

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

# **CORPORATE SOCIAL RESPONSIBILITY IN LATIN AMERICA**

A COLLECTION OF RESEARCH PAPERS  
FROM THE VIRTUAL INSTITUTE NETWORK



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## Note

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## Preface

The United Nations Conference on Trade and Development (UNCTAD) was mandated to work on Corporate Social Responsibility (CSR) issues by the 2008 Accra Accord, which stipulates that UNCTAD should analyze voluntary enterprise policies on CSR and other codes of conduct as a complement to national legislation, to identify best practices that would maximize the developmental impact of corporate activities, in particular by transnational corporations.

Based on this mandate, the Virtual Institute (Vi), UNCTAD's capacity building and networking programme for academia, in cooperation with the Division on Investment and Enterprise Development, undertook a research project on CSR in Latin America. The papers collected in this volume were drafted by researchers from universities in Chile, Uruguay, Colombia, Argentina and Spain, who received feedback during a workshop held in Medellin, Colombia, on 19 November 2009. As part of the Vi's ultimate goal of linking research and policymaking, the workshop involved government officials and representatives from academia, as well as the corporate sector, civil society and trade unions.

The purpose of this publication is to enhance the understanding of CSR issues in Latin America based on facts, figures, cases and experiences, as well as to review appropriate methods for analyzing the impact of CSR initiatives. The publication covers CSR and labour practices in the agriculture and extractive industries (the mining industry in Chile and banana production in Colombia); CSR practices in Uruguay; and new legal instruments in the area of human rights and labour rights in the Latin American region.

The publication was prepared under the supervision of Vlasta Macku, Chief of the Policy Capacity Building Section of the Knowledge Sharing, Training and Capacity Development Branch in the Division on Technology and Logistics. The papers collected in this volume were written by Paz Verónica Milet from the University of Chile; Zuleika Ferre, Natalia Melgar and Máximo Rossi from the University of the Republic, Uruguay; Maria Alejandra Gonzalez-Perez from Universidad EAFIT, Colombia; Marcelo Saguier from FLACSO, Argentina; and Ramón Torrent and Federico Lavopa from the University of Barcelona, Spain. Introduction and conclusions were provided by Jonathan Barton from the Catholic University of Chile. The research has benefited from a peer review by Jonathan Barton, and comments by Anthony Miller and Fleur Claessens from UNCTAD.

Financial support of the Government of Spain is gratefully acknowledged.

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## List of Abbreviations

ACDE	Asociación Cristiana de Dirigentes de Empresa
ATCA	Alien Tort Claims Act
BIT	Bilateral Investment Treaty
CAFTA	Central American Free Trade Agreement
CARIFORUM	Caribbean Forum
CBO	Community-Based Organization
CCC	Codes of Corporate Conduct
COBA	Cultural Corporation of Lo Barnechea
COCHILCO	Chilean Copper Commission
CODELCO	National Corporation of Copper of Chile
COREMA	Regional Environment Commission in Chile
CSR	Corporate Social Responsibility
dECON-FCS	Department of Economics, School of Social Sciences, Universidad de la República, Uruguay
DNA	Did not answer
DNK	Did not know
EA	Enlazando Alternativas
EC	European Commission
EPA	Economic Partnership Agreement
ERTA	European Road Transport Agreement
ES	Enterprise Survey
ETI	Ethical Trade Initiative
EU	European Union
FDI	Foreign Direct Investment
FT	Fair Trade
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GRI	Global Reporting Initiative
ICMM	International Council on Mining and Metals
IFA	International Framework Agreement
ILO	International Labour Organization
IMF	International Monetary Fund
INE	National Statistics Institute (Spanish)
INGO	International Non-Governmental Organization
IPE	International Political Economy
IPLR	Internationally Protected Labour Right
IRSE	Índice Nacional de Responsabilidad Social Empresarial
ISO	International Organization for Standardization
ITO	International Trade Organization
ITT	International Telephone and Telegraph

IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association
LATU	Technology Laboratory of Uruguay
MAI	Multilateral Agreement on Investment
MNC	Multinational Corporation
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organization
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
POS	Public Opinion Survey
PPT	Permanent People's Tribunal
PTA	Preferential Trade Agreement
RICO	Racketeer Influenced and Corrupt Organizations Act
SAP	Structural Adjustment Policy
SONAMI	National Mining Society of Chile
SRN	Social Responsibility Network
TNC	Transnational Corporation
TV	Television
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNCTC	United Nations Centre on Transnational Corporations
UNDP	United Nations Development Programme
UNIT	Institute of Technical Standards (Spanish)
US	United States of America
WTO	World Trade Organization





# **Introduction<sup>1</sup>**

## **Corporate Social Responsibility in Latin America: A phenomenon in search of an agenda**

Since the colonial era, Latin American countries have been integrated into international trade. Their economies, originally based on an export-led development model centered on commodities, have gradually diversified, with varying degrees of success, since the import substitution industrialization period of the mid-twentieth century. At the turn of the millennium, however, most of them still remain highly dependent on their natural resource base. Apart from Mexico and Brazil, which account for the lion's share of manufactured exports, and rather exceptional cases such as Costa Rica's export prominence owing to the presence of Intel, Latin American trade is still largely characterized by high shares of mineral and agricultural exports (Barton, 2006; Schaper and Onffroy de Vèrèz, 2001).

