sensible information to the (...) United Self Defence of Colombia (AUC) to act in the coal region and in the coal transport corridor to Santa Marta. How it was possible for Drummond and Glencore to engage in such incidents of violence for more than one decade without suffering serious consequences for doing it?”

However, there were more MNCs engaged with paramilitary groups. Many local traders and foreign companies sponsored paramilitary groups arguing that it was necessary to protect their employees and assets. This is the case of Chiquita Brands (CB), the MNC known up to the end of the eighties as UFC. The first case study approached in this thesis refers to CB (chapter 4), one of the main benefactors of paramilitary groups in Colombia. As will be shown, the methods employed by UFC to
capture the state for one century, were like those the company employed at the time it operated in Colombia during the nineties as CB.

CB case study shows the abuse of power of the MNC and the implications of MNCs deploying political connections, in their home and host countries, to influence the government and carry out their business operations at any cost. The other cases approached in this thesis involve two MNCs that have taken advantage of the neoliberal policies adopted during the last two decades by the Colombian government to attract foreign investors, Pacific Rubiales Energy Corp. (PREC) and AngloGold Ashanti (AGA). These case studies show how liberal policies can facilitate the process through which MNCs play the role of captors. Moreover, they demonstrate that MNCs’ abuse of power is facilitated through a framework that is designed by the host country’s government in conjunction and with the support of international organisations and the MNCs’ home countries.

The AGA and PREC case studies involve a foreign investment policy led by the government of President Alvaro Uribe Velez that may be considered successful as it boosted foreign investments in Colombia. In order to attract massive foreign investment in conflict-prone areas, in 2002 the former Colombian president, Alvaro Uribe Velez introduced a governance model based on three pillars: (1) democratic security, (2) investor’s trust and (3) social cohesion. In the frame of this governance model and taking advantage of the Colombian natural resource wealth, Uribe targeted to attract foreign investors operating in the natural resource sector. This strategy was called locomotora minera (mining locomotive), a policy which considered the mining as an important source of progress and development to improve the Colombian economy and paved the way for violence reduction and peacebuilding.

24 Former president Uribe’s core policies and cornerstone of his government’s programme.
As mentioned above, one of the cases referred to in this thesis is the AGA case study. AGA is a South African MNC that started greenfield exploration in Colombia seduced by the former president Alvaro Uribe’s security policy known as “Seguridad Democratica” (Democratic Security) and the “Investors Trust” policy. Concerning the Democratic Security policy, it was based on generating the safety conditions in the national territory, it was required for MNCs to operate without rebels’ disruptions such as kidnappings and terrorist attacks against infrastructure. The cornerstone of such policy was the deployment of army troops in areas of the national territory where it was difficult for companies to have access due to the presence of guerrillas (Página Oficial Álvaro Uribe Vélez, c2014). Aligned to such strategy, the government promoted agreements between the military force and private companies for, among other things, the protection of their employees and assets.

Concerning the “investors’ trust” policy, it was the government’s keystone for the country’s economic development (Página Oficial Álvaro Uribe Vélez, c2014). Based on the high price of gold and minerals at that time and the fact that Colombia is a natural resource-rich country, the government forecast that the mining sector had the potential to become the main source of economic growth and development for the country, and it focused on attracting investors in the mining sector, this strategy was called locomotora minera (the mining locomotive). It aimed to attract foreign investors interested in developing projects in the extractive industry to pave the way toward development in conflict-prone areas. Through the National Plan for the Mining Development: Colombia mining country 2019 (Ministerio de Minas y Energía, 2006), the government established the framework of the mining locomotive and implemented it through the brand “Colombia Pais Minero” (Colombia, the mining country). The combination of both democratic security and the mining locomotive proved to be good enough to persuade MNCs to invest in Colombia. AGA and PREC were two of them.

Both AGA and PREC were operating in conflict-prone areas. However, the Democratic Security policy seemed to provide the means the MNCs required to
operate without disruptions. On the one hand, AGA’s explorations were carried in a zone controlled by guerrilla rebels before the company’s arrival but dominated by paramilitary groups at the time the company decided to carry out its exploration activities. According to AGA’s Community Report: Despite the region’s instability in the past, it was then and remains our view that the Colombian government has established a reasonable and sufficient level of control to allow us to continue exploration activities there... This has given AngloGold Ashanti a definite lead in this country (AGA, 2005).

On the other hand, the Colombian government granted PREC a concession to exploit one of the most productive oil fields in Colombia, “Campo Rubiales”, a zone in the municipality of Puerto Gaitan, Meta (the department where is the municipality of Puerto Gaitan), a conflict-prone area dominated by the Medellin cartel during the eighties, guerrilla rebels during the nineties and paramilitary groups during the last two decades (Rutasdelconflicto.com, 2017). The Colombian strategy to attract foreign investors allowed PREC to go from being a stranger to turn into a leading Canadian oil company and one of the main partners of the Colombian government in the accomplishment of the state’s economic goals.

The Uribe’s investors trust policy was enhanced with FTAs with North American and European countries. This strategy aimed to establish a trustworthy business environment for foreign investors. Nowadays, the country has a comprehensive legal framework on Foreign Direct Investment (FDI), and it is a state member of several international trade organisations. Moreover, it recently became the 37th member of the Organisation for Economic Cooperation and Development (OECD), an intergovernmental organisation which aims to promote policies to improve the economic and social well-being. Therefore, one may consider that the country enjoys a sophisticate and comprehensive legal framework which allow it to negotiate agreements with MNCs on fair and reasonable terms. However, such a modern and sophisticated international trade legal framework has turned into a factor enhancing
and leveraging the bargaining power of MNCs in Colombia. It has placed MNCs in an advantageous position in relation to the host country.

The above-mentioned Swiss-based MNCs -Glencore and Drummond- still doing business in Colombia. They have benefited from the investment-friendly policy of the Colombian government to attract foreign investors. In an interview with Stephan Suhner, coordinator of the Swiss-based NGO Kolumbien Ask! who has closely followed up Glencore’s operations in Colombia, he noted that Glencore like any other Swiss-based corporations have benefited from the Europa Free Trade Association (EFTA) - Colombia free trade agreement. Such a trade agreement does not include a human rights clause. In addition, they have benefited from the International Centre for Settlement of Investment Dispute to initiate arbitral proceedings against the Colombian government in a case related to loyalties. Therefore, adoption and implementation of neo-liberal policies have not prevented human rights to be infringed but only it has made the host country more vulnerable to the MNCs’ strategies to achieve their private goals.

In addition, neoliberal policies have not been enough to overcome the violence rooted in society. Despite conflict remaining rooted in the Colombian society, peacebuilding has become a central issue in the Colombian development agenda. The government of the former president and Nobel prize Juan Manuel Santos (2010-2018) achieved a peace agreement with the Revolutionary Armed Force of Colombia (FARC). The accord called the attention of the international community who enthusiastically has decided to support peacebuilding projects massively. However, violence has not

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25 The Free Trade Agreement between the Republic of Colombia and the EFTA States (Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation) was signed on November 25, 2008 and approved by Law 1372 of January 7th, 2010.
26 ICSID is the world’s leading institution devoted to international investment dispute settlement. It has extensive experience in this field, having administered the majority of all international investment cases (https://icsid.worldbank.org/en/Pages/about/default.aspx)
27 Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia (ICSID Case No. ARB/16/6)
finished yet. The left-wing guerrillas National Liberation Army of Colombia (ELN) and Popular Liberation Army (EPL), and newborn criminal gangs founded by former paramilitaries and/or former members of the FARC (known as BACRIM) are taking control over the illegal business the illegal groups used to manage before their demobilisation.\textsuperscript{28} Therefore, risks and threats faced by MNCs operating in Colombia would decrease thanks to the peace agreement between the Colombian government and the FARC, but they would not disappear in the years to come, even if peacebuilding projects are implemented or the post-conflict\textsuperscript{29} terminology is adopted to describe the current socio-political situation of the country.

Moreover, MNCs operating in the agricultural sector and the extractive industry are the most interested in entering the Colombian market. This worsens the post-conflict scenario because land distribution and control over natural resources are central issues when determining the Colombian policies towards MNCs. Yet, crucially land distribution and control over natural resources have traditionally served as sources of violent conflict and the government has been reluctant in negotiating such issues with left-wing rebels.

\textsuperscript{28} Notwithstanding the paramilitary groups being less powerful than they were before the demobilising process of the United Self-defence Forces of Colombia (AUC) during the president Uribe’s mandate, they still present in vast areas of the Colombian territory.

\textsuperscript{29} Post-conflict “(...) is an adjective, which serves to describe the period immediately after a conflict is over”. Nevertheless, it is important to bear in mind that this term can vary from one context to another considering the specific circumstances of the country to which we are referring. For instance, in the context of the Colombian conflict, the term “post-conflict” is commonly been employed by the government and policy makers to refer to the period after the signing of the peace agreement with the largest and oldest left-wing rebels of the country, the Revolutionary Armed Forces of Colombia (FARC).

In order to avoid such a simplistic approach, when making reference to “post-conflict”, this thesis adopts a process-oriented approach as Brown et al. (2011) suggest. It means that post-conflict is approached as “(...) as a process that involves the achievement of a range of peace milestones (and as a consequence) “post-conflict” countries should be seen as lying along a transition continuum (in which they sometimes move backwards), rather than placed in more or less arbitrary boxes, of being “in conflict” or “at peace.”
In addition, Colombia has an old democracy\textsuperscript{30} and a fully structured state apparatus which can easily be co-opted by MNCs due to the unfortunate levels of corruption. According to the World Economic Forum’s Global Competitiveness Index (2017), corruption is one of the biggest challenges for doing business in Colombia. Despite this, the performance of Colombia in Transparency International’s 2017 Corruption Perception Index (Transparency, 2017) is like that of Brazil or Peru, countries that are free of internal armed conflicts.\textsuperscript{31} Nevertheless, there are other sources which go further the people’s perception of the subject and provide insights into the dramatic levels of corruption in Colombia. For instance, the annual report on the situation of human rights in Colombia, presented by the United Nations High Commissioner for Human Rights (OHCHR, 2018)

The OHCHR (2018) highlights that from 2012 to 2016 the Office of the Colombian Attorney-General had received 64,095 complaints regarding corruption and “(...) only 1.6 percent of the cases were resolved, demonstrating significant historic impunity”. In addition, the report notes that the Attorney-General announced that over 500 civil servants were being investigated, involving approximately 686 million USD” (OHCHR, 2018:10). This report highlights a vast number of civil servants investigated for corruption and huge amounts of money involved in corruption scandals, but it also demonstrates a shameful level of impunity.

Neoliberal policies adopted in Colombia seem to overlook such dramatic levels of corruption. They have encouraged the government to turn MNCs into an essential component part of a fully structured state apparatus in which co-governance is seen as

\textsuperscript{30} Contrary to other conflict-prone countries where corruption is related to the absence of democratic institutions and democracy, Colombian democracy has been recognised by the US government as the Latin America’s oldest one. (Subcommittee on Terrorism, N. and I.O. of the Committee on Foreign Relations - US Senate, 1989:25)

\textsuperscript{31} Transparency International’s 2017 Corruption Perception Index ranks Colombia 100\textsuperscript{th} out of the 180 countries and territories assessed, with a score of 37 on a scale of 0 – 100, where 0 means that the public sector of a country is perceived as highly corrupt and 100 means that the public sector is perceived as very clean. (Transparency International, 2017).
essential to achieve the government’s goals. However, instead of these neoliberal policies doing this, they have configured complex and sophisticated scenarios leading to state capture. Scenarios where public and private actors meet not just for doing business but also for exchanging favours. Therefore, Colombia is a suitable example of how state capture may occur even in free-market countries where democratic institutions are deemed to be well-established. This will allow me to show that the materialisation of the liberal paradigm - a country enjoying a free-market economy, commanded by democratically elected authorities and well-established democratic institutions - does not make a country immune to state capture.
Chapter 4: Chiquita Brands

Introduction

This chapter introduces the case study of Chiquita Brands (CB), the popular purchaser, producer, marketer, and distributor of bananas around the world, who influenced, sponsored, supported and took advantage of public policies, which, in turn, worsened the Colombian armed conflict. The chapter tracks and analyses three different stages in which the MNC played a central role in the configuration of the Colombian socio-political context, to explain how the MNC has negatively influenced a business they have controlled for more than one century, affecting peace stability and fuelling conflict.

To facilitate a deep comprehension of the entire picture, it is important to bear in mind that before being known as CB, the company was known as United Fruit Company (UFC). The third chapter has summarised the operations carried out by CB when it was known under the name of United Fruit Company (UFC). This chapter focuses on the activities developed by CB only, from 1990, that is when the MNC re-entered Colombia under the name of CB, up to the moment in which it was held guilty for sponsoring paramilitary groups in Colombia.

Tracing the processes and mechanisms employed by CB, this chapter analyses how the MNC influenced politicians in its home-country to exert pressure on the host-country’s government to configure a harmful business model, which nowadays is rooted in the Colombian agricultural sector, that is based on a right-wing ideological orientation and the abuse of power to influence the public-decision making system and promote impunity.

Following the theoretical framework developed in chapter two, this chapter highlights the intrinsic and extrinsic features of the company; traces the process and mechanisms employed by the MNC to play the role of captor, and following the UNGP’s pillars
the chapter highlights the impact of the mechanisms deployed on conflict, that is the state duty to protect human rights, the corporate responsibility to respect the human rights and access to remedy if these rights are not respected.

In 1985, Cincinnati’s business tycoon Carl Lindner acquired UFC, a symbol of the American imperialism in Latin America (Bucheli, 2004). In 1989 Lindner rebranded UFC to the already well-known brand CB and decided to re-enter Colombia but contrary to the time it operated as UFC, CB was not interested in growing bananas directly but in marketing and distribution activities (Schotter and Teagarden, 2010).

However, the bad reputation of UFC could not be surpassed by the new business strategy or the company’s rebranding. On the contrary, the new-born corporation was strongly related as a continuation of its predecessor, an aspect which was negatively reinforced by the well-known CB’s main weakness which is its long tradition of violating workers’ rights (MarketLine, 2016).

The misbehaviour of CB did not contribute to creating new customers’ perception of the company. Conversely, CB’s wrongdoings evoked infamous episodes involving UFC in which it engaged with politicians to influence the government decisions through corrupt practices to hold land and government concessions, especially in Central America where such common practice led to the expression “banana republic” (Schotter and Teagarden, 2010:8). Hence, instead of developing a new business culture, CB showed itself as a continuation of UFC. Violence, political influence and links with politicians, militaries and illegal groups were some of the main features of its operations since it made the decision of re-establishing its business in Colombia.

In order to have a glance of CB’s power to influence policies at this stage, is relevant to know the position it enjoyed in the US context. This is important to identify the extrinsic and intrinsic factors determining the behaviour of the company when performing as captor and to find out the contextual conditions facilitating the MNC influencing the public decision-making system with negative consequences to the peace and stability in those areas where it was operating in Colombia.
MNC’s extrinsic features

Bananas were more than fruits for the Colombian government. To deprive the country of trading bananas would have had a negative impact on conflict as there was a high risk of local farmers substituting banana plantations for crops of coca (El Tiempo, 1995b). Thanks to its power and infrastructure, CB had the potential to promote employment and make adequate use of vast extensions of land which otherwise would be used by illegal groups to grow coca plants and to set up laboratories for processing cocaine. Therefore, the MNC offered an opportunity for the Colombian government to develop a profitable and legal business in conflict-prone zones.

Moreover, CB enjoys a strong market position and enjoys a high brand recognition in the U.S. and E.U. (MarketLine, 2016). Its dominant position supplemented with its strong ties with top American politicians made CB a powerful business actor not only in the host-countries where it was operating at the time it entered Colombia but also in its home country. The MNC’s power was clearly demonstrated when the MNC was involved in a historic banana trading dispute between the U.S. and the E.U. before the World Trade Organisation (WTO).

Despite CB being traditionally linked with powerful U.S. political actors for decades, such linkages were dramatically boosted during the W.T.O. dispute as it required an assiduous interaction between CB and powerful US politicians. The interaction was carried out through lobbying and political contributions aiming to obtain the political support the MNC required to achieve a satisfactory outcome from the dispute.

CB’s CEO, Carl Lindner, played a central role in building strong political networks in the US. Such networks were useful not only to obtain the support of the US government before the WTO but also to have the systemic support of the US authorities in any scenario. An example of this is the unconditional support the US
government offered to CB to overcome the difficulties faced when its top executives voluntarily admitted criminal responsibility to the US Department of Justice because one of its subsidiaries - Banadex - was supporting paramilitary groups in Colombia with their consent (Department of Justice, 2007).

**MNC’s intrinsic features**

The authority of Carl Lindner was remarkable. The will of CB was that of Lindner. He dealt by himself with the most important issues involving the MNC, like the WTO dispute or the illegal payments to Colombian illegal groups. Lindner’s power over the company’s decision-making system was absolute, to the extent that he could easily approach the main leaders of the home and host countries to make the MNC’s claims without intermediaries.

Therefore, top management of the home-country made all decisions inside CB. Therefore, decisions regarding Colombian business and how to deal with illegal groups were made by the corporation’s top agents directly. Similarly, like any other business decision, payoffs to guerrillas and paramilitary groups should have been approved by the MNC’s top management, Lindner included (CAJAR, 2008).

Local managers had no discretion to make decisions. They were required to obtain the approval of the home country's headquarters before proceeding with any illegal payment and in those cases where bribes were paid without the consent of the headquarters, CB immediately dismissed the host-country’s employees involved in the corruption episode. This is a serious symptom of ethical ambiguity: bribery and other illegal payments were valid after the approval of CB’s headquarters, but it was considered as an unacceptable practice when it is carried out by the host country's management without authorisation.

That was the case of the managers of the CB’s Colombian subsidiary Banadex, who paid bribes to officers of the Colombian customs authority - DIAN - to make use of the port facilities without fulfillment of the legal requirements. Such payments were not
recorded in the MNC’s books and, as a consequence of this, in 2001 CB was fined by the US Securities and Exchange Commission for the violation of the US rules regarding accounting books and records. The employees involved in the corruption scandal were immediately removed from the company, as the payments were made in contravention of the CB’s guidelines (US Securities and Exchange Commission, 2001).

**Mechanisms employed by the captor**

The next section traces the process through which CB influenced the public decision-system to reach its business goals. It follows the theoretical framework developed in the second chapter. Therefore, it tracks the MNC’s progress at three different levels towards state capture and highlights the main mechanisms employed by the MNC through each level.

Just to remind what these levels are, the first level is that in which MNCs receive support from their home country’s government, foreign politicians or international organisations to achieve favourable conditions facilitating their entrance into foreign markets and/or the smooth running of their operations. The second level refers to the formal links the MNCs develop with domestic actors and civil society to influence the sector in which they operate. Finally, the third level is that in which the MNCs deal directly with individuals working for the government or members of powerful organisations who can play the role of APCs to facilitate the MNCs to achieve their private goals.

**First level**

*Lobbying and political contributions in CB’s home country.*

CB focused on to enhance its political ties in the US and it was sufficient for the MNC to influence the commercial landscape in its favour, not only in Colombia but in all its
influence areas in Latin America. The banana trade dispute between the EU and the US, initiated in 1993 before the World Trade Organisation, which lasted for almost two decades established a milestone in how the MNC enhanced its political ties in the US.

The origin of such dispute was the banana policy instituted by the EU to privilege the position of the bananas grown in the member states of the Lome Convention (former European colonies) and impose restrictions to bananas grown in other countries to enter the EU market. Such a regime affected American companies as they distributed bananas grown in Latin American countries (Non-member states of the Lome Convention). The most important American companies in the sector, Dole Fruit Company, and CB argued the EU banana policy would seriously affect their stake of the EU market and impact their profits.

However, despite being in a similar position, Dole Fruit and CB’s strategies to face the EU policy were quite different. While Dole Fruit did not battle against the EU banana regime, and made the decision of adopting commercial measures to diminish the negative impact of the EU policy, such as forming joint ventures with EU importers and investing in banana production in Africa and Canary Islands, CB was focused on challenge the EU banana policy and consequently it sought the support of the US government to force the EU to change its policy (Devereaux et al, 2006: 108,109). Such a difference can also be identified in the way in which the banana giants relate to Colombian authorities.

In an interview with the former Colombian vice-ministry of trade, Eduardo Muñoz, he notes that:

(...) the power to influence the American banana industry was very strong, therefore, CB was very aggressive with lobby. The president of CB arranged meetings with ministers and in a meeting, he showed pictures of himself with powerful people. Dole (Dole Fruit) was more careful, it did not employ such
The CB’s lawyer was very rude when dealing with local authorities as well.

Despite the banana trade giants being the main affected by the EU restrictive measure, it was not the US’s government the first one in filing a claim against the EU banana policy. In 1993, Venezuela, Colombia, Nicaragua, Guatemala, and Costa Rica brought legal action against the EU’s banana regime before the GATT dispute settlement system for considering it was against the principles of the General Agreement on Tariffs and Trade (GATT). As a result, the GATT panel considered that the EU’s banana regime was against the GATT.

On 1993, the EU blocked the panel’s decision and it decided to negotiate an agreement with the complaints. The EU reached an agreement with the Latin American countries involved in the dispute, except Guatemala, allowing them to negotiate quotas to enter their bananas in the EU market (Patterson, 2001).

In the interview conducted to Eduardo Muñoz, who also worked as permanent representative to the WTO, he notes that the Colombian former president Gaviria was pleased with that agreement, known as the Banana Framework Agreement (BFA), as it was based on an export licenses scheme granted to the grower countries. However, the BFA was rejected by CB as it did not satisfy the MNC’s economic interests because most of the bananas commercialised by the MNC were grown in Honduras, a non-party state of the BFA.

Hence, displeased with the BFA, CB sought the support of the U.S. Trade Representative to impose sanctions against the EU and the Latin American countries signatories of the BFA. However, their pleas were ignored as it was considered that the U.S. economy was not been affected by the EU policy as the banana industry did not provide a substantial number of jobs in the U.S. neither bananas were exported to the EU by the U.S. itself. Instead of declining its pretention, CB exerted pressure on the US government to encourage the government to adopt legal measures against BFA signatories and the EU.
CB’s claims were finally heard. CB’s CEO, Carl Lindner, followed a tactic based on developing ties with Republicans and Democrats through political contributions aiming to influence the U.S. position regarding the EU banana policy (Buterbaugh and Fulton, 2008). The Time Magazine (2001) noted: “He (Lindner) and his companies lavished $1.3 million on G.O.P. committees from 1988 through 1994, while putting $625,000 in Democratic coffers.”. Such contributions were not as effective as Lindner would have expected but they were good enough to obtain the support of the U.S. government before the WTO.

The initial interest of Lindner regarding the EU banana policy was to obtain the U.S. government support to impose sanctions against the E.U. and those Latin American countries which had signed the BFA (Colombia included). To achieve such target, Lindner had a powerful collaborator, the republican candidate for the 1996 U.S. presidency Bob Dole, who represented Lindner’s interests in the U.S. Congress. In 1994, CB made a petition to the US government to apply sanctions against the EU based on the US trade law, for considering the EU banana regime against the GATT. The petition was filed under the Clinton administration within 24 hours of CB making a half million US dollars’ donation to the Democratic Party (The Guardian, 1999). Patterson (2001) notes that the petition “was regarded as a test of the new Administrations commitment to use US trade laws aggressively to protect US interest”.

At that time, Lindner was confident enough of the U.S. government’s support to the extent that in December 1994, in a Miami hotel room, he approached the Colombian former president Ernesto Samper with a threatening attitude. After showing photos of him with the U.S. presidents Reagan and Bush and speak about his ties with Dole to exhibit CB’s powerful links with U.S. politicians (Greenwald, 2001), Lindner let Samper know that if Colombia did not drop the BFA to support CB’s pretentions, the U.S. government would impose sanctions against the country and revoke the trade benefits established in the framework of the commercial agreements between Colombia and the U.S. (El Tiempo, 1995c).
Congressman Dole pressed for congressional action against Colombia to force the Latin American country to drop the BFA (Greenwald, 2001). However, president Samper sent a letter to the U.S. president Bill Clinton to let him know that if Dole’s efforts to impose sanctions against Colombia were successful in the U.S. Congress, it would undermine the efforts of the Colombian government to reduce coca crops (Blustein, P. and Lippman, T., 1995). Finally, after one year of evaluating the sanctions against Colombia, the Clinton administration declined such an idea (Bucheli, 2005).

Therefore, Lindner had to accept the bittersweet decision of the U.S. government of bringing a formal complaint against the E.U. before the WTO without imposing sanctions against Colombia. Hence, in 1995, the same year in which the WTO dispute settlement system was founded, the U.S. filed a claim before the WTO against the EU, initiating one of the most remarkable WTO disputes, which was known as the “banana trade war”. Guatemala, Mexico, and Honduras joined the US’s claim.

Under the WTO rules, only member governments can initiate a proceeding before the WTO. Hence, CB’s power to influence the outcome of the WTO dispute was worthless. In part, because the MNCs could not directly intervene in the WTO dispute resolution system because who should demonstrate that a state party of the WTO is trying to impose measures in breach of the WTO rules are the governments of the WTO member states only (WTO, 2018).32

However, despite not being possible for CB to guarantee a positive outcome in the WTO system merely because it has obtained the political support of its home country’s government, such support was of paramount importance to have better chances of success. As Shaffer (2003) notes, the more accurate coordination and alignment between the MNC and the US government, the higher their chances of success.

32 Referring to the WTO dispute settlement system, the New York Times (1997) pointed out “Buying influence is harder than it looks these days, especially when your problems involve multibillion-dollar disputes over international trade. In the old days, a loud enough complaint – and nothing speaks louder than big donations - often resulted in trade sanctions against the offending government. Now it ends up in the court of world trade (...).”
Hence, the WTO dispute encouraged CB to intensify its strategy of sponsoring political parties in order to maintain the US government support in all possible scenarios. It was not a difficult task. CB continued deploying its economic power and political influence as much as possible to encourage the U.S. government to challenge the EU banana policy before the WTO. The chairman and CEO of CB, Carl Lindner, and executives, were identified as one of the most important contributors of the Democratic and Republican parties from 1993 to 2004.\textsuperscript{33} The New York Times (1997) highlighted that some European officials considered there was a strong link between Lindner’s political donations and the filing of the case against the E.U.

However, as Clegg (2002:151) notes, the precise significance of Lindner’s private financial donations in influencing government policy is difficult to quantify due to the multiple factors involved in the policy formulation. Nonetheless, the substantial economic contributions to democrats and republicans are aspects which cannot be ignored when analysing the factors leading Lindner’s company to be placed, as it was noted by the Washington Post (Blustein and Lippman, 1995), at the centre of the WTO dispute.

\textsuperscript{33} Lindner was the main contributor during the 1993-1994 election cycle. Majority Leader in the Senate, Bob Dole, who according to the Washington Post (1996) used Lindner’s private jet during his presidential campaign at least 17 times, was the facilitator of meetings between CB and the U.S. trade representative, Mikey Kantor, who was a key supporter of CB’s position at the top of the U.S. government (The Guardian, 1999). Despite of Lindner being a right-wing republican, between 1993 and 1996 CB made donations for more than $1.1 million to the Democratic Party (Newsweek, 1997) and Lindner was the president Clinton’s largest single contributor as of July 1994 (Mother Jones, 1996). Such generosity was not overlooked by the media who pointed out that Lindner’s contribution was rewarded with an overnight stay in the Lincoln bedroom of the White House in early 1995 (Newsweek, 1997; The Guardian, 1999). However, the main beneficiary of Lindner’s generosity was highlighted by the newspaper The Guardian (1999) pointing out that “The Clinton administration took the "banana wars" to the WTO within 24 hours of CB, a powerful, previously Republican-supporting banana multinational, making a $500,000 donation to the Democratic Party”.

Therefore, political contributions would have played a relevant role in encouraging the unconditional support of the U.S. government to CB’s pretentions in a two decades’ trade dispute. Shaffer (2003:23) approaches the banana trade war as an example of how powerful business use trade policy as a tool to protect their interests. In addition, the banana trade dispute shows the high level of discretion of the U.S. government when making the decision on whether support or not the interest of a corporation in a trade dispute before the WTO and how such decision “favours the politically connected” (Patterson, 2001).

This is a relevant factor to understand the position of the US government regarding the MNC’s operations carried out abroad and the scope of the MNC’s power to intimidate foreign governments. If the U.S. government made the decision of initiating a trade war against the EU to defend the economic interests of CB, it was highly likely that the U.S. government would support the MNC’s interests against anyone in any possible scenario. Shaffer (2003:31) asserts that A successful public-private collaboration to challenge foreign trade barriers requires interfirm coordination, an intensive exchange of information between public authorities and private firms, strategic use of leverage points against foreign governments, and the harnessing of political clout. This statement, which refers to trade litigations before the WTO, may be applicable also to other kinds of barriers which the MNCs would not be able to overcome without the US government’s support.

Second level

CSR

The CB headquarters’ interest in CSR issues significantly increased after the MNC emerged from the bankruptcy in 2002. Maurer (2009), highlights that CB adopted CSR as a long-term strategic goal and gave importance to the company’s “Vision” and “Core Values” to integrate such concepts as component parts of the CB’s strategic plan. Moreover, started an annual CSR report which, according to Maurer (2009), is
well regarded in the CSR community for its commitment to transparency and sustainability.

The rebirth of the banana giant as a responsible corporate citizen was reinforced by some relevant achievements in the field of CSR. On 2003 CB’s environmental sustainability program was recertified by the Rainforest Alliance, and all Social Accountability 8000 labour standards had been met in Costa Rica. Furthermore, in 2004 CB received the Corporate Citizen of the Americas Award which is awarded by the Trust for the Americas, the not-for-profit arm of the Organisation of American States (OAS) for its commitment to alleviate poverty in Honduras. The former Colombian president, Cesar Gaviria, the secretary-general of the OAS at that time, presented the award at a ceremony in Washington (CSR Wire, 2004).

Mentioning the improvement of the CB in social issues, Werre (2002:249) highlights that “...in the last ten years CB has made a substantial shift in the understanding of its role in society and in taking actions integrating environmental and social concerns in its business operations.” Nevertheless, at the time CB was being considered as a successful example of MNC implementing CSR programmes, it was sponsoring illegal groups in Colombia.

Therefore, while the US and the Colombian governments were negotiating an agreement to make the US citizens involved in crimes against the humanity untouchable before the ICC, and the executives of CB were in the US enquiring whether they were in troubles or not for sponsoring terrorists in Colombia, they were simultaneously taking actions to turn CB into a good corporate citizen, or at least to make it poses as a good corporate citizen before the CSR community of experts. It seems to suggest that CSR was effectively being used as a greenwashing strategy.

**Third level**
Describing the scenario in Urabá at the time Convivir were in operation, German Graciano, leader of the Community of Peace of Apartado, notes:

*The banana traders offered money to buy false witness to make them say that they were not involved in the incidents of paramilitarism. Similarly, the banana traders said that all we said is false. Practically, the Colombian government made some international lobby to erase the injustice to the Peace Community. Many of them were occupying political positions, with the plenty control of the paramilitary groups. At the time of the paramilitary groups Alvaro Uribe was the governor (of Antioquia) and through the Convivir Papagayo operate with the support of the Convivir and the political authorities of the region.*

Among the hundreds of documents declassified by the National Security Agency (NSA, 2011), there is a memo, dated August 1997, in which CB recognises it was a member of the Convivir Puntepiedra S.A. and highlights the fact that such organisations were completely legal under the Colombian law. CB describes the Convivir Puntepiedra S.A. as "a legal entity in which we participate with other banana exporting companies in the Turbó region (...) Convivir are entities that legally operate and exist under Colombian law (...) have been pushed by the government as means of combating guerrilla terrorism. While they operate under military supervision (and have offices at the military bases), their "sole function is to provide information on the guerrilla movements (...) Convivir operate under full legal protection in Colombia (...) our participation is not illegal" (NSA, 2011).

**Enablers**

When being asked for the main actors involved in the CB’s networking for sponsorship of paramilitary groups, the general secretariat of CAJAR, Mr. Luis Guillermo Perez, pointed out that Uribe played a central role as he has been one of the main sponsors of the paramilitary project in Colombia. However, Perez notes that the local banana traders and the military force were also important elements to facilitate the paramilitary
project operating in the banana zone. Perez highlights the role of the local businessman Raul Hasbun and, regarding the role played by the Colombian army, Perez points the general of the Colombian army, Rito Alejo del Rio, as the main supporter of Convivir.

CB explicitly established in one of the memos published by the NSA, that there was a common interest of Banadex (CB’s owned company), the local banana traders, the military force, and the Colombian government: to drive the guerrillas out of Urabá (NSA, 2011). Therefore, the next section focuses on different actors which were involved in the configuration of the networking through which the mentioned goal was tried to be achieved, and how such actors played the role of enablers of CB’s wrongdoings.

However, it is important to highlight that the role played by the US government is not approached in the same way as the role played by other actors. The intervention of the US government regarding the CB’s support to illegal armed groups was not as punctual as the intervention of some other actors like the Colombian government, the army or the local traders. Actually, it was much broader as to the point that it is possible to argue that the US government played a central role at every single moment of the entire process, from making the MNC powerful enough as to make it no afraid of the consequences of any of its wrongdoings, to the impunity suffered by victims up to the date. Consequently, as it has been done through this chapter, the role played by the US government and/or US politicians will be mentioned when relevant instead of doing it in a separate section.

Enabler 1: Colombian government

As mentioned in the third chapter, during the nineties was established the legal framework that configured the cornerstone of the paramilitary activity for the upcoming years. Mr. Perez highlights that banana traders of Urabá have declared to the authorities that they took advantage of such legal framework to create a legalized
form of paramilitary groups -Convivir- which enjoyed the support of the governor of Antioquia, Alvaro Uribe Velez.

Among hundreds of declassified documents of CB, there is a memo with evidence that the Compañía Frutera de Sevilla, the subsidiary of CB, used to make “sensible payments” to guerrillas. Moreover, it donated US$5,950 to Alvaro Uribe who was racing for the governance of Antioquia. However, it also made contributions to the Uribe’s opposing candidate, the conservative Alfonso Nuñez (NSA, 2011). Finally, after a fierce political race, Uribe was elected Governor of Antioquia for the term 1995 to 1997. According to the press, “The governor of Antioquia, Alvaro Uribe Vélez, has been one of the main defenders of the Convivir since his department is today threatened by the progress of kidnapping, extortion and the general violation of human rights” (El Tiempo, 1997a).

In a declaration before the U.S. authorities, the former paramilitary leader Salvatore Mancuso noted that, despite the fact Arias-Gaviria recognized Mancuso as a renowned paramilitary chief, he granted to Mancuso the required licenses to operate as a Convivir (Vanguardia, 2008).

Enabler 2: Local Banana Traders

The role played by the banana traders in the Urabá has been considered by an important segment of the Colombian society as positive for the banana zone, because they have contributed to the economic development of the zone but also to make effective the presence of the government in an abandoned area of the Colombian territory. In that sense, Muñoz notes:

In Urabá in the 2000s, the guild itself -Augura- requested the support of the government to make a bridge between the traders and the employees. The dialogue was essential to recover the security and harmony in Urabá.

(...) for 2005 there were no problems of security in the banana zone as before. The paramilitaries never back to the region. The government had meetings
with the labour syndicates on a regular basis as well. The communication between the government and the farmers was fluid, and they requested government support to commercialize their products and the government supported them. The interests of the traders and the government were aligned. For that time the security problems were overpassed. At that time the syndicates had bodyguards and protection, did not the traders.

(...) for 2006 to 2007 its activity in Magdalena was intensified. The institutional relationship between the government and the local traders was very active. They met on a regular basis, it facilitated the coordination between the government and the trader’s interest as the main interest of the government was to defend the interest of both, producers and traders, and not only traders as the MNC.

However, Perez, the Secretary of CAJAR, has a completely different opinion. He considers that they contributed, and still contributing, to the systems of violence of the banana zone. The representatives of Banadex, Charles Kaiser and Reinaldo Escobar, director and legal advisor of the CB’s subsidiary, had a meeting with the AUC leader, Carlos Castaño, in which they agreed to pay to the AUC through the Convivir Papagayo, three US cents per each banana box exported. Such a scheme to finance the AUC then was followed by Banacol and its affiliated companies -Augura related companies- (Verdadabierta, 2012). It means that most of the banana traders operating in Urabá were sponsors of the paramilitary groups.

Raul Hasbun, son of a renowned banana trader, was the man behind the “paraeconomia”, name given to the scheme employed by the paramilitary groups to finance their operations. In 2008, during an interview carried out by the magazine Semana to Hasbun, who already was in prison, he pointed out that all the banana traders not only acknowledge the operation of the paramilitary groups in the banana zone but also, they worked with them in a coordinated way and they were the main sponsors of the military project in the banana zone. (Semana, 2008b).
From Perez point of view, the dominant ideology of local banana traders has not changed, he notes:

*Most of the banana traders are supporters of Uribe, they are against the peace process, they were against the peace agreement. Union traders are being killed systematically and Colombia has been excluded from the OIT list of countries where more syndicalists are killed, thanks to the government’s lobby.*

Enabler 3: Colombian Army.

Concerning the role played by the Colombian army inside the terror apparatus known as Convivir, the general Rito Alejo del Rio was the key actor. Del Rio, who meet the paramilitary leader Carlos Castaño in 1983 while receiving military training in Israel (Cinep, 2004), attended the U.S. Army School of the Americas, in 1985 and was involved in the thief of weapons of the Colombian Army destined for paramilitaries in Magdalena (NSA, 2011).

Del Rio was considered, on the one hand, as a national hero by businessmen and right-wing politicians, who called him “the peacemaker of Urabá”. On the other hand, he was considered a murderer by union leaders and left-wing politicians, who called him “the butcher of Urabá”. Such dichotomy about Del Rio’s was also present in the US Department of Defence’s reports. In a report issued on February 1998, Del Rio was glorified as a U.S. military training "success story" but a second report issued in March 1998, Del Rio was considered as a "not-so-success" story because of his links with paramilitaries (NSA, 2011).34

From 1995 to 1997, Del Rio served as commander of the Brigade 17 of the Colombian army, the same period in which Uribe was the governor of Antioquia. Del Rio was removed of the army in 1999 when he was the chief commander of the Brigade 13 in Bogota. The general Del Rio was expelled of the army in 1999 by the president

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34 The specific file in which Del Rio is mentioned is available at: https://nsarchive2.gwu.edu/NSAEBB/NSAEBB327/doc07_19980225.pdf
Pastrana (1998-2002), at a moment in which Pastrana was negotiating a peace agreement with the FARC rebels. The reason leading his expulsion was related to his involvement in numerous massacres and his ties with private death-squads.

Afterward Del Rio being expelled of the Colombian army, his supporters made a tribute to the general in a renowned hotel of Bogota, in a huge auditorium packed with hundreds of people. During the event, Alvaro Uribe, who was studying in the University of Oxford and was already campaigning for the Colombian presidency, exalted the importance of the role played by Del Rio in Urabá. In a memorable speech, the former governor of Antioquia held: "Nobody better than General del Río understood that Urabá had arrived the hour of peace, the State and the Citizenship, and faith that advanced remarkably (...). In addition, denoting the important role played by Del Rio at the time he was governor of Antioquia, Uribe said: “The discreet and efficient accompaniment of the General was present everywhere” Del Río is "a good example for the soldiers and police of Colombia” (Verdadabierta, 2010). Uribe’s speech was a public demonstration of Uribe’s sympathy and admiration for Del Rio.

While Del Rio was the commander of the military force in Urabá, he brought the appearance of legality to the operations carried out jointly between the Colombian army and the paramilitary groups. When appointed as the chief of the Brigade 17, Del Rio met the political and economic actors of the zone and encouraged them to share information allowing the army to combat the FARC, therefore, from banana traders to trade unions’ members served as informers of the Convivir, as they were perceived as allies of the military force (Valencia and Celis, 2013).

Declassified records of CB show that at the time Del Rio was in charge, the Colombian army requested for payments in favour of the Convivir. The disclosed records of 1998 described such payments as: "Donation to citizen reconnaissance group made at the request of Army." A disclosed handwritten document dated 1999 describes a "General in the zone for several years" (...) Turbo improved while he was there (...) Mayor in Apartado said he was with death squad (...) [mayor] got him suspended from the Army (...) Quite well respected in the zone (...) Forced to leave the military – sacrificial
lamb (...) [Excised] wants to make a donation in its own name (...) Helped us personally (...) Security information that prevented kidnap (...)

Want to show our (...) P16 mm = $9000 (...) Other companies are putting in their (...) Very popular in the military (...) Guerrillas asked to fire” (NSA and Verdadabierta, 2017).

Dismissal of Rito Alejo del Rio was neither the end of CB’s sponsorship to paramilitary groups with the support of the military force nor the end of Del Rio influence in the state decision-making system. According to records of 2002 and 2003, the MNC was making payments to police and army members for facilitating payments for security services (NSA, 2011). On the other hand, Del Rio was hired by the Colombian government as advisor of the Colombian intelligence agency -DAS- at the time Jorge Noguera was the director of the agency (El Espectador, 2017f).

In 2012 Del Rio was sent to prison for the murder of Marino López occurred on February 27th, 1997, in Bijao (Chocó). In September 2017 Del Rio is released but he still being investigated for massacres and murders committed at the time he was the commander of the Colombian army.