These export sectors have had a major impact on Latin American development, and have also linked the socio-ecological practices in the region with foreign investment and foreign consumption patterns. The responsibility of these foreign actors (investors, firms and consumers) has been a critical theme throughout this time, ranging from dependency theorists and their position that these actors merely drove "the development of underdevelopment" to neoliberal advocates who promote the actions of these capitalists as the driving force of the development process. The same reflections can be extended to domestic firms and investment in terms of their contribution to local and regional development. Rather than black and white answers, the hues of grey point to a wide range of responsibilities that have been assumed and shunned over time. Although social responsibility is not specific to commodity-based export sectors, since it is as relevant to banking as it is to mining, it is important not to lose sight of the importance of the commodity export sectors which have characterized the region's development over the past five hundred years and continue to play a central role. The prominence of foreign capital in these sectors and their associated social responsibilities over this same time frame also cast the issue of responsibility in a historical as well as contemporary light. In this sense, the issue is neither new, nor can it be separated from Latin American development as a broader process.

The behaviour of domestic and international firms in terms of their ability to deliver returns to investors, generate employment, and create wider development benefits in local and

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<sup>1</sup> by Jonathan R. Barton (PhD), Associate Professor at the Institute of Urban and Territorial Studies, Pontifical Catholic University of Chile

national contexts, has been central to post-colonial development patterns. The expectations of various stakeholders, including local and national governments, with regard to firm performance are prominent in contemporary political economy debates in the region. These expectations vary according to the context, the scale of the firm, its orientation toward export or domestic markets, ownership, sector and branch, and specific localities and sites.

Drawing the boundaries between what firms are responsible for, what the state is responsible for, and what civil society and individuals are responsible for, is a complex undertaking, as multiple factors shape these boundaries and continuously re-fashion them. The debates around corporate social responsibility seek to better understand these boundaries, determine where different responsibilities lie, and establish what types of instruments, management practices and regulations are the most appropriate for ensuring that firms are able to operate effectively across a wide range of criteria that extend beyond a limited horizon of profit maximization. In essence, the focus is on how firms are able to contribute to more sustainable development at different geographical scales.

In response to this challenge, corporate social responsibility has emerged over the past two decades as a key element of firm strategy within an increasingly globalized world economy. Its evolution can be traced back to early environmental responsibility initiatives within environmental management frameworks from the 1980s (Welford, ed. 1998; Welford and Starkey, eds. 2001), or even further back to different perspectives on business ethics emerging during the mid-twentieth century (Carroll, 1999). These ideas were then dovetailed with existing strategies and engagements with workers groups within business social and environmental responsibility activities (Elkington, 1997; Jenkins *et al.*, 2002), resulting in early environmental certifications, such as British Standard 7750 and the Eco-Management and Audit Scheme, which had links to social issues of worker health and safety, working conditions and pay. Issues relating to impacts on local communities, human rights and corruption were then brought in. Dobers and Halme (2009), for example, argue for increasing action in the fields of tax fraud, antitrust and corruption in terms of CSR in developing regions.

The agenda that is now recognized as corporate social responsibility has therefore become increasingly multidimensional and complex over time. Dahlsrud (2008) analyzes 37 definitions of social responsibility and identifies congruence around five central themes that constitute the phenomenon (rather than a universal concept or practice): the social dimension, the economic dimension, the environmental dimension, the stakeholder dimension, and voluntariness. It is precisely due to the inclusion of a wide range of issues that are central to business performance, competitiveness and wider sustainable development that this agenda can no longer be ignored, marginalized or sidelined by firms.

The latest initiative to consolidate this wide-ranging agenda is the ISO norm 26000 that is currently being developed and should be operational by 2011, although it will not be certifiable (unlike most ISO standards). ISO 26000 seeks to frame the CSR issues within a single set of norms that will help firms to gain an understanding of the content of the issues that are on the table and the steps that can and should be taken in order to engage in a more consistent way. ISO 26000 builds on previous initiatives that began as early as the 1970s with different codes of conduct for transnational firms in their increasingly global activities.

On a number of issues, CSR continues to be dominated by the European and North American perspectives, with developing economy firms adopting this agenda rather than generating one that is locally or regionally relevant – including Millennium Development Goals or the issue of HIV/AIDS, for example (Correa *et al.*, 2004; Blowfield and Frynas, 2005). However, there are published cases of poverty alleviation-oriented CSR such as those of Procter & Gamble in Venezuela, and Union Fenosa (social energy) in Colombia (Peinado-Vara, 2006).

As with the previous instruments in this field developed in the 1970s, the participation of diverse stakeholder groups, such as workers, consumers and SMEs, remains problematic (Alonso, 2006). Although various organizations such as the World Business Council for Sustainable Development and later the UN's Global Compact have consolidated a wide range of these types of voluntary codes, the lack of a baseline or other tools for assessing and evaluating firm

performance has led to increasing criticism from different quarters, NGOs in particular: the phrases "greenwashing" and "window dressing" have characterized this type of criticism.

In response to these criticisms, CERES created the Global Reporting Initiative (GRI) as a multistakeholder organization (including businesses and NGOs) aiming to establish a framework of reference to assess firms' reporting on responsibility issues. While GRI has gone a long way toward making many responsibility considerations more transparent, the whole agenda remains marred by problems of performance evaluation (between declared intent – discourse – and interventions/practices).

How do we evaluate performance? Which baselines and targets are adopted? How do we compare firms locally, nationally and globally, within and across sectors? How do commodity and value chains operate in this regard? How are priorities established across the wide range of topics that are on the agenda? It is evident that despite its exponential growth as a business management tool and its increasing importance to academia, NGOs and state organizations, there is a lack of effective monitoring and evaluation of CSR. In addition, only incipient, innovative social science, natural science and humanities research considers CSR in its entirety, as opposed to a more prominent academic channel that communicates "best practice" based almost solely on the firm perspective.

Reservations remain in different quarters: in some firms, the relative merits of engagement with a wide-ranging social, environmental and rights-based agenda remains anathema to many managers, who perceive that these issues are not central to their business. It is also the case in government, where many perceive that while regulatory frameworks are within the remit of government and the state, and that voluntary initiatives should be left to non-state actors. These reservations across different actor groups suggest that, despite significant advances since the 1970s, the CSR agenda is currently at a crossroads. Bryane Michael (2003) presented this situation as a set of three competing paradigms in social responsibility: the neoliberal school focused on self-regulation; the state-led school focused on regulation and cooperation; and a "third way" school focused on "for profit" and "not for profit" organizations. Each of these has an Achilles heel and generally fails to engage with development theory, thus adapting poorly to developing country circumstances.

For the "triple bottom line" (according to Elkington, 1997) of economic, social and environmental performance to be mainstreamed, a number of problems need to be resolved, including the basic issue of voluntarism versus regulation: to what extent should social responsibility remain a voluntary mechanism? What is the relationship with the social responsibility that is prescribed through law, for instance (a minimum standards and minimum rights perspective)? Other questions include the extension of social responsibility beyond larger firms to include SMEs, farmers, universities, hospitals, ministries, armies, NGOs, faith organizations, etc.; it is perhaps worthy of note that the Chilean army has a sustainability report that is GRI-compliant.

The papers that follow provide an insight into many of these issues. It should be noted here that although social responsibility research is still in a nascent state in Latin America, it is likely to increase significantly during the next years as more firms incorporate social responsibility into their practices and new demands from consumers, clients, suppliers, government and civil society groups shape the agenda more clearly. Notwithstanding the scarcity of empirical research, there is already a considerable number of CSR initiatives under way in the region. Such initiatives, particularly for intra-firm considerations, were identified, for example, by Vives (2006) in an IDB survey of 1,300 firms in eight Latin American countries. Meanwhile larger firms, which are more connected to global networks, are increasingly subject to different certification pressures that require them to communicate their performance in different social responsibility fields. Rather than quantity, however, the issues relate more to quality, content and substance.

Part of the complexity of the social responsibility agenda in its current form lies in its all-encompassing nature. By moving beyond basic compliance on social and environmental issues into a range of related areas, including human rights and community development, the agenda is getting increasingly complex over time. Rather than a more conventional focus on what firms are

doing to design and implement strategies along social responsibility lines, this agenda can be seen as an inter-related web of actors and issues. This dynamic scenario is difficult to examine and evaluate. Nevertheless, the papers in this collection provide new perspectives on this agenda, moving beyond the traditional, business-centred perspective.

The contribution by Paz Verónica Milet focuses on the cases of two mines – Los Bronces and Los Pelambres – in Chile's largest productive sector: copper production. It compares their positions regarding the evolving responsibility agenda that is being shaped by their different locations and institutional responses. While the paper primarily reflects the more conventional, case-based work on CSR, its added value lies in the comparative analysis of the experiences of a firm operating in a predominantly agricultural area where copper production is relatively recent, and an older Anglo-American plant in the metropolitan region, with a particular focus on the social initiatives that each has developed through its community-oriented foundations. What is evident in this paper is the relative absence of the state in the promotion of social responsibility activities.

The other contributions address the national and international levels. It is here that much of the social responsibility agenda will be determined over the coming years, with increasing pressures from globalized actors (e.g. consumer groups and clients) and globalized instruments (e.g. trade and investment agreements, and international standard-setting and certification).

Based on a national survey conducted in Uruguay, the extent of public awareness and government promotion of social responsibility is the focus of the paper written by Zuleika Ferre, Natalia Melgar and Máximo Rossi. The survey, one of the first of its kind in the region, provides strong evidence of the relative lack of public awareness at present, and the clear association of social responsibility with working conditions and pay rather than other issues, such as the environment. Nevertheless, by comparing perceived responsibilities of firms and government, the survey throws light on the ways in which people associate certain responsibilities with the state, and others with the firm. It is evident that surveys of this kind are vital to track social responsibility perceptions and to guide decision-makers in firms and government in terms of shaping national agendas in this field.

There are clearly sectoral and branch differences – e.g. between mining firms and IT or banking firms – within national and international settings that influence the ways in which agendas are developed. The contribution of Maria Alejandra Gonzalez-Perez concentrates on how the social responsibility agenda has emerged in the Colombian banana sector as a consequence of the globalized trade in this product. Rather than a firm-centered analysis, the paper introduces the concept of social responsibility networks whereby the firm is part of a network of actors who each have a role to play in terms of production, commercialization and consumption. This network approach takes the lead role away from the firm itself to stress that a strengthening of the agenda requires negotiated outcomes, with behaviour changes not only in the firm itself but throughout the product chain. Of particular interest in this Colombian case is the role of this network in terms of engaging with the civil violence context within which it operates.

The growing role of such networks and the globalization of most product chains have led some researchers to focus increasingly on the role of international instruments in promoting greater firm responsibility. Marcelo Saguier cites the Permanent People's Tribunal as a way in which different stakeholders can exercise pressure on firms through public tribunals that bring forward accusations of malpractice against firms. Although not legal entities, the aim of these tribunals is to publically shame firms into more moral positions regarding diverse responsibility issues. By bringing to light a number of accusations, it has been possible to record more systematically the criticisms voiced against particular firms in specific locations.