**Exchanging favours**

To justify the payments carried out by the MNC to the paramilitary groups, a spokesman of CB noted that in the nineties more than fifty employees of the MNC were killed by rebels. The spokesman added that the only intention of the MNC with the payments to the paramilitary groups was to protect the lives of its employees (CNN, 2000). However, there are serious indicators that the relationship between the MNC and the paramilitary groups went further than simply paying money for protection.

From 1997 until around February 4, 2004, CB, through its subsidiary Banadex SA, paid to the paramilitary structure in Urabá and Santa Marta more than $ 1.7 million dollars. Within this context, on November 5th, 2001, 3,400 AK 47 rifles and five million 5.62 mm caliber cartridges were landed and introduced into the national
territory, for them. The arsenal was transported on one ship and disembarked in the courtyards of Banadex, at the port of Turbo, where the weapons were divided into fourteen trucks to be delivered to paramilitary organizations of Córdoba and Urabá (CAJAR, 2008).

The weapons were seized on Colombian territory in various operational procedures against the Self-Defence Forces of Colombia (AUC), and according to the investigations the destination of the weapons was Nicaragua, but they were diverted to the Colombian paramilitary groups (UNODC, 2001). Therefore, the links between CB and the Colombian paramilitaries were strong enough to allow them to carry out illegal import-export transactions. The main leader of the AUC called this transaction his “best goal” (El Tiempo, 2017b).

Another illegal transaction, which put CB at the centre of controversy in the US, was revealed by the Cincinnati Enquirer. The newspaper published a story pointing out that a ton of cocaine, which destination was Europe, had been seized from seven CB’s fruit transport ships. The story had to be removed after CB threatening to sue the newspaper as the journalist based his story on internal voice mails obtained through illegal means. The newspaper apologised, agreed to pay more than US$10 million to CB, removed the story and fired the journalist Michael Gallagher, the reporter who led the investigations involving CB (Democracy Now, 1998).

The Colombian Attorney General requested information to the US Department of Justice about this incident as there was evidence that drug for US$33 million approximately had been camouflaged in fruit in the vessels CB Bremen and CB Belgie (Verdad Abierta, 2009). Such request had no consequences.

These incidents demonstrate some important international transactions which could not have been developed by the paramilitary groups without the participation of a powerful organization -CB- who can operate abroad through a well-developed

35 There was an episode at the end of nineties in which CB was sanctioned because an employee of the company paid bribes to officers at the port of Turbo, Antioquia to get access to the facilities.
transnational infrastructure. Referring to the transaction of the Nicaraguan rifles, the paramilitary Raul Hasbun argued: Banadex, which was a subsidiary of CB, was hired, because it was the only company that had the infrastructure to unload it in containers and in bulk (Semana, 2012b). It shows that the role of the MNC fuelling the war was more relevant than the role played by any other trader operating in the banana zone.

The CB’s headquarters’ awareness of the negative consequences of dealing with paramilitary groups, increased after the MNC emerged from the bankruptcy on March 19, 2002, ending Carl Lindner’s control over the company. Roderick Hills joined the Board of Directors and was appointed as head of the Audit Committee. At this stage, three relevant events happened: 1. The opposition of the US to the Statute of Rome and the jurisdiction of the International Court of Justice (ICC), 2. the negotiation of a plea agreement between CB and the Department of Justice, and 3. CB’s executives’ commitment to making the MNC a good corporate citizen a strategy successfully used to improve the company’s reputation. The measures adopted by the MNC were successful enough to avoid the MNC’s headquarters being sent to prison.

Impact

State capture discouraged the government’s duty to protect human rights

When being asked for the efforts carried out by the government to improve the conditions in the banana zone after CB’s departure, Muñoz notes:

There was a work to bring the Colombian army to the zone to re-establish the public order and recover the control over the territory. The traders and workers understood that they had common interests and that the future of the banana business depended on the smooth running of the business which necessarily would require the coordination between employees and traders. Muñoz describes that process as (...) one necessary to modify the discourses
adopted by each side in battle held between them during decades. The government offered support to facilitate the negotiations between the traders and the workers.

Despite the banana zone’s security conditions improving after the demobilization of the AUC’s troops\textsuperscript{36} and the departure of CB, one question remains in the air: was the departure of CB the end of state capture by the MNC? Some interviews suggest that the influence of the MNC in the banana zone was of such magnitude that its legacy endures in the banana business nowadays. According to Perez:

\begin{quote}
\textit{(...) The truth is that there is a paramilitary presence, we have documentary evidence that they have their camps and operate with the complicity of the 17\textsuperscript{th} Brigade.}
\end{quote}

Perez’s version matches the version of Graciano who notes that currently there is a strong presence of death-squads in the banana zone and that there is evidence of it. He considers that the main responsible for violence in the region is CB, as the MNC provided weapons to the paramilitary groups and gave them money to carry out their operations for decades in the banana zone. Graciano notes that the impunity and injustice have not been repaired and that the MNC’s executives responsible for crimes against humanity have not been held accountable yet.

When being asked whether something has changed in Urabá after CB leaving the banana zone, Graciano description of the facts allows to identify the legacy of CB to the Urabá: (1) There is a strong relationship between banana traders and it is not clear for the locals whether CB has completely left the banana zone or it still having business around (2) The concept of development as it is adopted in the banana zone, is one based on attracting investors at the expenses of the needs of the working class, small farmers and peasants (3) the strategy currently employed by landlords to expand their

\textsuperscript{36} The demobilizations of the self-defense groups (AUC) began on November 25, 2003 in Medellín with the Cacique Nutibara block and ended on August 15, 2006 with the Elmer Cárdenas block. (Verdad Abierta, 2008)
domains is similar to that used by CB in 1900’s to expand its emporium (4) The political landscape is dominated by the right-wing as they represent the best the interests of local traders and landowners (5) There are paramilitaries in the area, with the complicity or at least the complicit silence of the Colombian army and the authorities.

Concerning the first point, in June 2004, CB sold its Colombian farms to Bancol at a loss of $9 million. Thanks to the terms of the purchase agreement, CB acquired the right of purchasing fruits at a derisory price from Banacol for an initial period of eight years (Interchurch Justice and Peace Commission, 2012). From this agreement, it is possible to infer that the MNC’s economic interests still involved in the banana zone even afterward its departure. Moreover, concerning the sales agreement with Banacol, the CEO of CB points out (…) The sales agreement we signed required the purchaser to continue the collective bargaining contract with the union that represented CB’s workers (Aguirre, 2007), which suggests the MNC had interest in maintaining the working conditions as well.

According to the Colombian Attorney General Office, after leaving the country in 2004 the MNC deployed financial manoeuvres to continue doing business in Colombia through two local companies who represented the economic interests of the MNC: Invesmar and Olinsa. Invesmar was a member company of the business group to which Banacol belonged, its owners were unknown because the company was established in the British Virgin Islands to keep them confidential. From 2004 to 2008, Invesmar continued the scheme of payment to paramilitaries established by CB. The other company, Olinsa was established with a capital of US$ 20 million in 2004 by Gloria Cuervo, a former employee of CB who owned 94% of the company’s shares. Most of the company’s businesses (98%) were carried out with CB, who used to borrow high amounts of money to Olinsa at less than half of the market’s interest rate. According to the Attorney’s investigations, through these companies, CB continued operations in Colombia up to 2008 (El Espectador, 2009).
Almost ten years after the Attorney General Office’s investigation, Graciano asserts that CB still having economic interests involved in the Urabá’s banana zone. Concerning this, Graciano notes:

*For us the situation is very complex in Urabá (...) because for us the company (CB) has not gone, it merely has changed its name and some employees, (...) at the moment we have Del Monte, Banacol, Uniban, (...) some employees of CB simply changed their companies but they still there working. Four years ago (...) paramilitaries were killed (...) and the Community picked the bodies of the paramilitaries up and they had IDs of the banana companies, the guild of bananas of Urabá. It was in 2011...2012. (...). They are not with marketing as when they started in 1997 (...) One week ago, (...) in Santa Marta it was identified that the company had banana bounces with the label of CB’s brand. We believe that this company continues in the zone. On this, Perez notes, CAJAR does not have information that CB operated in the zone, but people say they are purchasing bananas in the area.*

Concerning the second point, Graciano notes that the economy has not improved, the labour conditions are not good, and the companies are not committed to the locals. According to Graciano:

(...) the banana companies are very strong, they abuse the employees’ rights, the payment is low, they apply tough labour policies against their employees. We do not see any CSR in the region, neither a contribution to the development of the region of Urabá. (...)

Referring to one maritime port which is being constructed in Urabá, Graciano notes:

*It has brought many foreigners to the region (...) With the maritime port, there is an international presence to industrialise the zone. For us, we consider that the port is negative for us. The port needs a lot of territories and it will lead to the displacement of people to develop the infrastructure.*
Concerning the third point, which is the accumulation of vast extensions of land in Urabá, Graciano highlights:

The increase of the paramilitary presence with the strategy of purchasing land (...) The strategy of land acquisition implemented by CB to expand their banana plantations and control the water still being used by the local traders nowadays. (...) with the massive acquisition of land to be used for oil palm, cattle and banana crops (...) for us it remains the same.

Graciano makes a description of how the acquisition of land has been carried out by suspicious people, how they negotiate with small property-owners and facilitate the transfer of the property:

(...) That paramilitary strategy of buying land is a threat for us and the peasantry. The same paramilitaries say: we buy you (small property-owners and peasants) the land, we give you what you need, and immediately with the administration we organize and give you the legal paperwork. They are creating this strategy to legally buy the land.

Regarding the fourth point, which is the political landscape, Graciano notes:

“the extreme right-wing’s strategy, the paramilitary strategy, that is dominating the territory (...) they are the one who has the right to make politics, is the force of drugs traffic (...) they have the politic, social and economic control over Urabá. (...) For us all remains the same, the political scenario has not changed. The paramilitary policy of acquiring massively land is a threat for communities and farmers. The policy of purchasing and purchasing land is a threat to us.

Finally, regarding the public order and the security in the banana zone, Graciano points out:

(...) the demobilisation has not happened yet, the top commander of the paramilitaries, Otoniel, was demobilized in 1992 and he still in the region. All
the paramilitaries who were at that time currently are in the banana zone. In 2005, supposedly they were already demobilised, but the paramilitaries committed massacres with the army. (...) The paramilitaries who are in the region at this moment were present when the paramilitaries operated with the sponsorship of CB.

Regarding the impact of the peace agreement with the FARC, Graciano points out:

For us, there is a desire of stopping the war, but we think this is not the solution to the paramilitary control, it is merely a strategy of the government. It is the first step to achieve a feeling of true peace. The FARC left the weapons and the paramilitarism increased. We consider that the paramilitarism has undertaken the control of the zone, the areas occupied by the FARC before are now occupied by the paramilitary groups.

State capture encouraged an irresponsible attitude of CB towards its responsibility to respect the human rights

Bucheli (2004:210) notes that in the sixties Urabá was a peaceful area but it turned into one of the most violent zones of the country and the main entry for illegal arms traffic in the eighties. UFC was a witness of such transformation which, among other reasons, led the company to leave the country. At the time of the UFC’s departure in the eighties, left-wing rebels, paramilitary groups, and the national army were fighting for the control of the banana zone, therefore, when CB made the decision of re-entering Colombian market in 1990, it was aware of the difficulties it would have to face to operate in territories dominated by illegal armed groups.

Hence, it made the decision of paying money to guerrillas to operate without disruption and it developed a mechanism to carry out such payments. According to the declassified internal memorandum, released by the National Security Archive (NSA,
since 1990 CB set the mechanism through which the records of such payments will be documented in the MNC’s accounting books. In order to keep the recipients’ identity confidential and to assure compliance with the Foreign Corrupt Practices Act, the illegal groups' payoffs were named “sensitive payments” and they were recorded as “Managers Fund expenses”. In addition, the mentioned memorandum established that before being paid such expenditures, they should have been documented and approved by the MNC’s regional manager.

Such CB’s practice was the beginning of one of the most well-documented episodes of one MNC supporting terrorist groups. However, CB alone could not have been able to develop such a strategy alone. It required a broad number of abettors allowing the MNC to implement such practice for more than one decade without serious disruptions. This section explores the machinery established by banana traders to operate a set of networks fuelling an internal war merely to satisfy its business interests. As the aim of this thesis is to identify the factors leading state capture, this section makes emphasis on CB’s contribution to such machinery.

At the end of the sixties, Urabá was dominated by the recently established EPL, the military arm of the Colombian communist party. In 1971 the FARC arrived Urabá, at that time the EPL was already operating in the zone. Both, EPL and FARC, configured labour unions and committing acts of violence against banana traders. The left-wing rebels were welcomed by the working class of Urabá, who perceived the rebels as a response to the abuses committed by the banana traders. At that time, the workers’ right of association and the configuration of unions were not recognized by the law as

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37 The NSA (NSA), a non-profit organisation funded in 1985 and based in the George Washington University, undertook a seven-year-long legal battle against the U.S. Securities and Exchange Commission (SEC) and CB, which resulted in the CB Papers, tens of thousands declassified records outlining how the company engaged in illicit payments to guerrilla rebels and paramilitary groups while it was doing business in Colombia. As part of the NSA’s Colombian project, led by the senior analyst Michael Evans, the organisation successfully obtained the mentioned documents employing the US Freedom of Information Act.
they were related by the government and banana traders as forms of insurrection (Verdadabierta, 2012).

However, challenging the government, the EPL established the labour union Sintrago and the FARC Sintrabanano. The establishment of the unions fuelled the conflict between the guerrilla groups as they were competing for the support of the peasants and consequently the members of one union were considered by the other as their enemies (Semana, 1989).

In the eighties, after years of armed confrontation between EPL and FARC and the banana traders being killed, kidnapped and extorted by guerrillas, the government reached a truce with the rebels and initiated a peace process to find out a negotiated solution to the armed conflict. In addition, during the eighties the workers’ right of collective bargaining was recognized by the government, an aspect which was used by the guerrillas to systemically spread their ideology and military power throughout the country (Semana, 1989). At the end of the eighties, a new main actor was added to such scenario of violence, the paramilitary groups, the right-wing violent retaliation against the left-wing ideology sponsored by militaries, politicians, businessmen and drug cartels (El Espectador, 2016).

Paramilitary organisations were legal militias under the Law 48 of 1968, which called them self-defense units. Shah notes that under such law, paramilitary groups forcefully took valuable lands to favor the interests of drug traffickers, local landowners, and multinationals and private companies. The law gave permission to organize civilians with weapons and it served as the legal support of the paramilitary’s project of introducing an aggressive counter-agrarian reform, a project which was successfully implemented in the northern area of Colombia (Shah, 2014:76).

Therefore, from the departure of UFC to the arrival of CB important social changes impacted the banana business. Summarising the changes having more impact on CB, the following are the most relevant: the left-wing guerrilla groups had taken control over the banana zone; the worker’s right to form and/or join a union was guaranteed
and recognized by the government; there were right-wing paramilitary groups confronting guerrillas and serving to the interests of local landowners and businessmen; and the banana traders of Urabá had made the decision of moving their business from Urabá to Magdalena to avoid the incidents of violence taking place in Urabá (Bonet, 2000).

Uniban, the most important Colombian banana trader, started doing business in Magdalena because of the struggles in Urabá. It was the rebirth of Magdalena’s banana zone but despite the conflict in Antioquia, Urabá was still being the most productive banana zone in the country (Bonet, 2000), therefore, the banana traders did not stop their operations in Urabá, but they opted to carry out their operations simultaneously in Antioquia and Magdalena.

The expectation of the banana traders was not to leave their banana plantations in Antioquia and to move to Magdalena. They wanted to recover their land at any point of time to expand their business and continue with their business in both regions. Nevertheless, the reactivation of the banana production in Magdalena instead of improving the economic conditions of Magdalena made the battlefield wider than it was at the time in which the banana production was concentrated in Urabá only.

Hence, CB arrived at the Colombian banana zone at a moment in which it was a battleground. The local traders of Urabá were guerrilla’s military target and the Colombian army was incapable of bringing violence to an end. Therefore, CB accepted the cost of doing business in Colombia and it made the decision of paying money to the guerrillas and other illegal groups operating in the banana zone.

*CB’s relationship with left-wing guerrilla rebels.*

There is evidence of payments carried out to by the MNC since 1991 to individuals working to the Colombian army but also to the FARC, ELN and EPL rebels. These payments were called “sensitive payments” and they were made to avoid disruption of the MNC’s operations. Altogether, from October 1991 to December 1996, excluding
1993, payments to the three mentioned guerrilla groups sum around half a million US dollars (NSA and Verdadabierta, 2017).

Documentary evidence suggests that CB did not simply pay the money requested by the rebels. The MNC negotiated with them the amounts to be paid and relevant aspects related to the public order of the banana zone. From 1991 to 1995 these negotiations were held simultaneously with the FARC and the ELN and the issues discussed in such negotiations were related to the MNC’s operations in Antioquia and Magdalena. The rebels had sensitive information about the structure and composition of CB and had information related to the top members of the company, an aspect which pushed the MNC to negotiated with guerrillas to avoid the damage of the company’s assets or retaliation against its employees (NSA and Verdadabierta, 2017).

Payments were made through CB’s local subsidiaries -Frutera de Sevilla and Banadex—38-or through local partners, such as Banazuñiga and Banacosta. The payments were registered in the accounting books of the MNC as “Gastos de Seguridad ciudadana” (Expense of citizen security). Payoffs never were hidden by the CB’s representatives in Colombia, they were reported to the representatives of the CB in the US, who rejected or approved such expenses and tracked them. Example of this is that at the beginning of the nineties, the accounts of citizen security were elaborated by Juan Manuel Alvarado, CB’s security chief, who sent them by fax to his boss in Cincinnati (NSA and Verdadabierta, 2017).

Therefore, CB’s headquarters had a clear idea of what their colleagues in Colombia were doing. As an example of this, the fact that the headquarters had complains when they considered excessive the amount the Colombian management agreed to pay, and they requested for better agreements. Nevertheless, despite CB’s complains, the

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38 C.I. Bananos de Exportacion S.A. ("Banadex") is an indirectly wholly-owned subsidiary of CB with its headquarters in Medellin, Colombia. Banadex indirectly reports to CB. Through this company, bribes to local custom officials were paid to obtain the licenses required to operate port facilities. According to CB it did not know about such payments as they were contrary to the MNC’s policies, therefore, the Securities and Exchange Commission (SEC) accepted an offer of settlement presented by CB to solve the controversy (SEC, 2001).
management used to pay any amount as it knew the power of guerrillas to damage its assets and kill or kidnap its staff.

During 1990 to 1995, the main armed actors dealing with CB were the ELN and FARC but there were also other groups operating such as the dissidents of ELN and EPL, a group of left-wing insurgents whose main leaders had decided to demobilise to participate in politics. All these groups represented a huge risk for the MNC’s operations, but CB was focused on negotiating with ELN and FARC as they were powerful, violent and had sensible information related to the MNC’s operations.

Moreover, the directives of CB considered the ELN and FARC well-structured armed groups, as they had a central commando which effectively controlled the troops’ operations. Therefore, it was possible to coordinate with them strategic issues. For instance, CB and the FARC did not just negotiate the amount to be paid to the guerrillas, but also sensible issues related to the smooth running of the MNC’s operations, such as assets of the company, the relation with other armed groups operating in the zone and the labour union’s requests (NSA and Verdadabierta, 2017). However, CB was not the only business affected by the guerrillas. As it was mentioned previously, local traders of Urabá were seriously affected by the rebels and they had to move to Magdalena to keep their business going on.

In 2018, before the US District Court Southern District of Florida, the MNC’s rejected its liability for the murder of six American missionaries who were kidnapped and killed by the FARC in the nineties. Based on the “duress” defence, CB argued that it was forced to pay extortions to the guerrilla rebels and that it had no intention in supporting the FARC’s criminal activity. However, the US District Judge, Kenneth Marra, rejected the viability of duress defence and held that the company had other alternatives, such as leaving their operations in Colombia, instead of making payoffs to an armed group which was not linked with any legal activity as all its goals were criminal.39

39 Case No. 08-MD-01916-KAM Jan 3, 2018.
State capture imposed obstacles to access to remedy when human rights were disrespected

In an interview conducted to the social leader German Graciano, he made it clear such consequence of state capture:

“We were isolated from society and the government never gave us support. We only had the support of the catholic church, the government left us isolated and we claim our constitutional rights, but we did not have any guarantee from the government, the local administration. We attempt by many means to seek the help and support of the public officers, prosecutors, the mayor, the police, the vice-president. The peace community was taken as a group which was not displaced but which was isolated and did not make part of the civil society and because of the economic model of Urabá (...) we were not recognised as victims. We tried by many means and testimonies but we found persecutions, judicialization and deaths, and abductions. Therefore, there were no guarantees or any kind of justice”.

The opposition of the US government to the Rome Statute and the ICC jurisdiction.

In May 2002, the US government made the decision of not becoming a party of the Rome Statute. In a letter sent to the UN Secretary-General, the US Secretary of State for Arms Control and International Security, John R. Bolton, held: This is to inform you, in connection with the Rome Statute of the International Criminal Court adopted on July 17, 1998, that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000. The United States requests that its intention not to become a party, as expressed in this letter, be reflected in the depositary's status lists relating to this treaty (US Department of State, 2002).
After making such decision, the Bush administration conducted individual negotiations with several countries seeking Bilateral Immunity Agreements (BIA) to avoid the prosecution of US nationals before the International Criminal Court (ICC). In August 2002, the US government officially approached the Uribe’s government to sign a BIA. Such demand led to diplomatic tension between the US and Colombia for several months⁴⁰ but after the US threatening Colombia with a shortage of military and economic aid, the Colombia government accepted the US’s request.

On September 17th, 2003, the agreement was finally signed. It established that the Colombian government will not present claims against US citizens before the ICC for crimes against humanity committed within the Colombian territory unless the Colombian government had obtained prior approval of the US government (El Tiempo, 2003). The representative of the US government in charge of negotiating the agreement was Stephen Rademaker an officer of the US Department of State, who is currently occupying a senior position at the law firm Covington & Burling (C&B) which is the same firm that represented CB during the negotiation of the plea agreement with the Department of Justice, an agreement which will be analysed in the next section.

*The negotiation of a plea agreement between CB and the US Department of Justice*

Apparently, CB’s top executives overlooked they were financing a terrorist group as they were too busy dealing with crucial aspects related to the future of the company such as the colossal WTO dispute against EU for the restrictive measures imposed to

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⁴⁰ El Tiempo (2003), describes the facts in the following way:

August 12: The US Congress passed a law to take military aid away from countries that refuse to guarantee the immunity of US soldiers. August 19: The former presidential candidates and Colombian social organizations rejected Washington’s request. August 20: Colombia warned about the convenience of seeking a Latin American consensus to guarantee the full validity of the ICC. September 20: President Uribe sent a letter to his US colleague, George W. Bush, to state that the bilateral agreement signed in 1962 is sufficient to guarantee immunity for Americans. June 30, 2003: At least 5 million dollars of military assistance that E.U. I was going to deliver to Colombia during the fiscal year, they were suspended for refusing to sign an agreement on CPI. July 2: Aid cannot be with petty conditions or pressures, responded Uribe.
Latin American bananas, and the financial difficulties which led the MNC for Chapter 11 bankruptcy filing to restructure the company.

It was up to Lindner leaving control over CB that the top executives of the MNC became aware of the fact that they would face serious legal accusations because of the payoffs to the AUC. On February 21, 2003, Kirkland and Ellis, an outside legal counsel for CB, advises top executives to stop payments to the AUC. On April 24, 2003, Roderick Hills and Robert Olson, CB’s board member and general counsel, met with assistant attorney Michael Chertoff, a former law firm colleague of Hills, to inform that the MNC was making payments.

The Washington Post (2007b) points out that Chertoff “affirmed that the payments were illegal but said to wait for more feedback, according to five sources familiar with the meeting”. Despite the executives knowing that something was wrong with the payoffs they were making to one organisation officially listed as terrorists, on May 5, 2003, they instructed the directives of Banadex to continue making payments to the AUC, such payments continued up to February 4th, 2004 (Schotter and Teagarden, 2010).

Eric Holder, the lead counsel designated by the firm C&B, was the legal advisor of CB in charge of achieving a plea agreement with the US Department of Justice. CB voluntarily accepted its liability for making payments to the AUC, an organisation which had been included in 2001 in the Foreign Terrorist Organisations (FTO) list. As a result, in March 2007, the judge Royce Lamberth of the U.S. District Court for the District of Columbia authorised a written plea agreement. Under the terms of the plea agreement, CB’s sentence will include a $25 million criminal fine, the requirement to implement and maintain an effective compliance and ethics program, and five years’ probation. CB also has agreed to cooperate in this ongoing investigation (US Department of Justice, 2007).

The documents in which the US authorities based their decision of achieving a plea agreement with CB, were declassified thanks to the perseverance of the NSA.
However, the names of the executives involved in the illegal transactions carried out by CB were not revealed (Washington Post, 2017c). It was until Michael Evans, a senior analyst of the NSA, identified the names of the directives mentioned in the documents and made them public (NSA, 2017).

After agreed to pay a US$ 25 million criminal fine, Holder disappointed considered the US Department of Justice imposed the sanction ignoring the brave attitude of CB’s executives. According to Holder, “If what you want to encourage is voluntary self-disclosure, what message does this send to other companies? Here’s a company that voluntarily self-discloses in a national security context, where the company gets treated pretty harshly, [and] then on top of that, you go after individuals who made a really painful decision” (Washington Post, 2007b).

Years later, Holder was appointed by the Obama administration as US Attorney General (2009-2015). Such appointment was controversial because he had been the legal advisor of CB, a company which funded paramilitary groups in Colombia, an aspect which was not consistent with the President Obama’s position towards Colombia (Glaser, 2008). Obama rejected the idea of having a Free Trade Agreement (FTA) with Colombia, while labour and human rights were being systematically violated in the South American country. Hence, it made no sense to appoint someone who acted as the legal advisor of one MNC which sponsored illegal groups directly responsible for crimes against workers and union leaders in such a high position of the US government and at the same time to demand improvements on labour matters, and require the Colombian government to implement an Action Plan Related to Labour Rights before approving the US-Colombia FTA (Shah, 2014).

Furthermore, there were many concerns about Holder’s conflict of interests between his public duty and his private interest. Holder was a partner of C&B, a “firm that's represented the biggest banks on Wall Street, and is internationally known for its white-collar defence practice” (Vice News, 2015). C&B has been linked in the past with incidents of revolving door involving the Department of Justice (Vice News, 2015). Holder has been one of the C&B’s lawyers who has gone from investigating
white-collar criminals in the Department of Justice to defend them in C&B and vice versa. Before he was appointed as Attorney General, Holder was a partner of C&B - where he assumed the defence of CB- and before working for C&B, he was deputy attorney general in the Clinton administration.

When Holder was chairing the Department of Justice, financial corporations were fined but there were no criminal charges against the individual executives responsible for the US financial crisis of 2008 (Greenwald, 2013; Vice News, 2015). In addition, according to the Department of Justice, for 2015 criminal prosecutions for white-collar crimes were the lowest in 20 years (TracReports, 2015). This data has been associated with the revolving door of C&B-DOJ in which Holder has taken part (Vice News, 2015). After concluding his period as Attorney General in 2015, Holder returned to the firm C&B.

*State capture imposes obstacles to victims trying to have access to justice*

As the following facts show, one may consider that CB has influenced the system of justice to the extent that it has made difficult for the Urabá’s victims to have access to effective judicial remedies in domestic and international courts.

Firstly, the Colombian system for the prosecution of crimes has provided not to be effective to prosecute the executives of CB. In 2005 the finance scheme employed by the AUC and the banana traders was identified by the 29 Specialized Prosecutor of Medellín, Alicia Domínguez, who initiated an investigation against CB based on an anonymous communication submitted by the Dian (Colombian taxation authority) warning that the AUC were financed by the businessmen of Urabá (El Tiempo, 2012b). Domínguez identified that the Convívir Papagayo was used by CB as an intermediate to make payments to the paramilitary groups. As part of the investigation she was leading, Domínguez traveled to the US to approach the directives of CB, but after returning to Colombia she was removed of the investigation and then fired. According to Domínguez, she was informed inside the Prosecutor’s Office that the investigation
she was leading against CB would put in risk the Colombian economy (El Tiempo, 2012b).

Before Dominguez being removed, the head of the Prosecutor’s Office of Medellín and boss of Dominguez, Guillermo Valencia Cossio, ordered her to accept the appointment of Liceth Mira, the former prosecutor of Urabá, as attorney of the directives of the Convivir Papagayo. Valencia’s order was refused by Dominguez who argued there was a conflict of interests because Mira had left her position at the Medellín Prosecutor’s Office just a few days before Valencia’s instruction (El Tiempo, 2012c).

Years later, on March 6, 2012, the Specialized Attorney 33 of Medellín closed and archived the investigation against CB, its subsidiary Banadex, and Banacol, for considering: that there was no enough evidence to establish that there was a clear intention of the entrepreneurs to sponsor the criminal activity carried out by the AUC; that the entrepreneurs made payments in good faith to the Convivir Papagayo as it was a legal organisation fully recognised and supported by the government; that the entrepreneurs were victims of extortion by criminal groups as their payments were made to protect their assets and workers (Verdad Abierta, 2012).

Raul Hasbun who was sent to prison in the same investigation carried out by the Specialized Attorney 33 of Medellín, complained about the closing of the investigation against CB and the other entrepreneurs. When the interviewer of the magazine Semana asked him why he had accepted to be interviewed, Hasbun noted “Because they closed the CB case. What do they call us to declare then? If the Attorney General’s Office does not want us to talk about the banana workers, let them tell us so we do not waste justice and we avoid threats for being “sapos”. Let the Prosecutor's Office say who they want us to talk about and who they do not, but they should say it publicly. If they do not want us to talk about politicians or businessmen, let them say so” (Semana, 2012b).
Secondly, the CB’s plea agreement has been one of the main obstacles confronted by the Colombian victims of CB seeking justice. After CB’s plea agreement, in 2007 the Colombian Attorney General, Mario Iguaran held that the executives responsible for the crimes committed by CB would be extradited. Such declaration had a powerful impact (Washington Post, 2007a; Reuters, 2007), but it never came true. In April 2008, Iguaran held that it was not possible to initiate the extradition request because the identity of the executives was confidential in the plea agreement and, without such information, legal actions were not possible. CAJAR (2008) rejected Iguaran’s announcement because since January 2008 a document (Radicado # 63.625) demonstrating the full identity of the executives had been filed in the Colombian Attorney General’s Office.

As the outcome of the CB’s plea agreement suggests, it was beneficial for a group of irresponsible executives to reach a plea agreement in which the corporation is fined because of the executives’ crimes, but none of them goes to prison and their identities are kept confidential. In addition, if most of its board of directors is involved in the crimes, as it was the case, they would be delighted with such kind of agreement since the shareholders’ money will pay both the attorney's bill and the fine, while they are not even fired. This outcome, as the CB’s plea agreement demonstrates, is clearly advantageous for the perpetrators, but it is unsatisfactory for the victims as it affects access to justice.

Thirdly, the recently approved Colombian transitional justice tribunal named Special Justice for Peace (JEP) cannot investigate and judge the executives of CB who were involved in the payoffs to the AUC. The current Attorney General, Nestor Martinez, who ten years before being appointed emphasised on the importance of initiating legal proceedings against the executives, given the status of crime against humanity to the

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41 In September 2007, the former Ministry of Justice and current Attorney General, Nestor Martinez, noted: "We must mention to appear before the General Prosecutor of the Nation the directors (of CB)
criminal conduct called by the Colombian law *concert to commit a crime aggravated*,
which means that a legal action for such criminal conduct can be brought before
tribunals without restrictions of time.

The General Attorney, noted that it means that the executives of CB could be
prosecuted before the Special Jurisdiction for Peace (JEP) (Colombian Congress,
2017), a special jurisdiction to deal with the crimes committed in the frame of the
armed conflict, which was established as an important component part of the peace
agreement achieved after the negotiations taking place between the Colombian
government and the FARC.

When Martinez made this statement, the draft version of the JEP statute allowed such
possibility. Nevertheless, during the debates at the Colombian congress to discuss the
final version of the JEP statute, one of the central topics was the legal risks
entrepreneurs may face if they were processed by the JEP (Dinero, 2017). The
congress was completely divided; therefore, a JEP statute with an ambiguous norm
ruling the matter was elaborated.

Such version of the JEP statute was strongly criticised by the Chief Prosecutor of the
ICC, Fatou Bensouda, who considered it was not clear the scope of the norm regulating
the liability of entrepreneurs in the sense that it did not specify whether a link between
the entrepreneurs’ sponsorship and the crimes committed by the illegal armed groups
was necessary to hold a third civil person guilty (Semana, 2017c). The
recommendations were heard but congress opted to leave to the Constitutional court
to make a final decision on such matter. Hence, the congress submitted a final version
of the JEP to the Constitutional Court for its revision

The Constitutional Court established that members of the civil society cannot be forced
to appear before the JEP, therefore, they would do it but on a voluntary basis only

*and their henchmen, because we must know the criminal truth of the conduct of those who financed
the paramilitaries, that is a chapter that is about to be worked in the Colombian Justice " (El Pais, 2007).*
(Constitutional Court, 2017). It means that if the executives of CB want to appear before the JEP to accept their liability for crimes against humanity, they would do it. However, the key question here is: do they want to do it? The FARC was disappointed with the outcome (Caracol Radio, 2017c), contrary to the entrepreneurs who were glad about the Constitutional Court’s decision (Dinero, 2017) as the attempt of making entrepreneurs accountable in the frame of the JEP was seen by many of them as a revenge of the FARC (Panam Post, 2017).

Fourthly, the jurisdiction of the ICC over crimes against humanity committed in the Colombian territory is not as broad as it could have been because the Colombian government, as any other sovereign state could have done, made the decision of accessing the ICC under special conditions. According to the ICC (ICC, c2018), “Colombia deposited its instrument of accession to the Rome Statute on 5 August 2002 together with a declaration pursuant to article 124 excluding war crimes from the jurisdiction of the ICC for a seven-year period. The ICC may, therefore, exercise its jurisdiction over war crimes committed in the territory or by the nationals of Colombia since 1 November 2009 and over other crimes listed in the Rome Statute committed since 1 November 2002.”

In addition, as it was mentioned previously, in 2002 the US government exerted pressure on the Colombian government to enter a BIA and deprive the Colombian government of its right to bring legal actions before the ICC for the prosecution of US citizens committing crimes against humanity in Colombian sovereign territory. Therefore, the Colombian government may bring legal action before the ICC against the local banana traders who were sponsoring the paramilitary groups, but thanks to the BIA it will not be able to do the same to the American executives of CB. It is relevant to highlight that trying to save some dignity, in the frame of the BIA the Colombian government reserved to itself the right to ask the US government whether it could bring or not a legal action before the ICC against any US citizen. The key question is: Does the US allow Colombia to do it? Probably it does not.
Finally, but not least, the US courts have systematically rejected the lawsuits of the banana zone victims. In June 2007, two lawsuits were filed, one before the District of Columbia and another in Florida. Later, in July 2007, before the US federal court of New Jersey, another lawsuit against the MNC was filed, based on the Alien Tort Claim Act.

In February 2008, the US Judicial Panel on Multidistrict Litigation considered that the actions pending in the different federal districts involved common questions of fact and, therefore, it makes the decision of consolidating all the claims in a single proceeding which was transferred to the US District Court for the Southern District of Florida. In March 2011, two more lawsuits were filed, and they were also consolidated with the other claims into one single legal process in May 2011. CB executives rejected the victims’ legal claims and highlighted that they made the payments to the AUC in good faith to guarantee the safety of its employees and their families as it was corroborated in an investigation conducted by an independent special committee (Special Litigation Committee, 2009:189).

However, on 3 June 2011, District Judge Kenneth Marra rejected the argument of CB and on 27 March 2012, Judge Marra, held that the court had authority to deal with the victims’ claims which were based on Colombian law. CB appealed this decision, and on July 2014 the 11th Circuit Court of Appeals ruled that the court did not have the competence to deal with the plaintiffs’ legal claim. On 14 August 2014, the plaintiffs filed a petition with the court of appeals asking it to rehear the case. However, in April 2015, the US Supreme Court declined to hear the case. The main argument exposed by the US judiciary was the fact that the relevant illicit conducts committed by CB occurred outside the US territory (Reuters, 2015) and the fact that CB’s payoffs just aimed to protect its employees and their families.

The legal battle continued and in March 2017, a class action complaint was brought before a court in Florida under the Torture Victims Act. Furthermore, group of human rights defenders integrated by CAJAR, the International Federation of Human Rights (FIDH), The Human Rights Programme of Harvard University and the Peace
Community of San Jose de Apartado filed a lawsuit to bring the US executives of CB before the ICC for the commitment of crimes against the humanity.

**Analysis and conclusions**

In Colombia, CB played a central role in configuring the banana industry from its roots. The MNC shaped the entire business to the extent that it served to local traders as a source of inspiration for doing business aggressively in the banana zone. Moreover, it contributed to the configuration and perpetuation of local elites which played the role of facilitators of the MNC’s goals for decades.

These aspects allowed CB to legitimate its business practices for a very long period, good enough to penetrate the roots of society. Sponsoring dead-squads was not simply an accepted or tolerated practice; it was seen by local traders as an adequate model of doing business in the banana zone as it made easier for the banana guild to carry out their business in spite of the armed conflict.

Nowadays, local banana traders have reinforced corporative practices established by CB. It reveals the contribution of the MNC to the Colombian banana industry, such as supporting right-wing politicians, appointing former politicians in top positions for lobbying (in a country which lobbying is not regulated), accumulating land, promoting poor labour conditions, and adopting a model of development which ignores the local needs and supersedes the foreign interests, in sum, an industry based on policies that instead of contributing to peacebuilding and the socio-economic improvement of the country, worsening the armed conflict.

Nevertheless, this case study seems to suggest that CB did not require to capture Colombian institutions directly to satisfy its needs. CB found support from its home-country’s politicians, who played a central role as enablers of the MNC to exert pressure on the host-country’s government to pave the way CB required to manage its business in Colombia without troubles.
The analysis of two episodes, on the one hand, the WTO dispute between the US and the EU and, on the other hand, the sponsoring of CB to different terrorist groups in Colombia for more than one decade, has been relevant to understand the whole picture. These two episodes are apparently unrelated and, therefore, they would be tracked independently as if they were separate processes.

However, both of them occurred simultaneously. At the middle of the nineties, while in the home-country CB was carrying out the lobby and strengthening its ties with US politicians, democrats and republicans, the MNC was engaging in illegal transactions with left-wing and right-wing terrorists in Colombia, the host-country. Similarly, while CB was donating money for supporting politicians in the US, it was simultaneously making illegal payoffs to terrorists in Colombia and later negotiating a plea agreement with the Department of Justice for such incident.

The WTO dispute effectively provided a crucial scenario for CB to enhance its political ties with American politicians and increase its power to influence the US government through lobbying and political contributions, an aspect which necessarily leveraged the MNC’s bargaining power to deal with the Colombian episode involving CB and terrorist groups included. Hence, it is highly probable that the close relation of CB with American politicians at that time would have softened the position of the American authorities in relation to the investigations carried out against CB for supporting paramilitary groups in Colombia.

It is relevant to highlight that both episodes, the WTO dispute and the accusations against CB for sponsoring terrorist groups, involved the interests of the same company: CB, a company which massively sponsored US political parties and politicians, some of them who acted as enablers of the MNC in multiple scenarios. Therefore, if an adverse outcome to the MNC was reached in any scenario, the interests of US politicians and political parties would be negatively impacted.

For instance, regarding the episode of the MNC sponsoring terrorists in Colombia, on the one hand, there was the interest of CB’s executives of avoiding go to prison for
crimes against humanity, and on the other hand, there was the interest of the US government in avoiding US nationals being brought before foreign tribunals, named them Colombian tribunals or the ICC, for crimes against humanity. This is a convenient coincidence, both the US government and the MNC have a common interest but the MNC could not adopt any measure to avoid US nationals being brought before courts. However, the government could do it, therefore, the government did it.

Concerning the WTO banana trade war, the extent to which the U.S. could have been negatively impacted by the EU restriction was never clear at all. One may say that there was the interest of the US to exhibit its power before the WTO, however, there was no apparent reason for the US government to hold a fierce battle for years against the EU for bananas, fruits which do not grow in the US and which do not create a substantial number of jobs in that country. On the contrary, there were many reasons for CB and some American politicians to be worried for the WTO dispute’s outcome as a negative outcome represented a huge risk to the CB’s finances which necessarily would have negatively impacted the budget of one main donator of the US political parties, but it would not necessarily affect the US economy.

CB and its chairperson had made significant political contributions to both US political parties, which increased their chances to influence the government disregarding the result of the US political elections. Such a strategy was effective enough for CB as it received support from both political parties, republicans, and democrats, during the time the banana trade war took place. For legal reasons, the MNC was not allowed to intervene before the WTO, but the US government could do it, therefore, the US government did it on behalf of CB.

To avoid MNCs co-opting the public decision-making system to obtain private gains, the role of the civil society of the MNCs’ home-country is of paramount importance. Civil society can assess whether the factors pushing their government to support an MNC’s position legitimately respond to national interests or merely to an individual’s private interests. Otherwise, politicians would be playing the role of enablers of the
strategies employed by the MNCs to take advantage of the state’s apparatus to satisfy their private interests in both, the home and the host countries where they operate.