Torrent and Lavopa, on the other hand, focus on the inclusion of social responsibility elements within trade and investment agreements. Their paper evaluates different trade agreement formats and content to establish dominant US and EU models for bilateral and multilateral agreements. The authors argue that it is possible to make better use of these types of agreements by incorporating social responsibility criteria and ensuring that firms behave ethically within

complex, globalized production and trading systems through internationally-recognized, rules-based instruments.

The different perspectives, levels and issues presented in these five studies reflect only part of the highly diverse agenda that is corporate social responsibility. What the papers share is a focus on three particular points relevant for all social responsibility research and the development of the future agenda. The first relates to the relationships between multiple actors, rather than the firm in and of itself. Firms operate in a complex network of actors where each has a role in influencing the social responsibility of the firm, by exerting pressures or not.

The second is the question of scale. Within a context of increased globalization, the decisions of actors in one location influence those of others in different locations. This raises the point about where firm responsibilities are located, not only what these responsibilities are. Multi-scale analyses that include supply chains, production, transportation, distribution and sales, including recycling commitments, reveal a complex picture of CSR where firms have influence, impacts and responsibilities. They also pose the question of which administration or jurisdiction is responsible for ensuring compliance to which sets of legal codes in transnational settings. The importance of establishing legal compliance is permanently relevant in the discussion of social responsibility since in many cases CSR is itself defined as what firms do beyond their legal compliance commitments, so called "compliance plus".

The second point feeds into a third relating to degrees of regulation. To what extent are voluntary codes suitable or effective in delivering increased social responsibility? To what extent are states supportive of social responsibility initiatives taking into consideration their own limitations in terms of inspection and enforcement? The issue of regulation and the extent to which states should be involved in the promotion and enforcement of social responsibility remain central to the debate and unresolved for the most part, whether in terms of national regulations or within international agreements.

To date, social responsibility experiences in Latin America have been highly heterogeneous. Different initiatives have been developed from the 1980s to improve intra-firm practices and local environmental and social conditions. Some of these initiatives are singular and highly focused on one issue, others are incorporated into management strategies and wider agreements with other stakeholders. This complexity and heterogeneity, not only of practices, but also of certification standards, the wide range of potential issues to be considered, and the increasingly global networks in which production and consumption take place, presents a challenge for practitioners, regulators and evaluators. Among the voices that promote social responsibility and others that criticize it, there are a wide range of justifications and aspirations presented. In many ways, the role of business in terms of its contribution to sustainable development in Latin America is under examination, resulting in a growing interest among a wide range of stakeholders to establish an agenda that clearly moves in this direction.

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# **Corporate Social Responsibility in the large mining sector in Chile: Case studies of Los Pelambres and Los Bronces**

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# 1. Conceptual definitions

The study of Corporate Social Responsibility leads to the conclusion that the concept is constantly developing. It is impossible to present a fixed definition given the fact that there is no consensus about its achievements, its coverage and how inclusive it is when characterizing the different initiatives developed under responsible corporate management.

Nonetheless, some common elements do permit a more specific vision of the concept, as Calderón discusses:

“It is a model of management voluntarily chosen by the company, which makes it incorporate in its business strategy the respect for ethic values, persons, the community and the environment; in the same time it permits keeping on listening and answering to the needs and expectations of the different publics the company is related to, called the stakeholders” (Calderón, 2009a).

By analyzing the concept of CSR, we pointed out some elements related to it and incorporated by the government, companies and civil society organizations in Chile. In this sense, we found that one central element of CSR is the vision of companies as corporate citizens.<sup>2</sup> This means that the company not only has to find out how to maximise its profits but also how to respond to various rights and social responsibilities when managing its activity.

Those actions developed by the company refer to the needs and expectations expressed by interest groups related to the company in some way, whether internal – the workers – or external – the suppliers, clients or neighbouring communities.

Another factor to take into consideration is the way CSR is set up, i.e. what its major motivating forces are. A first force, at a broader level, is globalization; a second one, at the national level, is the requirements coming from the government and civil society of every country; and a third one is the internal needs of the companies themselves.

There is a consensus in Chile around the idea that CSR was set up by the convergence of those three forces. Since the 1990s, Chile has been through a deep process of political and commercial reintegration at the international level, which meant an expansion of markets and the need for Chile to respond to new requirements and standards to reach them and attract foreign capital.<sup>3</sup> The need for companies to face new realities and expectations implied a modification of their management policies.<sup>4</sup>

A third element to take into account is the definition of areas or priority topics within CSR. Although different visions exist, some more inclusive and others more restrictive, it is possible to list the principal areas incorporated within the concept, given the CSR propositions made in different sectors. These include corporative government and management systems, the quality of working conditions (in relation to health risks to workers and security at work), policies about the relationship with suppliers, responsible production and marketing, environmental management, support to the community, in general, and especially to the community linked to the company's activities.

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<sup>2</sup> This idea has been studied by the Boston College Center for Corporate Citizenship, and taken up in Chile by institutions like Acción RSE. See [www.bcccc.net](http://www.bcccc.net); and “El ABC de la responsabilidad empresarial en Chile y en el mundo”, Acción RSE (2003).