That is the case of CB, a MNC who taking advantage of its connections with powerful politicians in their home-country, carried out extorting practices abroad against foreign officers, such as to threat presidents of foreign countries with economic sanctions, trade barriers or the shortage of economic or military aid, if they did not do what it wanted. Similarly, the MNC took advantage of its strong position to influence the government of its home-country to obtain benefits to evade its responsibilities or to impose obstacles to those people seeking effective remedies against the human rights violations committed by the MNC abroad.

Figure 3 describes the CB case study’s event-history map. It briefly describes thirty-four milestones and highlights the three levels of state capture process I have mentioned in chapter two, based on the strategies and mechanisms employed by the MNC through the period analysed in the case study. There are two years in which CB massively employed strategies aiming to capture the state, 1997 and 2001.

It is important to note that in 1997 guerrilla rebels were included in the US’s Foreign Terrorist Organisation official list, which means that from 1997 the company was acting against the US law because they were sponsoring terrorists. Therefore, CB had to employ as many strategies as they could to avoid negative repercussions in the home country and continue deploying illegal practices in the host country. Similarly, in 2001, the AUC (paramilitary groups) were included in the US’s Foreign Terrorist Organisation official list. Therefore, CB employed as many mechanisms as possible to avoid negative repercussions in the home country and continue sponsoring paramilitary groups in the host country.
Figure 3: CB’s Event-History Map

- CB was one of the main donors of the US political parties
- Guerillas were supported by CB
- WTO Banana War
- Paramilitary groups were supported by CB
- The Convivir legal framework is established
### Event-history map

1. Carl Lindner, a Cincinnati business tycoon, acquired most of the United Fruit Company and the company changed its name to CB Brands and re-entered Colombia. The mechanism "sensitive payments" to pay illegal groups is immediately established by the Company.

2. CB makes a petition to the US government to apply sanctions against the EU banana trade policy based on the US trade law, for considering it is against the GATT. The petition was filed under the Clinton administration based on the US trade laws and it was widely supported by the US government. There was a political interest in supporting the CB's petition as a demonstration of Clinton's commitment to using US trade laws aggressively to protect US interests. The US trade representative made the decision of accepting the petition and initiated an investigation under the US trade law.

3. The chairman and CEO of CB, Carl Lindner, and executives, are identified as the main contributors of the Democratic and Republican parties during the 1993-1994 election cycle.

4. CB makes economic contributions to the political campaigns of two candidates for the race to the governance of Antioquia ( Colombian region). Alvaro Uribe is one of the candidates.


6. The US suits the EU before the WTO.

7. Bob Dole, a Republican Congressman who supported the interests of CB in the US Congress, presses for congressional action against Colombia and Costa Rica to impose sanctions against these countries for their decision of joining the Framework Agreement proposed by the EU. The Colombian government considers Dole’s initiative a serious threat for the Colombian economy but to the public order also.

8. Twenty-eight CB’s employees are murdered on their way to work.


10. The US Department of State includes FARC and ELN on the Foreign Terrorist Organisation official list.

11. Lindner and his wife, Edyth, contribute with $360,000 to Republicans and $176,000 to Democrats.

12. There is a legal memo dated 1997 which says that the company was "member of an organization called CONVIVIR Puntepiedra, S.A.," which the author characterizes as "a legal entity in which we participate with other banana exporting companies in the Turbo region." The memo says that the "sole function" of the Convivir was "to provide information on guerrilla movements."

13. Colombian lawyers advise CB about how to make “sensitive payments” to guerrilla without legal consequences.

14. CB’s fruit transport ships have been used to smuggle cocaine into Europe. More than a ton of cocaine was seized from 7 CB’s ships.

15. From the second quarter of 1997 and until the second quarter of 1998, Banamex (CB Colombian branch) made payments to "Convivir" cooperatives, which they registered as "donation to the group of citizens of recognition at the request of the Army." Accounting records from 1997-1998 also point to the role of Colombian security forces in encouraging the company's illegal paramilitary payments. Beginning in the second quarter of 1997 and continuing through the second quarter of 1998, sensitive payment schedules for Banadex record large payments to "Convivir" as "Donation to citizen recognised group made at the request of Army."
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<td>16. The Cincinnati Enquirer publishes an 18-pages article exposing CB’s dealings in Latin America. Accusations against CB included allowing cocaine to be brought to the US on its ships, bribing foreign officials, evading nation's law on land ownership, forcibly preventing its workers from unionizing, and a host of other misdeeds. The Enquirer was later forced to issue a front-page apology and pay CB a reported $14 million after it was revealed the lead reporter, Mike Gallagher, illegally accessed more than 2,000 CB voicemails. Gallagher was fired.</td>
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<td>17. CB’s employees are fired because of their involvement in a bribery scandal. Two of its workers paid bribes to public servants to use a government’s warehouse without permission.</td>
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<td>18. The US Department of State includes AUC on the Foreign Terrorist Organisation official list.</td>
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<td>19. CB files for Chapter 11 bankruptcy protection in order to restructure the company.</td>
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<td>20. On November 5th, 2001, through the port of the CB Brands company, 14 containers with 3,400 AK 47 rifles and 7 million rifle cartridges were sent to the paramilitary groups, brought in the Otterloo ship. The containers were unloaded at the CB Brands winery and it sent a sophisticated crane for its mobilization. The 14 containers, which were declared before the Dian as a cargo of rubber balls, were then transferred to the La Rinconada and La Maporita farms (Judgment of December 9, 2014, rationed 200682611 155, page 155)</td>
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<td>21. CB emerged from the bankruptcy (Chapter 11) on March 19, 2002, ending Cincinnati businessman Carl H. Lindner, Jr.’s control of the company. The CRS Vision and Core Values become part of the company's strategic plan, and CR was made one of the CB’s five long term strategic goals. Moreover, CB began an annual CSR report that is well regarded in the CSR community for its commitment to transparency and sustainability (Maurer, 2009).</td>
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<td>22. CB makes payment to the Colombian army and police directly CB and it analyses different options to continue with the scheme of payments to illegal groups.</td>
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<td>23. After cutting military aid to Colombia, the US signs a Bilateral Immunity Agreement with Colombia in order to avoid US nationals being processed and judged before the ICC.</td>
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<td>24. The Justice Department begins a criminal investigation. CB stops financing illegal groups as a result of possible criminal prosecution in the US under the anti-terrorism laws (Maurer, 2009). CB voluntarily revealed that one of its Colombian subsidiaries had made protection payments from 1997 through 2004 to terrorist groups.</td>
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<td>25. CB sells its operating subsidiary in Colombia. CB put forward a “sales” operation of Banadex to the transnational Banacol Marketing Corporation at far below market price (fire sale). Banadex, a subsidiary of CB that has worked in Colombia since 1989, was transferred to Banacol (Banacol Marketing Corp. SA based in Panamá), just when the United States Justice Department gave notice of its investigations. CB and Banacol put forward the agreement for the sale of Banadex, specifically the commitment of Banacol to sell to CB pineapples and bananas at a particularly advantageous price for an initial period of eight years (Banacol, 2012)</td>
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<td>26. CB wins the 2004 Corporate Citizen of the Americas Award, awarded by the OAS, thanks to their social commitment in Honduras. Cesar Gaviria (Colombian president 1990-1994) was the secretary-general of the OAS at that time.</td>
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<td>27. CB is the leading distributor of Bananas in the US, with annual revenues of US$4.7 billion.</td>
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<td>28. CB admits it has paid $1.7 million to AUC from 1997 to 2004, including $825,000 after it was listed as a terrorist group.</td>
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| 29. The US Department of Justice filed criminal charges against CB under the U.S. anti-terrorist law. The next day, CB settled its charges with the government by
pleading guilty to a charge of Engaging in Transactions with Specially Designated Global Terrorist (18 US Sect. 1705(b)) and agreeing to a $US25 million fine. The US government declined to press charges against CB’s individual managers or board members despite they were completely identified.

30. The US defeats the EU in the WTO Banana War.

31. Colombian Attorney General considers the individual managers and board members should be prosecuted and judged by Colombian tribunals.

32. The Specialized Attorney 33 in Medellín closed the investigation against the transnational corporations CB Brands, Banadex, and Banacol. The victims rejected such a decision for favouring the impunity of the companies, and for being a whole body of evidence that was analysed in the process.

33. The Attorney General considered the individuals should be prosecuted as their committed crimes against humanity. In his view, the JEP is competent to carry out investigations against the MNC.

34. A coalition of human rights organizations (CAJAR and FIDH) with the support of Harvard University, sent a submission to the International Criminal Court (ICC) calling for an investigation into the alleged responsibility of CB Brands International for crimes against humanity committed by Colombian paramilitary groups, under the Rome Statute, such a case could only be brought against the company’s corporate directors, as the ICC can only exercise jurisdiction against individuals.
Chapter 5: Pacific Rubiales Energy Corp.

Introduction

This case analysis traces the process through which Pacific Rubiales Energy Corp (PREC), a Canadian oil MNC, penetrated the Colombian socio-political structure and influenced the country’s public decision-making system. It shows how state capture encourages violence whenever it is necessary to allow MNCs to achieve their private goals. Therefore, the case study highlights some synergies between PREC and the government that led to putting the state apparatus at the service of the MNC-government’s “common goals” even if the peace and stability of Puerto Gaitan, a conflict-prone area of the Colombian territory, were seriously put at risk.

In addition, following the theoretical framework developed in chapter two, this case explores the ways in which PREC employed strategies and mechanisms to develop ties with different actors to influence programmes, policies, and decisions of the host-country’s government. PREC did this to the extent that the MNC’s main private interests, that is the protection of its infrastructure and increase of oil production, were turned into the government’s supreme goals under the label of development and progress, putting completely aside what is supposed to be the higher interests of a conflict-prone country, that is conflict prevention.

This chapter is developed in four sections. The first section offers a profile of PREC. It analyses the intrinsic features of the MNC, which are those determining the way in which it made business decisions, and the extrinsic features, which are those determining the power of the MNC when conducting its business relationships in the home and host countries.

The second section describes the way in which PREC built its relations with different actors. It presents an analysis of the different mechanisms and processes employed by PREC to play the role of captor. The third section analyses the main consequences of
PREC playing the role of captor. Hence, while section one and two analyse the causes, section three focuses on the consequences. Finally, at the end of this chapter, some conclusions are highlighted.

Company profile

Extrinsic features
Pacific Rubiales Energy Corp. (PREC) is an oil multinational corporation (MNC) established in Canada in 2008, it became the most powerful private company operating in the Colombian oil market in just a couple of years. The architects of PREC’s success were Miguel de la Campa, José Francisco Arata, Serafino Iacono y Ronald Pantin, former managers and high skilled engineers of the Venezuelan state-owned oil company Petróleos de Venezuela -PDVSA-, who were expelled from Venezuela for calling protests against the economic measures adopted by former Venezuela’s president Hugo Chavez in 2002 (The Economist, 2014). After being expelled, Iacono and his partners set up Pacific Stratus Energy, a company seeded with $5 million in early-stage capital by the Canadian business tycoon Frank Giustra (Minning.com, 2014).

The extrinsic features of the MNC are related to two factors: PREC enjoyed a dominant position in a key sector of the host-country’s economy, and PREC’s business in Colombia was relevant for the home country’s government, as it was an ambassador of Canadian companies interested in the Latin American extractive sector. These aspects were helpful for the rapid expansion of the MNC’s networks in Colombia because the company’s top officers were welcomed by the Colombian government with the backing of the Canadian government.

PREC was a key player operating a crucial sector for the Colombian economy, to the extent that the good performance of the company was essential for the good performance of the Colombian economy. PREC’s contribution to achieving the government’s goal of production (one million barrels per day) was central as for 2013 the MNC’s input was 210,000 barrels per day (El Tiempo, 2016a).
In 2007, the MNC acquired Meta Petroleum Corp., an oil company that was operating Rubiales, Piriri and Quifa heavy oil fields since 2001. The acquisition of Meta Petroleum substantially contributed to the success of PREC thanks to three factors. Firstly, the knowledge and expertise of Iacono and partners, secondly, the rapid increase of oil production in Campo Rubiales, from 7,900 barrels daily in 2007 to 208,763 avg. daily in 2013 (El Tiempo, 2016a) and thirdly, the rise of the oil price, one which grew from US$69.49 per barrel on August 21st, 2007 to US$108.51 per barrel on August 29th, 2013 (Macrotrends, 2018). The success of Meta Petroleum Corp. allowed PREC to acquire many domestic oil companies. All these companies operated as Colombian subsidiaries of Pacific Rubiales and they were relevant to expand PREC’s oil emporium in Colombia.  

**Intrinsic features**

One of the main characteristics of PREC relates to the lack of separation between control and decision within the company’s governance structure. The board of directors was composed of top Venezuelan executives who directly made the company’s decisions. Thanks to these executives meeting formal authority, experience and social influence (Kang and Sorensen, 1999) their power within the company was strong enough as to allow them to make a wide range of decisions within the organization, from those related to the structure of the company to those related to the operations carried out by the MNC in the oil fields.

Such a decision-making system was not a novelty for the MNC’s top executives. They used to employ similar patterns in their former employments in order to have full

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42 In 2009 PREC acquired from the Colombian subsidiary of the French oil exploration and production firm Maurel & Prom 100% interest in oil block Sabanero (BNamericas, 2013). The net income of PREC for 2011 was $US554 million and for 2012 it was US$528 million (Portfolio, 2012), allowing the company to make important acquisitions (El Tiempo, 2013a). In 2012, PREC owned Pacific Stratus Energy Colombia Corp., which operated La Creciente natural gas field in the north-western area of Colombia (Frontera Energy, 2012) and PREC acquired PetroMagdalena Energy Corp (Corp., P., 2012). According to the Superintendence of Corporations, for 2012, Pacific Group’s holdings included 30 companies (Static.elespectador.com., 2018)
control over the decision-making system and to obtain good dividends from their decisions not necessarily for the company, but for themselves.

PREC’s managers enjoyed huge discretion to make decisions concerning the operations carried out by the MNC in the oil fields as there was no separation of management from control. Hence, managers freely decided whether to engage or not with the host-country’s government’s strategies and how to do it and due to the PREC’s award scheme managers were encouraged to make decisions aiming to maximise their personal income at any cost. It explains why many aggressive decisions against its own workers were made by PREC’s managers even if they would negatively affect peace in the region or the reputation of the company, as such decisions were made only based on whether they were lucrative enough for managers.

PREC’s managerialism stems from the company’s executives’ business practices. When occupying top positions at CorpCoal, PREC’s directors and executives employed manoeuvres based on managerialism-oriented decisions and tactics against good corporate governance practices. An example of this was revealed when CorpCoal was acquired by Pala, a mining company trading in the Toronto Stock Exchange (TSX). During the due diligence, Pala found inconsistencies related to golden parachute provisions included in the employment agreements of 15 directors and executives of the ColCorp.

According to such provisions, in the event of a change of control, the management would be entitled to receive a certain change of control payment if they resigned following the acquisition of 25% or more of the shares of the company (Newswire.ca., n.d. a). Change of control, as it relates to employment agreements, normally takes place when an individual acquires 50.1% or more of the company’s shares. Therefore, the percentage established by Iacono acting as director of CorpCoal was too low as to trigger a golden parachute provision. Moreover, Pala found serious irregularities related to information CorpCoal directives had not disclosed at the moment of the acquisition (Redorbit.com, 2008).
Pala’s allegations were rejected by CorpCoal (Newswire.ca. n.d. b). Nevertheless, Pala blamed directives and executives for the poor performance of CorpCoal and made the decision of dismissing the CorpCoal’s directives (Redorbit.com, 2008). On March 2009, five executives, including the PREC top officers, filed a suit against Pala claiming breach of contract, wrongful dismissal, and defamation (The Globe and Mail, 2009). The Ontario Supreme Court of Justice held Pala liable for the charges (Newswire.ca. n.d. b). Disregarding the legal outcome, the behaviour of PREC’s directives when working at CorpCoal shows the absence of independence of the board of directors and the lack of separation of control from management.

Iacono, the head of the board of directors, had the power to make decisions benefiting himself and his close circle of friends. Similar practices were carried out by the directors involved in the scandal of CoalCorp when acting as directors of PREC. In 2012, despite the success of PREC, a significant number of shareholders were dissatisfied with the company’s incentives payment practices. According to the Key Proxy Vote Survey (Shareholder Association for Research and Education, 2012), PREC’s awards to their top directors were disproportionate compared to other Canadian corporations. The Survey points out that executives’ compensation at Pacific is excessive. Additionally, the Survey is doubtful about the transparency of the company’s awards scheme as one of the members of the board’s compensation committee, Miguel de la Campa, is also a member of the executive co-chair of the board. It dramatically increased the risk of Campa influencing the decisions made by the compensation committee to benefit himself.

In 2013 the Key Proxy Vote Survey, SHARE pointed out the Rubiales’ lack of independence of the board of directors. According to the Survey, “Six of Pacific Rubiales’ twelve directors are not independent of the company’s management, and the independence of a seventh director is questionable.” The report makes clear that such practice is against good corporate governance as the board of directors must be an independent entity to guide the board in its responsibility for overseeing the managers’
performance. In sum, the powerful people within PREC were simultaneously making decisions and overseeing their consequences as they were made by themselves.

Moreover, it is important to highlight that the good performance of PREC could not be attributed to the managerial decisions exclusively, as the company’s management reward policy suggests. One should bear in mind that the MNC’s success was directly related to the commodity price also (The Globe and Mail, 2012). In 2012 oil price was high, therefore, the profit of the company was high too. Hence, if the oil prices dropped, the performance of Pacific Rubiales would dramatically decrease -even though the managers were making excellent decisions- as they did not have any control over oil prices. On the contrary, the wrongdoings of the corporation could have been attributed to the entire corporation, since there was no decision-control separation.

**Mechanisms and processes leading to state capture**

In chapter two, this thesis theorised the state capture process and described it as one comprising three different levels. The first level is that in which the MNC receives support from its home country’s government or politicians and/or international organisations interested in promoting the type of business carried out by MNCs in the host country. At such level, the mentioned actors negotiate with the host-country’s government the business conditions on behalf of the MNCs, in order to facilitate their entrance or the smooth running of its business when the MNCs are already doing businesses in the host country.

The second level of state capture is that in which the MNC itself develop ties with the host-country domestic actors. At that level, the MNC employs the mechanisms available to engage with domestic socio-political actors and develop the synergies it requires to access to those who make public decisions in the host country. Finally, at the third level of state capture, the MNC takes advantage of the ties and socio-political networks it already has developed. At this level the MNC can directly deal with individuals who can play the role of APCs in exchange of favours, to influence the
public decision-making system in the MNC’s interest. The next section describes the path through which PREC developed such levels and highlights the mechanisms employed at each stage.

**First level**

*Foreign political links*

The brain behind PREC was the Canadian businessman Frank Giustra, who has been considered “a ‘superstar’ of the natural resource industry” (Group, 2014). Giustra is one of the main donors of the Clinton family’s charities (Street, 2015) and in 2007, he partnered the Clinton Foundation to create the Clinton Giustra Enterprise Partnership (CGEP), a Canadian-based charitable organization focused on poverty alleviation (Clinton Foundation, u.d. a).

Giustra’s interest in doing business in the Colombian natural resources industry flourished in 2005, when Bill Clinton introduced Giustra to the former Colombian president Alvaro Uribe Velez, in New York, during the Clinton Global Initiative (Emshwiller, 2008), a scenario established in 2005 by President Bill Clinton to convene global and emerging leaders “…to create and implement solutions to the world's most pressing challenges” (Clinton Foundation, c2018). Giustra and Uribe’s interests met immediately. On the one hand, there was the Uribe’s interest in launching an aggressive FDI campaign without precedent, mainly focused on natural resources and, on the other hand, there was the Giustra’s interest in developing a business empire in the Latin American natural resource industry.

However, Giustra’s greed was carefully hidden behind philanthropic activities. In 2008, the CGEP developed a social program aiming to improve the skills of Cartagena’s young people, to allow them to have access to quality jobs in the

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43 Colombian FDI increased almost four times during the Uribe’s mandate. It increased from US$2.134 million in 2002 to US$7.201 million in 2009. The oil and mining sectors scored the major investment increment. Oil investment increased from US$449 million to US$4.568 million and the mining sector from US$466 million to US$3.089 million. (Dinero, 2010).
hospitality sector through the Accesso Training Center. In 2010 an organisation called Fondo Acceso S.A.S. (Access Found) was created through a partnership between the Mexican business tycoon Carlos Slim and the Clinton-Giustra alliance. Fondo Acceso was the Clinton Foundation’s Colombia-based investment company created to provide equity financial alternatives to projects of small and medium Colombian enterprises (Clinton Foundation, 2011).

Despite the Fondo Acceso’s goal being one of a private equity fund, it was not registered as one in Colombia, but it was registered as a simplified stock corporation. Therefore, Colombian regulations to private equity funds did not apply to the organization and it was not under control and surveillance of the Colombian Superintendence of Corporations as it should have been (Goodman, 2015). Consequently, Fondo Acceso’s transactions were out of the reach of public authorities of control and surveillance. Such a situation has been a source of media concerns about the transparency of the organization and its real commitments (Nypost.com, 2015).

An article published by The Washington Post (Narayanswamy, 2015), illustrates many incidents providing evidence of Clintons’ close relationship with Frank Giustra. The American newspaper points out that after the 2005 meeting, Uribe, Clinton, and Giustra met several times. Moreover, it highlights that in 2010 Bill Clinton and Giustra joined Hillary Clinton (who was the US Secretary of State at that time) to an official meeting with Alvaro Uribe in Bogota, Colombia.

The USA-Colombia FTA was the central topic of that meeting. Hillary Clinton was a fierce detractor of the FTA but after the meeting, she openly supported the US-Colombia FTA. The Secretary of State’s decision was considered bizarre and suspicious by Clinton’s detractors because when Hillary Clinton was running for the US presidency, she was against the US-Colombia FTA because of the systematic infringement of the labour unions’ rights a serious obstacle for the US commercial relations with Colombia. In 2008, Mrs. Clinton stated, “As I have said for months, I oppose the deal, I have spoken out against the deal, I will vote against the deal and I will do everything I can to urge the Congress to reject the Colombia free trade
agreement.” The situation of labour unions and workers in Colombia did not improve, therefore, there was no reason for Clinton’s change of mind.

Some detractors of Clinton suggested that the actual reason for the Secretary of State’s change of mind was to benefit Frank Giustra’s business in Colombia (Schweizer, 2016). Nevertheless, according to Clinton’s supporters, such an accusation is false because Hillary Clinton simply aligned her position with that of President Obama, who supported the US-Colombia FTA for consider that there was a substantial improvement in human rights issues (Hirsh, 2015).

Giustra rejected the accusations like the one responsible for having influenced Clinton’s decision with regards to the FTA. In addition, Giustra noted he had sold the shares of PREC at the time the FTA was approved. However, Giustra’s interest in the natural resources sector goes further the oil industry as he has investments in the gold mining industry also (Marketwatch, 2016).

Another relevant meeting was one which took place in 2012 (Narayanswamy, 2015). Bill Clinton and Giustra visited Colombia to participate in the golf tournament Pacific Rubiales Colombia Championship, as part of a Clinton Foundation’s fundraising strategy. The event was hosted by the former Colombian president Juan Manuel Santos and the top directors of PREC. The fundraising was very beneficial for the CGEP as it obtained US$ 1 million from it. At that time PREC was already one of the biggest oil companies in Colombia and the most successful one as it was operating the country’s most productive oil fields.

Nobody has produced evidence that the connections of Giustra with the Clinton family helped him to secure deals in Colombia. However, Giustra’s links with Clintons provided to be very beneficial for his businesses, especially the partnership with the

44 “Other media outlets have insinuated that I influenced the decision by the U.S. to sign a free trade agreement with Colombia. At one point, I was an investor in Pacific Rubiales, a Colombian energy company. I sold my shares in Pacific Rubiales several years before the U.S-Colombia Free Trade Agreement, which, I will note, was approved by several U.S. agencies and the White House. To theorize that I had anything to do with that is sheer conjecture.” (KARNI et al. 2015)
Clinton Foundation as it facilitated Frank Giustra to get access to Colombian top politicians for several years on a regular basis. When assessing whether the Clintons-Giustra’s partnership improved the conditions of vulnerable sectors of the society through their projects or not, it is necessary to bear in mind that the organization faced similar difficulties that any other NGO would face when intervening social sectors unattended by the government for decades. However, the program has been criticised for the lack of sustainability and the low impact of their projects and the impossibility of meeting the high expectations of the people who the Acceso Oferta Local programme supposedly would have benefited.45

**Home-country’s government’s pressure**

Interference of the Canadian government in issues related to Colombian conflict increased because of PREC. The former Canada’s prime minister, Stephen Harper, who supported the Canada-Colombia FTA and advanced in achieving a commercial agreement with Colombia before the USA, visited Colombia in 2011 just few weeks after a PREC’s subsidiary was attacked by the guerrilla rebels. Mr. Harper pointed out that "No good purpose is served in this country or in the United States by anybody who is standing in the way of the development of the prosperity of Colombia," he said. "We can't sit around; we can't block the progress of a country like this for protectionist reasons and try to use human rights as a front for doing that." (Chase, 2011).

For the Colombian government, such words clearly represented a formidable backing of the Canadian government to the Colombian investment policies. However, such words automatically invalidated the legitimate worries of those who were against the approval of the FTA with the North American countries, such as social leaders, environmentalists, members of NGOs and trade unions, in sum, victims of the Colombian armed conflict.

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45 This programme aims to make farmers and fishermen able to commercialize their products directly, saving the costs of making use of intermediaries (Clinton Foundation, u.d. b).
Mr. Harper’s words did not describe the position of an individual nor that of PREC only. They describe the position of the entire Canadian mining industry towards the investments of their companies in the Latin American natural resources sector. This is one strategically relevant for the Canadian economy which the Canadian government defends unconditionally abroad as it is considered an important industry for development (Sagebien, et al. 2008).

Such position has led to configure a contemporary class conflict between North and South, a class conflict in which the Canadian mining industry’s approach towards Latin America is just limited to take control over the Latin American natural resources through their companies as a form of imperialism in which the Canadian will is imposed even against the will of the Latin American indigenous people, who reject Canadian projects in their territories as an anti-imperialist response to their predator businesses expansion in the region (Gordon and Webber, 2008).

In 2013, the Government of Canada issued the Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia. The document was strongly criticized by NGOs who considered the government had failed in providing an accurate report about the real situation of the Canadian MNCs’ operations abroad and how they were impacting the human rights in Colombia. When the NGOs requested the government of Canada to provide detailed information about the topic, the government avoid being involved in discussions by arguing that there was not enough information as to elaborate an accurate report on the subject. According to the Council of Canadians (2013), “(…) Amnesty International, KAIROS, Common Frontiers, and the Americas Policy Group (CCIC) pointed out that the report also ignores the potential of Canadian mining investment to affect human rights in Colombia” (Canadians.org, 2013).

Luis Perez, the secretary-general of the Collective of Advocacy Jose Alvear Restrepo (CAJAR), a well-known defender of human rights in Colombia, noted in an interview that the Canadian government has a considerable interest in the investments carried
out in Colombia by the Canadian companies belonging to the natural resources sector as a substantial portion of the Colombian natural resources are taken by Canadian enterprises. The Canadian ambassador told me a few years ago, that 60% of the Colombian strategic natural resources are taken by Canadian enterprises...they (the Government of Canada) boast for investing US$150 million in human rights, more than any other country in the world, but the damage of their mining and extractive corporations is not taken into account.... That's the Canadian diplomatic body in Colombia, Mr. Perez noted.

In 2013, the Colombian ambassador in Canada, proudly stated that drugs and human rights in Colombia were not the central topics of the political agenda between Canada and Colombia nowadays, but it was commerce, particularly Canadian investment in key sectors of the Colombian economy, the cooperation in security and regional matters, and the implementation of the Law of Land and Victims (Lloreda, 2013).

It is relevant to highlight that the Colombian ambassador included in the Canada-Colombia’s political agenda a sensitive issue: The Law of Land and Victims. This law and its implementation are considered domestic issues, which should exclusively make part of Colombian public agenda for sovereignty reasons, however, the Colombian ambassador left this issue open to discussion with the Canadian government and those whose interests it represents. It increased the risk of state capture as external actors were invited to influence the public decision-making system when making decisions concerning policies and rules about land and victims.

**Second level**

**Social engagement**

Sagebien et al. (2008) highlight that due to their extensive presence in South America and the high impact of their activities, Canadian MNCs should improve their CSR policies in order act as a good diplomatic envoy of the Canadian government and to avoid a negative impact on state to state relations. PREC followed such advice. After
reviewing the financial statements of the MNC from 2008 to 2013 (PREC, 2008-2013), it was possible to identify a progressive improvement of PREC’s social and environmental policies.

In 2009 the MNC’s main projects received international certifications of environmental, health and safety management systems. In 2010 the corporation founded the Regional Center for Latin America and the Caribbean in support of the United Nations Global Compact. In 2011 PREC joined the UN Global Compact and start supporting the Extractive Industry Transparency Initiative (EITI), becoming the first company implementing the EITI standards in Colombia.

The achievement of international recognitions and the propaganda style media strategy employed by PREC was a total success. In 2012, PREC obtained the National Award for Social Responsibility and Sustainability from RS Magazine and Corporación Calidad. The prize was awarded based on a survey measuring the perception of 317 business leaders and 43 CSR experts (El Tiempo, 2013b).

The 2012 financial statement points out that PREC developed programs aiming to satisfy the needs of the community which were carried out by their staff in Colombia. According to the mentioned document, “the Company has been involved in the provision of educational and health supplies, the building of schools and funding of hospitals, and the sponsorship of other local, cultural, sporting and other organizations and events”. The 240 pages PREC’s Sustainability Report 2012, notes that 2012 was a year full of domestic and international awards for PREC, thanks to their social commitment.46

46 According to the Sustainability Report: “The London-based firm World Finance recognized Pacific Rubiales as “Best Sustainable Oil & Gas Company in Latin America for 2012”. We received the National Award for Social Responsibility and Sustainability from RS Magazine and Corporación Calidad, for our contribution to sustainable development by means of a comprehensive management methodology. We were also winners of the Gold and Silver Seals for Environmental Responsibility, granted by the Fundación Siembra Colombia. Pacific Rubiales was one of the two companies in Latin America chosen to receive the “Pioneer Award for Social Investment” for 2012, launched by the Secretariat of Social Investment Principles during the Corporate Sustainability Forum 2012 - Rio+20. We were awarded the prize for “Best Oil & Gas Producer in Corporate Social Responsibility 2012”, granted by Capital Finance
PREC’s CSR strategy was not only useful to achieve awards but also to obtain loans. The MNC’s achievements in social matters were valuable also to attract investors and obtain a loan issued by Export Development Canada (EDC). The EDC’s publicly funded loan of US$70 million was issued to develop new opportunities for South American companies to use Canadian supply chain expertise in the oil and gas, extractive, and manufacturing sectors (Pasc.ca, 2013).

Such loan disappointed NGOs whose perceptions of PREC operations in Puerto Gaitan were quite different from that of business leaders, experts, and private awarding bodies. Therefore, NGOs made pressure on the EDC to avoid the loan being granted. However, the EDC made the decision of issuing the loan since corporate loans were not subject to review and that PREC was adopting international standards aiming to improve its performance on such matters (Pasc.ca, 2013).

PREC’s CSR strategy was expensive, in 2013 the MNC invested US$ 67.7 million in CSR (El Espectador, 2017a). However, it was effective to create a smokescreen to hide the MNC’s wrongdoings. In Bogota, the Colombian capital city, PREC was perceived as a reputable MNC fully committed to Colombian development, while in Puerto Gaitan it was systematically infringing human rights and abusing of its power. What PREC called CSR was actually a strategy based on “bread and circuses”.

The Bread
Because of the social and cultural conditions of the population of Puerto Gaitan, prior consultation\(^47\) is compulsory to operate in that region. Being aware of this, PREC

\(^{47}\) “Prior consultation is a fundamental right that ethnic groups have to be able to decide on measures (legislative and administrative measures) or projects, works and activities to be carried out in their territories. This right seeks to protect the cultural, social and economic integrity of ethnic groups and provide them with the right to participate in the decision-making process. This participation mechanism is a collective constitutional right, as well as a special public and mandatory process that has to be carried out prior any public or private adoption, decision, project or measure is implemented, especially if any of the aforementioned items directly affects the life style of the national ethnic groups in terms of their territorial, environmental, cultural, spiritual, social, economic and wellbeing aspects, among other that impact their integrity.” (Agencia Nacional de Minería n.d.)
configured a team of prior consultation experts. It was composed of former employees of the Ministry of Interior, the national authority in charge of assuring that prior consultation is effectively carried out and in a sound manner. According to a former employee of PREC, who was in charge of the prior consultation process within the CSR department, prior consultation was taken seriously in PREC and it was carried out accurately thanks to the vast experience and expertise of the advisors of PREC.

However, the interviewee recognized that the success of the prior consultation processes carried out by PREC was not related to the expertise of the team members but due to the high amounts PREC used to pay to communities as compensation to get their approval. The interviewee pointed out that, as there is not a legal ceiling for compensation, PREC directly agreed with indigenous people the amount be paid for compensation, an amount that used to be higher than the amount paid by other companies operating the Colombian oil market. The interviewee pointed out: *If you are going to carry out (the project) in indigenous reserves, compensation is a must because the impact is too big, therefore, what the other companies criticized about PREC was that it paid compensations much higher than the normal ones and for that reason it had the prior consultation process done.*

The former PREC employee highlighted that in 2012, PREC’s performance was at top levels, therefore, there was no resistance of people towards PREC’s operations as the extractive industry was perceived by locals as a lucrative business: *When the oil barrel was $US100 there was a lot of cash flow thus, for example, you were able to agree on high social investments to benefit, for instance, the social needs of ten communities. Now, I have a certain amount of money and I have to agree with all them…If the mayor asked for support for the festival, we support everything to keep a good environment.*

However, after 2014, because of the oil crisis, there was a lack of budget to satisfy the economic needs of locals and the extractive industry, in general, started to be systematically rejected and consequently, the environmental movements against the industry increased. The interviewee blames the oil crisis and the fact that the company
defrauded social expectations as it was exposed by media campaigns as an organisation fully committed to improving the people’s quality of life.

In sum, the economic power of PREC during 2012 facilitated the company’s relationship with locals, a relationship built on a money basis. A former employee of the Ministry of Mines points out that PREC competitors were annoyed because of the PREC’s practice of paying huge amounts of money to communities as it made more expensive for them to achieve an agreement with communities as they wanted to receive compensations similar to those paid by PREC. In the sector...what was said is that they (PREC) paid excessively high amounts, that there was money giving to leaders for making the process easier.

Therefore, CSR was employed by the MNC as a risk management strategy to diminish the risk of the company’s operations being rejected by the community. As Sagebien et al. (2008:113) note, this is a common technique employed by MNCs to get the social license they need to operate in a sound manner. However, according to the interviews conducted, abusing of its economic power and to get access to the natural resources, PREC used to offer huge amounts of money to local leaders which configured an auction system where the local leaders sold the natural resources to the best bidder. This practice created serious obstacles for competitors as they were unable to make better offers than PREC.

The Circuses
One of the most effective mechanisms employed by the MNC to create a bridge between the MNC and people was the sponsorship of the Colombian Football Federation in 2012. Advertisements, news, and reports about PREC’s sponsorship flooded the media. PREC adopted the slogan Pacific es Colombia y es para ti (Pacific is Colombia and it is for you) and developed a marketing campaign based on propaganda to advertise itself as a socially responsible corporation. To show people its commitment to the country as a sponsor of the national football team adopted the slogan Pacific Incondicional - Jugador 12 (Pacific Unconditional-Player 12). Thanks
to the massive advertisement strategy around such a partnership, the company was perceived as one committed with the country’s development.

Moreover, the MNC also sponsored the local football teams of two cities in which its operations were focused, Cartagena and Villavicencio, the capital city of Meta, where Puerto Gaitan is located. In 2012 the MNC sponsored the Puerto Gaitan Festival, an eccentric event assembling top Latin American musicians, models, and artists, considered by critics as a waste of money taking into account the unattended needs of locals (El Tiempo, 2012a). As it will be shown later, the massive media strategy focused on football was an effective smokescreen to hide what was happening with PREC’s workers in Puerto Gaitan’s oil field.

Apart from football and festivals, in 2013 PREC supported an academic event focused on the rights of the victims of the Colombian armed conflict. However, following the advice of their media advisors, PREC’s directives and employees were not present at the conference to avoid their involvement in conflict-related issues as a conference about a controversial topic would expose the organisation to negative perceptions (La Silla, 2013a).

Therefore, putting aside the conflict-related issues, PREC focused its media strategy on football. The MNC adopted the slogan *Hinchas Inseparables* (Inseparable supporters) and brought 210 families of the National Football team staff to the football games played by the Colombian National Team in the Brazil 2014 World Cup. An aircraft for the exclusive use of the Colombian Air Force was used to transport the families. Nevertheless, the government never replied to inquiries asking why an airplane that it is supposed to be used by the military force exclusively, was used for private purposes (Las2orillas, 2016).

Football as a means to enhance political links

For the 2014 football world cup, former President Santos’ sons were in Brazil, joining a group of supporters integrated by the husband of the Sustainability Manager of PREC (Valeria Santos, niece of the former president Santos), and the Vice-president of
Corporate Affairs of PREC, among others. According to Brazilian media, Santos’ sons were sharing a flat with them in Brazil (Globo, 2014). The closeness of Santos’ family and the executives of PREC was presented by Colombian media just as part of show business about an irrelevant fight in a Brazilian restaurant involving an actor, a famous journalist, a top executive of PREC and the sons of president Santos (El Espectador, 2014b).

Similarly, the Colombian media handled as show business news the fact that after the Brazil 2014 world cup, in November 2014, one of PREC’s top executive, Jose Francisco Arata, met Santos’ son and a famous Colombian football player in an exclusive restaurant in Madrid (Las2orillas, 2014). At that time, according to La Silla (2014a), Martin Santos, Santos’ son, was the “body man” of the president as he joined his father at the main domestic and international meetings, performing an active role in the Santos’ government.

It explains why in November 2014, the same month and year of the diner with Arata in Madrid, Martin Santos joined his father to a meeting in Paris as a member of the Colombian Committee to discuss issues related to the OECD membership. The presence of Martin Santos in the OECD meeting in Paris was strongly criticized by detractors as it was not clear the role he was playing in that meeting as he was the executive director of the Fundacion Buen Gobierno since October 2014 (La Silla, 2014a).

Hence, at the time of the mentioned dinner in Madrid, the son of the Colombian president was already the CEO of Fundacion Buen Gobierno an organization which, as he said in an interview, is a space of convergence between the public and the private sector. (El Tiempo, 2014). Fundacion Buen Gobierno is a non-profit organization founded by Juan Manuel Santos in 1994, following Anthony Giddens’ “third-way thesis” embraced by the former US president Bill Clinton and the UK Prime Minister
Tony Blair.\textsuperscript{48} The Foundation was used as a political platform for Santos re-election (La Silla, 2010a).

In 2017, because of the bribery scandal involving the Brazilian MNC Odebrecht and the political campaigns of Santos, the former Colombian former president Andres Pastrana, required authorities to investigate the links between Fundacion Buen Gobierno and Odebrecht as, according to Pastrana "It is vox populi that large amounts of money that went out for the parliamentarians who supported the campaign of Juan Manuel Santos was left by the Foundation Good Government" (Elheraldo.com, 2017).

There is a lack of information available about the financial movements of the Buen Gobierno foundation and its relationship with MNCs due to its private nature. Such opacity makes it difficult to establish that the foundation played the role of an APC to influence the government’s decisions. However, taking into account that Mesa’s firm was the communication advisor of PREC at the time he was acting as the executive director of the Foundation Buen Gobierno, and that Santos’ son was occupying the same position when meeting PREC directives, the Foundation would have had the potential to have been used by the MNC as a bridge to reach Santos’ government.

**Third level**

**Political Engagement**

As there are no rules regulating how the relationships between the agents of the government and the MNCs should be conducted, PREC top executives and top government agents developed their relationship in a very informal way. According to a former employee of the Ministry of Mines and Energy interviewed, to quickly obtain an answer from the government to any of their requests, top executives of PREC employed lobbying.

\textsuperscript{48} Giddens’ third way thesis proposes a way of doing politics different from the traditional left and right positions, one in which free market policies are necessary for development but they require strong institutions to achieve social justice (Giddens, 1998).
The interviewee notes that there were not parameters clearly established to meet the governmental authorities and informal channels were used by companies to get access to the government. The interviewee also notes that some high-level employees at that Ministry were disappointed with the extreme pressure of PREC to have their requests attended and it highlights that the company had a Venezuelan lobbyist in charge of getting access to the governmental entities.

However, those were visible channels through which PREC approached the public office. Bladimir Sanchez, the author of the documentary *Operación Pacific Rubiales*, notes that while doing the documentary he found that at the top positions of PREC there were family members of senators and congressmen and notes that Campo Rubiales was frequently visited by the president, ministers, senators.

When being asked for specific names, Mr. Sanchez did not point out anyone; however, he said that the Liberal Party had interests in the company, such as the Galan family. In fact, the ex-wife of the senator Galan was working as an advisor of PREC (La Silla, 2017b) and PREC sponsored events organized by Escuela Galan, a corporation ran by the senator Galan’s mother (Semana, 2014).

_Funding political campaigns_

In 2005, Puerto Gaitan was a municipality of 15,475 inhabitants (DANE, 2005). Such a number increased considerably for 2011 when the population reached around 31,139 inhabitants (Plan de Desarrollo Puerto Gaitán, 2012). The beginning of important oil projects was the main reason for that dramatic rise of population. People from everywhere were moving to Puerto Gaitan looking for job opportunities in the oil industry. This increase in population had important electoral implications. In 2011, before the elections for the council and mayor of Puerto Gaitan, the Governor of Meta issued an early warning of electoral risk in Puerto Gaitan as the registration for voting in the domestic elections rose dramatically. There were rumours that PREC was trying to influence the elections for mayor. The MNC’s strategy consisted of asking its employees to register their IDs in Puerto Gaitan.
PREC denied such accusations. In fact, such a strategy was not necessary for PREC to achieve their commitment as the municipality electoral system provided a means to make it possible. It required candidates applying for positions in oil companies to register in a list called Registro Unico de Mano de Obra (Single Labour Record), which was based on a points system. According to that system, the more points you score the better your chances of getting a job in PREC, and one of the criteria established to obtain points (30) was to register for voting in Puerto Gaitan (La Silla, 2011a).

The elections for mayor were won by the candidate of the U party. The Colombian electoral authorities were close to declaring the mayor responsible for surpassing the maximum economic amount allowed for political campaigns in municipalities. However, this was not the only irregularity of Puerto Gaitan Elections. Semana (2011a) registered testimonies reporting serious irregularities such as money and roof tiles in exchange for votes. Moreover, according to testimonies, people were transported from Meta’s capital city, Villavicencio, to Puerto Gaitan to vote for the Puerto Gaitan mayor, a practice which is not a crime but suggests that unethical maneuvers were used to obtain votes. According to the Industrial Global Union (IndustriALL, 2011), the elected mayor was the candidate supported by the Canadian MNC.

Concerning the 2014 presidential elections, it was unclear who was the presidential candidate supported by PREC. De la Campa was openly supporting Santos’ re-election and Iacono was supporting Santos’ opponent, the candidate supported by Alvaro Uribe Velez (La Silla, 2013b). Disregarding such apparent divergence, an interviewee noted that due to the fact that the industry is dominated by former employees of PDVSA who were fired of their jobs by Hugo Chavez, they support the political ideology of Uribe as he rejects the growth of socialism in Latin America and openly supports capitalism.

According to Coronell (2017), Pacific Rubiales paid the fees of the political advisor of the Santos’ campaign in 2010. Moreover, Pacific Rubiales was involved in Santos re-election by making donations not only to Santos’ political party, the U party, but also to the Liberal and Cambio Radical political parties, both member parties of the
“Unidad Nacional”, the Santos’ political movement that assemble the main Colombian political parties as a component part of a governance strategy (La Silla, 2017c). Such donations were not made directly to Santos’ political party to avoid surpassing the maximum amounts of economic donations allowed by the Colombian electoral policies.

**Revolving door and Patronage**

The revolving door is a common practice in the oil sector. It used to be justified by the technical nature of the sector. In 2010, Alvaro Uribe’s culture minister from 2002 to 2006 and foreign affairs minister from 2006 to 2007, was appointed CEO of Gran Colombia Gold. In 2012, Uribe’s mining minister from 2007 to 2010, and Francisco Sole, the former vice-president of one of the most important newspapers of the country, were appointed as members of the Pacific Rubiales’ board of directors.

In 2012 president Santos’ niece Valeria Santos was appointed as Sustainability Manager of PREC (La Silla, 2012). In 2013, PREC established a business relationship with the firm *Cano & Mesa Comunicaciones Estrategicas*, a private business run by the 2012-2013 General Secretary of president Santos, Juan Mesa (Cancilleria.gov.co, 2016). After leaving his position as General Secretary, in 2013, Mesa assumed the position of executive director of the Good Government Foundation, the president Santos’ think tank (Fundacion Buen Gobierno).

Therefore, simultaneously, Mesa was the man in charge of developing the platform for Santos’ presidential re-election through the Foundation and the advisor of strategic communications of PREC through a small communication firm he founded in 2010 that managed the communication strategies of important MNCs such as Telefonica, Toyota, and Odebrecht (La Libertad, 2017). As the head of the Foundation, Mesa’s main task was to work hand in hand with the presidential candidate’s political party,

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49 Form of favouritism in which a person is selected, regardless of qualifications or entitlement, for a job or government benefit because of affiliations or connections. (Transparency International, c2018)

50 Curriculum vitae Juan Rafael Mesa Zuleta. Available at: https://www.cancilleria.gov.co/sites/default/files/Fotos2016/juan_rafael_mesa_zulueta_hoja_de_vida.pdf
Partido de la U. Furthermore, he was in charge of establishing the regional chapters of the Fundacion Buen Gobierno to have a presence in the entire country (El Nuevo Siglo, 2014).

Hence, while Mesa was leading the Santos’ re-election campaign, Cano & Mesa led one of the main component parts of Pacific Rubiales’ massive media campaign, the millionaire deal between Pacific Rubiales and the Colombian Football Federation, another client of his firm (Dinero.com, 2012). Such sponsorship was the cornerstone of PREC’s social engagement.

Feeding politicians’ greed
The MNC provides the conditions required to satisfy the business needs of politicians and individuals working for the government who have access to those in the top circles of power. An example of this involves a former vice-minister of transport, Garcia Morales, who was declared guilty of bribery in the Odebrecht investigation. In 2010, Garcia invested US$2 million in Pacific Infrastructure (El Espectador, 2017b). This investment was made by Garcia acting on behalf of a Colombian businessman and his brother who received the money from the Brazilian MNC Odebrecht in exchange of facilitating to Odebrecht their personal bank accounts to enter the money Odebrecht was planning to spend in bribes to obtain significant infrastructure contracts (El Espectador, 2017c).

Because of such incident, the businessman was condemned to seven years of prison (El Espectador, 2017d). According to the president of Pacific Infrastructure -Garcia’s successor as vice-minister of transport- the investment was used by PREC’s subsidiary to leverage its operations; however, they did not know about the illegal origin of the money. As part of this investigation, the Colombian Attorney General seized US$ 4 million in shares of Pacific Infrastructure (Noticias Caracol, 2017).

Another example of politicians taking advantage of PREC to satisfy their business interests was configured in the frame of the philanthropic activities developed by the Clinton Giustra Enterprise Partnership in May 2013 during one visit to Colombia of
the Clinton-Giustra team carried out to participate in the inauguration of ventures to create jobs in Cartagena (Clinton, 2013).

The main venture was called Access Training Centre (ATC). It was a social programme managed and administered by the Organizacion Empresarial Gente Estrategica (OEGE), a private organization assembling several private companies owned by the Benedetti family, a powerful and traditional political family from the Colombian cost (Cuestion, n.d.). ATC aims to promote jobs opportunities for young people of the Colombian Caribbean coast. It was a social initiative supported by the Department of Foreign Affairs, Trade and Development of Canada, the CGEP (Ideaspaz.org, 2014) and two organisations linked with the OEGE (Elheraldo.co, 2013). According to the Clinton Foundation (2013), PREC was one of the main supporters of ATC.

Three for-profit corporations linked with OEGE, Marketing Estrategico BPO, Gente Caribe and Marketing Estrategico del Caribe, provided the workforce to Pacific Rubiales, Pacific Coal and Impala, all the companies in which Giustra had economic interests, through business process outsourcing (BPO) agreements. It means that thanks to their commercial relationship, PREC, and its subsidiaries obtained low-cost workforce from the enterprises linked to OEGE without establishing a labour relationship with any worker. Therefore, individual workers had a formal legal relationship with the OEGE’s enterprises only and they were directly responsible for the welfare of the workers. Consequently, PREC and its subsidiaries were not responsible for the workers’ labour claims.

OEGE enterprises commercial relation with PREC was a profitable one. Just to have an idea of the business relevance of such commercial relation, in 2016 the bankruptcy of PREC was argued by OEGE as one of the main reasons of the insolvency of its owned companies, Marketing Estrategico BPO, Gente Caribe and Marketing Estrategico del Caribe (El Tiempo, 2016b).

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51 Acceso Centro de Formación para el Trabajo
**PREC-Ecopetrol Association Contract**

PREC and Ecopetrol (The Colombian oil company mainly owned by the State), entered an association agreement to jointly establish operations in Puerto Gaitan. According to the Financial Statements of PREC, “Association Contract means a contract entered into with Ecopetrol, as amended, giving rights to the Company to explore and exploit Colombian state-owned hydrocarbons with participation rights for Ecopetrol, excluding those surface rights, easements and permits used, useful or held for use in connection with such contract.”

As mentioned above, the association contract was confidential (FIDH, 2016), making it difficult to assess whether the terms of the agreements were fair or not to Ecopetrol, the state or the local communities. The International Federation for Human Rights (FIDH, 2016) identified that there was an absence of mechanisms to verify the social and environmental performance of the operations carried out into the frame of the association contract and if there were such mechanisms, they were not publicly available.

Concerning the secrecy surrounding the performance of the agreement, according to the PREC-Ecopetrol’s contract, during the time of its performance all the information obtained was confidential and it was treated as a trade secret.\(^{52}\) Furthermore, in the event of any controversy or claim arising out of or relating to the association agreement, PREC and Ecopetrol agreed arbitration as the mechanism to resolve their contractual disputes and, as it was said by Ecopetrol when having a dispute related to the distribution of royalties, any advance of the arbitration tribunal could not be disclosed as it was confidential (La Republica, 2012).

Based on the legal nature of the association contract, it is possible to deduce that, by virtue of that agreement, Ecopetrol and PREC were partners. A partnership usually involves sharing the operational risks and entails each party doing its best effort to reach a common goal. In this case, the common goal was to keep the levels of

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\(^{52}\) Numeral 6.3, clause 6 of the “Piriri” association agreement.
production at the highest possible level to meet Ecopetrol’s expectations and continue with the agreement. However, such expectations were not met and in 2015 Ecopetrol made the decision to not extend the agreement, affecting 30% of PREC’s production (El Espectador, 2015).

Concerning the advantages of association agreements, it is relevant to point out that they put the MNC in a privileged position in comparison to its competitors. According to Sornarajah (2010:64), thanks to the joint ventures scheme between state-owned companies and MNCs -one dominant in the extractive industry- the MNC is allowed to enter a monopolistic market and enjoy the benefits of a monopolistic position such as a share of monopolistic profit. It means that the MNC is the only private entity entitled to access the natural resources and obtain a profit for doing it, and any other competitor of the MNC will be excluded of exploring and exploiting such natural resources.

Therefore, PREC controlled a significant share of the market. Moreover, the power of PREC was boosted by the fact that the MNC was the largest independent oil producer operating the Colombian oil sector (Economist, 2014). Le Billon (2005:222) points out that concentration of supply in the MNC hands influences the degree of the country’s dependence on its investment. To some extent, PREC was in such a position, as it was the main producer of oil in Colombia and, therefore, the main supplier of Colombian oil to the world.

It worsened the government’s dependence on the performance of the Canadian company to achieve the goal of producing one million barrels per day. However, whether that goal was actually being achieved or not was based on reports issued by PREC itself. In an interview conducted for this thesis, Mauricio Rodriguez, representative of the NGO Centro de Solidaridad, notes that as the production volume could not be measured by the government, because it did not have how to do it, (…) it was the MNC who said what the amount of oil produced was.
According to the interviewee, the government did not have mechanisms to verify whether the information provided by the MNC was accurate or not. Similarly, Rodriguez notes that the MNC controlled the ports through which the oil was exported, and the authorities could enter these ports, but they could not measure the volume of oil traded. Unfortunately, because of the confidential nature of their relationship, it was not possible to identify the way in which PREC and Ecopetrol dealt with such inconveniences.

**PREC-Army Agreements**
Considering the conflict-prone area where PREC was carrying out its operations, at the time the MNC made the decision of entering Puerto Gaitan, Meta, the presence of former paramilitary groups, left-wing rebels, and criminal gangs was foreseeable. In 2011 Meta had a strong presence of FARC and powerful criminal gangs conformed by former paramilitaries, one of the most renown at that time was the Popular Revolutionary Anti-Terrorist Army of Colombia (ERPAC). In such a scenario it was predictable that criminals would target the company’s infrastructure and employees. The presence of left-wing rebels and criminal gangs in the region necessarily affected the smooth running of the MNC’s operations and PREC had to adopt measures to avoid it.

However, without the government’s support, it would have been too difficult for the MNC to overcome such obstacles. Extortion has been a common practice of illegal groups. However, such a practice represents a serious dilemma for MNCs because, on the one hand, if they did not make the payments requested by illegal groups, their infrastructure would be destroyed, and their employees kidnaped. Nevertheless, on the other hand, if payments were made, locals would blame them for supporting illegal groups and the MNCs would have to confront the legal consequences of infringing the law for sponsoring terrorist groups.

Aware of such dilemma, in 2011 the government created the war plan Operation Sword of Honour (OSH) in order to defeat criminal organisations (El Espectador, 2012a). As an important component part of the Operation, the government deployed military force
in the PREC’s area of influence in Meta, that is the Quifa and Rubiales oil fields in Puerto Gaitan. The military force configured the Batallon Especial Energetico y Vial No. 15 (Special Energy and Road Batallion) which was supported by the local police force. In 2011 a military force top officer commented that the Batallion was part of a strategic plan aiming to keep oil production without disruption in the oil fields of Quifa and Rubiales. Moreover, the officer noted that a command post would be installed inside PREC’s oil complex and that the vehicles for use of the military force and petrol would be provided by PREC (Ideaspaz.org, 2011).

The OSH brought security in an area in which symptoms of conflict and violence were flourishing. However, OSH was the beginning of a relation of subordination through agreements between the MNC and the military that will be explained later. Moreover, it was strongly criticized by workers and locals as the area was turned into a military camp, and the establishment of the command post in the premises of the MNC was seen by the union leaders as a retaliation for the strikes carried out few months before the government’s decision of bringing military force to Puerto Gaitan.

The support of the military force to protect infrastructure and the assets of the MNC was effective, but locals did not feel safe as PREC’s contractors and subcontractors, in order to operate without disruptions and accomplish with their agreements, used security services provided by illegal groups. Taking into account that the distinction between PREC and its contractors and subcontractors was not clear in the field, locals’ perception was that illegal groups and former paramilitaries were carrying out security tasks sponsored by the MNC (CITPax, 2012).

Furthermore, the MNC did not have enough control over the selection process of the people hired to provide security services as it was conducted by domestic companies through BPO agreements. CITPax (2012) identified an extortion scheme in the Colombian extractive sector according to which security services were provided in exchange contracts. Such practice was occurring without the involvement of PREC, so it would be wrong to blame the MNC for the deals between contractors and former combatants or illegal groups as there is no evidence of PREC establishing ties with
illegal groups. Nevertheless, since PREC’s production and assets were not affected by criminals, the MNC was the biggest beneficiary of the security services provided by illegal groups.

According to a former employee of PREC, the security department of the MNC was managed by former militaries who coordinated with the police and military forces the security strategies to protect PREC’s assets and employees. Such a high level of coordination between PREC’s security department and the public force was possible thanks to the financial support of the MNC. SOMO and Indepaz (2016) note that between 2007 and 2014, the Ministry of Defence received COP$119.150 million from PREC being the Canadian MNC the main business benefactor of the Ministry of Defence.

An independent consultant of the industry who was interviewed, referring to this type of agreements said ... the extractive industry makes agreements with the Ministry of Defence to obtain security... they (PREC) pay an amount to the Ministry of Defence and the Ministry sets up battalions to protect the company’s locations and assets. Such a practice has strongly been criticized as it seems as if the corporations were paying for their own security to have military camps in their fields, and they pay for protection...this is the privatization of the public force.

Trying to obtain information about the agreements a formal letter requesting information was addressed to Ecopetrol, the partner of PREC to know in depth the scope of the contracts the Colombian oil company and its Canadian partner agreed with the Ministry of Defence for the protection of workers and oil infrastructure. However, Ecopetrol refused to provide such information as a clause of confidentiality was incorporated in such agreements, according to which neither the total content of the agreements nor their component parts can be disclosed to third parties unless there is an agreement between the parties, or a judicial order issued for such purpose. Likewise, any information directly related to the contract and operational issues or technical matters related to the performance of these contracts could be disclosed.
Consequently, another letter requesting the same information was addressed to the Ministry of Defence. The letter of the Ministry of Defence shows that there are several contracts with Ecopetrol and some others with its Canadian partner.\textsuperscript{53} However, the response just mentions the code number of each contract and the name of the institution who has signed the agreement -army, military force or police- but it refuses to provide the contracts’ full text or information related to the scope or clauses of the agreements. According to the Ministry, digital or printed copy of such material, as it was requested, cannot be provided as “it incorporates strategic information for the defence and security of the state, critical issues for the protection of the community in general and the economic infrastructure of the country”.

When asking about the CSR projects involving PREC and the military forces, the Ministry of Defence replied that the military forces do not have an agreement to develop CSR projects with the MNC and that there is no legal link between the army and the MNC supporting such kind of initiatives. However, in 2014 the military forces reported that PREC supported them to bring three days’ health brigade to Puerto Gaitan which benefitted more than 3000 people. According to the report of the military force, psychological assistance, medicines, glasses, and wheelchairs were provided (Ejército, 2014a). Moreover, in the same working days, 300 military cards were issued to indigenous people (Ejército, 2014b).

It is unclear within which kind of framework such social activities were carried out or the agenda the military force and/or PREC were following to carry out such activities and how they contributed to their goals. It is also uncertain, whether the activities were carried out informally or as a component part of the agreements between the military forces and the Ecopetrol-PREC partnership. Because of the secrecy, the answer to all

these questions is still unknown to anyone outside to PREC, Ecopetrol and the Ministry of Defence.

Thanks to the incorporation of clauses of confidentiality in the PREC’s two key agreements, no one outside the parties involved may have access to such information, which means that the performance of the mentioned agreements cannot be inspected, supervised or controlled by the authorities unless a judiciary order being issued. As a consequence, the terms and conditions under which their operations are carried out evade the public scrutiny and guarantees high levels of secrecy that may facilitate the conditions to divert the public interest in the private benefit of the individuals representing the interests of institutions involved in the agreement.

**Impact on violence**

**State capture discouraged the government’s duty to protect human rights**

*Confidential agreements.*

Two sets of agreements were the cornerstone of PREC’s operations in Colombia: The agreements with the Colombian army and the joint-venture with Ecopetrol. On the one hand, the PREC-army’s agreements involved the payment of large sums of money to be paid by PREC to the military force, in exchange for security services for the protection of the MNC’s workers, assets and infrastructure, as if the military forces were any other private contractor.

Through the interviews conducted, it was possible to grasp the scope of the agreements between the public force and the MNC. For instance, according to Bladimir Sanchez, more than one hundred members of the Mobile Anti-Disturbance Squadron (ESMAD) were inside PREC’s premises in Puerto Gaitan, ready to act in case of any disruptions. He notes that in addition to their salary, public force members working within the premises of PREC “received vouchers from the company to obtain benefits such as food, gifts or flight tickets.” Bladimir notes that it was mean to guarantee the loyalty of the public force.
On the other hand, due to the legal nature of Ecopetrol\textsuperscript{54}, the PREC-Ecopetrol Association Contract involves using public funds in for-profit commercial activities. These agreements were confidential despite involving public interests. It means that information about the scope of the agreements, clauses and the obligations and rights under these contracts cannot be disclosed to third parties without judicial order issued for that purpose.

There is no way for a regular citizen to have access to information related to the scope of agreements through which the army and police obtain economic resources from private foreign companies in exchange of providing exclusive security services, when it is supposed that the military force should provide security services to everyone within the national territory without distinction. Similarly, it is not possible for a regular citizen to have access to the information related to the scope of the contracts involving an 80% state-owned company and its foreign partner nor to get access to information related to how they are using public funds or what is the framework within which their commercial activities are carried out.

Making public decisions overlooking locals’ concerns. In theory, the spaces of dialogue should be led by the FSI, which is the Ministry of Interior, who must orient the dialogue in such a way that the concerns of the community and the companies are equally heard. However, in practice, the MNC’s strategy to develop its relationship with locals and indigenous people was designed and implemented between the MNC and locals, without intermediaries.

A former employee of the Ministry of Interior noted that despite that Ministry being the main governmental authority on prior consultation, it does not have enough economic resources to carry out a prior consultation process in an accurate way by itself. Consequently, the government required the support of the MNC to carry out its duty of being involved in the consultation process. Logistic, human resources and

\textsuperscript{54} According to the Colombian legislation, Ecopetrol S.A. is commercial mixed economy corporation of the national order linked to the Ministry of Mines (Law 1118 of 2006). Ecopetrol was created by the law (Law 165 de 1948) to develop an economic activity and majority of its shares, 88 approximately, are owned by nation-state entities (Ecopetrol, 2018)
transport were provided by the MNC to facilitate the institutional presence of the
government in the field to carry out the prior consultation process.

This version was corroborated by a former employee of the Ministry of Mines and
Energy who noted that the quality of the prior consultation process is supposed to be
guaranteed by the state but in practice, it is the corporation who leads the process. The
interviewed noted that the presence of FSI in the field is so weak as in the public
institutions there are few people available to support consultancy processes and such
people are not able to verify the quality of the process as they are not experts in the
topic. According to this person, the state leaves the communities alone in the process
of negotiating compensations with the MNCs. PREC took advantage of the lack of
policies regulating the process and its economic power. The interviewee noted:

“The vulnerability of the communities reduces everything to a money issue,
give me some money and I’ll allow you to operate. In the agreement, the
responsible of the prior consultation is the state but in practice, it is the private
company who conduct the consultation process.”

The former employee of PREC who was interviewed noted that without the oil crisis,
the intervention of the state in this space of dialogue would not have been necessary
as PREC had the economic power to attend the requests of the community and fulfill
its expectations. However, the interviewee notes that key issues for the development
of the region, such as employment and social investment, were directly managed by
PREC and the presidents of the local action boards, which facilitated abuses of the
presidents, who made decisions without considering the real needs of locals.

For instance, the former employee of PREC who was interviewed noted that the
presidents of the local action boards were in charge of overseeing the issuing of
certificates attesting who was a member of the community, a prerequisite to get a job
in PREC. However, the presidents were paid for issuing certificates to people who did
not belong to the community. The way in which the former employee of PREC tells
the facts seems to suggest that such corrupt practice was carried out by the presidents
of the local boards exclusively and that there was no involvement of PREC as the MNC did not obtain any economic benefit by such a practice.

However, the secretary-general of CAJAR has a different opinion. In the interview conducted to the secretary, he points out that PREC would have involved in such practice as the MNC could agree with the presidents of the local boards to issue certificates to people who did not belong to the community to hire them instead of locals. Therefore, PREC’s economic power and the lack of institutional presence, despite making easier the MNC’s job, facilitated abuses of those in charge of making decisions.

To improve the dialogue process and avoid wrongdoings because of the lack of institutional presence in such processes, the United Nations Development Programme (UNDP) has accompanied dialogue processes between the communities and the oil industry in the frame of cooperation agreements. Despite the good intentions of the UNDP, the companies are not fully committed to improving their relationships with the communities. An advisor of UNDP noted that (...) Some companies have a good relationship with the community but others, like Ecopetrol, have an awful relationship with the community…. they (Ecopetrol) treat the community without respect.

Moreover, from the interviews conducted to UNDP advisors, it was possible to infer that the presence of FSI in the dialogue scenarios is just a formality as there is a relation of subordination between the public entities overseeing the spaces of dialogue and the companies. According to one advisor of UNDP, there are meetings in which the advisors of the FSI ask the oil companies what they want in order to orient the dialogue in such a way:

“few hours before the space of dialogue taking place, the public entities’ advisors ask the companies what they want and need during the meetings with communities. Most of the times the company does not want to reach an agreement with the community and they simply request the public entities to delay negotiations as much as possible”.

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Communities do not trust in the impartiality of the FSI involved in the dialogue: The Ministry of Interior and the National Agency of Hydrocarbons (ANH). On the one hand, the UNDP advisor notes, *The ANH should follow the agreements* (between the companies and communities) *but also make the operations of the companies easier.* *Hence, sometimes dialogue spaces are seen by the ANH as obstacles to facilitate the companies’ operations.* Moreover, there is a strong link between the ANH and the private sector. A UNDP advisor notes that *they meet every single month to discuss how to resolve the conflicts in the regions.*

On the other hand, the UNDP advisor pointed that many advisors of the Ministry of Interior attend the dialogue scenarios just to carry out political campaigns, taking advantage of the proximity with local communities and the fact that the Ministry of Interior is the most political branch of the central government as it is in charge of controlling the relationships between the executive branch and the Congress.

The involvement of FSI is mandatory and the UNDP adds impartiality to the dialogue process. However, when the UNDP advisor was asked for the benefits of the UNDP project for the FSIs, it answered that *(...) The benefit for the Ministry of Mines and the ANH is to keep the production running smoothly (...) The income of the Nation is secured.* It shows that the interest of the FSIs is the same as that of the private companies but is not necessarily the same as the communities. Therefore, the presence and intervention of weak FSIs, lacking impartiality, and the presence of UNDP through a project which is mainly financed by such FSIs, seriously put at risk the transparency of the dialogue process and may contribute to the enhancement of structural violence by giving an appearance of fairness to agreements overlooking the concerns of locals.

Unfortunately, while in some regions of the country the UNDP is seen by the communities as an actor contributing to the dialogue process in an independent way, *(...) in Meta UNDP is perceived by the communities as another allied of the oil companies (...) the people believe that what we are doing is making viable the industry at any cost,* notes a UNDP advisor.
**Land Acquisition**

Acquisition of land in conflict-prone areas necessarily involves disputes related to land property. For 2016 in Colombia just a third part of the displaced rural families have documents supporting their legal ownership of land and the risk of acquiring ownership of land irregularly is even worse in the department of Meta where there are areas in which less than 70% of the land has been legalized (Elheraldo.co, 2016). Therefore, any buyer may be exposed to risks related to land ownership as these risks are inherent to the purchase of land in most of the Colombian rural areas.

A report by SOMO and Indepaz (2016) points out several irregularities in the acquisition of land carried out by PREC in Puerto Gaitan like the accumulation of wasteland and acquisition of land owned by illegal groups. Moreover, the report describes strategies to accumulate land through extensive chains of purchases involving fiduciaries, individuals and domestic enterprises lacking good reputation. Most of the transactions highlighted in the report are manoeuvres that cannot be labelled as illegal just for being suspicious. However, Somo and Indepaz suggest there was a reckless behaviour of the MNC when conducting due diligence before the land acquisition (SOMO and Indepaz, 2016:109). That conclusion raises the question of whether due diligence would have prevented PREC to purchase land with ownership irregularities as they did. The answer to this question appears to be that even if accurate due diligence had been conducted, the MNC would still have purchased the land.

PREC’s Annual Information Formulary (PREC, 2016) included “ownership matters” as a component part of its foreseeable operational risks. PREC refers to “ownership matters” as one of the risks related to their activity and points out that its properties are not free of ownership claims as there is the risk of claims due to inconsistencies related to the land property and claims of indigenous people (PREC, 2016:80). It shows the awareness of the MNC about the risk such issue involves. Therefore, it would be naïve to believe that such risk was overlooked by PREC when performing
due diligence and to pretend that PREC would have refrained from developing projects in Puerto Gaitan after becoming aware of the existence of reasonably foreseeable risk.

As the MNC’s Annual Information Formulary suggests, PREC was aware of that risk but, after analysing the strategies it employed to acquire land, it is possible to infer that PREC also knew that the risk of people claiming property of the acquired land would be diminished with the support of APCs such as law firms, judges and lobbyists pressing for laws facilitating irregular mechanisms to accumulate land. As the Superintendent of Notaries and Registration pointed out, in Colombia “…did not strip the land with plata o plomo but through the judiciary” (Semana, 2017b).

MNCs clearly have taken advantage of the weakness of the FSI in charge of making decisions on land issues and the lack of a legal frame establishing rules governing land distribution. Such gaps have been used by APCs to diminish risks related to land ownership and facilitate the acquisition of property of land through maneuvers without breaking the law. Thus, it is highly likely that PREC had taken into account such risk but it did not prevent the company to acquire the land it required to develop its projects in Puerto Gaitan even though unscrupulous maneuvers were required.

In 2013, the government presented the project of law “Zonas de Interés de Desarrollo Rural y Económico” -Zidres- (Zones of Interest of rural and economic development). According to the Colombian Ministry of Agriculture, through this law the government will establish the Zidres areas, that is special zones with agricultural potential that cannot be economically developed by small families because the high costs it would involve due to the technical conditions of the areas, such as isolation, climate and lack of infrastructure (Minagricultura.gov.co, 2014).

The debate concerning the convenience of the Zidres project has been intense. On the one hand, the government considers that large extensions of wasteland require the intervention of ambitious agricultural projects aiming to take advantage of the potential of vast extensions of land to make them productive. Therefore, it necessarily requires the intervention of powerful business able to make substantial investments in
the areas qualified as Zidres. On the other hand, opponents of the project, especially the left-wing and NGOs, consider that the project ignores the peasants’ right on the land and exclusively benefit powerful companies interested in accessing the land for economic purposes (Las2orillas, 2015). Oxfam (2016) called the Zidres Law as a “rural underdevelopment law” and strongly criticized the Zidres Law for considering that the law is against the rights of peasants, promotes the accumulation of land by corporations and arises as an opportunity for those who acquired land against the Law 160 of 1994.

According to congressman Jorge Robledo (Jorgerobledo.com, 2015), the Zidres Law was a legislative initiative promoted by Pacific Rubiales and other big corporations, as a means to legalize thousands of hectares of land they had acquired through manoeuvres aiming to avoid the Law 160 of 1994, which seeks the equitable distribution of the wasteland by restricting the property of land to what the Law 160 calls a Unidad Agricola Familiar -UAF- (familiar agricultural unit), that is a small portion of land designated to rural families exclusively, and restricts accumulation of large extensions of land in a single owner.

A law firm owned by a former Colombian ambassador in the US was simultaneously involved in the formulation of the Zidres Law and acting as advisors of corporations directly interested in the enactment of the Zidres Law (Jorgerobledo.com, 2015). Playing the role of enabler, the prestigious Colombian law firm of the former Colombian ambassador in the US, with the complicity of one partner of the law firm, in order to circumvent the law deployed manoeuvres to acquire huge extensions of land through the creation abroad of many fake companies which individually bought the number of UAF allowed by the law, and then all these units together were sold abroad to one single corporation, the law firm’s client, the real one interested in the outcome of the transaction as it was its commitment to accumulating vast extensions of land (Suarez, 2013). The partner of the law firm called the fraudulent transaction a sophisticate legal procedure offered as part of the law firm’s portfolio (La W, 2013).
The Zidres Law, known by detractors as the Urrutia Law in honour to the former Colombian ambassador in the US, despite being strongly criticized was sanctioned in 2016 by president Santos (Semana, 2016a). Colombian congressman Asprilla pointed out that the Zidres law overlooks the problem of land distribution as it allows accumulation of land in the hands of few owners. Moreover, the congressman notes, the law impacts on peace because it allows big companies and MNCs to legalize acquisitions of large extensions of land formerly owned by third parties that have taken the land by force (Agencia Prensa Rural, 2015).

Whether the Zidres law worsens the problem of land distribution or not is still an open discussion (El Espectador, 2017e). However, what it is clear is that there are two different approaches, one according to which the productivity of wastelands should be promoted as it is an important component of the country’s economic development and another approach according to which wastelands should be distributed among small farmers that have been victims of the Colombian conflict instead of economically powerful actors.

Summarizing, it may be inaccurate to blame PREC or any other MNC for the historical institutional incapacity to legalize land ownership and fairly distribute social resources, one of the main sources of conflict in Colombia. However, PREC, as other MNCs have done, has taken advantage of the existing legal gaps and, with the support of APCs, it has deployed manoeuvres to acquire vast extensions of land depriving the state of implementing a fair land distribution policy.

**Express Environmental Licenses**

There are many environmental concerns related to PREC’s operations in Puerto Gaitan. 43% of Puerto Gaitan’s population is indigenous people and the main economic activities of locals before PREC arriving were agriculture and fishing, activities with a low environmental impact when compared to the oil industry (Semana, 2011b). The oil industry has dramatically changed the landscape of Puerto
Gaitan. Farmers have abandoned their traditional economic activities to join the oil industry in order to improve their economic condition. After PREC arrival, the town’s economy has been focused on the extractive industry which has negatively impacted the environment.

Despite this, in 2013 Ronald Pantin, CEO of PREC, pointed out that the slow pace in which environmental licenses were being issued by the authorities would negatively affect oil production. After this declaration, the government immediately initiated a campaign supporting the idea of creating an “express window” for issuing express environmental licenses in record time in exchange for an economic surcharge to be paid by the oil companies (El Espectador, 2013a).

The idea of creating an express environmental license has been supported by the government arguing it would be useful to develop the infrastructure and mining projects the state requires to satisfy its economic needs. Therefore, the government has issued decrees aiming to diminish the bureaucratic burden of the licensing procedure and to obtain environmental licenses speedily. Such initiatives have been rejected by environmentalists, technicians in charge of studying the applications for environmental licenses within the FSI and the left-wing. They note that shortening the term for evaluation of licenses would affect the toughness of the evaluation process in which the government bases its decision on whether issuing a license or not.

The debate is still open, but the position of the government has not changed at all. Disregarding which position is right, the government efforts have been focused on making the issuing term shorter and in the while, detractors are considered enemies of progress (El Espectador, 2014c).

**State capture encouraged an irresponsible attitude of PREC towards its responsibility to respect human rights**

Knowledge of the Colombian oil industry was not the only asset of Giustra’s Venezuelan partners. They also knew how to diversify their portfolio by investing in sectors of the economy in which the Colombian government had a special interest,
through a complex web of corporations, making PREC more than merely an oil corporation. For the end of the first quarter of 2012, the free cash flow of the company was higher than expected (Dinero.com, 2012), which allowed and encouraged the rapid expansion of PREC through investments in key sectors of the Colombian economy different from oil, such as agriculture (Agroescada), mining (Gran Colombia Gold and Pacific Coal), infrastructure (Pacific Infrastructure), African palm (Pacific Green), stone lime (Pacific Stone), among others.

Such diversification allowed the company to carry out manoeuvres to benefit partner companies from the business of other companies belonging to the group. Some of them, in spite of their negative environmental impact, were completely legal, such as the project of Agroescada, which aimed to use residual water of PRE’s oil production to develop a huge crop of African palm in Puerto Gaitan (FIDH, 2016), but some others were illegal as it was the case of an offense identified by the Colombian General Comptroller’s Office and involving the mentioned project.

The Colombian General Comptroller Office’s found that in the frame of the association agreement between PREC and Ecopetrol, it was made a millionaire investment to benefit Agroescada S.A.S., a company which was not part of the association agreement, causing patrimonial detriment (Contraloria.gov.co, 2017). The Office’s finding dates 2017 because the association agreement was secret until 2016, that is after the PREC and Ecopetrol association agreement finished. The high degree of secrecy of the agreement between Ecopetrol and PREC allowed them to manage public issues involving public resources as a private business, putting obstacles to anyone interested in following up how the agreement was being developed.

**Press freedom**

In 2009 a Colombian business journalist, Hector Rodriguez, replicating international business news, published information involving some of the PREC’s top officers. The information was related to their dismissal when they were working as directors and
executives at CoalCorp, because of the systematic underperformance of the company for several years. Disclosure of the mentioned business information by Rodriguez was the beginning of a three years’ legal battle against him. In 2009, Iacono sued Rodriguez claiming defamation. After one year of being involved in the dispute, in 2010 Rodriguez was declared innocent. (Americaeconomia.com, 2012).

Later, Rodriguez continued investigations and published the excessively high salaries perceived by PREC directives and irregularities related to the company’s acquisitions. As a consequence, he was sued four times, two for criminal defamation in the US courts and two more in the Colombian courts, one for insult and another for economic panic as PREC attributed to Mr. Rodriguez’s declarations the dramatic decrease of their share value in 2011 (El Espectador, 2012b). Rodriguez considered he was being persecuted by the MNC and that such behaviour would seriously affect press freedom. The practice of prosecuting journalist through legal claims was pointed out by the Freedom of Press Foundation’s 2012 Colombian Report where the Foundation highlights how legal claims are replacing bullets to quiet the press (FLIP, 2013).

Another reporter, Daniel Pardo, was fired after reporting how media was being used by PREC as a mechanism to hide some transgressions of the company in the areas where it was carrying out its operations. In a column entitled “Pacific Es Colombia”, Pardo noted that paying millions to advertise in the television primetime, the most-listened-to radio programs and the most popular newspapers and websites, the MNC was influencing the media (Pardodaniel.wordpress.com, 2012). Pardo mentioned the case of Rodriguez and the awful conditions of PREC’s employees in the oil fields where the MNC was operating. Pardo’s accusation was published by the digital magazine Kien&Ke but it was removed from the magazine’s website and Pardo was fired. Some colleagues of Pardo supported his claims and requested PREC to disclose the information related to the company’s expenditure in media.

These episodes related to freedom of the press, illustrate that violence and force were not the only means used by PREC to silence the press. If the MNC were using violence deployed by its private security services to silence press, the illegal nature of such a
strategy would have exposed the MNC to criminal investigations. Conversely, the economic power allowed PREC bullying journalists through systematic legal claims, acquiring shares in newspapers and private broadcasting corporations and investing huge amounts in advertisements (Semana, 2016b). These legal means provided being more effective and less harmful for the company’s reputation to silence the press.

Violence would be deployed by other actors, illegal actors such as paramilitaries, guerrillas or criminal gangs, or legal actors abusing of their status, such as the police and the army but there is no evidence of PREC using violence to silence the press. In Sincelejo, Colombia, Guillermo Quiroz, an independent journalist, was murdered when he was covering a protest against PREC. Quiroz was intercepted by officers of the National Police who place him in an official vehicle to beat him and threw him out of the vehicle while it was in motion. Quiroz After seven days in the hospital died because of the serious injuries caused by the brutal attack (El Espectador, 2018).

The National Police denied their involvement in the incident, arguing that Mr. Quiroz jumped out of the vehicle. The police focused on the fact that Mr. Quiroz was empirically performing the role of a journalist (FLIP, 2012). However, Prior the attack, there is evidence that Mr. Quiroz was receiving threats because of his work as a journalist (ICHR, 2013), and later the National Police confirmed the incident of police brutality and the officers involved in the incident were removed (Semana, 2012).

The independent reporter Bladimir Sanchez affirms he was a victim of persecutions by PREC when he was elaborating a documentary showing the negative impact of PREC’s operations in Puerto Gaitan. In an interview, Mr. Sanchez said he was a victim of threats and pressures and he says that the information he collected for the documentary was stolen twice. He denounced the incidents to the authorities but, according to him, nothing happened. Mr. Sanchez received special protection from the state for one year.

In 2007, the World Press Freedom Ranking elaborated by Reporters Without Borders ranked Colombia 126 among 175 countries (RSF, 2007). For 2012 the country fell to
PREC is not responsible for the underperformance of the country in that ranking but as the incidents exposed suggest, the systematic harassment to some journalists that were investigating the operations of the MNC as part of their job, substantially contributed to violations of press freedom.

Trade unions
Business Process Outsourcing agreements were used by PREC as a shield to avoid workers’ claims. Based on such kind of agreements, a contractor provides working force to another in exchange of a price to be paid by the later for the service provided. Consequently, it was the contractors’ duty to guarantee adequate labour conditions and PREC would be entitled to argue that it was not responsible of the employees’ welfare based on the fact that it had no legal relationship with the workers but with the contractors -domestic businesses- by virtue of the BPO agreements. Despite PREC attempts to avoid workers’ claims, in July 2010, the workers of the oil fields of Puerto Gaitan started a huge strike because of the precarious labour conditions at the oil fields. Consequently, there was a retaliation of the employers and workers involved in the strike were fired.

As most of the workers were not hired by the MNC directly through labour contracts, their employer was not PREC but domestic private businesses which hired them through service contracts. Such form of affiliation substantially reduced the workers’ rights and their power to claim any improvement of their working conditions to PREC directly. According to a Colombian congressman, the main responsible for the violation of workers’ rights was not PREC but the contractors, as they were taking the MNC’s money without accomplishing their contractual duties (El Espectador, 2011a). Hence, outsourcing of working force was one of the main sources of conflict in Campo Rubiales and PREC used this mechanism to avoid being directly involved in labour disputes.

A former employee of the Ministry of Mines and Energy, who was interviewed, points out that there was a lot of pressure of PREC on the government to obtain their support to solve the labour dispute and after many meetings, as the strike was seriously
affecting oil production, the vice-president at that time was appointed by the government to lead the negotiation process directly. The interviewed noted that everybody (in the Ministry of Mines and Energy) was shocked to see him (the vice-president) going to Puerto Gaitan to deal with the strike directly. It was a demonstration of the extraordinary power the MNC had at that moment.

Mauricio Rodriguez, who has accompanied the workers during the entire process of defending their rights, notes that (…) The role of the vice-president was important to generate a communication channel between the USO and PREC. It produced the configuration of working tables and a first agreement was achieved with the USO. He also helped, for instance, to push PREC to negotiate directly with the communities. However, PREC broke the agreement with the communities, they did not accomplish with the agreements.