<sup>3</sup> See Van Klaveren, Alberto, “Inserción internacional de Chile”, in Toloza, Cristian y Eugenio Lahera (eds), *Chile en los noventa*, Editorial Dolmen, Santiago (1998).

<sup>4</sup> See Chaparro, Eduardo, Salgado, René, “Sociedad, mercado y minería. Una aproximación a la responsabilidad social corporativa”, Serie recursos naturales e infraestructura 105, Division of Natural Resources and Infrastructure, CEPAL (2005); Gonzalo Arroyo S.J, Andrés Suárez, “Responsabilidad social corporativa. Una mirada global”, Universidad Alberto Hurtado, Santiago (2006); and Fernando Chomalf, Nicolás Majluf, “Ética y responsabilidad social de la empresa”, El Mercurio Aguilar, Santiago (2007).



More precisely, the draft of the International Standard on Social Responsibility (ISO 26000) elaborated at the end of 2008 in Chile, specifies seven fundamental matters: organizational governance, human rights, work practices, environment, fair practices of operation, consumer topics, active participation and development of the community, and relations with actions and expectations (INN, 2008). This standard will apply to companies, and is important to be taken into account because of its inclusiveness and the challenges it brings for Chile's productive sector. Rodolfo Camacho, representative of the Confederation for Production and Trade, an industrial group in Chile, said this norm would present threats as well as advantages, as "it can mean a loss of competitiveness for our country and limit the access to some markets" (Área Minera Review, 2008).

Hence, Victoria Alonso and Hernán Blanco argue that "if we hope that some integrated standard about social responsibility has an important impact in Chile and be adopted by a wide range of companies and organizations, that standard will need to be flexible, inducing to creativity and have the capacity to adapt itself to the local circumstances" (Alonso y Blanco, 2004-2005).

A fourth and final element is the positive repercussions for the firms that are related to the development of CSR policies. Potential workers, clients or suppliers, but also the firm itself, can indeed benefit from the development of responsible practices. In that sense, Accion Empresarial identifies three possible benefits for the business: improvement of the financial performance, reduction of operating costs and improvement of its corporate image and reputation (Acción RSE, 2003). According to results obtained by Detecta Company at an international conference on social responsibility held in 2003 with the title "The other face of competitiveness", those benefits are perceived by Chilean businessmen.<sup>5</sup> Indeed, participants responded as follows:

**TABLE 1: RESPONSES BY CHILEAN BUSINESSMEN AT CONFERENCE ON SOCIAL RESPONSIBILITY, 2003**

<i>"According to you, what are the three principal benefits for a socially responsible firm or organization?"</i>	
47%	Better commitment and productivity of the workers
40%	Improvement of image and reputation
37%	More profitability in the long run
29%	Improvement of relations with the community
22%	Strengthening of clients' fidelity
10%	Improvement of relations with the authorities (municipality, government)

Among the selected priorities, we can see that the first is related to the internal dynamic of the firm, i.e. the improvement of workers' productive capacity. In addition, a high percentage (37 per cent) pointed to more profitability, which was the third highest benefit identified. This indicates the clear distinction firms make between socially responsible activities and philanthropy.

On the other hand, regarding contacts with external actors, we observe the importance given to CSR actions for the conformity of the reputation of the firm and for the improvement of its relationship with the community. Nonetheless, the idea that CSR can improve connections with authorities is the least identified benefit, associated with only 10 per cent of respondents, which shows how little importance is attached to that outcome.

According to us, two definitions of CSR gather definitively all the conceptual elements presented in this article on Chile. Prohumana, a Chilean organization that has been working on the subject for more than ten years, argues that CSR is a "contribution to the sustainable human development, through compromise and trust of the firm for its employees and their families, the

<sup>5</sup> The results are available at [www.sofofa.cl/Mailing/ResponsabilidadSocial/BoletinRSE13.pdf](http://www.sofofa.cl/Mailing/ResponsabilidadSocial/BoletinRSE13.pdf).

society in general and the local community, in order to improve the social capital and quality of life” (Prohumana, 2009). On the other hand, Acción RSE defines it as a management tool, a new vision of business that includes concerns about the economic development of the firm as well as its repercussions on stakeholders. This is a strategic attitude that manifests itself in the capacity of the firm to listen, understand and meet the legitimate needs and interests of its diverse publics (Acción RSE, 2003).

Although these definitions give an operational basis for understanding the evolution of CSR in Chile, they do not disaggregate the repercussions of a firm’s socially responsible actions at the internal and external levels, i.e. for the firm itself and the community as a whole.

CSR practices have developed within firm strategies in Chile only recently – since the 1990s – but the Chilean mining sector is already very proactive in that field.<sup>6</sup> The reasons for this are various: first, because the nature of its activity has large implications for workers and implies severe consequences for the environment; second, because of the presence of foreign investors concerned about respecting international CSR standards; and finally, because of requirements regarding working conditions and environmental impacts compelled by the Chilean state.

Within the mining sector different expressions of CSR can be found: declarations of intention regarding the definition of the firm’s image and corporate mission; information policies, public relations and support for local initiatives in order to prevent conflicts; technological options associated with the marketing of its production; and the implementation of sustainable socio-environmental conditions in the management of the firm and in the territory it operates in (Larraín, 2004).

Before analyzing the relations between Chile’s mining sector and CSR, it is worth developing the characteristics of the sector and its economic importance for Chile.

## 2. Structure and significance of mining activity in Chile

The mining industry is one of the principal sources of income for Chile, as it represents 10 per cent of its GDP and accounts for more than half of its annual exports, as Figures 1 and 2 indicate.