Mr. Rodriguez highlights that there was an important contribution of the vice-president during the negotiation process. However, he points out that (…) at one point of time, the same government turn into allied of PREC in a change that suddenly happened. The negotiation with USO was broken and the ESMAD intervened and all the workers were expelled and transported in buses to Puerto Gaitan and Villavicencio (the urban areas), and when the field was empty, an agreement between PREC and a new syndicate called UTEN suddenly showed up. The USO was excluded from such agreement.

It was the beginning of a strategy employed by PREC to effectively finish the strike, a strategy against freedom of association and the workers’ right to join trade unions. It was a three phases strategy. In the first phase, PREC broke the negotiations with the USO and supported by the ESMAD, PREC expelled all workers of the oil field. At this stage, Mr. Rodriguez notes that (…) the vice-president directly called the president of the Unitary Centre of Workers (CUT) to say that he could not guarantee anything to the workers (…) a few hours later, there were helicopters, military force, and the ESMAD expulsing people. He (the vice-president) did not have any power on the
military force as they were acting for the service of PREC. For October 2010, there were no workers in Campo Rubiales.

The second phase consisted of PREC’s decision to sign an agreement with a trade union different from the USO called the UTEN. Through this means the negotiation process carried out with the USO and supported by the vice-president was spoiled. The UTEN was a trade union composed by middle-level employees of PREC, for instance, the regional manager, secretaries and administrative staff directly hired by PREC. Hence, the middle-level employees, instead of those protesting for the poor labour conditions, were who agreed with the MNC the new labour conditions, despite they were not facing the critical labour conditions suffered by the workers involved in the strikes.

Rodriguez notes that the workers adhered to a contract instead of being involved in the negotiation to reach a collective agreement. The contract, called agreement for the improvement of the working relationships in PREC, was compulsory for any single worker of the MNC. Rodriguez points out that “such agreement established more less what already existed”, and notes that the salary, an aspect which was central for the USO members involved in the strike, was not revised and equated to that of the workers hired by Ecopetrol through labour contracts, a fair pretention taking into account that workers hired through the BPO system received a half of the salary the Ecopetrol workers received for performing similar functions.

Finally, in the third phase, PREC employed a system called “Andromeda”. According to Rodriguez, Andromeda (…) is a blacklist based on military intelligence. The workers of PREC who were associated with USO were in that list, and to be hired directly by the company the workers had to leave the USO. The worker in order to provide evidence that it had left the trade union, had to sign a letter establishing that it was not a member of the USO anymore. According to Mr. Rodriguez, “(…), some letters were made by the employees themselves, but some others were standard form letters they had to sign (…) suddenly the number of workers affiliated to the USO passed from 3000 to zero.”
When asking Mr. Rodriguez whether legal actions against the company were initiated for those facts, he notes that they did but the authorities did not give a satisfactory response. He notes that the office of the Ministry of Work in Puerto Gaitan just opened twice a week, which suggests the lack of institutional capacities to attend the requests of thousands of workers.

State capture imposed obstacles to access to remedy when human rights were disrespected

In May 2013 three members of the USO travelled to the Colombian capital city, Bogota, to initiate legal actions against PREC and its local partners for conspiracy to violate the workers’ association rights. They were supported by NGOs but nothing happened. When being asked for the role of the Attorney General Office in the investigations against PREC, Rodriguez notes that “(...) the Attorney General Office configurated a specialized team to study the situation of the oil fields and excellent analysis of context ...they made fieldwork to know what was happening in Rubiales Camp (...) however, at one point, the employees of the Attorney General Office in charge of the investigation were translated to other positions within the institution and the investigation was put in a second place.”

According to an employee of the Attorney General Office interviewed for this thesis, the practice of carrying out investigations in a selective way is a common practice of that institution. The employee notes that the Office has the power to select the investigations they want to be focused on and it may deploy all its institutional efforts and institutional capability to show results concerning such investigations. Mr. Rodriguez notes that the fact that the current Attorney General was the legal advisor of powerful MNCs, may affect the impartiality of the Office in the investigations involving their former clients.

The workers who travelled to Bogota, to institute the criminal complaint against PREC, were put in prison for obstructing public roads and hijacking. According to the judgment, they obstructed roads affecting the access of goods and food to the town.
and forced workers to participate in the strikes, illegally seizing for the term of five days those workers who rejected the strikes (El Tiempo, 2013c). However, after three months in prison, because of the lack of evidence, the three workers were released (CUT, 2014).

Mr. Perez noted that the detention of the workers was arbitrary and that the attorney investigating the facts made her decision of charging the workers influenced by PREC. For instance, to develop faster the investigations against the workers, the attorney used to travel in the MNC’s helicopter to Puerto Gaitan. Furthermore, Mr. Perez highlights the criminal responsibility of PREC’s directives was clear, but they could avoid sanctions as the attorney who was investigating the directives were removed when he was close to charging the directives. According to Mr. Perez, the attorneys investigating PREC were replaced many times and they did not investigate the directives and, therefore, the legal action against the directive prescribed.

Mr. Perez and Mr. Rodriguez assert that these facts clearly show an imbalance on how justice is delivered by the Colombian authorities. While the authorities’ reaction to the claims of PREC was immediate, the legal actions against the MNC never were solved. *They were arrested as if they were the most dangerous criminals of the country*, points out Mr. Sanchez when referring to the workers put in prison.

Therefore, because of the lack of justice in the local tribunals, legal actions against PREC were brought before Canadian and US’s tribunals for the infringement of the chapters related to labour rights incorporated in their respective FTAs with Colombia. Nowadays, such actions are being handled by foreign tribunals. Mr. Perez noted that in the domestic courts fifteen criminal complaints, about threats against the life of one of the workers who went to prison, have been filed but nothing has happened. Conversely, the judiciary system has efficiently prosecuted that worker who has had to defend the MNC’s accusations.

Bladimir Sanchez points out that the power of PREC was so huge as it was called “small Canada.” He notes that PREC decided who could get access to the public roads
in Puerto Gaitan as if the town were an independent republic. Therefore, the members of the USO and human rights defenders were not allowed to freely transit in public areas. The restriction to access to the town was known as “La Vara”.

Sanchez points that when NGOs and USO’s directives arriving at the area of Campo Rubiales, there was a truck equipped with a sophisticated technology which recorded phone conversations to follow up human rights defenders and trade union’s leaders. Bladimir obtained videos and photos of such truck from the chief of security of Campo Rubiales, a former captain of the police. However, according to Sanchez, such pieces of evidence could not be used in tribunals because people were afraid of possible retaliation and, therefore, nobody wanted to denounce the wrongdoings of PREC. Such version was confirmed by Mr. Perez, who noted that criminal complaints were not possible because people were afraid of the consequences of complaining against the MNC.

**Analysis and conclusions**

The rapid expansion and success of PREC would not have been possible without the different contributions shaping the power of an irresponsible MNC. The features of PREC were the result of combining the classic model followed by Northern MNCs that base their power in the support received from their home country’s government to rapidly expand their business in Southern countries, and a group of Venezuelan businessmen with vast expertise in the oil business who thanks to the similarities between Colombia and Venezuela identified business opportunities in the social, cultural and political weaknesses of the host country.

It allowed PREC to penetrate the social, economic and political structures of the state, to the extent that the nation-state adopted the discourse of North American leaders according to which oil production is a synonym of development, prosperity, and progress because the good performance of their MNCs will necessarily improve the host-country’s social conditions. Moreover, by calling spoilers of development and prosperity those who disagree with the aggressive FDI campaigns, such foreign leaders
set up a common enemy for the state and the MNC: anyone disrupting or attempting to disrupt the MNCs’ operations.

When the MNC’s discourse, one based on productivity and wealth maximization, is adopted by the government as its own, the main private interests of the MNC - protection of infrastructure and increase of oil production- turned into the state’s supreme goals. Consequently, once the government engaged with the MNC to achieve their “common goal”, anyone disrupting the smooth running of their business, called it environmentalist, trade union, NGO, journalist, worker, public servant, etc., will be perceived as a threat for the country’s prosperity, development, and progress, a mutual enemy that should be removed at any cost through the means the consortium government-MNC made available.

Therefore, as the PREC case analysis suggests, in such scenario, state capture is central as it allowed PREC to achieve both targets. Firstly, it allowed the MNC to create the required conditions to penetrate the country’s structure to amalgamate the MNC’s interests and the national interests in a single shared interest, turning shareholders’ wealth maximization into an equivalent of development and progress.

Secondly, as the case analysis suggests, through the consortium government-PREC, state capture broadened the number of mechanisms available to remove obstacles disrupting the PREC’s operations in Puerto Gaitan. In addition to the ordinary private mechanisms available for the MNCs to guarantee the smooth running of their project, there were institutional mechanisms available, mechanisms that usually are not available for private companies as they have been created to protect the nation’s supreme interests only. For instance, as the PREC case analysis has demonstrated, institutional mechanisms such as the public force, the judiciary and the legislative systems, were placed at the service of the MNC to remove any obstacle, arguing that it was necessary to protect the national interests.

In addition, there was another set of mechanisms available for PREC to co-opt the state. They were the result of combining the power of the government and the MNC,
such as private battalions, lobbying activities in domestic and international top scenarios, and some unethical forms of socio-political engagement.

Finally, as demonstrated, the mechanisms adopted in the frame of the Colombian government-PREC’s consortium configured new structures of violence, -like forcing people to substitute agriculture for mining- and contributed to the existing ones, as it was the case of how it worsened the freedom of the press or land distribution. However, as the mechanisms deployed by the government-PREC’s consortium were considered necessary to achieve the consortium’s goals, they were employed disregarding negative outcomes.

In contexts like this, where the achievement of economic goals is the only thing that matters for the government, implementation of peacebuilding activities would be feasible only to the extent that such implementation does not represent an obstacle for achieving the consortium’s goals. Furthermore, peacebuilding will be relevant only to the extent that it makes the consortium’s business running more efficiently, or it is useful to diminish, hide or disguise the harmful consequences caused by other mechanisms the consortium has employed to achieve its goals. As Mr. Perez pointed out (…) there (In Puerto Gaitan) the state was them (PREC). However, as the PREC’s slogan Pacific is Colombia suggests, during its economic flourishing PREC was the Colombian establishment.

This chapter has approached the mechanisms developed by PREC to play the role of the captor. These mechanisms have been tracked from the moment in which the MNC made the decision of entering Colombia up to the moment in which the MNC-government nexus was so close that it configured a consortium in which they were working together to achieve a common goal. In addition, based on the foundational principles of the UNGPs the chapter has assessed the impact of such mechanisms on the State’s duty to protect, the MNC’s corporate responsibility to respect and their duty of ensuring that victims of business-related human rights abuses have access to an effective remedy.
Figure 4 describes the PREC case study’s event-history map. It briefly describes twenty-five milestones and highlights the three levels of the state capture process I have mentioned in chapter two, based on the strategies and mechanisms employed by the MNC through the period analysed in the case study. There are two years in which PREC massively employed strategies aiming to capture the state, 2010 and 2013.

It is important to note that in 2010 the company reached its best economic performance but, simultaneously, it was involved in serious incidents such as violation of press freedom, labour rights and human rights. Moreover, the board of directors of the company was exposed because of their wrongdoings in former jobs. Therefore, at that stage PREC massively employed strategies aiming to enhance their relations with the host country and the home country’s governments. This strategy provided to be effective to protect PREC’s economic performance and avoid the negative consequences of the company’s transgressions.

The other year highlighted in the graph is the year 2013. During that year PREC was desperate to extend their agreement with Ecopetrol to continue exploiting Campo Rubiales field as it was its main source of wealth. The company achieved its highest level of production that year and it employed strategies and mechanisms to have the support of the local government to continue its operations in Campo Rubiales without disruption however such a strategy was extremely expensive and the company could not keep it going and Ecopetrol made the decision of finishing their agreement.
Figure 4: PREC's Event-history map

- Political lobbying at international level (carried out by Frank Istrera)
- Boom of the company's CSR strategy
- PREC's actions against press freedom and freedom of association (labour rights)
- PREC operations in Puerto Gaitán
- PREC massively employed strategies to enhance its links with local actors (lobbying, revolving door, agreements with the government, sponsorship of the national football team, media campaigns, etc.)
## Event-history map

1. Top executives of PDVSA were expelled from Venezuela for calling protests against former Venezuela’s president Hugo Chavez.

2. Clinton introduces Giustra to Uribe.

3. Giustra partners the Clinton Foundation to create the Clinton Giustra Enterprise Partnership (CGEP), a Canadian-based charitable organization focused on poverty alleviation (Clinton Foundation, u.d. a).

4. The CGEP develops Access Training Center a social program aiming to improve the skills of Cartagena’s young people, to allow them to have access to quality jobs in the hospitality sector.

5. The Canada-Colombia FTA is signed.

6. PREC and the Ministry of Defense sign several agreements for the protection of assets and employees.

7. The journalist Hector Rodriguez, replicating international business news, published information involving some of the PREC’s top officers. The information was related to their dismissal when they were working as directors and executives at CoalCorp, because of the systematic underperformance of the company for several years.

8. Fondo Acceso S.A.S. (Access Found) was created through a partnership between the Mexican business tycoon Carlos Slim and the Clinton-Giustra alliance. Fondo Acceso was the Clinton Foundation’s Colombia-based investment company created to provide equity financial alternatives to projects of small and medium Colombian enterprises (Clinton Foundation, 2011).

9. Bill Clinton and Giustra joined Hillary Clinton (who was the US Secretary of State at that time) to an official meeting with Alvaro Uribe in Bogota, Colombia.

10. The workers of the oil fields of Puerto Gaitan started a huge strike because of the precarious labour conditions in the oil fields.

11. PREC supported by the government employed a strategy based on imposing obstacles by force and through the law to labour unions.

12. The Canada-Colombia FTA is implemented

13. PREC’s oil operations were attacked by FARC rebels.


15. The government created the war plan Operation Sword of Honour (OSH) in order to defeat criminal organisations (El Espectador, 2012a). As an important component part of the Operation, the government deployed military force in the PREC’s area of influence in Meta.

16. Bill Clinton and Giustra visited Colombia to participate in the golf tournament Pacific Rubiales Colombia Championship, as part of a Clinton Foundation’s fundraising strategy.

17. PREC achieves its best performance. It allowed and encouraged the rapid expansion of PREC through investments in key sectors of the Colombian economy different from oil, such as agriculture (Agrocascada), mining (Gran Colombia Gold and Pacific Coal), infrastructure (Pacific Infrastructure), African palm (Pacific Green), stone lime (Pacific Stone), among others.

18. A social initiative called Access Training Center was created and supported by the Department of Foreign Affairs, Trade and Development of Canada, the CGEP and two for-profit organisations linked with the OEGE. Through BPOs the two for-profit organisations linked with the OEGE provided the workforce to PREC.

19. PREC’s board members where sponsoring Santos and Uribe’s candidate political campaigns.

20. The Government of Canada issued the Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia. The document was strongly criticized by NGOs who considered the
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<tr>
<td>21.</td>
<td>Cano &amp; Mesa, the company owned by Juan Mesa, the man who was leading the Santos’ reelection campaign, is hired by PREC to develop the company’s massive media campaign involving the Colombian national football team.</td>
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<tr>
<td>22.</td>
<td>A record level of oil production is reached in Campo Rubiales field.</td>
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<td>23.</td>
<td>The Colombian government initiated a campaign supporting the idea of creating an “express window” for issuing express environmental licenses in record time in exchange for an economic surcharge to be paid by the oil companies.</td>
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<tr>
<td>24.</td>
<td>Ecopetrol announces its decision of finishing the agreement with PREC and taking full control of the Rubiales field in 2016.</td>
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<tr>
<td>25.</td>
<td>PREC completes its restructuring process and changes its name twice.</td>
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Chapter 6: Anglo Gold Ashanti

Introduction

AngloGold Ashanti (AGA), a South African MNC, was one of the first MNCs believing in Uribe’s governance model based on three pillars: (1) democratic security, (2) investor’s trust and (3) social cohesion. Hence, AGA’s entrance in Colombia was an opportunity for the government to turn territories which had had a strong presence of guerrillas into productive areas where corporations would develop their business projects and improve the socio-economic conditions.

It was also an opportunity for AGA to take the first to move advantage with the full support of the Colombian government. Therefore, AGA took the risk of entering unexplored territories and deciding to secretly explore the Cajamarca area from 1999 to 2003. Through a company named Kedahda, it carried out greenfield exploration from 2003 to 2007 (Pax, 2016).

In 2007, Kedahda discovered a huge deposit of gold in Cajamarca, that may be considered one of the biggest discoveries of gold in South America (Correa, 2014). The company requested the government to keep such discovery in secret, but Uribe did not do so he wanted to let know the people that the government’s policies were working (El Tiempo, 2007).

This chapter analyses the intrinsic and extrinsic features of AGA leading the MNC to influence the Colombian mining sector. In addition, it analyses how AGA has not only influenced the mining policies, but also the government’s position towards mining projects. Hence, this chapter highlights the main mechanisms used by AGA to influence the government’s decision on whether to allow or not the MNC to carry out its main project in Colombia: “La Colosa”. In addition, it explores several strategies employed by AGA to influence the whole decision-making system of the economic sector in which it operates. Finally, the chapter analyses the impact of AGA’s capture of the state on violence, with reference to the foundational principles of the UNGPs.
Company Profile

Extrinsic features

AGA is the third-largest gold mining company in the world (AGA website). It is a key player in the global market. In addition, taking into account that for 2014 AGA’s investment in Colombia was around US$240 million, and considering the vast extension of land where the MNC has carried out gold exploration activities, 8.2 million hectares for 2014 (AGA, 2014), AGA is considered the most important gold mining company operating in Colombia.

Intrinsic features

The separation between management and control is clearly established within the MNC. Central decisions involving AGA are made in the MNC’s home-country (South Africa) and, according to the interviews carried out, there is a visible chain of command which is fully respected by managers operating in Colombia. However, AGA’s chain of command is diluted when it operates through its Colombian subsidiaries (Exploraciones Pantanos de Colombia S.A., Exploraciones Chocó de Colombia SAS, y Exploraciones Chaparral de Colombia S.A.) because the company does not have managerial duties towards them and merely partners through joint ventures with other companies who oversee management (AGA, 2014).

AGA enjoys a reputation as a company performing “good mining”. That is, it presents itself as a company respecting the highest international standards for the protection of environmental and human rights. The company is a member of the United Nations Global Compact, the International Voluntary Principles on Security and Human Rights Initiative, the International Council on Mining and Metals (ICMM) and the Extractive Industry Transparency Initiative (EITI) (AGA, n.d.). A representative of Tierra Digna
notes that “AGA has a more elegant organisational structure in comparison to most of the MNCs of the gold mining industry.”

As a member of the UN Global Compact is committed to the ten principles established by the initiative known as “the world’s largest corporate sustainability initiative”. This means that it participates in the UN initiatives aiming to encourage business to take strategic actions and undertake responsibilities in support of the Sustainable Development Goals (UN Global Compact, 2015). The UN Global Compact’s principles compromise responsibilities in human rights, environment and anti-corruption issues that companies taking part in the UN initiative should fulfil. However, into the frame of the Global Compact, companies are not compelled to provide evidence they are doing something as it is a voluntary instrument.

In addition, AGA is a member of the ICMM, therefore, the MNC is required to implement the ICMM’s Sustainable Development Framework (2015) which involves 10 principles and 6 position statements into corporate policy.55 There is evidence on paper that AGA is carrying out these principles in the countries where it operates (AGA-reports.com, 2014a).

However, as the company is in an exploration phase in Cajamarca rather than an exploitation phase, it is not clear whether all the principles are carried out on the ground. For instance, in a report issued in 2014, AGA paid more attention to the environmental concerns (6th, 7th and 8th principles) and it provided evidence that it was fulfilling with the environmental issues in Cajamarca (AGA, 2014). Nevertheless,

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55 Principle 1: Implement and maintain ethical business practices and sound systems of corporate governance; principle 2: Integrate sustainable development considerations within the corporate decision-making process; principle 3: Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities; principle 4: Implement risk management strategies based on valid data and sound science; principle 5: Seek continual improvement of our health and safety performance; principle 6: Seek continual improvement of our environmental performance; principle 7: Contribute to conservation of biodiversity and integrated approaches to land use planning; principle 8: Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products; principle 9: Contribute to the social, economic and institutional development of the communities in which we operate; principle 10: Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders.
collected data and interviews conducted during the fieldwork suggest that AGA has not implemented some principles accurately.

That is the case in regard to the 3rd, 9th and 10th principles of the ICMM framework. Firstly, the 3rd principle requires companies to “Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by their activities”. This principle has not been implemented at all. AGA has overlooked the longstanding agricultural tradition of Cajamarca and has seen it as an obstacle for the La Colosa project. Consequently, AGA has tried to remove this obstacle by influencing the public decision-making system to turn Cajamarca into a mining region to benefit its private interest.

Secondly, the 9th principle of the ICMM framework encourages MNCs to contribute to the social, economic and institutional development of the communities in which they operate. However, the community in Cajamarca has no interest in the MNC’s socio-economic contribution to their development, since that contribution is a condition on the approval of La Colosa project, which has unanimously been rejected in the Cajamarca’s public consultation.

Finally, the ICMM’s 10th principle requires companies to “Implement effective and transparent engagement, communication and independently verified reporting arrangements with their stakeholders”. The opacity of the relationship between AGA and the government and the reluctance of the company to let the people know what it was planning to do before starting with the greenfield exploration, demonstrate that this principle was ignored in the case of Cajamarca.

According to the company, AGA goes beyond the standards established by the Extractive Industries Transparency Initiative –EITI- (AGA-reports.com, 2014a), which is defined as “a global standard to promote the open and accountable management of oil, gas and mineral resources” (EITI, c2018a). For instance, AGA publishes the breakdown of payments to governments of the countries where it operates around the world. However, as the EITI aims to address the key governance
issues of the oil and mining sectors, an aspect that is the responsibility of the states, it
is the government that has to report this information if it wants to belong to the EITI.
Hence, it is the country’s performance which is audited and assessed instead of the
company’s performance. Therefore, the EITI is basically a government-oriented
initiative based on the transparency and accountability of the governments in regard to
their countries’ economic performance for oil and mining exploitation.

It is considered that the EITI is beneficial to the states as it is proof that they accomplish
with a high standard of transparency and accountability which makes them attractive
for investors (EITI, 2005). Colombia has been a member of the EITI since 2013,
consequently, the country periodically reports data to inform public on issues such as
levels of taxation, revenue distribution and quality of expenditures, environmental and
social payments (EITI, c2018b). Nevertheless, despite the importance of the EITI as a
tool to fight against corruption, it mainly focuses on the misuse of the revenues. In
addition, as the government is the main actor, it mainly assesses the government’s
behaviour, and the MNCs merely support the government to achieve its goals and just
to the extent they wish to do it because the EITI is not compulsory for MNCs.

However, as an MNC with public listings on the Johannesburg, New York, and
Australia’s stock exchanges, AGA conforms with the rules of the jurisdictions where
it operates and has its own anti-corruption and anti-bribery policies. The approach to
managing risks relating to corruption covers practices such as conflict of interests, due
diligence and the requirement to document interactions with the government (AGA-
reports.com, 2014b). The anti-corruption policies in AGA have been useful to keep
control of the activities carried out by the company’s agents around the world.

The MNC conforms with the domestic law where it operates, therefore, it approaches
corruption as a legal-illegal issue only. This approach excludes practices that are
completely legal, but which may lead to state capture. Therefore, AGA’s anti-
corruption policy is narrow and it seems to be focused on avoiding illegal corruption
only, overlooking some specific conditions of the countries where it operates.
Mechanisms and processes leading to State Capture

AGA was not the first MNC to deploy its economic power and political networks in order to influence the mining sector. There are other cases of MNCs which were already exercising a remarkable influence over the mining sector at the time AGA arrived in Colombia. Two of the most illustrative cases are the already above mentioned Swiss-based MNCs, Drummond and Glencore, both companies operate in the coal industry. These MNCs have been involved in investigations of massacres carried out by paramilitary groups in their area of influence.

Two of the NGOs which have closely traced operations of these MNCs in Colombia, are Pax Christi and the Swiss-based NGO Kolumbien Ask!. From interviews conducted with Rodrigo Rojas, Pax’s representative, and Stephen Suhner, Kolumbien Ask!’s representative, it was possible to identify different mechanisms and processes contributing to the tremendous power of Glencore and Drummond in Colombia.

Summarising, the arsenal of such MNCs included CSR, lobbying, revolving door, ties with domestic and foreign politicians, diplomacy carried out by their governments on behalf of the MNCs to exert pressure on the Colombian government, and an international legal framework establishing favourable conditions for the MNCs doing business in Colombia. The two MNCs deployed all these mechanisms in such a way as to achieve their goals of influencing the mining sector, doing business without serious disruptions in conflict-prone areas, and avoiding sanctions for sponsoring paramilitary groups.

Therefore, AGA and any other MNC operating in the Colombian mining sector has the infamous precedents of Glencore and Drummond which they can use as a formula to achieve similar goals. In fact, Rojas and Suhner’s description of Drummond and Glencore deployed such mechanisms is chillingly similar to AGA’s methods. The next section traces the process through which AGA has influenced the public decision-system to reach its business’ goals. It follows the theoretical framework developed in
the second chapter. Therefore, it tracks AGA’s progress at three different levels towards state capture and highlights the main mechanisms employed by the MNC through each level.

Recapitulating, the first level is that in which MNCs receive support from their home country's government, foreign politicians or international organisations to achieve favourable conditions facilitating their entrance into foreign markets and the smooth running of their operations abroad. The second level refers to the formal links the MNCs develop with domestic actors and civil society to influence the sector in which they operate. Finally, the third level is that in which the MNC deals directly with individuals working for the government or members of powerful organisations, who can play the role of APCs to facilitate the MNCs’ achievement of their private goals.

**First level**

The legal framework of the Colombian mining sector, like most of the Latin American mining legal frameworks, has been built up neoliberal principles as conceived by international organisations like the World Bank and the IMF (Bastida, 2013). The cornerstone of this framework is the rule of law and, therefore, issues such as legal and political stability, protection to property rights, promotion of FDI, reduction of transactional costs and tax incentives for corporations are fundamental aspects that a well-developed mining legal framework should embrace. Hence, the government initiatives aiming to improve the mentioned issues are supported by international organisations who consider the more developed and assured these issues are, the better the mining system.

Concerning the La Colosa project, in 2009 the proxy of AGA in Colombia stated that: *La Colosa is part of the exploration activities carried out by the company (AGA) for the invitation extended by the national government for the development of the policy Colombia un País Minero* (W, 2009 min. 6:38). It seems that Uribe’s government strategy was providing effective in persuading foreign investors to set up their business
in the country.\textsuperscript{56} However, the strategy for the implementation of the mining locomotive required the government to develop a fast-track policy to facilitate MNCs doing business in the Colombia mining sector.

The strategy required guaranteed safe access to the land without too many administrative obstacles, which necessarily involved government control over the “mining locomotive” to drive it in the desired direction. Hence, the government decided to carry out military strategies to facilitate access to conflict-prone areas and to reduce the administrative burdens on MNC when developing their projects.

To achieve this commitment, the government was sponsored by the World Bank. The influence of the World Bank in the Colombian mining system is remarkable as the international organisation directly sponsored the institutional design of the mining sector. In 2011 the Colombian government, funded by the World Bank, signed an agreement with the global firm McKinsey & Company. The purpose of this agreement was to reform the administrative structure of the Colombian mining sector (Contrato No. 36, 2011).

As a result of that consultancy, some of the key functions of Ingeominas (FSI of the mining sector) were transferred to a new governmental agency, the Agencia Nacional de Minería (ANM), which was created as the Colombian mining state agency (Decree 4134, 2011). The new-born agency was conceived as a technical state entity aiming to serve effectively and efficiently to the interests of the mining companies.

\textbf{Second Level}

As mentioned above, AGA is a member of the ICMM. The ICMM recognises the impact of mining on governance\textsuperscript{57}. Therefore, it developed a set of tools to assess the

\textsuperscript{56} FDI index, \$US: 2.100 in 2002, 7.201 in 2009 and 5.013 to June 18\textsuperscript{th}, 2010 (Página oficial Álvaro Uribe Vélez, c2014).

\textsuperscript{57} According to the ICMM, “(...) governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement
impact of the mining companies’ activities. This is the ICMM’s “Mining: Partnerships for Development TOOLKIT”. The toolkit establishes five different policy domains which may be impacted by mining: 1. The legal and regulatory framework; 2. The fiscal regime, economic policies, and public administrative capacity; 3. production inputs; 4. human capital development; and 5. social cohesion. The ICMM notes that different actors are involved in these policy domains and that the company should be aware of the individual agents’ incentives and motivations because they determine the way in which policy decisions are taken (ICMM, 2011).

According to the ICMM, the objective of doing this is to (…) understand how existing formal and informal interactions between the mining company and its stakeholders result in an influence on the host-country’s governance framework (…) This requires placing the company itself in its wider context and understanding the interests, resources, and roles of government entities at different levels (e.g., national versus regional), communities and other stakeholders, as well as the evolving policy frameworks within companies themselves. This understanding, in turn, should explain why different stakeholders have been able (or unable) to collaborate across the five policy domains (ICMM, 2011:134).

Following the approach adopted by the ICMM, this section explores how the social and political relations of AGA with different actors have been built, emphasising the MNC’s relationship with politicians and the civil society in general through CSR and social interventions aiming to impact governance as it has been defined by the ICMM.

**CSR**

Concerning Cajamarca, AGA’s CSR strategy has been focused on environmental programmes and activities aiming to benefit agriculture because most of the people who are rejecting the MNC’s projects are farmers who have environmental concerns. Through such a strategy, the MNC aims to show its commitment to locals and show sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them.
them what is “truly mining”. To develop such initiatives, AGA has joined a public university of Medellin (Agenciadenoticias.unal.edu.co, 2016) and the “Corporación Autónoma Regional de las Cuencas de Los Ríos Negro y Nare” -CORNARE-, a public entity in charge of planning environmental strategies and following up environmental issues within the impact area of AGA operations in Antioquia58.

Rodrigo Rojas, director of Pax Christi criticises La Colosa project, but he recognises that AGA is a responsible company when compared to other companies of the mining sector:

“AGA’s commitment to human rights protection is above the average of companies belonging to the sector.”

The CSR strategy compromises a robust plan to protect human rights in those areas where it operates. Such a strategy is based on the UNGPs, which means that every due diligence carried out by AGA takes into account human rights. Such an approach compromises to identify, prevent, manage and mitigate all the possible human rights risks AGA may face. For instance, AGA has a protocol according to which any incident of violence taking place in the areas where the company operates should immediately be communicated to the national competent authority, then the MNC asks the authorities for reports about the incident in order to follow up the investigations and know exactly what really happens (AGA, c2018).

In addition, AGA acquires goods and services from local suppliers only, aiming to improve the economic development in the areas where it operates. This is a very common CSR strategy which is effective to improve the companies’ relationships with their stakeholders. However, in the case of Cajamarca that policy instead of improving

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58 According to the CORNARE it “arises as a response to the irresponsible and uncontrolled management of natural resources of farmers trying to subsist”. notes that the BancO2 is “a strategy of payment for environmental services.” Environmental protection is the main goal of the project. An AGA’s representative points out “With projects like these we can showcase that the mining sector can generate environmental protection...demonstrating that we truly are mining.
AGA’s relationship with the community, have contributed to making deeper the division between supporters and detractors of La Colosa project.

While its CSR policy has allowed AGA to enhance its relationship with that segment who benefits from the MNC’s business, like contractors and subcontractors, the relationship of AGA with that segment who does not have any business relationship with the company has declined. Therefore, this CSR policy has deteriorated the harmony within the community because it mainly focuses on contractors and subcontractors of the company who have an economic interest in the continuity of La Colosa project and consider detractors of the project as enemies of development. Referring to this segment of people, the representative of Tierra Digna noted:

(they are) …businesspeople who are benefited from the MNC’s business as they operate as contractors looking to obtain profitable contracts.

Concerning the other segment of Cajamarca’s population, that is the people who do not have any business relationship with the company, they are most of the Cajamarca’s population and hesitate of AGA’s good intentions. They perceive the MNC’s contractors and subcontractors as people who are selling themselves for money.

According to AGA, contractors and their families have been victims of threats and bullying. Moreover, some of them have been threatened and injured by criminal groups such as the FARC (AGA, c2018). The fact that illegal groups are still operating in the MNC’s influence area, worseness the situation as criminal gangs compete with the MNC for natural resources and the MNC’s presence is seen by such groups as a threat to the smooth running of their illegal business.

In a desperate attempt to overcome obstacles, for 2010 AGA had developed 24 social projects in Cajamarca. These projects covered a wide range of activities such as house painting, improvement of health services, purchasing of an ambulance, sponsoring of football teams and cultural activities, the pavement of roads and trips to the countryside. In addition, with the support of the Brazilian Institute of Mining (IBRA) AGA also has sponsored trips to Brazil to teach people what “truly mining” means (La
Silla, 2010b). In 2012, AGA supported 100 families of Cajamarca belonging to the association of producers of avocado in the entire productive chain process of avocado commercialization (AGA, 2014).

“The company covered the social needs the state was not covering” notes the spokesperson of Tierra Digna. Before the public consultation, the fact that the MNC was undertaking the local government’s responsibilities to attend the locals’ needs was clearly highlighted by the former mayor of Cajamarca, William Poveda, in a political meeting in which he pointed:

"All the mayors have worked with AngloGold Ashanti, and no one can come here to say that he did not receive (sic), and all those who come will have to work with the company, or are they not going be taxed? with what we do the works, with what we fulfil (our duties) if we do not have money. This is a municipality of the sixth category, to be able to work and to do things we need money” (Elolfato.com, 2016).

Likewise, after the suspension of La Colosa project, the new mayor, Pablo Marin pointed:

The municipality's infrastructure projects are virtually paralyzed...At this time, the river trawling material, such as gravel, crushed and sand, can no longer be exploited, and it has to be brought from other localities, which increases costs even more. If you had the project to improve or build 50 housing units, this is reduced in the budget for the number of beneficiaries by the increase in costs... La Colosa project promoted working conditions with health and pension guarantees (El Tiempo, 2018a).

The declarations of the former and current Cajamarca’s mayors clearly show that they were basically relying exclusively on the project to attend the social needs of the Cajamarca’s inhabitants.
Instead of empowering people, AGA has been co-opting the civil society by creating a relationship of dependency which has facilitated the company to abuse of the people’s social needs to exert economic pressure on them. Moreover, according to the director of Pax Cristi, (…) to promote the non-attendance of people during the public consultation, AGA arranged events in the countryside to avoid people participating in the public consultation. In addition, the day of the public consultation, the employee of AGA in charge of the productive projects and distributing the seeds of avocado to the people engaged in the AGA’s agricultural projects, was seen around the voting boxes apparently persuading people to support the project (Las2orillas, 2018).

Despite AGA’s huge investments and CSR projects in the area, most of Cajamarca’s population is still rejecting the presence of the company due to the distrustful way in which AGA was implemented its CSR programme. After analysing the CSR strategy of AGA, one may consider that CSR is a central issue for the MNC as, in theory, it has developed a well-structured strategy based on social programmes aiming the improvement of social, economic and environmental conditions.

However, in practice, instead of contributing to the welfare of the people of Cajamarca, the AGA’s social interventions have been unsuccessful for two reasons. Firstly, there is a lack of people’s confidence, which stems from the fact that they do not trust in the MNC and consider that the activities carried out by AGA have been used as means to exert pressure on people to obtain their support at any cost. Second, some activities developed in the frame of AGA’s CSR have been misused. Whether it has been done intentionally or not it is not clear at all but there are situations where the CSR activities were carried out as mechanisms against the people who reject the project.

**Third level**

**AGA’s involvement in politics**

Referring to the engagement of AGA in politics, a representative of Tierra Digna pointed out:
They (AGA) support political campaigns of congressman, deputies, and mayors (...) The last local mayors were supported by the company. The company puts the mayor. However, (...) I cannot say that they only sponsor the Democratic Centre, but they also support other political parties.

To support contested parties in a political race is a common practice, as the PREC case study has shown. However, while in the PREC’s case study both political parties were supporters of the Uribe’s mining locomotive, as Uribe founded both political parties in contest, that was not the case of AGA in Cajamarca where there are many political parties involved in the mining debate, basically divided into two different groups with completely opposite views towards the mining locomotive.

While, on the one hand, there is a group of political parties sharing similar core ideas regarding the importance of the extractive industries for development, most of them belong to the collision of the government and the Democratic Centre, on the other hand, there is another group whose members are against the large-scale mining in environmentally vulnerable areas, which is composed by the Democratic Pole and the Green political parties. There would be a subtle difference among the different parties belonging to each group but, as the local political dynamics have shown, political parties can easily be divided into two sectors: Those who say yes to the La Colosa and those who say no.

Considering the profound division caused by La Colosa project in Cajamarca, the AGA’s involvement in politics has substantially influenced the configuration of the political landscape not only in the municipality but in the department of Tolima. For instance, concerning the 2017 elections, according to the AGA’s manager of corporative affairs, Carlos Enciso, “We made contributions to almost all political parties, except for the Democratic Pole and the Green Party, because we believe that campaigns and electoral processes must have a transparent way of development. We are very worried that there may be rulers who cannot justify their access to power.

59 U party, liberal party, conservative party and Cambio Radical.
What a good thing it would be for all companies to participate in the electoral processes, but the specific candidates we do not make contributions.” (Elofato.com, 2017).

AGA’s manager said the MNC did not make any contribution to specific candidates. However, it did to one specific group of candidates, those sympathetic with La Colosa project, specially to the Democratic Centre party to which, according to a report elaborated by DeJusticia (2014), AGA donated COP$ 45 million (US$ 16,000 approx.) to support their candidates for Congress (La Silla, 2014b). AGA also has changed the political landscape of the department of Tolima. According to the representative of Tierra Digna (…) Tolima is a department of the liberal tradition. However, currently, Tolima is represented by a conservative governor, Oscar Barreto.

Barreto has been the conservative party’s candidate for the Tolima’s governance twice, the first in 2007 and the second in 2015 and he has been supported by Uribe in both opportunities. During his first campaign for the governance of Tolima, he marketed himself as the closest governor to the Uribe’s ideas (La Silla, 2017d). Just before turning into the AGA’s manager of corporative affairs, Enciso was the secretary of the infrastructure of Barreto. According to the digital magazine Las2orillas (2017), there are testimonies of people who say that Enciso joined Barreto in political meetings acting as a directive of AGA when Barreto was campaigning for the Tolimas’ governance for the second time. In addition to the governor, two key congressmen support the MNC’s project. One is a U party member and the other is a member of the conservative party.

The governor and the congressmen supported Pedro Marin, the U party candidate for Cajamarca. Such political machinery was effective enough to help Marin to achieve the position of mayor. Marin defeated the Liberal, Green and Democratic Pole political parties’ candidate, Julio Vargas, someone who strategically was been promoted by his sponsors as a farmer of Cajamarca, for a narrow difference of 305 votes: 4,756 (50,74%) against 4,451 (47,49%) (Registraduria Nacional, 2017a).
Despite the AGA’s candidate winning the elections, the outcome of the public consultation asking the people whether they accepted or rejected La Colosa project was averse to the company: 6,165 people voted NO (97.05%) to the project and just 76 people voted “yes” (Registraduría Nacional, 2017b). The mayor and his political godfathers did not hide they were disappointed by the results. The Cajamarca’s debate on the large-scale mining projects has turned into a national debate which will determine the national mining policy the upcoming years.

One may consider that the outcome of the elections was a huge paradox taking into account that the public consultation was carried out just fifteen days after being carried out the elections for Cajamarca’s mayor. However, the fact that AGA focused its efforts on the mayor elections rather than on the public consultation may explain the paradox of having a mayor democratically elected who does not represent the people’s will. AGA decided to deploy its machinery to support the mayor’s election, while it simply avoided being involved in the public consultation, as the MNC was against the consultation itself.

**Lobbying**

When being asked for how the Ministry of Mines manage its relations with the private sector, a former employee of the Ministry of Mines pointed that they are carried out with a high degree of informality and notes:

(...) *The relationship between the company and the ministry was direct. There was not a protocol to receive a corporation’s representative to hear his requests. Usually, the CEOs of the companies approached the top levels of the Ministry (...) There is not a protocol.*

Similarly, when asked about whether lobbying was common in the Ministry of Mines, the former employee notes that lobby is conducted by mining guilds who have plenty and unrestricted access to the government:
In the mining sector, there are small, medium and large-scale mining. They are grouped in associations. Cesar Diaz was a representative of one of these associations, the Chamber of Commerce for Mining, and later he became a mining vice-minister (...) The revolving door operates from the private to the public sector also. The companies are those who develop the projects, therefore, we (the Ministry of Mines) supported the companies to carry out the projects in the country.

The relationship between mining companies and the government is dominated by informality and, contrary to the ordinary people, companies can make their requests directly to the government’s top officers. The asymmetry of the relationship between the government and the mining companies and the high level of informality in their interaction, makes the FSI vulnerable to the infiltration of external actors aiming to influence the decision-making system and reinforce policies in benefit of the private mining sector, a practice that instead of being punished by the legal system is backed by the mining regulation model itself.