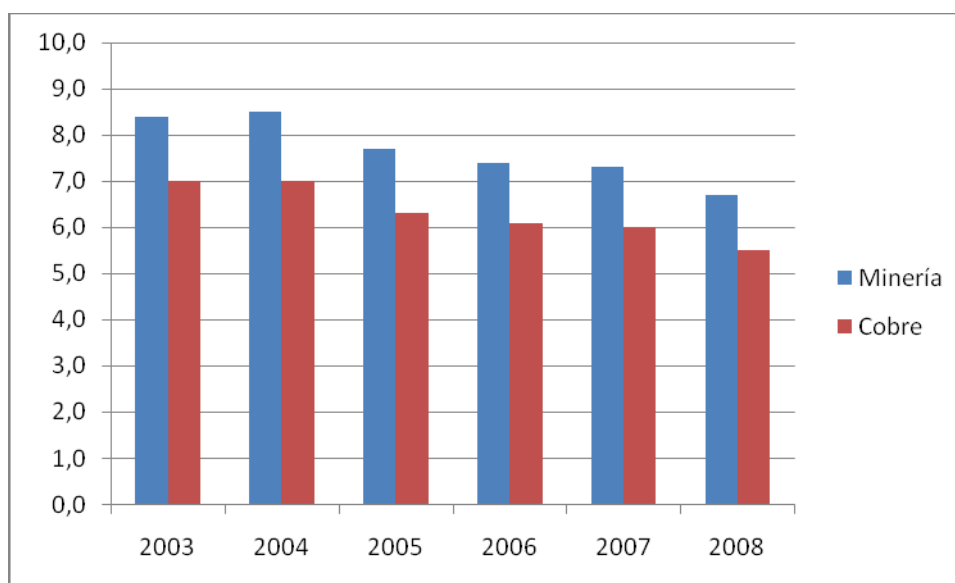
FIGURE 1: PARTICIPATION OF THE MINING SECTOR IN CHILE’S EXPORTS (PER CENT)



Source: COCHILCO

<sup>6</sup> See Soledad Teixido, Reinalina Chavarri and Andrea Castro, “Responsabilidad social empresarial en Chile: Perspectiva para una matriz de análisis”, Prohumana Foundation (2002).

**FIGURE 2: PARTICIPATION OF THE MINING SECTOR AND COPPER IN CHILE'S GDP (PER CENT)**



Source: Central Bank of Chile

Note: 2003 constant prices

The principal product of the mining sector is copper, due to the increased international demand that emerged from the rise of the electricity industry. At the beginning of the boom of the copper industry, mainly in the early 20<sup>th</sup> century, foreign investors brought new technology to an activity that until that time had developed in a very rudimentary way, as priority had been given to the saltpeter industry.<sup>7</sup>

At that time, the state had a weak participation in the sector, but this slowly increased. As a result, in 1966, under the Christian democrat government, Eduardo Frei Montalva instituted the “law of chileanization” of copper, under law 16.425. This allowed the creation of joint ventures with foreign companies, with a participation of 51 per cent by the Chilean state. The objective was to give the state the capacity to intervene in the strategy of production and commercialization of copper.

This state participation in the copper industry increased even further with the nationalization of the Gran Minería (under law 17.450), announced in 1971 by Salvador Allende’s government. This required modification of the Chilean Constitution, with the addition of a transitory disposition to Article 10 stating that: “For the national interest and in exercise of the sovereign and inalienable right of the State of having freely its wealth and its natural resources, the foreign companies that constitute the great mining industry of copper are nationalized and therefore incorporated into the full and exclusive domain of the Nation ...” (CODELCO, 2009).

The foundation of the National Corporation of Copper of Chile (CODELCO) came with this transformation; CODELCO is a state-owned company that comprises all existing Chilean deposits. It is still the world’s biggest producer of copper.

From the 1990s, the mining sector – and especially the copper industry – moved into a very dynamic phase, with the arrival of foreign capital due to favourable conditions generated by the modification of foreign investment status in 1974, new developments in the mining sector and the exploration boom (see Table 2).

<sup>7</sup> See Equipo MMSD América del Sur, “Minería, Minerales y Desarrollo sustentable en Chile”, Chapter 6 in *Minería, Minerales y Desarrollo Sustentable en América del Sur*, co-edited by CIPMA, IDRC and IIPM (2002).

**TABLE 2: FOREIGN INVESTMENT IN THE MINING SECTOR, AUTHORIZED AND MATERIALIZED  
(THOUSANDS OF US DOLLARS, NOMINAL FOR END OF 2008)**

2008		1974-2008	
Authorize	Materialized	Authorize	Materialized
4,590,961	2,366,188	44,692,18	23,538,324

Source: Central Bank of Chile

This increasing private investment in the mining sector in the 1990s generated a substantial change in the composition of the production of copper. In the early 1990s, CODELCO was responsible for 75 per cent of national production, but the current figure has declined to 70 per cent (COCHILCO, 2003). The tax system also shows evidence of this phenomenon. According to Gustavo Lagos, Director of the Mining Centre at the Universidad Católica, the amount of tax revenue coming from the private mining sector exceeded the total amount brought in by CODELCO for the first time in 2009. Taking an average price of \$ 2 for one pound of copper, the 10 major mining companies provided \$ 1.8 million, whereas CODELCO provided \$ 1.6 million (La Tercera, 2009).

More precisely, among that general contribution of the mining companies, there is a special tax on mining activity – the mining royalty – instituted by Chilean legislation since 2005 (law 20.026). This law created a special tax obligation for the mining companies that sell more than 12,000 metric tons of fine copper annually, based on their operational taxable income. The tax percentage varies up to a maximum of 5 per cent and its revenues go to a fund for innovation and competition. The revenues are distributed according to the following criterion: 25 per cent is shared among the country's regions and 75 per cent goes to major projects selected from all over Chile.

Strong criticisms have been raised since the creation of the project. On the one hand, the mining companies argued that this special tax would increase their production costs, considering that they were already paying other taxes, and the fact that mining is such an important productive activity for Chile. On the other hand, the criterion of distribution of tax revenues was questioned in the sense that it would not be in favour of the regions. Finally, the two criticisms were examined separately. On 11 August 2009, the project that creates the fund was sent to the Senate to be voted on. Eventually it was decided that 65 per cent would be distributed at the national level and 35 per cent to the regions and, among the regional percentage, 70 per cent would go to the mining regions and 30 per cent to the others.<sup>8</sup>

Another interesting element is the bigger importance that molybdenum has taken for the mining industry and its exportations. Molybdenum is a sub-product of copper used as a raw material for special steels and some other alloys, due to its particular properties: resistance to high temperatures and corrosion, and its durability and strength (CODELCO, 2009).

The importance of copper to Chile's exports and GDP has been constant, despite fluctuations in its international price and the existence of a political debate about the need to diversify exports and develop more value-added production. Furthermore, some sectors call for the privatization of some percentage of CODELCO, although there is still no consensus on this

<sup>8</sup> See: Boletín no. 3588-08, Press Department of the Senate of Chile (11 August 2009).

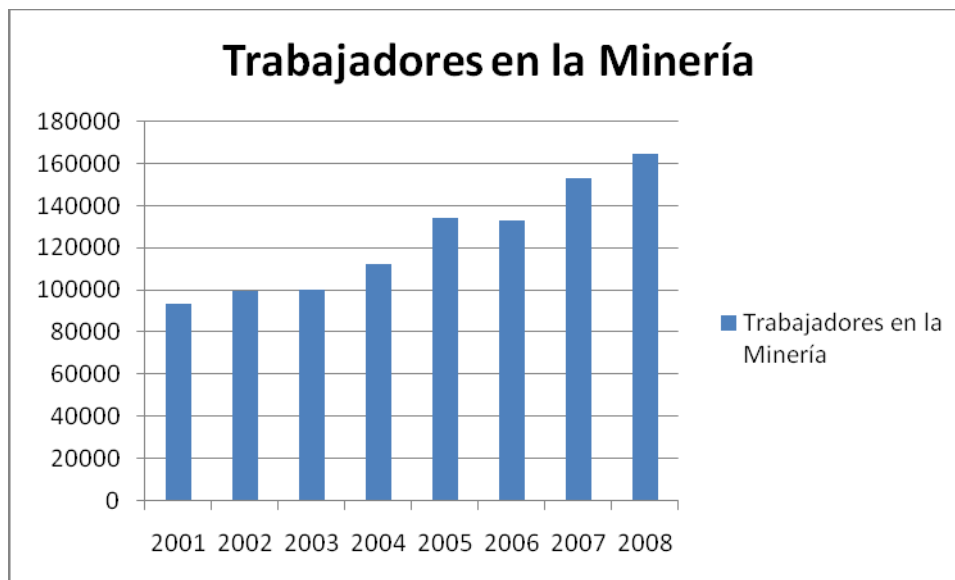
### 3. CSR and the large mining sector

CODELCO and the eighteen major firms of the large mining sector, the “Gran Minería”, gather within the framework of the Mining Council of Chile, a union association in which both public and private firms participate (mainly producers of copper, gold and silver) along with national and foreign private firms. The objective of the Council is to generate and ease the creation of a favourable environment for the mining firms, which could lead to a consolidated social licence allowing them to operate in a sustainable way (Consejo Minero, 2009). The medium mining sector and small mining sector and other firms from the large mining sector are part of the National Mining Society (SONAMI).

The Gran Minería has been very active in the CSR field due to the visibility of its activities, its labour force (see Figures 3 and 4) and the impact of its activities on the environment. As Figure 4 shows, it is important to emphasize that, essentially for economic reasons, i.e. the wish to maximize utilities, around 65 per cent of the labour force that works in the Gran Minería is subcontracted. This labour force is deeply affected by decisions made by the firm in many areas – such as the increase of some standards – but at the same time enjoys the advantages it offers to workers more directly related to it.

Another determinant factor that motivates the firm to act responsibly is the conscience that its mining activity is seen both as being able to generate profits for the community but also as leading to possible adverse consequences. This perception is even stronger for multinational companies (MNCs), as they are constantly being observed by NGOs, the media and society in general.