**Clientelism**

It takes a long time to assess accurately the environmental impact of large-scale mining projects. It means loss of profit for the company and loss of royalties for the state in the while. Consequently, institutions and procedures aiming to assess such impact may be seen by the companies as obstacles for doing business. Such perception increases the risk of relevant institutions being co-opted and administrative procedures being skipped by using illegal means like bribes or unethical practices. This is perfectly exemplified through a corruption scandal known as the “piñata of mining titles”.

In Colombia mining concessions are granted through mining titles, it gives the right to the holder to carry out legal mining. To grant mining titles, the current legal framework

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60 An unequal system of exchanging resources and favours based on an exploitative relationship between a wealthier and/or more powerful ‘patron’ and a less wealthy and weaker ‘client’ (Transparency International, c2018).
establishes the principle of "first in time, first in law", which means that the first person -legal or natural- who applies for the title will be the first in being considered by the government’s mining authority for granting a concession. The mining rights granted by the title may be negotiated between private parties, and the concession rights may be partially or totally transferred, which means that an individual may apply for a mining title and then transfer the rights of that title to an MNC (Anm.gov.co, n.d. b).

Referring to the main weakness of the principle “first in time first in law”, a former employee of the Ministry of Mines who was interviewed during the fieldwork pointed out that Who first present the offer is that one who obtains the title, even if later a better offer from a technical point of view arrives. Therefore, anyone who is granted a mining title automatically blocks any other interested in carrying out mining in the same area covered by the title.

Backward with “the piñata of mining titles”, this was the name given in 2011 by the minister of mines to the massive issuing of mining titles carried out by Ingeominas, the Colombian mining authority in charge of issuing mining titles at the time AGA obtained most of its titles (El Espectador, 2011b). The minister denounced that 19 mining titles were granted to AGA in high-altitude wetlands, few days before a legal restriction of granting mining titles in such areas coming into force (Semana, 2011c). The minister considered that the information related to the restriction of applying for mining titles on high-altitude wetlands was leaked by individuals working at Ingeominas, as it could not be a coincidence that the mining titles were granted just a few days before the law being enforced, despite the applications being repressed for years in the Ingeominas’ office. Making a mention of this infamous incident, a team leader of Tierra Digna notes:

...at the time the concessions were carried out, there was a lot of influence of people working for Ingeominas. Some of these persons are nowadays occupying directive positions in AGA.
In fact, Julian Villaruel, acting as the director of Ingeopminas, granted mining titles over around eight million hectares to AGA from 2005 to 2007 (La Silla, 2011b). After his resignation as director of Ingeominas, AGA appointed Villaruel as president of Gramalote, a project led by AGA in Antioquia. Similarly, following the policy of recruiting the right people for the job, Liliana Alvarado, who worked as a directive of Ingeominas, was appointed by the MNC as a socio-economical analyst (La Silla, 2011b). Apparently, they were well-compensated for the services provided. Villaruel, who was awarded in 2006 by the Junior Chamber International with the distinction of the executive of the year for his achievements in the mining sector (El Tiempo, 2006b), was appointed in a senior position at a Canadian gold company operating in Colombia.

Summarising the reasons for MNCs hiring such people, Miguel Rodriguez, one of the main authorities of the Colombian mining sector, notes that “…some to be processors of environmental licenses with their influences by their recent passage through the State; others to carry the information they have just collected as state officials; others so that with their lobbying power they go through any modification of the mining code. With the help of these same influential officials, they will prevent the country from increasing the mining royalties, which many experts and even senators have spoken about.” (El Tiempo, 2011)

Colombian mining and environmental authorities have been strongly criticised for questionable incidents like that of “the piñata of mining titles”. Experts hired by the General Comptroller’s Office pointed that the mining sector is highly vulnerable to co-optation because of the environmental authorities’ weaknesses and because the institutions are shaped in such a way they can easily be co-opted through legal and illegal means (Garay, et. al. 2013:37). The experts concluded that the lack of technical thoroughness when granting licences and evaluating mining projects is one of the main weaknesses of the Colombian mining authorities (Garay et al. 2013: 232). However, the experts’ opinion overlooks that technical reasons can be used by mining authorities as an excuse to justify unethical practices like that of the revolving door or the delegation of functions from one entity to another. They used to be justified and/or
tolerated based on technical grounds such as the knowledge and experience of that one who is being appointed or the lack of technical capabilities of that entity who delegates its functions to another.

In addition to Araujo, Villaruel, and Alvarado, there is another case of a revolving door which could not be configured thanks to the pressure of media. This is the case of the lawyer Gloria Alvarez, who was AGA’s spokesperson and proxy. She was the head of the main environmental authority of the department of Cundinamarca (CAR) and president of the board of directors of ASOCARS -a collegiate body assembling all the territorial environmental authorities of the country- before working for AGA. Mrs. Alvarez was hired in 2009 by AGA to carry out the licencing process for a vast extension of forest reserves.

In 2012, Alvarez was appointed as a candidate for the position of director of the Division of Forests, Biodiversity and Ecosystems Services at the Ministry of Environment. The newspaper El Espectador (2012c), made public the risks of appointing her as director of the mentioned department. The newspaper highlighting that if she were appointed as director, she would be the person in charge of issuing licences for mining in forest reserves, which would have been very convenient for AGA. After the media making all this public, she was not appointed by the minister of environment.

Similarly, functions have been passed from one public entity to another arguing that the entity to which the functions are passed have a much better technical capacity. That is the case of the delegation of functions carried out in 2004 between the Ministry of Mines and the Antioquia Governance. In the frame of such delegation, the functions related to issuing mining titles in the Department of Antioquia passed from the Ministry of Mines to the Antioquia Governance. The Director of PAX Christi pointed out:
“...There was... the Ministry of Mines who delegated the adjudication of mining titles to the secretary of mines of the Governor of Antioquia. The minister of mines delegated its functions to speed up the issuing of titles”.

In addition to speed up the issuing of mining titles, this delegation may have been agreed for political reasons also or at least it was used for political purposes as it was suggested by the ministry of mines, Mauricio Cardenas, who noted: “With the mining titles in Antioquia a lot of politics has been done and we are not going to allow it (...), it is an ordered mining” (Elmundo.com. 2012). However, the minister did not refer to the way in which Antioquia governance was doing politics with the mining titles.

To explain how politics could have been done through the delegation of mining functions from the national government to the Antioquia governance, I will show one episode in which an individual with political interests could have benefited from the function of issuing mining titles in Antioquia. It was the head of the Governance of Antioquia. In addition, I will show a second episode where the closeness of AGA to the Antioquia Governance, was useful to allow the Antioquia Governance to build a political platform to compete with another department for the control over the natural resources of an entire town known as Belen de Bajira.

The Governance of Antioquia’s Mines Secretary is the entity in charge of carrying out the functions concerning the legalisation, control and follow up of the mining titles issued within the department of Antioquia (Art. 7, Ordenanza 12 of 2008). The Secretary was created in 2008 by the law (Ordenanza 12 of 2008). However, before it was created the Antioquia Governance already had such functions as they were transferred from the Ministry of Mines to the Antioquia’s governor since 2004 (Resolucion 181532, 2004). The Ministry of Mines made the decision of transferring the national government’s function of issuing mining titles in Antioquia to the Governance of Antioquia, based on the lack of infrastructure and technical capabilities of the Ministry to fulfill accurately its functions (Resolucion 181847, 2006). The act of delegation was systematically renewed until the Secretary of Mines of the Governance of Antioquia was created. Now I will refer to two remarkable episodes.
The first one involves Federico Gaviria, who was governor of Antioquia from 2004 to 2007 -that is from the time the Ministry of Mines delegated its functions to the Governance of Antioquia- and established a business partnership with AGA to successfully apply for two mining concessions (FJT-15 A and FJT-15R). The mining concessions were granted on January 2008 by the local branch of Ingeominas in Medellin, Antioquia, to carry out mining operations in Antioquia and Choco for 29 years (Semana, 2011d). Replying to the critics about this episode, which emerged in 2011 when was a candidate for mayor of Medellin, Gaviria said:

"These licenses do not generate any incompatibility or inability of any kind, ethical or legal, with the legitimate aspiration I have to be mayor of Medellin,...the main generator of employment and economic and social development in the municipality of Carmen de Atrato (Chocó)....I am no longer a partner of it, but if I were, it would not be incompatible with my aspiration to the Mayor... Antioquia was and has been with pride the cradle of Colombian mining, how about now that it is intended, so rudely, to stigmatize mining? What will the thousands of illustrious graduates of our distinguished School of Mines say? " (Elcolombiano.com, 2011)

The second episode shows how the entire department have politically benefitted from the delegation carried out in 2004. Thanks to such delegation, the links between AGA and the department of Antioquia are stronger than the links of the MNC with other departments. In 2017 there was a discussion between the Department of Choco and the Department of Antioquia about the political filiation of a town, Belen de Bajira. That one having the reason in such a discussion, would have had the control over an entire town covering a vast extension of the land.

To resolve the dispute, it was arranged a collection of signatures to know who was in favour of Belen de Bajira belonging to Antioquia. In the process of collecting signatures to know the people’s will, the Governor of Antioquia received the support of AGA. The MNC collected 6,120 signatures, which were more signatures than those collected by any other private company. The reason for AGA supporting the
department of Antioquia stems from the fact that the company obtained mining titles and licences for exploring the disputed land, they were issued and granted by the Governor of Antioquia. Therefore, the MNC’s mining titles and licences would be at risk if Antioquia were defeated by Choco (Caracol, Radio, 2017b).

When being asked for the high number of signatures collected by AGA, Juan Nariño, the Director of Corporate affairs of AGA, denied the information despite it has been confirmed by the Governor of Antioquia (Caracol Radio, 2017b).

Mr. Nariño is a good example of a revolving door in action. During Uribe’s mandate, from 2002 to 2004, he served as the assistant manager and director of the Presidential Program to Combat Corruption. In addition, he was the coordinator of the Demobilization Process of the Autodefensas Unidas de Colombia (AUC) to the Organization of American States (OAS), and from 2004 to 2006 he was responsible for the coordination of demobilization of protests and blockades within the Mission for Support the Peace Process in Colombia. Before being appointed by AGA, he was the vice-president of foreign trade at the National Business Association of Colombia (LinkedIn, n.d.), and recently he has been appointed as president of the Colombian mining association (ACM) the mining guild in charge of lobbying before the government (El Tiempo, 2018b).

**Revolving door and patronage**

A member of Tierra Digna noted that (...) the directives of AGA always have preserved a Colombian national as the head of the organisation’s Colombian chapter. The intention is to have someone able to move in the circles of power and influence certain key sectors. This is the case of Josefina Araujo, a family member of one of the most powerful political families of the north of Colombia. Her father was Alfonso Araujo, governor of the department of Cesar twice. Mrs. Araujo worked for AGA more than eight years, leading the MNC’s area of compliance.
Before being recruited by AGA, Josefina Araujo served as director of the division dealing with ethnic issues at the Ministry of Interior during Uribe’s presidency. The division was in charge of concerting with indigenous people mining and oil projects in their territories, for the time in which most of such territories were occupied by paramilitary groups. Moreover, the division presided by her was in charge of acquiring territories to relocate indigenous people. As a legal advisor of the Human Rights Programme of the Ministry of Interior, one of the main functions of Josefina Araujo was to oversee the contracts to provide safety and security to union leaders, human rights defenders, and teachers. Therefore, she had unrestricted access to sensitive information for the time the director of the Colombian department of intelligence (DAS), Jorge Noguera, was supplying information to the paramilitary leader Jorge 40.

In 2006, the links between the DAS and the paramilitary groups were disclosed in media when it was made public that the DAS was carrying out espionage against the civil society (Semana, 2006). According to the newspaper El Tiempo (2006a), the Attorney General had evidence of Josefina Araujo’s husband, Alvaro Pupo Castro, being the main link between the paramilitary chief Jorge 40 -Pupo’s cousin- and the former director of the DAS. In addition, El Tiempo (2006a) reported that according to investigations carried out by the Colombian Attorney General, there was evidence that Jorge 40 obtained information about union leaders, human rights defenders and teachers from Noguera, to carry out para-military intelligence.

There is no evidence of Mrs. Araujo facilitating or disclosing, directly or indirectly, to her husband, Noguera or Jorge 40, the sensible information she had access. However, the situation itself is problematic because at that time she was the wife of someone who facilitated classified information to paramilitary groups, confidential information to which she had plenty access and could only be known by very few people. After the mentioned report of El Tiempo, Mrs. Araujo resigned to her position at the Ministry and one year later was hired by AGA. In 2017, Noguera was sentenced to seven years and ten months of prison for espionage against human rights defenders, union leaders, politicians and journalists (Corte Suprema de Justicia, 2017).
According to Araujo’s professional profile, she was the director of the legal and compliance area of AGA from 2007 to 2013 and director of ethics and compliance from 2013 to December 2015. Araujo’s main duties at AGA were related to those she used to perform when working for the Ministry of Interior, such as negotiating land acquisition, dealing with communities and leading the compliance division of the AGA (LinkedIn, n.d.).

The question that arises here is whether Mrs. Araujo’s direct and indirect links with legal and illegal powerful actors of conflict and the fact that she would be able to have access to sensitive information, were aspects AGA considered as important assets for the company when making the decision of appointing her.

As a coincidence, the Tierra Digna representative notes, referring to the incidents of violence taking place in Cajamarca, that (...) All the threats are signed by recycled paramilitary groups like Gaitanistas and Aguilas Negras. There is a selective way in which the murders were carried out, my feeling is that there is a clear strategy aiming specific people leading movements against the project.

AGA-Army agreements.

In a context where the machinery of the national army could easily be co-opted through confidential agreements, it is possible to establish a cause and effect relationship between the MNC’s interests and the aggressive military actions carried out against the civil society. To do this, I tried to get access to the AGA-Army agreements, which are the legal instruments through which the formal relationship between the army and MNC is established. To obtain information about the agreements between AGA and the Colombian Army, a formal letter requesting information was addressed to the Ministry of Defence. The letter of the Ministry of Defence responding my enquiry states that there is an agreement dated 2008 between AGA and National Army.

However, the Ministry of Defence just mentions the serial of the contract -08-0013- but it refuses to provide the contract’s text or detailed information related to the scope or clauses of the agreements. According to the Ministry, digital or printed copy of such
material, as it was requested by me, cannot be provided because “it (the agreement) incorporates strategic information for the defence and security of the state that translates in the protection of the community in general and the economic infrastructure of the country”.

A representative of the NGO Tierra Digna points out:

(…) between 2002 and 2006 there was a critic violation of human rights. There were massacres led by members of the military force…. If there was an agreement between the MNC and the ministry of defence at that time (then) we enter into a dark area as it would suggest an involvement of the MNC in the murders and forced displacement in the area of Cajamarca…after that the process of purchasing of land.

However, as the response of the Ministry of Defence noted, AGA and the government have an agreement dated 2008. Nevertheless, it does not mean that the organisation’s subsidiaries did not have any relationship with the Colombian army before such date. One should bear in mind that AGA operated under the name of Kedahda since 1999 and it developed a web of subsidiaries to operate before making public its full identity. Such practice, known as beneficial ownership secrecy, aims to hide the beneficial owner allowing it to vanish and evade its liability if something goes wrong. However, in the case of AGA, it was difficult for the MNC to hide its identity because, as Utting (2005) notes, high profile brand name corporations can run but they cannot hide (2005:380).

The NGO Pax Christi (2016) in the document “Democracia vale mas que el oro”, points out that since 2002 there is a relationship between the army and AGA. The

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61 “A beneficial owner is the real person who ultimately owns, controls or benefits from a company or trust fund and the income it generates. The term is used to contrast with the legal or nominee company owners and with trustees, all of whom might be registered the legal owners of an asset without actually possessing the right to enjoy its benefits. Complex and opaque corporate structures set up across different jurisdictions, make it easy to hide the beneficial owner, especially when nominees are used in their place and when part of the structure is incorporated in a secrecy jurisdiction.” [Transparency International, c2018]
document notes that the army has a permanent presence in Cajamarca to protect the MNC’s assets and personal. Describing the military structure serving AGA in Cajamarca, the document points that it is composed by a military base with around 40 soldiers, 120 police officers and an entire battalion fully available to the company’s requests (Pax, 2016:17). When interviewed for this thesis, Rodrigo Rojas, the director of Pax Christi Colombia noted that Association contracts with the military force are problematic. They (AGA) do not pay the fees of them but they give them support such as food and other benefits to the public force.

Referring to the agreements between the MNC and the army, the Tierra Digna’s representatives pointed out that given the confidential status of the information it is difficult to obtain such agreements. Nevertheless, they have been alerted of some aspects incorporated in such agreements, for instance, (...) in the frame of the agreement there are goods to be given to the public force by the MNC and that labours of intelligence may be included in the frame of such agreements.

Impact on violence

The AGA’ decision of investing in Colombia, not simply fuelled violence in a conflict-prone area, but through state capture, the MNC has been able to obtain the Colombia government’s unconditional and unrestricted support. AGA co-opting the state has indirectly contributed to direct violence but also to reinforce structural violence as it has deployed manoeuvres to impose obstacles to the people’s participation in issues that substantially affect their fundamental rights, such as environment and land property. It has led them to be gradually excluded from the mining sector decision-making system. Furthermore, co-opting the state AGA has been able to exert tremendous pressure on different FSI to have the things done as soon as possible. Such pressure combined with the greed of individuals belonging to the government has configured a corrosive effect on the FSI.
The next section traces the processes leading to the above-mentioned effects of state capture and based on the pillars of the Ruggie principles’ framework –respect, protect and remedy- it highlights how state capture impacted some of the mentioned pillars.

**State capture discouraged the government’s duty to protect human rights**

Government using the state apparatus to impose obstacles to the civil society’s participation

In a public consultation carried out on March 26th, 2017, 97.05% of people of Cajamarca voted against mining projects. People’s decision clearly simplifies the position of the civil society with regards to the La Colosa project. Cajamarca’s public consultation was not the only one carried out in Colombia to stop mining projects.\(^62\) However, two public consultations have been central as they have opened the discussion on whether the municipalities have the right or not to restrict large scale mining projects through public consultations.

The Colombian Constitutional Court ruled that “…the territorial entities are competent to rule the use of soil and guarantee the environmental protection, even if by exercising such faculty the mining activity is banned” (Sentencia T-445, 2016). Such decision supports public consultations as valid mechanisms to decide whether to allow or not mining projects in municipalities.

However, the government rejects public consultation as a valid mechanism to make decisions on the feasibility of mining projects. Hence, the government, through the ANM and the Ministry of Mines, requested the Constitutional Court to declare null the

\(^{62}\) In July 2013, in the municipality of Piedras, Tolima, 98.8% of voters rejected mining; in December 2013, 96.01% of the voters of the municipality of Tauramena, Casanare, were against mining; in February 2017 97.28% of the voters of Cabrera, Cundinamarca, were against mining; in March 2017 Cajamarca 97.05% voted against mining and in June 2017, Cumara, Meta, 96.90% rejected mining. For June 2017, after the Constitutional Court ruling the subject, there were 44 municipalities preparing public consultations to decide the feasibility of mining projects in their territories (Caracol, 2017). On July 9th, 2017, Pijao (97.75%) and Arbelaez (98.54%) rejected mining projects. In September 2017 voters of Jesus Maria, Santander, people massively rejected mining (97.04%). There is a trend which seems will not stop unless the government interferes.
Sentence T-445 of 2016. However, the Constitutional Court rejected the government’s pretention and confirmed its position (Auto 053, 2017). The Court established that the public consultation was a valid mechanism available to people making the decisions on whether to allow or reject mining projects in their municipalities (SU 133, 2017).

Despite the Constitutional Court ruling the subject, the government is still rejecting the Court’s position. The government considers the public consultation on mining issues is a threat for the mining locomotive which may entail serious negative consequences for the economy. The Minister of Mining, the director of the Agency for the Legal Defence of the State (An agency which makes part of the government), the Minister of Environment, head of the main environmental national authority and the ANM’s director have fiercely rejected the public consultation and supported AGAs’ interest.

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63 The Minister of Mining argued that “The Cajamarca’s mining consultation has not the capacity of changing the law (...) it has not the power to be retroactive, which is to make invalid decisions already made (make invalid the mining titles already granted) this is a political decision, it has not the capability of affecting an administrative procedure which has not taken place yet (authorisation for exploitation) there is a public decision that should be implemented by authorities (....) that have powers on the soil not the subsoil (...) we have a company (AGA) who has implemented exploratory activities but who has not presented a working project yet as to measure its environmental impact (...) The State Council has been accurate in that there is not retroactive application of such decisions. We respect the people’s decision, but it has a legal procedure that should be ordinarily follow, then the environmental authority will decide whether the (mining) activity is feasible or not” (El Espectador, 2017g).

64 The Director of the agency pointed out “There would be a decision in the ballot boxes but it does not enter in force automatically until the Plan of Territorial Order is reformed (...) the decisions of the people who live in the regions should be respected so the national interest should be considered and should, among other things, prevail over the purely local interests (...) Money does not grow on trees, it must come from somewhere” (Bluradio.com, 2018).

65 The Ministry of Environment held “(...) to leave the decision on the convenience of developing such an important industry in the municipalities, from an environmental point of view, is not the most convenient route for the country” (El Tiempo, 2016d).

66 According to the director of the ANM: “In the frame of a constitutional action, the Constitutional Court is resolving to attribute a competence when which was been seek (by that who initiated the legal action) was the protection of the right of public participation, and the Court resolved to attribute a competency in the municipalities. That competency would be that of banning the mining activity”. (El Tiempo, 2016d).
State capture has allowed the MNC to obtain unconditional support from the Colombian government. The government has aligned all its FSI to reach a common goal which is to allow AGA to carry out La Colosa project at any cost. Similarly, by co-opting the local government, AGA has received unconditional support from the Cajamarca’s mayor. By co-opting both, the national and local governments, AGA has been able to encourage the government to leave the public consultation without effect and to keep its hopes in the La Colosa project alive.

Without the support of the government, the public consultation’s outcome cannot be enforced. The Accord of the Cajamarca’s Council that gives full effect to the public consultation requires the Cajamarca’s mayor to adopt the necessary measures to modify the destination of land. In addition, the Accord suggests to the Ministry of Environment to revoke the environmental licences granted to AGA and requests to the Ministry of Mines to analyse whether it may revoke the mining titles granted to AGA (Accord 003 of April 27th of 2017). However, the Accord is not compulsory as the Ministries are not obligated by any Council’s decision.

Hence, the outcome of the Cajamarca’s public consultation to be enforced requires additional administrative procedures that should be carried out by the national authorities and the Cajamarca’s mayor. It means the decision made by the people of Cajamarca through the public consultation, requires the determination of those who support the La Colosa project and have been co-opted by AGA: the mayor and the national government. In addition, in October 2017, the government decided to stop sponsoring public consultations arguing deficiency of budget. The government stated that if the municipalities wanted to carry out public consultations, they should be funded with their own economic resources (El Tiempo, 2017a). Such decision represents an enormous obstacle for public consultations taking into account that the municipalities lack of economic resources even to satisfy their basic needs.

The null action of the mining national authorities against the Court decision is a clear sample of the government’s desperation to recover plenty control over the mining sector decision-making system, as it has been overtaken by the municipalities. Since
the Constitutional Court’s sentence, the decision-making system passed from the hands of the government to those of the municipalities’ people, therefore, the power of the government as the unique authority able to determine the feasibility of large-scale mining projects has been put at risk and, therefore, the APCs’ bargaining power to negotiate public decisions in exchange of favours.

To grasp the AGA’s position, during the fieldwork I got in touch with Maria Calero, AGA Manager of Human Rights and Strategic Plans at AGA to request for an interview. However, due to the challenges faced by the company after the public consultation in Cajamarca, through a formal letter Calero, replied:

“AGAC is a company committed to sustainability and, as such, the relationship with our stakeholders, including academic institutions and students, is a priority. We applaud and appreciate the efforts of students like you ... we are sorry to inform you that at this moment we will not be able to accompany you in your thesis project because we are in a period of adjustment and coupling to the new realities of the country in juridical, social and of the new regulatory framework of the Colombian mining sector ... However, ... when our projects are in a phase of exploitation and greater stability, we hope to be able to attend your enquiries”.

Therefore, due to AGA’s negative to respond my request and in order to illustrate the position of the MNC regarding the public consultations in the mining sector, I have taken the opinion of Felipe Marquez, AGA’s country manager, from an interview conducted by media (Marquez, 2014). When Marquez was asked for the lessons learned after the public consultation, he highlights that the MNC’s main mistake was to deal with the government instead of negotiating with the community directly.

Concerning prior consultation, AGA shows itself as fully respectful of the locals’ decisions (Reuters, 2015). However, there are opinions according to which AGA’s position regarding the prior consultation is not honest at all. For instance, the director of Pax Christi notes:
(...) They (AGA) do not want to consider the will of people and they prefer to use force or undue influence to achieve their commitments.

The representative of Tierra Digna notes:

(...) through a marketing strategy, the MNC has tried to show that they (AGA) are affected by the social circumstances surrounding the La Colosa project. They say that respect the outcome of the public consultation while the government makes a decision about the project (...) through media and press they said that the society is also negatively affected by the decision of stopping La Colosa project.

AGA is not pleased with the fact that decisions concerning the mining industry are being taken by the local authorities and communities directly as they would prefer to deal with the national government only. Therefore, in a very polite and imperceptible manner, AGA is still trying to coordinate mining decisions with the national government only instead of dealing with local authorities or communities.

Government Issuing laws fitting the MNCs’ interests and ignoring the people’s needs

The Colombian Mining Code establishes that the local authorities cannot ban, permanent or temporary, mining projects in their territories 67. The purpose of such restriction is to concentrate such power in the central government only (Pax, 2016). This is not negative itself. Foreign investors prefer national control over mining issues to deal with the central government only and avoid the transactional costs of dealing with local authorities. Therefore, instead of dealing with local authorities they try to do it with the national government directly as it is deemed that the national government has more economic and technical capabilities and it is the one who rules the mining sector, fixes taxes and controls imports and exports (Southalan, 2012:97).

67 Law 685 of 2001, article 37.
However, in 2013 the habitants of Piedras, Tolima, decided to make use of their right of calling public a public consultation\(^68\) to decide whether to reject or not a mining project. The government rejected such decision after considering it would negatively impact the smooth running of the mining locomotive. Hence, the government issued a decree (Decree 934 of 2013) to explicitly ban mayors and councils to establish zones in which mining was not allowed. It would be considered the first government’s attempt to block the public consultation on mining issues.

However, the institution who represents the interests of the local authorities -The National Federation of Municipalities- demanded the decree before the Constitutional Court for considering it was against the law. The Constitutional Court considered that decree 934 of 2013 was against the Colombian Constitution because it was overlooking the constitutional principle of the autonomy of local authorities. The Constitutional Court ruled that local authorities should be consulted by the national governments before making a decision related to mining exploration or exploitation in their territories (Sentencia C-123,2014).

Simultaneously, the State Council, the Colombian main judiciary authority on administrative matters, issued a decision suspending the effects of the government’s decree (Auto 11001-03-26-000-2014-00156-00). Referring to the State Council decision, the National Mining Agency (ANM) considered that the effect of such suspension was from the moment the decision was made by the Council, therefore, the decree had plenty effects from the date it was issued up to the moment it was suspended.\(^69\)

\(^68\) The public consultation is one of the mechanisms of participation contemplated by the Colombian Political Constitution to guarantee the exercise of political power by citizens. The Colombia law (Law 134 of 1994) establishes that a public consultation consists in a question of a general nature on a matter of national, departmental, municipal, district or local importance, that is submitted by the President of the Republic, the governor or the mayor, according to the case, to the consideration of the people so that it formally pronounces about it.

\(^69\) Radicado ANM 20161200336811
Moving forward the government, in another attempt to limit the rights of local authorities, issued the Decree 2691 of 2014. This decree pretended to make compulsory for local authorities to seek precautionary measures before the Ministry of Mines based on technical studies supporting and demonstrating that the community was being affected by the mining project.

Referring to that decree, Pax Christi notes that it aimed to restrict the participation of local authorities on mining matters taking into account the lack of economic resources of local authorities to hire experts to make environmental studies (Pax, 2016:33). In addition, Pax highlights that the requirement of presenting the requested documents before the Ministry of Mines aimed to allow the government to have plenty discretion to decide whether the study carried out by the local authorities was good enough as to grant protection to the community, which pretended to make stronger the power of the mining sector on environmental matters (Pax, 2016:33).

Moreover, the Decree 2691 of 2014 stated, “If appropriate, the Ministry of Mines and Energy may (...) consult the companies that have an interest in the area or the mining guild, regarding the suitability of the projects that are intended to be developed, in relation to the measures that have been requested by the territorial entities, which will be taken in account to make the decision” (Art. 7). In sum, according to the decree, the Ministry of Mines is the only one holding the power to decide whether or not to grant precautionary measures and if it has any doubt, it would ask the MNCs their opinion about the locals’ requests before making a decision.

The mentioned decree clearly shows that the government is, on the one hand, setting obstacles to the local communities while, on the other hand, it allows private companies and the mining guilds to assess whether the locals’ concerns regarding the mining project are valid or not as to, for instance, decide to suspend their own project.

It means that they may assess if their own wrongdoings are severe enough to be punished. Fortunately, the State Council decided to suspend the effects of that Decree for considering it aimed to allow the government to make decisions without consulting
the local authorities which were against the constitutional principle of autonomy of local authorities. This complex legal debate is still taking place due to the lack of a clear mining policy established by the government.

Disruption of peace stability

The Colombian government’s democratic security policy paved the way for MNCs’ large-scale mining projects. Support of the army allowed MNCs to enter inaccessible areas where it would have been impossible for any MNC to enter because of the presence of illegal groups. Hence, the democratic security policy played a central role allowing Kedahda to initiate greenfield exploration in areas where the presence of guerrilla rebels was robust.

However, incidents of violence involving the army and civil society dramatically increased. Referring to the situation in Cajamarca, the British Historian Mark Curtis (The Guardian, 2007) notes … *The army is engaged in a campaign of the murder of trade union and community leaders. Although there is no evidence of AGA complicity, it is the beneficiary of this onslaught, designed to force people off their land to make way for mining.* The next section explores the relationship between the rise of violence in Cajamarca and the operations carried out by AGA-Kedahda in Colombia, that is from 1999 to nowadays.

During the implementation of the democratic security policy, there were several incidents of violence against the civil society which has directly benefited the operations of AGA. Ximena Gonzalez, a representative of Tierra Digna who has supported Cajamarca’s civil society and followed up La Colosa project for many years, describes the process through which Kedahda-AGA has acquired land in the Department of Tolima:

*At the first instance, there were private lands. Wasted lands, of substantial extension, were acquired by the company despite they been lands which cannot be acquired in regular circumstances. There is a link between the massive*
forced displacement and the desire of people to sell their land for a low price. There is not a clear link between the forced displacement and the violence in the region but at least the MNC has benefited by such incident.

Forced displacement has guarantee AGA’s access to the land and systematic murders committed by members of the army have intimidated detractors of AGA, allowing the MNC to run its business smoothly. Detractors of AGA have been targeted by members of the army who argue they are left-wing rebels. On August 2003, there was massive detention of farmers. Fifty-eight people, among them the priest of Cajamarca and the left-wing candidate for mayor of the municipality, were arrested without reason.

A few months later, five residents of the Anaime municipality were murdered by members of the military force who posed as paramilitaries to perpetrate the crime. Camilo Pulido, an artisanal miner, was one of the victims. On November 2010, a criminal judge of Bogotá sentenced the militaries involved in the incident to prison. The army members appealed the decision claiming that the people murdered were guerrilla rebels. Such claim was rejected and the decision was confirmed on October 2011 by the Tribunal of Bogota who ordered the government’s public apology for the crimes committed by the army.

In 2006 Alejandro Chacon, a local mining leader, was murdered. Chacon was killed by members of the army who claimed he was a guerrilla rebel (Satterlee, 2008). Soraya Gutierrez, a member of the CAJAR, noted that this is the result of a war context, a context which is a consequence of the application of the democratic security policy of the national government (...) The civil population is pointed out as guerrilla’s collaborators (Contravia, min 12:37-13:21, 2004).

In 2013, Cesar Garcia, a local leader who was against La Colosa project, was murdered. Garcia was the president of the Communal Action Board of the village of Cajón La Leona and was involved in the campaign “Si a la vida no a la mina” (yes to

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70 Sentencia 73001 3107 001 2007 00235 04. Tribunal Superior del Distrito Judicial de Bogotá, Sala de Decisión Penal, October 26th, 2010.
the life no to the mine). Garcia was known by everybody in Cajamarca as the main detractor of La Colosa and he had the power to meet more than 1500 people in parades against the company (El Espectador, 2013b). After his murder people against La Colosa were scared of making explicit their position because retaliations of criminal gangs were highly probable.

When being asked for recent incidents of violence that have taken place in Cajamarca, in which AGA would have a direct or indirect relation, the representative of Tierra Digna pointed out:

(...) four people have been killed in strange circumstance (...) there is a case which is not a murder, but the criminal investigation started as a suicide incident. There is an investigation on course because threats, by phone or mail and criminal actions have been established. One of the people was Cesar Garcia, a community leader who was murdered in Cajamarca in strange circumstances. The criminal investigation outcome was a couple of people in jail...However, the attorney did not enquiry whether the opposition of the victims to the La Colosa project was linked to the murders. The processes were not accompanied by lawyers and there was not a technical defence allowing to know the true facts surrounding the murders.

The systemic assassination of detractors of La Colosa continued. Between the years 2013 and 2014, the social leaders and land defenders Daniel Sánchez, Camilo Pinto, César García and José Ramírez, members of Cosajuca, an environmental NGO, were killed. The Ombudsman issued a risk report informing the situation of environmental defenders in Tolima and highlighting that there are threats against the life of environmentalists (Risk report 023, 2016). Referring to the Ombudsman’s report, Ximena notes:

The Ombudsman’s office has followed up what is happening in Tolima. It identified the presence of paramilitary groups. It has identified as a risk the defence of human rights. The social organisations against the project are at
high risk and the Colombian Ombudsman’s Office has encouraged protection from the state to the leaders of social organisations.

After all these incidents of violence involving members of the army Cajamarca, people’s distrust in the army. Nevertheless, MNCs operating in conflict-prone areas of the Colombian territory use to sign agreements with the army for the protection of their employees and infrastructure. Representatives of NGOs fear that La Colosa turns the municipality into a military camp through such agreements. However, disregarding such fears, the government’s main interest is to sign millionaire agreements to provide security services to the MNCs. Such agreements allow the MNCs to co-opt the Colombian army to the extent that they operate as a private military contractor. 

Targeting and stigmatising segments of the host-country’s civil society.

The combination of democratic security and mining locomotive was central to attract AGA’s investments. Therefore, people leading La Colosa project supported both, the democratic security and the mining locomotive, as they were essential component parts of the whole investment package. Consequently, La Colosa’s supporters backing strong military presence in prone to conflict areas and strategies targeting speeding up environmental licences and mining titles issuing to allow the economic exploitation of land as soon as possible.

Analysing the economic benefits of La Colosa Project, the NGO Pax Christi (2009) noted that there would substantial economic benefits for Cajamarca in the short and the long term. In the short term, the project would improve the rate of employment of Cajamarca as more than two thousand workers are required for constructing the infrastructure. Moreover, the project would also benefit the municipality in the long term thanks to the royalties the MNC would have to pay for exploitation.71 Therefore,

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71 According to the Law 756 of 2002, the royalties for this operation is 4% of mine production and 6% of alluvial gold production. The National Royalties Fund would receive 3% of the royalties, the Department of Tolima 10% and Cajamarca 87%.
to some extent, the mining project may be useful to resolve the economic problems faced by Cajamarca in the short run.

However, the report also mentions that as the project La Colosa is to be developed in a rural area where the main economic activities carried out by locals are fishing and agriculture and points out that the dramatic change of land destination would have a negative social and environmental impact (Pax, 2009). Therefore, most of the attention has been paid to the environmental implications of switching economic destination of land as the harmful consequences of mining for the environment are well known and mining projects have more negative implications for the environment than the activities carried out by local farmers and artisanal miners.

Those against La Colosa mainly reject the project because of its negative environmental impact. NGOs, experts and environmentalists have alerted locals about the negative environmental effects of the project based on the exploitation techniques AGA would employ in La Colosa and the licences it already has acquired to explore and exploit sensible areas like high wet mountains and natural forests. Opposition to mining activity has centred on the perception that large-scale mining activity will have a negative impact on the municipality’s landscape and ecosystem because there is empirical evidence that it seriously affects sources of water (Colombia Solidarity Campaign, 2013: 41-47).

AGA has systematically rejected such allegations. The MNC argues that there is a lack of technical and scientific evidence to prove such environmentalists’ claims. In addition, AGA points out that there is a disinformation campaign against the company based on lies about the real impact of mining projects (La Silla, 2017e). Therefore, according to AGA’s 2016 report, the MNC is working on diminishing what the MNC considers as the real environmental impacts of La Colosa project, making it clear that some of the environmental damages for which the opposition is blaming La Colosa may occur independently of the project being carried out (AGA, 2016).
There is a social conflict in progress which stems from an environmental discussion and it has been fed by the profound division the country is facing after the peace agreement achieved with the guerrilla rebels FARC. In the frame of the Cajamarca’s debate, on the one hand, there are those who support La Colosa, they are stigmatised as enemies of life -as if they were assassins-(La Inconquistable, 2017) and, on the other hand, there are those who reject La Colosa project who have been labelled by the former group as enemies of progress and development -an expression commonly used to refer to left-wing rebels-. Pax representative notes that not only individuals but also “NGOs are called enemies of the progress and development”.

The aggressive language employed by both parties to refer to each other is the reflection of a divided society in which human rights defenders are criminalised and treated as guerrilla rebels and those promoting investment and development are labelled as paramilitaries. Through state capture, AGA has involved itself in such social conflict as it has allowed the MNC to obtain support from the government to impose the idea that anyone against La Colosa is against development and progress. This post-cold war stigmatisation has been rooted in the Colombian society for decades, but the discussion around La Colosa has stimulated stigmatization of human rights defenders, who historically have been the target of paramilitary groups.

It is to note that since the beginning of its operations in 1999, there are clues of the army’s involvement in a strategy to repress social movements against La Colosa and eliminate social and environmental leaders. The U.S. Office on Colombia (2013), published a document in which they note that “During the mid-2000s, the entry of multinational Kedahda Resources S.A. triggered repression of social protests and extrajudicial executions... while actual gold-extraction operations have not yet begun, communities mobilizing against large-scale mining have been violently repressed by military forces aligned with corporate interests”.

According to the NGO Global Witness (2017), Colombia is the second deadliest country for activists in the world with 37 deaths in 2016, just being exceeded by Brazil (49 deaths in 2016). Describing the situation of activists in the country, Global Witness
notes: In Colombia (...) Areas previously under guerrilla control are now eyed enviously by extractive companies and paramilitaries while returning communities are attacked for reclaiming land stolen from them during half a century of conflict (Global Witness, 2017:6). The situation for social activists has not improved after the peace agreement with the FARC being signed.

According to a recent report (Cinep.org.co., 2017), between 2016 and the first semester of 2017, 101 social leaders and human rights defenders have been killed in Colombia, and one of the main causes identified by the report as one of the main features of the systematic crimes against human rights defenders was the polarisation of the national politics and the stigmatisation campaigns carried out in regions of the country, attributed to the media and the reluctance of the government to accept the existence of paramilitary groups and the involvement of the military force in such crimes (2017:13-16).

Artisans without a mining licence equal to Illegal miners

Illegal mining is a challenge for altogether, government, companies, and communities. A former employee of the Ministry of Mines notes that … the public consultation will not stop the illegal mining, from a helicopter you can see heavy machinery in territories where illegal mining is being carried out, they (illegal miners) are irresponsible and use mercury and damage the environment … they are armed actors linked to drugs that are carrying out mining.

In 2016, the Colombian Mining Association (CMA) and the Ministry of Mines and Energy (MME) highlighted that for 2015, Colombia produced and exported 1.903.386 troy ounces of gold but that only 220.000 were produced by holders of mining titles. According to the CMA, around 80% of the Colombian gold exports are illegal and it points out that illegal gold exports are a business of US$1200 million per year (La Republica, 2017). However, in an interview, the minister of mines noted that it is difficult to know accurately how much of that amount is actually illegal as such percentage may include the mining carried out by artisanal miners. The minister of
mines pointed out that for the government it is unknown from where 82% of the extracted gold comes from (Canal 1, 2017).

Hence, the main difficulty faced by the government is to trace the production and export of gold. According to the digital business magazine Portafolio (El Tiempo, 2016c), illegal groups are laundering gold through manoeuvres that employ indigenous people, Afro Colombians, and artisanal miners as the law (Decree 933 of 2013) allows them to carry out traditional mining thanks to a permit issued by the government. Nevertheless, the State Council suspended that law for considering it was against the Colombian Constitution (Consejo de Estado, 2016).

As a result of the Council of State’s decision, there is not a way for artisanal miners to obtain the permit issued by the government. Therefore, the artisanal mining activity carried out informally, which is that carried out without the government’s permit, was turned into illegal. Adding more restrictions to the activity of artisanal miners, on February 2017, the government established strict limits to the quantity of gold artisanal miners can legally exploit on an individual basis (Resolucion 40103 of 2010).

The target of the government through such measures, it is to trace gold production. The information is trace through the Unique Register for Minerals Commercialization, a tool administrated by the ANM, which aims to know accurately from where the gold comes from. Nevertheless, because of the uncertainty about the legal framework ruling artisanal mining and the limits fixed to artisanal mining, there is a high risk of artisanal miners turning into illegal miners merely for carrying out mining without a permit or surpassing the amount of gold they can exploit. It puts artisanal miners at high risk of vulnerability as they may be stigmatised as if they were criminals.

Therefore, one may say that in a perfect scenario criminal gangs performing illegal mining to fuel the war should be the common enemy of the government, MNCs and civil society, instead of the community or the legally established mining companies. The illegal groups performing mining are against life, the environment and development. Because of that reason, the US government development agency -
USAID- has focused on supporting Colombia in developing a framework for the promotion of legal mining. The programme is called “Legal Gold” and as the experimental trial was carried out in Antioquia in 2013 and 2014, the Governance of Antioquia was the first entity benefited by the USAID’s programme (El Tiempo, 2016c).

However, due to the fact that the civil society -artisanal miners, indigenous people, and afro Colombians- are used by criminal gangs to carry out their business, civil society has been placed in a grey area in which can be persecuted as criminals. Moreover, taking into account that the government’s criterion to point someone as an illegal miner is the lack of an administrative permit, an artisanal miner conducting mining without such licence would be treated as a military target merely by the fact of lacking administrative permission. If this aspect is overlooked by policymakers the forthcoming years and it is not completely regulated as soon as possible, that time in which farmers of Cajamarca were killed by the army arguing they were guerrillas would back.

The US involvement in shaping mining policies and formulating the illegal mining framework is seen problematic since such involvement may entail similar consequences than other forms of cooperation carried out in the recent past between the US and the Colombian governments jointly. For instance, the action plan is known as Plan Colombia, which in spite of being considered highly successful to fight against drugs and guerrillas, has been linked with the Colombian army scandal known as false positives (BBC News, 2016). The term “false positives” refers to the systemic assassination of civilians by the military force from 2002 to 2008, such as it happened in Cajamarca. Referring to this infamous episode, Human Rights Watch note that (…) these “false positive” killings constitute one of the worst episodes of mass atrocity in the Western Hemisphere in recent decades (HRW, 2015).

USAID programme “Oro Legal”, aims to mitigate the social and environmental damage of illegal mining carried out in Choco and Antioquia. Furthermore, it aims to support the Colombian government to legalise and formalise mining. The pilot of the
programme has been successfully carried out in Antioquia and Choco, but it aims to reach other areas of the Colombian territory. It suggests that USAID, the national government, AGA and Antioquia’s government are aligned in the strategy which is being developed against illegal mining, however, engagement of social leaders is required to tackle the problem.

Any effort of international cooperation should be aware of the fact that if there are no substitute occupations available for miners operating without a license, they would not stop carrying out illegal mining (Tschakert, 2009). However, it requires efforts from the government to guarantee access to the land for allowing farming, an aspect which may not probable where the interest of the government is focused on replacing agriculture for mining, as it is the case of Cajamarca, or to create job opportunities in new sectors of the economy, which may take longer considering that it demands the government to deploy actions it has not carried out for decades such as attracting investors or developing infrastructure.

Luis Guillermo Perez, Secretary-General of the human-rights defenders Colectivo de Abogados José Alvear Restrepo (CAJAR), notes that US involvement in shaping Colombian policies is nothing but just a mistake. Perez notes:

*There have been many resources in the Plan Colombia, that were applied to the Political War and the Ideological War ... to fight against any person that they say is contrary to the interests of US in general ... after the complaints of Alirio Uribe, a member of CAJAR who shows the US relationship with the Colombian Plan and the positive false, the US took the visa from him and his family.*

*In 40 years ... we (CAJAR) has never received money from the US. When they give money for the defense of human rights ... they are supporting military forces responsible for strategies of political and ideological wars ... make important sectors of the population enemies of them and the state. They are so badly formed that anyone who claims rights is considered as communists and*
it makes us a military target ... they have a very strong anti-communist conviction ... that has done a lot of damage to society. Community leaders continue to be murdered with complicity from the authorities. The USA protects its interests and protects its companies, said Perez.

By criminalizing illegal mining, the government instead of offering a remedy just worsen the situation of those who find in mining a mean of subsistence. Because of their illegal status, people performing mining without a license are excluded from public discussions in which mining policies are framed. To avoid this, Hilson (2016) suggests a holistic approach of the artisanal mining where the government’s involvement goes beyond the involvement of the mining authorities but also those authorities in charge of agriculture and rural development issues. Hence, artisanal mining should be viewed as a rural development issue to find out solutions to those who perform mining activities without fulfilling the requirements established by the law. In fact, Cajamarca requires the involvement of agricultural authorities because agriculture, instead of being advertised as an unattractive activity which should be replaced by mining, may offer an important alternative for the population.

**State capture encouraged an irresponsible attitude of AGA towards its responsibility to respect the human rights**

*State capture allowed AGA to consider valid and feasible to avoid business’ disruptions through measures against people’s fundamental rights.*

The measures AGA has foreseen to reduce an eventual negative impact of the La Colosa project can be classified into two sets: the measures AGA can adopt directly, “… changing mining plans to avoid such impact, by modifying mining plans and operations (…)”, and those measures which require AGA to rely on the government to be implemented, which are “(…) relocating the people to be affected to an agreed location and “(…) agreed levels of compensation for any adverse impact ongoing mining operations may continue to have upon the community” (AGA, 2011:4).
Concerning the second set of measures mentioned above, they are a clear example of how state capture has given AGA the necessary confidence to include strategies potentially disruptive of the people's human rights as feasible means to avoid disruptions of their operations. A former member of the Group of Public Actions (GAP) of the Universidad del Rosario, an academic group who supported in 2011 a legal action carried out by the civil society against AGA to stop La Colosa project (Mineducacion.gov.co, 2011), when being asked for the reasons leading the civil society to initiate a legal action against La Colosa project, noted:

(…) they feared their right to work and housing because it looms that the construction of the mine will generate displacements and they will have to leave the areas where they were usually living.

Furthermore, the interviewee notes that the community also rejected the project because:

(...) Open-pit mining ... has negative effects on the landscape. Even though there are compensation measures ... the damage can be irreparable.

Therefore, there is a high risk of relocation of people and compensation turning into elements disrupting peace stability. AGA’s intentions of relocating people overlook the fact that farmers of Cajamarca have been victims of forced displacement for decades and they do not want to suffer again the pain of leaving their properties. Furthermore, AGA’s strategy of using compensation may turn compensation into a mechanism to exert pressure on people who systematically have rejected the company’s economic offers in exchange for giving concessions.

In 2014, the country manager of AGA noted that “(...) they (the people) did not want anything from the company” (Marquez, 2014). Nowadays, the position of people towards the project has not substantially changed. Therefore, there is no apparent reason to believe that suddenly people will accept relocation or compensations without resistance, unless AGA forcing people to change their opinion, for instance, by
exerting economic pressure\textsuperscript{72} or treating people with legal actions or using violence through dead-squads playing the role of APCs.

\textit{State capture allowed AGA to encourage the adoption of a mining model that excludes civil society.}

The government’s agencies shaped the mining legal framework mainly based on the views of mining corporations as if they were simply agents of the mining companies. The role of the government as an agent can be identified in Colombia by analysing the way in which the government and the mining companies develop their relationships.

As it was mentioned above, the idea of creating a governmental entity exclusively to deal with the corporations’ requests is coherent to the World Bank’s approach towards the mining sector. The organisation in charge of designing such an entity was McKinsey & Company, the worldwide management consulting firm, who according to its portfolio, “\textit{... serve two-thirds of the world’s top 25 mining companies, across all regions and functions – helping them navigate...}” (McKinsey, c2018). Therefore, the way in which the sector has been shaped is one in which the FSI dealing with mining issues should help mining companies to navigate smoothly, which in the Colombian context means to simplify and reduce the administrative burdensome for acquiring land and obtaining mining titles and environmental licences.

It was believed that through the creation of the ANM, the Ministry of Mines would have a technical branch in charge of dealing with mining issues (Anm.gov.co, n.d. a). However, the appointment of Habib as the head of the ANM was not coherent with such a view. Representatives of the private sector -such as the CMA- were happy with the postulation of Habib as they were looking for someone focused on speeding the process of titling mines disregarding its lack of expertise and/or experience in the mining sector. The president of the CMA held “\textit{We need someone with the capability}

\textsuperscript{72} According to AGA, because of the project being suspended, around 400 people will be fired and investment in the area will be reduced to its minimum expression while the government makes a decision (Semana Sostenible, 2017).
of making decisions quickly, without so many legal formalities. We, the entrepreneurs, are willing to contribute our bit to make it possible” (Mineros.com.co, 2015)

Therefore, the ANM prioritises on granting concessions and issuing mining titles speedily. It affects the impartiality of the ANM when making public decisions as the government agency’s efforts aim to make it easier for mining companies doing business. Such perception is reinforced by the fact that, before being appointed by the government, the head of the ANM used to work at the President’s office as the responsible for speeding up the projects classified as National Interest Strategic Projects. Of course, “La Colosa” project was included among such projects.

The ANM is in charge of supporting the formulation of a sustainable mining policy - from an economic, social and environmental perspectives- and bringing support to the holders of mining titles based on such policy (Decree 4134, 2011, Art. 4, functions 5 and 10). Therefore, it has the potential to shape the sector. Nevertheless, there is not a clearly established mining policy yet and despite the ANM’s multiple functions, since it was created most of its efforts have aimed to keep the smooth running of the companies’ operations and spread the idea that a truly responsible mining industry is the solution to most of the socio-economic problems faced by the municipalities where most of the large-scale mining projects have been approved.

Utting (2002) notes that social change may response to pressures exerted from above as the elites and the capitalist organisations to which they belong exhibit a great capability to handle social opposition and deal with the crisis by creating institutions and supporting reforms of the regulation through new laws or the strengthening of the existent ones. In such a scenario, the government merely acts as an agent of the companies as the whole mining system has been conceived from its own roots as one aiming to satisfy the corporations’ needs efficiently and effectively.

That point of view fits mining law model recommended by the World Bank and adopted by most of the Latin American countries during the eighties and nineties, which is one model that response to the needs of the investor in which the role of the
state is merely regulatory, the government acts as an administrator of the mineral rights only and few limits and restrictions are imposed to the mining companies’ operations (Bastida, 2013:120, 121).

Such old fashion approach of the Colombian mining model overlooks the realities taking place on the ground, where there are two different tensions, as they were identified in terms of Williams (2012), one between “sovereign control and individual initiative” and other between “national law and the local nature and impacts of mining”. These tensions cannot be overlooked because depending on the state’s aspirations, instead of the companies’ needs, the way in which such tensions evolve over time will determine which mining model fits the needs of the state better.

Therefore, as Williams (2005) notes, the regulation model is not static but one which operates like a pendulum swinging over time. The movement of the pendulum responses to different circumstances, such as values, beliefs, economic and social conditions, etc. Changes of such circumstances led to reforms aiming to correct those defects that make difficult for the country to achieve its goals and objectives (Williams, 2005). An example of this is Bolivia, where the former mining regulation model was focused on individual initiative and national law while the current model is focused on sovereign control and the local nature and impacts of mining (Williams, 2012:419 and 420), which response to the realities of the Bolivian society, one in which indigenous population is the majority, much better.

Hence, reforming the mining model is not as undesirable as the mining companies, AGA included (El Espectador, 2017h), suggest. However, mining companies exert pressure on the government’s authorities not only to promote but also to avoid substantial changes in the mining model. They claim uncertainty of the Colombian legal mining framework as the central argument against any amendment or replacement of rules and laws affecting their interests (Caracol Radio, 2017a), ignoring that reforms are required in order to accurately regulate the socio-economic relations between the different actors involved in the mining sector.
The movement of the pendulum to one side or another may be influenced by different actors, i.e. mining companies, civil society, NGOs, politicians, etc. However, in countries where the government acts as a simple agent of the mining companies, state capture arises as a way through which the MNCs can influence the way in which the mentioned tensions evolve in order to exclude the opinions of other actors and maintain the mining model static, at an equilibrium point where the captor’s interests are plenty satisfied disregarding the social changes required.

**Analysis and Conclusions**

This chapter has traced the mechanisms deployed by AGA to influence the public decision-making system in order to develop the La Colosa project. It was identified that the MNC has strategically hired people, shaped institutions, supported politicians, and created CSR programmes to capture the state. Nevertheless, such strategy has not been as successful as it has been in other contexts where the AGA operates because people in Cajamarca has unanimously rejected La Colosa project, making it difficult to the government to play the role of enabler easily.

Thanks to its strong position in the Colombian mining sector, AGA has obtained the unrestricted support of the Colombian government since its arrival. The Colombian government has led initiatives aiming to shape institutions and rules to benefit the MNC. In addition, AGA has systematically made use of patronage and revolving door to appoint former top officers at top positions of the MNC, a strategy which has been useful to build bridges between the MNC and the public office to influence the public decision system.

It may be considered that AGA has not been involved in the strategies adopted during the Uribe’s government to attract FDIs and that it simply has been benefited from such strategies. However, after analysing the behaviour of AGA, one may realise that the MNC would have been directly involved in the implementation and continuity of such strategies. AGA has penetrated public institutions through the sponsorship of
politicians and the army. AGA has openly sponsored politicians sympathetic with La Colosa project but also with the “mining locomotive” as it was conceived during Uribe’s government.

Moreover, through agreements with the army AGA has directly sponsored the military force, developing a subordination relationship in which the army was placed in a position where they have to serve to the MNC’s interests. Similarly, AGA has employed a well-structured CSR strategy to make alliances with key actors to legitimate and validate its mining projects instead of improving the people’s welfare as it is deemed by the international standards to which the company adheres.

Furthermore, AGA has systematically followed a recruiting policy based on hiring former employees of the government. The evidence suggests that professional experience and expertise have not been the unique criterions considered by AGA when making the decision of hiring people to occupy high positions within the company. AGA has made use of the revolving door to hire people who have specific experience in implementing policies and strategies the national government has implemented to satisfy the MNC’s private interests. Revolving door appears to guarantee AGA to be involved in the decision-making process and to coordinate views and positions with the national government.

Nevertheless, for the moment AGA’s strategy has not flourished thanks to the Cajamarca’s public consultation. It has arisen as an obstacle for AGA and the government to coordinate the smooth running of the mechanisms they have designed together to achieve their common target. Hence, such a democratic mechanism of participation has been a stick in the wheel for AGA’s aspiration of carrying out La Colosa project but also for the government’s intention of excluding the population of the mining debate. However, generally speaking, the main individuals affected by public consultations have been the APCs, individuals within the government having the power to make decisions in the mining sector, because as a consequence of the public consultation their bargaining power has decreased.
If the feasibility of large-scale projects depends on the municipalities instead of the government, and the permissions of the government to make exploration and exploitation of natural resources turn into secondary instruments as previous approval of municipalities becomes compulsory, therefore, the captor’s interests would be in hands of the municipality’s people and their authorities rather than the central government and its ministers and agencies.

Consequently, the MNC will try to co-opt the people’s decisions. It means to distribute jobs, money, businesses or any other form of power the captor is willing to exchange with the majority of the population of an entire municipality, making more difficult to the captor to reach its target. That is not impossible for an MNC in a country where corruption is endemic but requires vast amounts of money and complex social networks, as the PREC case study has shown. However, this task could be more difficult than directly dealing with few individuals concentrating the power and making decisions from their offices at few state agencies as nowadays happens.

It would be wrong to blame AGA exclusively for the dysfunctional and corrosive Colombian mining sector. AGA has come into the scene just to reinforce dynamics other MNCs operating in the Colombian mining industry have already carried out to capture the state. Therefore, on the one hand, through state capture, AGA has been invited by the government to influence how the mining policies should be shaped to allow the MNC to achieve its private goals, just as it has happened with other MNCs before. Nevertheless, on the other hand, AGA’s has seriously putted at risk the “good mining” reputation they argue to have around the world, because when a corporation is co-opting a state it also is co-opting that state’s illness and the state captured by AGA, Colombia, is one fully contaminated by symptoms of violence many MNCs have contributed with.

Figure 5 describes the AGA case study’s event-event-history map. It briefly describes nineteen milestones and based on the strategies and mechanisms employed by the MNC through the period analysed in the case study it highlights the three levels of the state capture process I have mentioned in chapter two. There are three critical years in
which AGA massively employed strategies aiming to capture the state, 2006, 2007 and 2013.

It is important to note that between 2006 and 2007 AGA officially made the decision of entering Colombia as it was working in the shadows with another name, Kedadha. Therefore, the company triggered a full strategy to enter Cajamarca with the support of local political actors, top officers of FSI and the army. The strategy was based on mechanisms such as the revolving door, sponsoring political campaigns at the regional level and signing agreements with the army.

The other year highlighted in the graph is the year 2013. During that year AGA was desperate to initiate with the exploitation phase in Cajamarca as it had expended lots of money during the phase of exploration without obtaining economic returns. The major obstacle to achieving such a goal was Cajamarca’s public consultation. The government support was necessary to overcome such an obstacle. Therefore, the company employed lobbying and took advantage of its links with top officers of the government to obtain the support of the state’s mining agencies.

Different from CB and PREC, AGA still operating in Colombia. However, whether AGA will be able or not to carry out the La Colosa project is uncertain yet. Nowadays the company is focused on its operations in Antioquia. However, it still waiting for an opportunity to initiate the phase of exploitation in Cajamarca as it is the company’s most important project. It already has established the required conditions to do it but the people’s rejection of the project still being a huge obstacle for the company.
Figure 5: AGA’s Event-event-history map

- **Beginning of AGA’s exploration in Cajamarca**
- **AGA was carrying out greenfield exploration through a company called Kedahda.**
- **AGA massively supported Cajamarca’s political campaigns**
- **Mining titles over around eight million hectares were granted to AGA**
- **Revolving door is massively employed as an strategy to enhance AGA’s links with political actors**
- **There were several massacres involving members of the army in the AGA’s Influence area**
- **Local leaders against the La Colosa project were killed.**
- **Agreements between AGA and the Army**
- **Massive support from the government through laws**
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<tr>
<th>Event-event-history map</th>
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<tr>
<td>1. AGA takes the risk of entering unexplored Colombian territories and it decided to</td>
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<td>secretly explore the Cajamarca area from 1999 to 2003.</td>
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<td>2. A new national law ruling mining (The Mining Code) is issued.</td>
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<td>3. A military base is established in the AGA’s influence area.</td>
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<td>4. There is massive detention of farmers. Fifty-eight people, among them the priest</td>
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<td>of Cajamarca and the left-wing candidate for mayor of the municipality, were arrested</td>
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<td>without reason.</td>
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<td>5. A local mining leader is murdered</td>
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<td>6. Kedahda discovered a huge deposit of gold in Cajamarca</td>
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<td>7. Uribe discloses that AGA is operating in Colombia and that the company has found</td>
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<td>a huge deposit of gold in Cajamarca</td>
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<td>8. Agreement between AGA and the Colombian Army</td>
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<td>9. AGA has developed 24 social projects in Cajamarca. These projects covered a wide</td>
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<td>range of activities such as house painting, improvement of health services, purchasing</td>
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<td>of an ambulance, sponsoring of football teams and cultural activities, the pavement</td>
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<td>of roads and trips to the countryside</td>
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<td>10. The Colombian government, funded by the World Bank, signed an agreement with the</td>
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<td>global firm McKinsey &amp; Company to reform the administrative structure of the</td>
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<td>Colombian mining sector.</td>
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<td>11. Pinata of mining titles</td>
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<td>12. Call for public consultation</td>
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<td>13. Four members of an NGO against the La Colosa were murdered</td>
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<td>14. The government issued a decree (Decree 934 of 2013) to prohibit mayors and councils</td>
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<td>to establish zones in which mining was not allowed.</td>
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<td>15. The Constitutional Court suspended the decree as it considered it was against the</td>
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<td>autonomy of local authorities.</td>
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<td>16. The government and USAID initiate the campaign “Legal Gold”. This initiative is</td>
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<td>strongly criticized because it targets artisanal miners.</td>
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<td>17. The government issued the Decree 2691 of 2014. This decree pretended to make</td>
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<td>compulsory for local authorities to seek precautionary measures before the Ministry</td>
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<td>of Mines based on technical studies supporting and demonstrating that the community</td>
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<td>was being affected by the mining project.</td>
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<td>18. Election of Cajamarca’s mayor.</td>
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<td>19. The outcome of Cajamarca’s public consultation on large-scale mining: People are</td>
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<td>against the La Colosa project.</td>
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Chapter 7: Conclusions

Liberal models of peacebuilding claim that MNCs necessarily play a central role in conflict alleviation by supporting the external long-term governance agenda (Richmond, 2006). These liberal models encourage governments of conflict-prone countries to work for hand in hand with MNCs for conflict prevention and peacebuilding. In contrast to this, there has been a plethora of work on how MNCs’ involvement in conflict-prone areas has had a detrimental effect on conflict alleviation attempts or processes. A large body of work has criticized the assumptions that underpin the liberal models of peace and argued that MNCs can obstruct peacebuilding and even contribute to violence. However, such work mainly focuses on the involvement of MNCs in incidents of direct violence, overlooking how MNCs configure structures of violence and feed existent ones by penetrating the roots of the socio-political structure to unduly influence the public decision-making system and obtain private gains.

This thesis traces how MNCs influence government’s decision-making systems with potentially negative consequences for conflict alleviation and peacebuilding. It has looked at the mechanisms and processes involved in MNC state capture. It was then connected these mechanisms and processes of state capture to how these can be detrimental to overcoming violent conflict or peacebuilding and even contribute to violent conflict systems.

This thesis has addressed the following research questions:

(1) What are the mechanisms and processes by which influence and capture of the state by MNCs may occur?

(2) What is the impact of MNCs acting as captors on violent conflict?
To answer these questions, the chapter two of this thesis has developed a theoretical framework which, based on a sound definition of state capture, elucidates the main actors involved in the state capture process and the mechanisms through which MNCs may capture the state, drawing special attention to some legal mechanisms that MNCs may employ to configure the possible pathways through which state capture may occur. In addition, chapter two highlighted factors encouraging MNCs to play the role of captor in societies in which systems of violence are entrenched, and finally, it established a criterion to identify the impact of state capture on conflict based on the UNGP’s framework, respect, protect, and remedy.

Following such theoretical framework, through chapters three to five this thesis has analysed three episodes (embedded sub-cases or sub-units of analysis) within the Colombian single-case study (holistic case) to demonstrate that MNCs -directly and indirectly- has made systematic and strategic use of different means to play the role of captors in the Colombian context. Furthermore, the data obtained from different sources and the information obtained from the interviews conducted during the fieldwork have been useful to trace the process through which MNCs have played the role of captor, contributing directly to the country’s systems of violence, but also indirectly by worsened some symptoms of structural violence, such as the deprivation of people’s socio-political and environmental rights, a phenomenon that has been almost completely ignored by scholars.

Finally, based on the findings of my research, this chapter answers the research questions, summarises key points supporting the answers and makes some reflections about relevant issues in order to provide some recommendations to address state capture.
What are the mechanisms and processes by which influence and capture of the state by MNCs may occur?

This thesis has examined the mechanisms through which MNCs capture the state. Through case analysis, this thesis has traced these to the process of building socio-political networks with governments and individuals of the home-country and the conflict-prone country where they operate. Process tracing has been used to follow up how such a process has been carried out. It allowed me to track specific processes in which the MNCs’ target was to influence governance with the purpose of satisfying their economic interests and/or the interests of their business partners.

This thesis has analysed the process through which state capture happens, and it has identified that MNCs-state’s governance alliances provide MNCs with relevant sources of political power, which added to their influence and economic power configures the MNCs’ tool-kit to manipulate the public decision-making system in their own interest. Therefore, the liberal model of peace’s approach towards MNCs seems to overlook that MNCs’ political influence and economic power enable them to capture the state.

The process of MNCs’ engagement with governments and individuals is carried out through different mechanisms provided by free and globalised markets such as FTAs, Bilateral Investment Agreements, FDI policies, international contracts, socio-political engagement, CSR programmes, outsourcing agreements, etc. These mechanisms are developed for the expansion of the MNCs’ business globally and they are employed by MNCs as a component part of their entry strategy to get in foreign markets. Despite them being perceived by civil society as aggressive and/or disrupting of peace and stability, these mechanisms are a valid expression of liberal policies, therefore, MNCs are completely entitled to rely on them to successfully doing business abroad.
However, in Colombia, the combination between the context of armed conflict and MNCs’ intrinsic and extrinsic features, has given MNCs the possibility to divert the purpose of these mechanisms and make use of them as unscrupulous mechanisms to create advantageous conditions at the expenses of the civil society. It has been the case of the three MNCs approached in this thesis: PREC, AGA, and CB.

They have deployed many of these mechanisms in such a way that they have been used unfairly against individuals, groups of people and communities, and have been turned into suitable mechanisms to build a bridge between the MNCs and the public office to influence the public decision-making system. In other words, such mechanisms were useful for the MNCs to configure the links, networks, and webs required to play the role of captor and to enhance its relationship with the government and/or domestic actors enjoying some degree of political influence, a compulsory step towards state capture. The following examples support this assertion:

In the case of CB, it is relevant to mention its strategy of including abusive clauses in their commercial agreements. It was employed by the MNC to avoid its suppliers to make commercial agreements with local competitors. Similarly, the MNC’s strategy of borrowing money to local banana traders, which guaranteed to avoid disruption of the production levels, but also created a debtor-creditor relationship with local farmers and landlords to avoid them turning into competitors and to assurance the subordination of the local entrepreneurs.

Despite the abusive clauses included in such agreements, it is relevant to note that CB only partnered with people holding political power, wealthy local families linked with politicians who were capable to influence the public decision-making system to benefit their private interests and the MNC’s interests of course. Furthermore, only local powerful people were entitled to sign supply agreements with the MNC and to obtain credits from them. Hence, rather than victims of CB’s agreements, the MNC’s partners were a small segment of privileged people who were able to make their fortune thanks
to the MNC. People involved in the banana industry but lacking political power were just farmers working for CB’s local partners under unfair terms with no chances of doing business directly with the MNC.

Concerning AGA, it is relevant to mention the MNC’s CSR programme aiming to develop agricultural projects. It was effective to co-opt a segment of farmers who were rejecting the La Colosa project, and it also allowed the MNC to make alliances with key actors to legitimate and validate its mining projects. Concerning PREC, it is relevant to mention the MNC’s outsourcing strategy. It allowed the MNC to hire labour force under unfair terms through local suppliers, domestic companies owned by families of powerful politicians, allowing the MNC to evade employees and labour unions’ requests.

Another example is the PREC’s joint venture agreement with Ecopetrol, which granted a monopoly for oil exploration and production in the most productive region of the country and conceded commercial advantages which could not be an object of public scrutiny as the terms of the agreement were confidential. In addition, such agreement provided a passport to get unrestricted access to top authorities of the government at local and national levels.

As the case studies have demonstrated, and concerning the mechanisms provided by the free market, it has been the way in which such mechanisms have been deployed by the captor to influence public-decisions what made them relevant in terms of state capture. Hence, harmless mechanisms like commercial contracts ordinarily employed by corporations to achieve a competitive advantage in the market (i.e. to reduce operational costs), were employed by the MNCs to create strong ties with domestic actors who could play the role of alternative power centres (APCs) whenever it was required to allow MNCs to influence the public decision-making system in their private benefit.

The three MNCs approached in this thesis meticulously made the decision of partnering with individuals enjoying the potential to turn into APCs. Moreover, even
if it was not their intention, such partnerships were useful to build a bridge between the MNCs and the public office, making it easier for them to have access to the public office and communicate their requests to the government whenever they wanted. Hence, these mechanisms facilitated informal communication channels with the public office, a key element of state capture.

In addition to these mechanisms, the MNCs approached also employed a set of mechanisms that stem from the will of the host-country’s government of bringing FDI to the country. The desire of the host-country’s government of attracting MNCs pushed it to adopt aggressive strategies which were supported by the government of the MNCs’ home-country and foreign politicians who encourage the host-country’s government to establish favourable conditions to the MNCs’ operations.

As it was showed in the case analysis, bilateral investment treaties (BITs), free trade agreements (FTA) and FDI campaigns played a central role in providing new sources of power to allow MNCs to influence the decisions of the host country's government through diplomacy. As the case study showed, these mechanisms -BITs, FTA and FDI campaigns- promote international scenarios involving foreign politicians who encourage the host-country’s governments to engage with MNCs in ambitious investment projects. In such scenarios, on the one hand, foreign politicians acting on behalf of the MNCs encourage the host-country’s government to adopt measures aiming to overcome the difficulties that MNCs may face when conducting business operations in its country and, on the other hand, due to the difficult task of attracting FDI during wartime, the host-country’s government makes vast concessions and commits to adopting any possible measure aiming to diminish as much as possible the negative consequences of war. Mechanisms at this level transcend international frontiers.

Transboundary power of MNCs allowed them to obtain support from their home countries’ governments. These governments could exert pressure on the host-country’s government on behalf of the MNCs through diplomatic means. For instance, these
scenarios were crucial to close CB, AGA and PREC to the Colombian public office as they meet foreign politicians, representatives of the home country's governments, top representatives of MNCs, and top officers of the host-country’s government, to shape the terms under which businesses were going to be carried out. As the CB and PREC case studies demonstrate, in such contexts the MNC used to be supported by top representatives of their home countries’ government and powerful politicians who advocated for the MNCs’ best interests. Similarly, the CB case study shows that thanks to the support of American senators, CB could exert pressure on Colombia’s foreign trade policy during the WTO dispute.

Once the MNCs have built strong ties with potential enablers in the host and home countries, they reached a position where they could deploy mechanisms to go even further and effectively influence the public decision-making system to obtain private gains. Such mechanisms to be successfully triggered by the captor required a close relationship between the MNC and individuals enjoying political power in the host country. This was not difficult because as the case studies showed when the MNCs made the decision of entry to the host-country they partnered with individuals with political influence in the host-country, therefore, a mutually beneficial relationship between the MNCs and such individuals already existed.

However, such a mutually beneficial relationship itself was not enough to capture the state as it aimed to satisfy their economic interests only. Therefore, to capture the state the MNCs turned these private interests into public interests to put them on the national agenda and configure a consortium between them and the government. It guaranteed a high commitment to the public office in trying to achieve their common goals. To succeed, the MNC playing the role of captor and the enablers aligned the MNC’s interests and the government interests. In other words, they made the interests of the MNC the same as the state to make them compulsory to the formal state institutions (FSI). As the case studies have shown, this was neither difficult nor, at least in the context of Colombia, a big challenge for the MNCs.
The CB and PREC case studies showed that the support of the government of the MNCs’ home-country, US and Canada respectively, provided the required elements to build a shared discourse among the host-country, the home country, and the MNCs. Such shared discourse was enhanced by foreign politicians or former politicians lobbying for the MNCs, as it was the case of the Clinton Foundation in the PREC case study or the US senators in the CB case.

In addition, as the AGA and PREC cases have shown, it has been relevant also the role played by international organisations such as UNDP or USAID to align the MNCs’ interests to those of the host country. However, contrary to individuals playing the role of enablers, in the case of international organisations their involvement was not only to act on behalf of one single MNC, but they played the role of enablers of the entire sector in which they are operating, as the international organisations’ interest is not merely to align the MNCs’ interests and the government interests in exchange of private gains, but to align the interests of conflict-prone countries to the interests of MNCs to make the liberal fantasy of the liberal model of peace possible.

Once the MNCs’ discourses, one based on productivity and wealth maximization, are adopted by the government as its own, state capture happens. State capture is a strategy which allows MNCs to amalgamate their interests and the national interests in a single shared interest to create the required conditions to penetrate the state’s structure and turning their shareholders’ interest of wealth maximization into an equivalent of development and progress for the host country. In such a scenario, the MNCs’ private interests are turned into one of the state’s supreme goals.

Given the consortium MNC-host-country, MNCs get access to new mechanisms to influence the public decision-making system. These mechanisms bring MNCs to the government to the extent that they allow the MNCs to get unrestricted access to the public office. For instance, thanks to the agreements of AGA and PREC with the army, they enjoyed privileged protection from the army in exchange for payments, and thanks to the unrestricted involvement of MNCs in forums to decide public policies,
they could influence the way in which specialised public agencies were shaped as it was the case of the Colombian mining agency.

These mechanisms may be triggered directly by the MNCs, as it was the case of the agreements between the MNCs and the Colombian army, or can be triggered indirectly through APCs, as it was the case of the Convivir policy analysed in the CB case study, where illegal groups played the role of APCs to protect the assets of the MNC through violence and terror, mechanisms which the CB sponsored but never used directly.

In sum, in addition to the ordinary mechanisms available for the MNCs to guarantee the smooth running of their business projects, like joint ventures, advantageous commercial conditions and employment contracts, and the favourable trade conditions promoted and established by liberal policies, i.e. Free Trade Agreements and Bilateral Investment Agreements, etc., some other mechanisms -that usually are not available for private companies- and unethical practices -sometimes illegal practices- become part of the toolkit available to the captor.

These mechanisms are the result of combining abuse of public power by the government and the MNCs’ economic power. Bribery may be considered one of these mechanisms, but it is not as relevant as other mechanisms for two reasons. Firstly, bribery is against the law in most of the jurisdictions, therefore, if an MNC is discovered paying bribes, those individuals who are paying bribes will go to prison and the MNC will suffer sanctions and reputational damages. Secondly, bribery is a too risky mechanism to influence the public decision-making system because if it is exposed, it would spoil the entire complex process state capture entails. On the contrary, there are other unscrupulous mechanisms which are completely legal and facilitate the smooth running of the state capture process if they are skilfully deployed by the captor.

73 An example of bribes spoiling a state capture process is Odebrech. The Brazilian MNC paid US million dollars in bribes in several Latin American countries to obtain public contracts, but once it was exposed the MNC’s directives and the public authorities involved in the corruption scandal were prosecuted and most of the MNC’s operations in Latin America were stopped.
As it was said in the first chapter of this thesis, corruption is not equal to illegality. Corruption could be completely legal when unethical practices are not banned by the law or when legal practices are carried out in such a way they allow someone to abuse of their power to obtain private gains without breaking the law. Some examples of these mechanisms are the “private battalions” composed by the army but serving exclusively to the MNCs’ interests in exchange of payments; unrestricted access to policy-making scenarios; unethical recruiting practices like the revolving door to hire former public servants with access to top officers and privileged information; lobbying activities carried out by foreign and local politicians in domestic and international scenarios in exchange of donations to political campaigns; the involvement of MNCs in the host-country’s political campaigns to support specific candidates, and the use of socio-political engagement with unethical purposes or to hide wrongdoings. These mechanisms are completely legal, but they are an expression of the MNCs’ abuse of power to obtain private gains without serious repercussions.

The success of the captor depends on its ability to identify the different mechanism available, to choose which of them are the most suitable to influence the decision-making system without repercussions and to decide how they should be combined, articulated and deployed to reach its goals. In doing this, the MNCs’ managers play a central role as they follow instructions and execute orders. However, as the cases analysed showed, the consent of the headquarters is necessary to make all these decisions possible as they require to be commanded and approved by individuals at the top of the MNC. In the case of PREC and CB, such individuals were clearly identified. They were business tycoons, individuals enjoying huge economic and political power, capable to deal with top politicians and public officers directly.

Based on the case studies, the next section describes how the last set of mechanisms I have referred above -those obtaining of combining abuse of economic and political power- have operated in the ground. In the case analysis of CB, at the time it was operating in Colombia as United Fruit Company, the MNC enjoyed the first-mover advantage in the agroindustry, which allowed the MNC to enjoy the full support of the
Colombian government and shape the entire Colombian banana industry to fit its needs. Moreover, as the MNC was a symbol of the American capitalism in Latin America, United Fruit Company played the role of ambassador of the US government in Colombia, which exerted extreme pressure on the Colombian government who, based on the experience of Central American countries in which the MNC removed governments, had founded reasons to believe that any disappointment to the MNCs would negatively impact the Colombian diplomatic relations with the US.

Almost one century later, and during more than two decades, CB’s power to influence public policies was effective yet. CB was a strong supporter and sponsor of the infamous public policy known as Convivir, therefore, it was an abettor of the paramilitarism instead of a victim as the company’s representatives argued at some point. Moreover, thanks to the alignment between CB and its home country's interests, the MNCs found a source of power to set obstacles to people who were looking for effective remedies.

At the time CB was sponsoring terrorists in Colombia, on the one hand, there was the CB’s interest in avoiding its executives going to prison for crimes against humanity committed in Colombia and, on the other hand, there was the US government’s interest in avoiding US nationals being brought before foreign tribunals, named them Colombian tribunals or the ICC, for crimes against humanity. Both the US government and CB had a common interest, but as the MNC could not adopt any measure to avoid US nationals being brought before foreign courts, such measure was adopted by the US government, who exerted pressure on several countries to sign bilateral agreements to avoid US nationals being brought before foreign courts. Colombia signed one of these agreements and, consequently, the Colombian government was unable to bring US citizens for crimes committed in Colombia, a measure which directly benefited the board of directors of CB who were sponsoring paramilitary groups. One cannot say that the US government acted on behalf of CB, but it was a convenient coincidence which benefitted CB.
CB is the best example of MNCs abusing of their political connections in their home-country to influence public decisions abroad. The level of confidence of the CB’s chairman in his political connections was of such dimension that it felt confident to threat the Colombian former president Samper with measures which could only be deployed by the US government, such as to impose economic sanctions and trade barriers or to reduce the economic and military aid if his government did not cooperate with CB’s goals.

Such a level of confidence was possible thanks to CB’s political contributions. To obtain the unrestricted support of American politicians, CB, and its chairperson made significant political contributions to both US political parties, republicans, and democrats. It increased their chances to influence the government disregarding the result of the US political elections. The relevance of CB as a donor was of such dimension that if there was an adverse outcome for the MNC the contributions to the US political parties’ campaigns would be negatively impacted.

The fact that CB was an important donor of the US’s political parties was a determinant factor to obtain support from members of the US government and politicians in international and foreign scenarios. An example of this is the support CB received from both political parties during the WTO banana trade war. Such support was essential for the MNC because it could not intervene directly before the WTO nor exert diplomatic pressure on countries, like Colombia, against the US position. That support was important to avoid a negative outcome which would have affected CB’s finances but also the budget of the US’s political parties because CB was one of their main donators.

Another reward for CB’s donations to political parties was the support it received from US authorities at the time it is was being investigated for sponsoring terrorists in Colombia. While in the home-country CB was carrying out lobbying and strengthening its ties with democrats and republicans, it was simultaneously engaging in illegal transactions with left-wing and right-wing terrorists in Colombia. However, when it was negotiating a plea agreement with the Department of Justice for such
incident, CB received a favourable treatment and the identity of the members of the top management was kept in secret, which was an obstacle for the Colombian victims of paramilitarism to bring legal actions against the top managers of the company for sponsoring terrorists. It shows that the MNC has taken advantage of its strong position to influence the government of its home-country to obtain benefits to evade its responsibilities and to impose obstacles to people seeking effective remedies against the human rights violations committed by the MNC abroad.

Through these two examples, the WTO dispute and the US government protection to the identity of CB’s top managers sponsoring terrorists, CB case study shows that MNCs do not require to capture the host-country’s institutions to satisfy its needs as they can obtain more effective outcomes by supporting their home country’s politicians who can play the role of enablers to exert pressure on the host country's government to pave the way the MNC requires to influence the host-country’s decisions and manage its business without troubles.

Concerning paramilitarism, the case studies suggest that CB was not the only MNC benefited from paramilitary groups. Many other MNCs, like PREC and AGA, were also benefited by the presence of paramilitary groups in areas where they had economic interests. For instance, AGA was able to carry out gold exploration in vast areas without disruption of guerrilla because at the time it initiated operations in Colombia, the areas it was exploring were dominated by paramilitary groups, and PREC was able to develop the Campo Rubiales project after paramilitary groups expelled guerrilla forces and ruled Puerto Gaitan. The three MNCs, CB, AGA and PREC, benefit from the paramilitarism, however, different from CB, there is no evidence of PREC and AGA sponsoring dead squads.

Moreover, contrary to CB, PREC and AGA did not enjoy the first-mover advantage. However, they were pioneer foreign companies in taking the risk of entering in Colombia in wartime to carry out ambitious projects supported by enormous investments. This encouraged foreign governments to support such companies to obtain favourable conditions to carry out their projects. The PREC case analysis shows
that American politicians and the Canadian government played a central role to promote the operations of the MNC in Colombia.

The support of foreign governments and American politicians allowed PREC and AGA to penetrate the social, economic and political structures of the state, to the extent that such support was useful to encourage the host-country’s government to adopt the discourse of foreign political leaders according to which oil production was equal to development, prosperity, and progress. This strategy was useful to achieve a consensus among the MNCs, foreign politicians, and the host-country’s government that the good performance of the MNCs they were sponsoring was necessary to improve the host-country’s socio-economic conditions.

After approaching the AGA and PREC case studies, one may realise that the MNCs could have been directly involved in the implementation and continuity of policies adopted during the Uribe’s government to attract FDIs. They openly sponsored politicians sympathetic with their projects but also sympathetic with the “mining locomotive” and “democratic security” policies as they were conceived during Uribe’s government. The MNCs’ sympathy for such policies seemed to have encouraged them to implement a human resources management policy based on hiring people who were in top positions of the Uribe’s government in areas directly linked with the “democratic security” and the “mining locomotive” policies. Such practice, known as revolving door, played a central role to capture the state.

MNCs systematically employed the revolving door as a mechanism to guarantee its close relationship with the public office. Hence, the MNCs hired family members or friends of top members of the government or appointed top members of the government in top positions within the MNCs after leaving the public office, as an award for behaving gently with the MNCs at the time they were working for the government. This strategy combined with corrupt practices like clientelism and patronage were effective to guarantee the loyalty of the public servants while they were working in the public sector.
AGA and PREC case studies provide good examples of how MNCs playing the role of captors may systematically follow a recruitment policy based on hiring former top officer of the government to guarantee a fluent communication between the MNCs and the public office. Factors such as their proximity to top politicians and members of the government or their involvement in formulating and implementing key public policies like the mining locomotive or the democratic security policies are much more valuable assets for the MNCs than the candidate’s studies, professional experience or expertise. Therefore, individuals hired through revolving door have the full potential to play the role of an enabler as they are appointed to be involved in the public decision-making process and to articulate and coordinate with the government strategies and policies aiming to benefit the MNC’s interests.

The case studies have led to the conclusion that the three MNCs approached in this thesis have exhibited great ability to strategically deploy an arsenal of mechanisms, available from different sources, to configure a state capture strategy capable of influencing the public decision-making system. The next section focuses on the impact of state capture. Therefore, based on the three case studies, it approaches the main conclusions about the consequences of MNCs deploying their state capture strategy in a conflict-prone country.

*What is the impact of MNCs acting as captors on violent conflict?*

In the three case studies, the MNCs made the decision of influencing the public decision-making system to obtain private gains. Furthermore, they accepted any possible repercussion of doing it. In some cases, state capture negatively impacted the fundamental rights the government must protect, and corporations should respect to allow the civil society to achieve their potential level of realisation. In other cases, state capture represented a serious obstacle to the people’s right of having effective access to judicial and non-judicial remedies when the government has failed to protect their fundamental rights and/or the MNCs have failed to respect such rights.
Therefore, based on the three foundational principles of the UNGPs and the outcomes of state capture as they have been identified in the three case studies, the next section highlights different ways in which the MNCs’ misbehaviour throughout the state capture process has negatively impacted the State’s duty to protect the people’s human rights, the MNCs’ responsibility to respect such rights and their duty to guarantee access to judicial and non-judicial remedies.

**State capture discouraged the government’s duty to protect human rights**

This UNGPs’ fundamental principle requires states to adopt measures to protect civil society of the negative impact of MNCs’ operations on human rights. Moreover, this duty encourages the States to take effective actions aiming to prevent, punish and redress the MNCs’ abuses, and to promote the rule of law, which involves erecting a transparent and accurate legal framework to establish fair rules regulating the MNCs’ operations (UNGPs, 2011).

The case studies approached in this thesis have exposed how this pillar has been seriously impacted by state capture. State capture has (1) promoted violence and corrupt practices as it invites the government to act in detriment of the people’s fundamental rights. In addition, (2) due to the extent to which the three MNCs approached have influenced the sector of the economy in which they operate, their respective sectors -oil, gold mining and agroindustry- have been regulated through a legal framework that allows and sometimes encourages MNCs to commit systematic abuses against people. Moreover, (3) because state capture the state-agencies operate as agents of the MNCs, acting on behalf of the MNCs instead of the public interest.

(1) **State capture promotes violence and corrupt practices**

Thanks to the incompetence and/or complicity of the government, violent and corrupt practices are systemically carried out by MNCs and, therefore, socially accepted and tolerated by businesspeople who turn them into valid means of doing business with the
government’s complicity. Therefore, state capture penetrates the roots of the society to the extent that it makes people believe that such practices are normal, legal and necessary to succeed, which encourage them to copy similar strategies.

The Convivir policy is a good example of how state capture promotes legitimation of business strategies based on legal but unethical practices sponsored by the government. The CB case study shows that infamous practices like sponsoring dead-squads can be socially accepted and tolerated, but also seen by the local traders as valid means to protect their employees and assets. The CB adopted such practice as a component part of their strategy to penetrate the public decision-making system in their private benefit, cheered by the fact that it was supported by the Colombian government through the Convivir policy.

It is relevant to note that it was until the paramilitary groups were included in the US list of terrorists that CB was forced to stop sponsoring paramilitary groups. Otherwise, CB would have continued supporting dead squads as the Convivir policy was considered a completely legal and effective mechanism to protect the MNC’s workers and assets. Hence, the use of violence was considered normal and even necessary not only for CB but for many other traders doing business in the agroindustry and cattle raising. However, CB went further than any other company or entrepreneur because thanks to its enormous economic power it created stronger links with paramilitaries who considered CB as a key business partner to carry out illegal transactions.

Unethical and unscrupulous practices such as payment of bribes were considered by CB as part of doing business in Colombia, to the extent that such payments were recorded in the MNC’s accounting books by using different denominations such as “Christmas presents” to refer to bribes paid to public servants and “cost doing business in Colombia” and/or “sensible payments” to refer to private payments made to army and paramilitary groups for protection (NSA, 2011).

However, in the case studies, bribery was irrelevant when compared to other unethical but legal mechanisms employed by the MNCs to capture the state. Other mechanisms
proved to be less risky and more effective than bribery to influence the decision-making system as they were not against the law. For instance, outsourcing labour to avoid liability for the infringement of labour rights (PREC); lobbying through powerful guilds and/or foreign politicians (PREC, AGA and CB); appointing former public officers and family members of politicians in the MNCs’ top positions (AGA and PREC); sponsoring political parties and candidates in the zones where they are doing business to guarantee that the MNCs’ private agenda will be implemented disregarding the public needs (AGA, CB, and PREC); co-opting press and media to advertise their projects and avoid critics (PREC); hiring former public servants who made favours to the MNCs while they were working for the government (PREC and AGA); configuring a relation of subordination with the army, public servants and the domestic chapter of international organisations (PREC, AGA), etc.

In spite of not being contrary to the law in most western jurisdictions, the way in which the MNCs deployed such mechanisms could have had serious reputational consequences for these MNCs in other contexts. However, the fact that these mechanisms are not banned and because they are configured by unethical practices entrenched in the Colombian society, have made them suitable means to capture the state without even causing reputational damages and/or moral sanctions in Colombia.

State capture shapes sectors of the economy

According to the UNGPs (2011:4), in meeting their duty to protect, States should: 
"Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights. This is a critical aspect of state capture. In the three approached cases, state capture has negatively impacted the host-country’s business law, but also other issues that were directly related to the MNCs operations like land ownership and environmental law. Such a legal framework, instead of enabling MNCs
to respect human rights, encouraging abuse of power. The MNCs have shaped rules and the FSI in charge of ensuring the smooth running of the legal system.

Concerning AGA and PREC, their case studies have demonstrated that they have played a central role in shaping their respective sectors through the configuration and institutionalisation of patterns. The role played by AGA as a shaper of the mining sector has been remarkable. Despite La Colosa project impasse, AGA has been able to leverage its influence power partnering with other companies to successfully operate in other territories. For instance, the Gramalote gold project\textsuperscript{74}, in which AGA has partnered B2Gold, a Canadian MNC with identical interests.

The good relation of AGA with foreign and domestic companies operating in the Colombian mining sector and the alignment among their interests have allowed mining companies to work together to pressure the government to reach a common goal: to have a mining policy according to their needs. In 2014 the three mining guilds - Asomineros, Sector de la Minería a Gran Escala (AGA belonged to that guild) and Camara Colombiana de Minería- merged into one single guild, the Colombian Mining Association. Such a strategy has provided to be effective for the MNCs as it boosted their bargaining power to exert pressure on the government to shape a mining policy fitting their needs.

From their roots, these agencies have been shaped to satisfy the MNCs’ expectations by understanding the MNCs’ priorities and needs. Therefore, these agencies have undertaken a set of mechanisms which cannot be triggered by the MNCs directly, like rejecting judicial decisions against MNCs in the name of the government or formulating public policies to obtain fast-track licences and concessions. Hence, these agencies can be used by the MNCs as a bridge to reach the public office, as the MNCs’

\textsuperscript{74} Gramalote is a gold development project that is located approximately 230 kilometres (“km”) northwest of the Colombian capital of Bogota and approximately 80 km northeast of Medellin, the regional capital of the Department of Antioquia. Gramalote is a joint venture project between AngloGold Ashanti Limited (“AngloGold”) and B2Gold. AngloGold has a 51% interest and is the manager of the project, and B2Gold has a 49% interest. Retrieved from http://www.b2gold.com/projects/development/gramalote/
requests are communicated directly by them to the government, without the MNCs having to hire an expensive lobbying expert or agency as the public budget pays for such agencies.

In addition, these agencies can be used by the MNCs as a bridge to reach international agencies -like UNDP in the oil sector and USAID in the mining sector- who have the mission of supporting governments’ policies rather than MNCs’ interests. Furthermore, these agencies may play the role of enablers of the MNCs playing the role of captor because, as they are the technical branch of the government in their respective sectors, they can influence the public decision-making system on behalf of the MNCs.

In that sense, I would like to highlight the role of USAID as an enabler of MNCs’ interest concerning the Colombian mining policy. The role of the US Agency has been central to improve the Colombian mining sector. However, there is a huge problem related to the way in which USAID has orientated the discussion concerning two critical issues: “responsible mining” and “illegal mining”. Such discussion has taken place in scenarios where most of the times state agencies and mining companies are actively involved while the civil society is absent.

Consequently, the government and the mining companies unilaterally decided what responsible mining and illegal mining are, without consulting the civil society properly enough about what do they consider irresponsible mining is and the threats and dangers they would face if they are labelled as illegal miners. Unfortunately, international organisations’ mandate is to support the government’s agenda and when such an agenda has been captured by MNCs, they indirectly support the captor’s agenda.

Concerning PREC case study, it was identified that the way the MNCs did businesses influenced in a negative way the oil industry in Puerto Gaitan, to the extent that its legacy has been continued on by its former partner, Ecopetrol. According to the 6th principle of the UNGPs, States should promote respect for human rights by business enterprises with which they conduct commercial transactions (UNGPs, 2011).
However, that was not the case with Ecopetrol, the Colombian partner of PREC in Rubiales camp. When it was the partner of PREC, it played the role of enabler of many misconducts carried out by PREC during their joint operations in Puerto Gaitan, like allowing and hiding lucrative business carried out by PREC with public resources.

After PREC leaving Rubiales camp, Ecopetrol undertook hundred percent of the Canadian MNC’s operations in Puerto Gaitán, and it also continued with the legacy of abuses initiated by its former Canadian partner. According to the interviews conducted, after Ecopetrol undertaking operations in Rubiales camp, things did not change substantially as the well-established malpractices used by PREC to carry out its business in Puerto Gaitan were continued by Ecopetrol. Therefore, people in Puerto Gaitan have similar concerns as they used to have at the time PREC was operating Rubiales, for instance, persecution against social activists; poor labour conditions for workers; lack of transparency in the negotiations with local communities; the adoption of policies fitting the economic needs of the company at the expenses of the communities’ rights; etc.

Finally, concerning CB, it played a central role in configuring the banana industry from its roots. The MNC shaped not only the sector’s legal framework but the entire sector to the extent that it served to local traders as a source of inspiration for doing business in the banana zone. Moreover, it contributed to the configuration and perpetuation of local elites that played the role of enablers of the MNC’s goals for decades.

Currently not only local banana traders but traders of other sectors of the agroindustry have reinforced some practices established by CB, such as supporting right-wing politicians, making coalitions with the army, appointing former politicians in top positions for lobbying, accumulating vast extensions of land, promoting poor labour

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75 Hector Sanchez, a Puerto Gaitán social leader and environmentalist, who was victim of systemic persecutions at the time PREC was overseeing operations in Puerto Gaitán, received dead threats recently. (FIDH, 2018)
conditions, and adopting a model of development which ignores the local needs and supersedes the interests of foreign companies.

CB case study shows how the MNC’s misbehaviour is capable of establishing patterns in the industry that can be replicated by other entrepreneurs operating in the Colombian agroindustry. Moreover, CB’s legacy has also impacted the criminal world. In a joint action against organised crime carried out in 2018 by European and Colombian authorities, it was exposed an alliance between Colombian criminal gangs and a European banana trader to traffic cocaine from Urabá to Europe.\textsuperscript{76} As it was mentioned in the case analysis, CB’s banana supply channels to Europe were used at some point to traffic drugs and weapons. Nowadays the same supply channels are known as “the narcobanana route” and they still being used by foreign banana traders and Colombian criminal gangs to transport cocaine from Urabá, Colombia, to the Port of Antwerp in Belgium. Therefore, state capture not only allows to shape legal sectors of the economy but also it may have the potential of influencing illegal sectors of the host-country’s economy, and the case of CB is a representative example of this.

\textit{State capture encourages the subordination of domestic authorities.}

The subordination of the army was present in the three cases approached in this thesis. At the beginning of its operations, UFC enjoyed the unconditional backing of the Colombian government. It involved the unconditional support of the military force whenever required and the use of force as a valid means to avoid disruptions of the MNC’s operations. This was clearly demonstrated by the episode of the Bananas Massacre were UFC requested the support of the army and there was an immediate and disproportioned reaction of the military force against the UFC’s employees which caused an infamous carnage.

\textsuperscript{76} As a curiosity, the criminals agreed drug deliveries through social networks by using the password “I need some white bananas. when you send them to me?” (El Colombiano, 2018)
Later, during the nineties, CB was more than a simple sponsor of the mixture configured between the army and the paramilitary groups in the framework of the Convivir policy. The MNC played a central role in the well-functioning and continuity of the paramilitarism apparatus operating under the legal appearance of the Convivir policy. CB did not limit itself to make private payments to the terrorist as other traders did also. Thanks to its power and infrastructure, CB facilitated foreign transactions involving drugs and weapons to contribute to the enhancement of the paramilitary groups.

Contrary to CB, AGA and PREC did not require to make payments to terrorists to protect their workers and assets. The government allowed the army to make agreements with the MNCs for the protection of their goods and assets in exchange for an unknown consideration. It allowed the mentioned MNCs to develop a relation of subordination in which the military force was placed in a position where they have to serve to the MNCs’ interests in the terms settled by the agreement in exchange of sponsoring.

In the case of PREC, military camps were established within the MNC’s premises. According to the interviewees, within such camps, the army and providers of private security services jointly coordinated their operations. Moreover, some interviewees noted that members of the army were rewarded in many ways, for instance, through awards like Caribbean trips and cars. However, neither it was possible to corroborate such versions nor to know the kind of stimulus agreed in the frame of the army-PREC agreements because, according to the government, they were confidential for national security reasons. Therefore, the terms of the agreements between the MNCs and the army could not be an object of public scrutiny.

In addition, thanks to their consortium with the army, the MNCs could have been involved in the army’s decision-making processes, allowing them to participate in the military strategies carried out in the areas where they were doing business. Moreover, considering that inside the MNCs’ camps were coexisting members of the army and private security workers, full military coordination between both parties was
completely possible. This aspect represented a huge risk for peace stability because, as it was identified in the PREC case study, former members of paramilitary groups could have been working for private security companies hired by PREC, therefore, they could have access to sensitive military information to prosecute individuals and turn them into military targets.

Subordination of local authorities not only refers to the army. It refers also to the specialised state agencies like the ACM -the mining government agency- and the ANH -the oil government agency- who usually act as an agent of the MNCs to the extent that they behave as enablers of the MNCs in their respective sectors. As the case studies demonstrated, the agencies’ employees who have enabled the success of the MNCs’ business, use to be rewarded by the MNCs in top positions within their organisations. As this is a well-known practice, employees of the specialised state agencies and the Ministry of Mines act in the best interest of the MNCs expecting to be rewarded with a well-paid position as a sign of gratitude for the good services provided. Moreover, in the long term, such mechanism is much better for the captor’s interests than bribery as it allows MNCs playing the role of captor to have loyal employees who can play the role of enablers whenever it required, as they may still have powerful contacts in the public office.

**State capture encouraged an irresponsible attitude of CB towards its responsibility to respect the human rights**

Concerning this foundational principle of the UNGPs, the three MNCs approached did not respect the human rights of individuals belonging to specific groups or populations. On the contrary, they adopted mechanisms aiming to avoid social cohesion and labour rights.

Moreover, when their strategies to influence the public decision-making system impacted the human rights of the host-country’s civil society, they did not address such impact as the UNGPs suggest but, on the contrary, the MNCs did not stop and decided
to accept the possible negative consequences of their strategies as they were considered necessary to achieve their private goals.

*State capture imposes obstacles to social cohesion*

There are a broad number of definitions of social cohesion in sociology. However, the one I relied on to explain this consequence of state capture in prone conflict areas is a definition which approach social cohesion as the interaction among members of society who have a sense of belonging and willing of cooperation without coercion, through a set of attitudes, norms and behaviours aiming to improve their life expectations (Stanley, 2003; Cahn et al, 2006). I will focus on two specific manifestations of social cohesion which were specially affected by state capture: Cajamarca’s social activists involved in the AGA case study and labour unions involved in the PREC case study.

Both case studies showed that the captors deployed a considerable amount of efforts in trying to avoid social cohesion as much as possible as it represented an enormous risk to capture the state. In the case of PREC, trade unions and social leaders were considered the major risk for the MNC’s operations in Puerto Gaitan because at some point it was difficult for PREC to hide the poor labour conditions in which the employees of Rubiales were working. Therefore, the MNC deployed several strategies aiming to avoid the configuration of trade unions.

For instance, to avoid labour strikes and skip trade unions concerns, PREC outsourced the labour force from a Colombian private company who was directly responsible for the employment contracts and labour related issues. When outsourcing was not enough for PREC to avoid the negative impact of employees’ protests, another mechanism was employed by PREC to evade trade unions’ complaints. It was to force employees to drop the trade union which they were affiliated (USO) and sign an agreement in which they adhered to the labour conditions established by PREC and agreed to join another trade union (UTEN). In addition to such mechanisms, according to the interviewees, union and social leaders were persecuted by PREC through legal means.
such as legal actions against them and illegal means like intimidations and threats to their lives.

Concerning the AGA case study, social cohesion arose as one of the major obstacles for both, the MNC playing the role of captor and the government playing the role of APC or enabler. On the one hand, the public consultation, an initiative promoted by environmentalists and social activists, has been a stick in the wheel for AGA’s aspiration of carrying out La Colosa project because the rejection of the entire project substantially reduced the MNC’s chances of persuading authorities to ignore the social willingness.

On the other hand, public consultation dramatically affected the government’s chances of playing the role of APC because, since the feasibility of large scale projects depends on the previous approval of the municipalities’ inhabitants instead of the permission of the government, the government’s permission has turned into a secondary instrument. Therefore, the captor’s interests would be in hands of the municipality’s inhabitants and their authorities rather than the central government and its ministers or agencies, whose possibilities of playing the role of enablers simply vanish. In fact, the current position of AGA suggests that after the public consultation, the MNC is not interested in dealing with the government if it does not have anything worthy to offer, and therefore, people and local politicians have turned into the target they have to tackle.

Consequently, AGA deployed mechanisms to capture the state aiming the people, such as CSR programmes aiming to divide the society between those who were benefitting with the agricultural projects promoted by the MNC in the frame of CSR and those against the project. By doing this, the MNC has configured a segment of supporters of the MNC within the civil society who fiercely has rejected the opposites’ position towards the project. Concerning politics, the MNC has been focused on the local elections and, therefore, it has been successfully being involved in the configuration of the local political landscape. However, as it was said, social cohesion has been a
huge obstacle for AGA achieving its goals as the strategies it has deployed have not provided to be effective enough as the Colosa project still blocked despite its efforts.

*State capture encourages stigmatizing and targeting segments of the host-country’s population*

State capture promotes consensus between MNCs and government, a consensus of such dimension that they can set up common goals but also common enemies. Consequently, once the government have engaged with MNCs to achieve their common goal, anyone disrupting the smooth running of their business, called it environmentalist, trade union, NGO, journalist, worker, public servant, etc., will be perceived as a threat to the country’s prosperity, development, and progress, and therefore it is turned into a mutual enemy that should be removed at any cost through any available mean, even violence as it was shown in the CB case study.

At the time the Bananas Massacre happened, there was a negative perception towards workers claiming labour rights as it was considered a communist behaviour which should be avoided by the government to avoid insurrection. In the nineties, nothing changed at all. Unions were perceived by CB as an obstacle for the smooth running of their business and, therefore, union leaders were a paramilitary target.

Similarly, environmentalists against mining and oil projects have been labelled as “enemies of progress”. There have been a vast number of unfortunate declarations of public officers, at several levels of the government, referring to environmentalists against mining projects in unfortunate terms that have reinforced the idea of environmentalist equal to enemies of progress. For instance, former president Santos’ joke saying that it was easier to negotiate with terrorists than environmentalists, or the Canadian former president referring to people against extractive projects as spoilers of development and prosperity. Therefore, state capture has allowed spreading the idea that anyone against the mining or oil project is an enemy of progress to the extent that such view is shared among the public office, foreign governments, MNCs, and criminal gangs.
In addition to environmentalists, in the AGA case analysis was identified that illegal miners have been targeted as the main enemy of the mining sector, a valid conclusion the government achieved with the support of USAID, who has played and still playing a central role in shaping the Colombian mining sector and supporting MNCs’ operations in Colombia. However, the adopted approach to define who is an illegal miner is too broad, to the extent than artisanal miners without a mining licence granted by the government are included in such category and, therefore, are treated as criminals. Consequently, the voice of relevant individuals for the mining policy, like that of artisanal miners, is not being heard.

Therefore, the view of people who can be affected by the consensus between private actors and the government concerning the scope of expressions like “illegal mining” and “responsible mining”, central concepts of the Colombian mining policy, is ignored. This is a symptom of the US government making the same mistakes it did at the time of the Plan Colombia was being implemented, that is, ignoring the civil society’s views in scenarios of discussion where public policies were shaped and coca growers, farmers, and indigenous people, were approached as drug dealers.

Instead of promoting a contest between two sides, one represented by the government and the mining companies, and the other by the civil society, USAID should actively involve civil society in scenarios of discussion where the US government and other external influencers of the Colombian policies can be present, in order to avoid a massive stigmatization of individuals.

**State capture imposed obstacles to access to remedy when human rights were disrespected**

According to UNGPs, principle 26, *States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.* However, the three
case studies have demonstrated that state capture arises as a huge obstacle to have access to remedies.

Concerning the PREC case study, people’s claims against the MNC has been systematically rejected by the tribunals in the host-country’s jurisdiction but the legal actions of the MNC against people who have been targeted by the company have succeeded. The interviewees in the frame of the fieldwork of my research noted that there is an imbalance on how justice is delivered by the Colombian authorities. While the authorities’ reaction to the claims of PREC has immediate, the legal actions against the MNC never were solved and have encouraged the MNC’s retaliation.

Nevertheless, by far the most remarkable case study of state capture affecting the foundational principle “access to remedy” is that involving CB. In that case, access to state-based remedies was granted neither by the host-country nor by the home-country. On the contrary, there are signals of the host and home countries’ top officers imposing obstacles to allow the MNCs’ victims to have access to the remedies available in their respective jurisdictions. For instance, the fact that the identities of the top managers of the MNC were kept in secret by the US government, has been an obstacle for victims to identify against which individuals they have to take their legal actions.

The CB case study highlights two forms in which state capture impacted access to remedy: (a) it imposes obstacles to victims’ right to have access to an effective remedy for business-related human rights abuses, and (b) it promotes impunity.

State capture imposes obstacles to victims’ right to have access to an effective remedy

To evade severe sanctions for sponsoring terrorism, CB agreed with the US Department of Justice to pay a significant amount of money. However, such money was not to compensate the victims of the MNC’s business-related violation to human rights, therefore, victims were not benefited by that agreement. However, they were affected by it as the agreement blocked any attempt of the victims to seek justice in US courts. Moreover, while the legal claims of the families of the American employees
of CB who were killed in Colombia succeed, Colombian victims’ claims seeking justice before US courts have been rejected.

Another obstacle for victims was that only after several years it was possible to discover the identity of the US managers involved in the payoffs to paramilitary groups because, as part of the MNC’s agreement with the US Department of Justice, their identity was kept in secret. It made difficult for victims to bring an action against specific individuals who were sponsoring paramilitary groups on behalf of the MNC. Nevertheless, after they being plenty identified nothing has happened and for years several Attorney Generals have argued that they are going to make a formal request to the US authorities to extradite the individuals who were sponsoring paramilitary groups on behalf of the MNC.

State capture promotes impunity

In Colombia, after the demobilisation of members of paramilitary groups, former leaders of these groups have been sent to prison for their crimes. However, key enablers of the Convivir and the paramilitarism in Urabá, such as politicians and members of the army, have been sent to prison just for few years, like the general Del Rio who has been recently released, or have not been sent to prison as it is the case of those who designed and structured the Convivir.

Similarly, in the US, the US Department of Justice has systematically ignored the Colombian Attorney General’s requests of information to investigate the nexus between the MNC and paramilitary groups. Moreover, as the identity of the MNC’s managers who were involved in the payoffs to the paramilitary groups were kept in secret for years, it has been difficult to initiate legal actions against them. Currently, any of them has been held responsible for sponsoring death squads.

In the case studies involving AGA and PREC, it was identified that crimes that conveniently benefited the MNCs’ operations were not profoundly investigated and the possible links between the crimes and the MNCs’ operations were not properly
explored by the authorities. Specifically, in the AGA case study where there is a systematic sequence of murders of social leaders with a common feature: their public disapproval and rejection to the La Colosa project.

**Recommendations**

In a perfect post-conflict scenario, the Colombian government would have a state-building strategy and foreign governments, international organisations and MNCs would be welcomed to support such already well-developed strategy. Nevertheless, that is not the case and while the government develops such state-building strategy, it is not clear what role the mentioned external actors should play. As the case studies have demonstrated, state capture allows others to make decisions on behalf of the government as it has been the case of MNCs playing the role of captor and foreign governments willing to support the public policies as they have been shaped by the captor. Therefore, the lack of a state-building strategy represents an exceptional opportunity for external actors to influence the way in which such a strategy is shaped.

State capture allows the captor to influence such strategy to the extent that it could be shaped to satisfy the captor’s private needs at the expenses of the public interest. Hence, state capture arises as an enormous obstacle for the government to develop a state-building strategy aiming to satisfy the public interest. It may be seen as a serious concern for the host-country’s government, however, in a state where the government does not care about the meddling of external actors in the public decision-making system because individuals belonging to the government benefit from such meddling, the main solutions to avoid state capture should not stem from the government itself, as its members may have no interest in adopting and/or implementing any measure aiming to avoid state capture as they benefit from it, but from the civil society. Therefore, most of the following recommendations are mainly addressed to organised civil society.
Encouragement of social cohesion

Social cohesion has provided to be the most effective mechanism against state capture. In the PREC case study, it was identified that PREC deployed significant efforts in creating smoke-screens to hide the massive protests of workers refusing the poor labour conditions at the Rubiales oil field. In addition, the MNC invested great efforts in dividing workers, creating favourable conditions for a segment of workers to exert pressure on the others. Moreover, it developed strategies to debilitate unions’ bargaining power by forcing workers to abandon their unions to join one created by the MNC. Similarly, PREC obligated workers to accept the labour conditions unilaterally established by the MNC’s agreements, without negotiating their terms.

Regarding AGA case study, this is the clearest example of how civil society can arise as the main obstacle of MNCs trying to play the role of the captor. NGOs, social leaders, environmentalists, but also citizens worried for the potential of the project to cause irreversible damages, led Cajamarca to make the unanimous decision of rejecting the project. The MNC unsuccessfully has employed CSR as a mechanism to divide the society by supporting agricultural projects of one segment of the population. However, to date, AGA has not been able to persuade or intimidate Cajamarca’s population as it has been much more difficult to do it than persuading or intimidating individuals.

Concerning the CB case study, it shows that historically the MNC has employed violence to breakdown any initiative of social cohesion such as unions, social organisations and social leaders representing the interests of the community. Despite this, the case study shows that civil society has played a central role to overcome the obstacles set in the home and host countries to people seeking justice. Domestic and international NGOs have supported the victims of CB, helping them to reduce the power imbalance between the MNCs and victims. Furthermore, thanks to such support the voices of victims are heard by policymakers in domestic and international scenarios.
such as the UN Forum on Business and Human Rights, a scenario in which the victims’ voices are as relevant as the voices of government officials.

**Promotion and implementation of the available mechanisms for social control.**

Colombian law as most of the western societies’ law, recognise the people’s right to oversee public entities’ performance. For that purpose, the law has established mechanisms to follow up the way in which public entities carry out their duties. Unfortunately, such mechanisms are not massively promoted by the government and, therefore, people do not know how to use them to oversee whether the public office is fulfilling or not its duties and make the government accountable for it. However, as these mechanisms exist and are already recognised by the law, organised civil society can promote and use them to encourage the government to fulfil its duty of protecting the people’s fundamental rights against MNCs’ abuses. Moreover, such mechanisms provide an important source of citizen empowerment as they allow to assess how the government is handle with the nexus state-business and take action where the State fails to fulfil its duties.

Organised civil society should carry out an accurate assessment -due diligence- of the extrinsic and intrinsic features of MNCs before allowing them to be involved in governance matters. Civil society may refuse the involvement of MNCs in socio-political matters when, previous assessment, it identifies that the specific MNC has the potential to cause damages. Similarly, their involvement in social based projects should be rejected in those cases in which the MNCs or their subsidiaries have already been actors of conflict or have promoted social conflicts. No government can force civil society through legal means and/or without using violence, to engage in governance projects with MNCs.
The major involvement of the home country’s civil society

The civil society of the MNC’s home-country play a central role to avoid MNCs committing state capture abroad. It was the case of PREC, where the Canadian civil society oversaw the MNC’s operations and exert pressure on the government to obtain accurate information about how the mining and oil Canadian companies were operating abroad. Conversely, in the CB case, the US media exposed the politicians’ particularistic interests in protecting the MNC before the WTO during the US-EU bananas dispute. However, the US civil society did not react against the US government position of offering unconditional support through the state apparatus to one MNC which was not substantially relevant to the US economy, but which was feeding the economic interests of US politicians. A good example of a country where civil society is highly compromised with the protection of human rights in those countries where their MNCs deploy their business operations in Switzerland.

Since Switzerland is the home-country of powerful MNCs (Nestle, Novartis, Glencore, etc.), and that some of them have been involved in corruption scandals and human rights violations abroad (As it is the case of Glencore), the civil society has many concerns about the way in which the Swiss companies perform abroad. Therefore, Swiss civil society has led important initiatives to exert pressure on the Swiss government to have rules and policies aiming to make Swiss companies accountable for human rights violations committed by Swiss parent companies but also its subsidiaries throughout the world (Umlas, n.d.).

Therefore, the role of the organised civil society of the MNCs’ home-country is of paramount importance because they have the power of tackling state capture from the roots, that is, from the moment I have denominated the first level of state capture, that moment in which the home country’s politicians exert pressure on the host-country’s government to establish a business framework fitting the MNCs’ private interests and encourage the MNC to carry out their business in the host country in an aggressive way.
Active involvement and participation of the civil society in the spaces of dialogue.

Groups belonging to organised civil society should not allow MNCs taking away from them the role they can play when deciding issues related to governance. As the PREC case study shows, there is the government’s trend of including individuals who do not represent the interests of the civil society but only their own interests, in spaces of discussion where public decisions are made. It negatively affects the inclusion of groups that really represent the concerns of civil society. Such exclusion cannot be attributed to the influence of MNCs only, as groups belonging to organized civil society also refuse to attend such spaces arguing they do not share the views of the government on specific subjects.

Hence, organisations of the civil society should participate actively in such scenarios even in those in which they do not consider their interests are properly represented. Otherwise, they will be isolated from the decision-making process as it is happening in the mining sector discussions. Conversely, to reduce MNCs’ meddling on public decisions, restrictions to MNCs’ participation in spaces of discussion about sensible governance issues should be imposed, and the involvement of MNC should be substantially reduced while the conditions are good enough as to allow them to operate without being involved in the country’s internal conflict.

The AGA case study is particularly significant to understand the importance of civil society’s involvement in public decisions related to the mining sector. International like USAID may play a central role in the construction of inclusive mining policy. However, there is a huge problem which is related to the way in which the USAID’s efforts are orientated. There are symptoms of the US government making the same mistakes it did at the time of the Plan Colombia was being implemented during Uribe’s presidency. Mistakes which stem from ignoring the civil society in scenarios of discussion where public policies are shaped.
However, civil society and NGOs should also be willing to participate in such scenarios. Otherwise, they will be isolated from the decision-making process because of their reluctance to the participation of the US in the Colombian policies, as it has been happening. Conversely, the involvement of MNC in such scenarios should be reduced substantially while the conditions are good enough to allow MNCs to operate without involving them in the country’s internal conflict.

As Isacson (WOLA, 2013) notes, it is the Colombian government who should develop the state-building strategy instead of the US government. Therefore, in a perfect scenario after Colombia developing that state-building strategy, the US will support them and then the MNCs start doing their business. However, at the moment the government is doing nothing to have such strategy and, in the while, others are making a decision on its behalf as it is the case of MNCs playing the role of captors and unfortunately the US seems to be willing of supporting such strategy.

It seems to me that there is uncertainty about how the U.S. will support Colombia to fight against illegal mining in the upcoming years as Plan Colombia did not envisage mining as an important source of income for criminal gangs because at the time of the Plan Colombia was adopted, the main source of income for illegal groups were crops of cocaine and traffic of drugs. USAID should be aware of the high vulnerability of farmers, indigenous people and artisanal miners in particular when supporting the Colombian government in developing policies against illegal mining.

It involves, the U.S. government be carefully informed about the real situation of the Colombian mining sector and to avoid the Colombian government’s smokescreens as it happened during the Uribe’s government when based on the reports elaborated by the government itself everything was deemed to be perfectly working. Moreover, it would be useful to analyse lessons learned in countries with a long mining tradition such as Ghana where, as Maconachie and Hilson (2011:606) note, the competing interests of large mining companies in accessing large extensions of land for lengthy have affected the government’s efforts to legalise and support small scale mining.
In the case of the Colombian mining policy, one focused on issuing licences and granting concessions, the current government trend of being more interested in satisfying the MNCs’ needs than the artisanal miners’ demands which use to be overlooked and sacrificed in the name of development should finish. If such considerations are taken into account, they together -government and USAID- would promote a transparent mining policy.

Otherwise, the government will be promoting the conditions required to facilitate state be capture by MNCs and, in addition, it will be turning small miners into terrorists and enemies of development as it happened in times of the “false positives”. Unfortunately, the uncertainty about who are illegal miners persist which may lead to a similar tragedy to that of the Bananas Massacre. Recently Gran Colombia Gold, a company which board of directors is led by Serafino Iacono and Miguel de la Campa, former chair executives of Pacific Rubiales (grancolombiagold.com, c2017), sent a letter to the Colombian president requesting the government to undertake military action against illegal miners, a request which was rejected by social leaders and artisanal miners who now are afraid of they suddenly being turned into a military target by the government just to satisfy the MNC’s private interests (Elcolombiano.com, 2019).

**Major involvement and accountability of the MNCs’ headquarters.**

Finally, there is one recommendation addressed to the MNCs. To avoid reputational risks, MNCs’ headquarters should eradicate any sign of managerialism in the host-country to avoid the managers’ abuse of the entrusted power to obtain private gains. Therefore, when operating in prone conflict countries, the discretionary power of the subsidiaries’ managers to make sensible decisions in the name of the MNCs should be completely removed. For instance, MNCs headquarters should have plenty control over decisions involving engagement with domestic actors, named them businesspeople, public officers, politicians, army, civil society, NGOs, etc., as it is necessary to make it clear that such engagement is not based on the isolated decision of one or few individuals in the host-country, but it is a decision made by the MNCs
as whole legal entity. This is relevant to hold MNCs accountable for any possible negative outcome of such kind of decisions.

Moreover, parent companies should impose on the manager of their subsidiaries the duty of avoiding maneuvers aiming to distort the purpose of mechanisms that have been created to perform business transactions. Therefore, joint ventures, commercial contracts, outsourcing, PPPs, socio-political engagement, recruitment policies, etc., should be controlled, audited, and followed up by the headquarters directly, in order to guarantee that such mechanisms are being employed transparently. If headquarters are not willing to adopt such kind of measures and assume plenty of responsibility of the operations carried out by the MNCs abroad, they should simply avoid doing business in prone conflict countries.
## Acronyms List

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>3BL</td>
<td>Triple bottom line</td>
</tr>
<tr>
<td>AGA</td>
<td>Anglo Gold Ashanti</td>
</tr>
<tr>
<td>ANC</td>
<td>African National Congress</td>
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<tr>
<td>ANH</td>
<td>National Agency of Hydrocarbons</td>
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<tr>
<td>ANM</td>
<td>National Mining Agency</td>
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<tr>
<td>APCs</td>
<td>Alternative Power Centres</td>
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<tr>
<td>ATC</td>
<td>Access Training Centre</td>
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<tr>
<td>AUC</td>
<td>Self-defence United of Colombia</td>
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<tr>
<td>B&amp;HR</td>
<td>Business and Human Rights</td>
</tr>
<tr>
<td>B&amp;P</td>
<td>Business and Peace</td>
</tr>
<tr>
<td>B4P</td>
<td>Business for peace</td>
</tr>
<tr>
<td>BACRIM</td>
<td>Criminal organisations</td>
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<tr>
<td>BFA</td>
<td>Banana Framework Agreement</td>
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<tr>
<td>BIA</td>
<td>Bilateral Immunity Agreements</td>
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<tr>
<td>BITs</td>
<td>Bilateral Investment Treaties</td>
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<tr>
<td>BPO</td>
<td>Business Process Outsourcing</td>
</tr>
<tr>
<td>C&amp;B</td>
<td>Covington &amp; Burling</td>
</tr>
<tr>
<td>CAJAR</td>
<td>Collective of Advocacy Jose Alvear Restrepo</td>
</tr>
<tr>
<td>CAM</td>
<td>Corporate accountability movement</td>
</tr>
<tr>
<td>CB</td>
<td>Chiquita Brands</td>
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<tr>
<td>CGEP</td>
<td>Clinton Giustra Enterprise Partnership</td>
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<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<tr>
<td>DAS</td>
<td>Colombian Department of Intelligence</td>
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<tr>
<td>EDC</td>
<td>Export Development Canada</td>
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<tr>
<td>EFTA</td>
<td>Europa Free Trade Association</td>
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<tr>
<td>EITI</td>
<td>Extractive Industry Transparency Initiative</td>
</tr>
<tr>
<td>ELN</td>
<td>National Liberation Army of Colombia (ELN) and Popular Liberation Army</td>
</tr>
<tr>
<td>ESMAD</td>
<td>Mobile Anti-Disturbance Squadron</td>
</tr>
<tr>
<td>FARC</td>
<td>Revolutionary Armed Force of Colombia</td>
</tr>
<tr>
<td>FCPA</td>
<td>Foreign Corrupt Practices Act</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign direct investment+</td>
</tr>
<tr>
<td>FSI</td>
<td>Formal State Institutions</td>
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<tr>
<td>FTO</td>
<td>Foreign Terrorist Organisations</td>
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<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICMM</td>
<td>International Council on Mining and Metals</td>
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<tr>
<td>ICSID</td>
<td>International Centre for Settlement of Investment Dispute</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>INCORA</td>
<td>National Institute for the Agrarian Reform</td>
</tr>
<tr>
<td>JEP</td>
<td>Special Jurisdiction for Peace</td>
</tr>
<tr>
<td>MNCs</td>
<td>Multinational Corporations</td>
</tr>
<tr>
<td>NGOs</td>
<td>Non-governmental organisations</td>
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<tr>
<td>NSA</td>
<td>National Security Agency</td>
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<tr>
<td>OAS</td>
<td>Organisation of American States</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
</tr>
<tr>
<td>OEGE</td>
<td>Organización Empresarial Gente Estratégica</td>
</tr>
<tr>
<td>OHCHR</td>
<td>United Nations High Commissioner for Human Rights</td>
</tr>
<tr>
<td>PPP</td>
<td>Public-private partnership</td>
</tr>
<tr>
<td>PREC</td>
<td>Pacific Rubiales Energy Corp.</td>
</tr>
<tr>
<td>SEC</td>
<td>The US Securities and Exchange Commission</td>
</tr>
<tr>
<td>UFC</td>
<td>United Fruit Company</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNGP</td>
<td>United Nations Guiding Principles on Business and Human Rights</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>USO</td>
<td>Unitary Centre of Workers</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
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<tr>
<td>ZIDRES</td>
<td>Zones of Interest of rural and economic development</td>
</tr>
<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
</tr>
<tr>
<td>FIDH</td>
<td>International Federation of Human Rights</td>
</tr>
<tr>
<td>UTEN</td>
<td>Union of Workers of the National Energy Industry and Public Services</td>
</tr>
<tr>
<td>PDVSA</td>
<td>Petróleos de Venezuela</td>
</tr>
<tr>
<td>OSH</td>
<td>Operations Sword of Honour</td>
</tr>
<tr>
<td>UAF</td>
<td>Familiar Agricultural Unit</td>
</tr>
<tr>
<td>CMA</td>
<td>Colombian Mining Association</td>
</tr>
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  Resolucion 181532, 2004
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  Resolucion 40103 of 2010

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  Radicado ANM 20161200336811

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Colombian Tribunal:


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