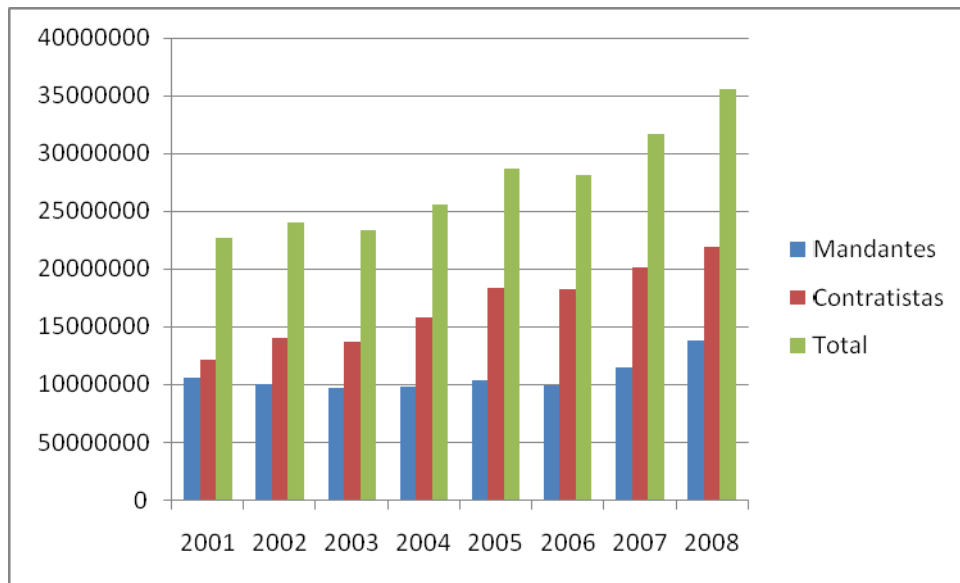
**FIGURE 3: WORK FORCE IN THE MINING SECTOR (ANNUAL AVERAGE), 2001-2008**



Source: National Service of Geology and Mining

Note: Total work force comprises workers from large, medium and small mining sectors.

**FIGURE 4: TOTAL HOURS WORKED, PER CONTRACTOR (MANDANTE) AND THIRD-PARTY COMPANY (CONTRATISTA), 2001-2008**



Source: National Service of Geology and Mining

This perception has been assumed by the mining companies that, at the conceptual level, favour the notion of “sustainable development” rather than CSR. In this sense, Canut de Bon argues that the exploitation of natural resources – and especially the non-renewable ones – can be considered sustainable only when fulfilling two conditions: that it does not affect the critical ecological capital, and that it is directly compensated by the creation of other capital (Canut de Bon, 2007).

From this sustainability perspective, the Mining Council identified three central dimensions influencing the management of mining companies: economic sustainability, environmental sustainability (with special attention to water, energy and waste), and social sustainability (that emphasizes the need to improve the quality of life of the work force related to the company and the population living in the area where the activities are developed).

This guideline has been followed by the firms from the large mining sector in the implementation of their policies. More specifically, these policies depend on factors like the land area, where firms develop their activities, and the stakeholders related to the firms.

From the sustainability point of view, topics of concern for the mining companies are different according to whether they are based at the external or internal level. At the external level, the companies' major concerns are the environment – and especially the use of hydrological resources because they are basically located in dry areas – and the repercussions their activities will have for the regional ecosystem. This has been a central concern, especially after the emergence of a series of emblematic protests, as we will see in analyzing the two case studies below. Firms generally put emphasis on this topic by implementing rigid environmental protection standards that consist of policies of early warning and transparency regarding potential accidents.

The strategy of monitoring and transparency in environmental topics has been significant in the mining sector and has been developed by organizations such as Chile Sustentable, Olca and Terran. These institutions have monitored the impacts of mining especially on the environment (related to hydrological resources, air quality, etc.) and the process of generation of a new environmental institutionalism for Chile. On 28 October 2009, the Senate Environment Commission approved a project related to environmental institutionalism that received more than one thousand remarks in the legislative/consultative process and eventually set up the Department and the Superintendence of Environment, the Environment Evaluation Service and an

Environmental Tribunal to solve specific cases. These institutions meet the requirements of the OECD discussed in the negotiations with Chile in view of entering the organization.

As mentioned above, some organizations have raised objections to this initiative by the Congress, arguing that it would threaten the original spirit of the proposal and would delimit the participation of various institutions to denunciation, evaluation and resolution of environmental topics.<sup>9</sup>

Mining companies have also been involved in the generation of social capital and the construction of alternative capacities to the mining industry in the areas where they have settled. In this sense, they worked in three ways: through the internal institutions of the company itself (for instance the External Relations department), through their own foundations – that work with some autonomy or within the logic of the company itself – and together with the Mining Council. The latter has been the case for responsible advertising campaigns, for instance, including one called “take care of yourself, you are Chile’s wealth” that is based on the idea of promoting security in everyday life, and emphasizes security as a bridge between the concerns of people and the mining companies (Costabal, 2008).

At the internal level, there are two concerns related to the mining sector. The first one refers to the need to generate a new corporate culture, reinforcing policies of corporate ethics and establishing fundamental principles in relation to the work process and the connections between the firm and the environment. The second concern is related to the workers’ quality of life. In the current context of economic crisis, companies choose to promote CSR actions that directly benefit workers.<sup>10</sup>

A survey of the major copper producing companies in Chile, titled “Social Responsibility in firms of the large mining sector in Chile”, undertaken in October 2005 by the Department of International Affairs and Environment of the Chilean Copper Commission (COCHILCO), shows progress in the areas of action mentioned above.<sup>11</sup> There were some results of particular relevance to this study:

In relation to the companies’ values and ethical principles, 90 per cent affirmed that values are part of systemic processes of education and communication, for workers and for the external environment, being periodically validated and verified;

- In relation to the dissemination of CSR initiatives, 50 per cent said they did not publish anything or only published irregularly, whereas the other 50 per cent mentioned that they published an annual social evaluation, including the company’s financial situation.
- In order to satisfy its responsibility regarding the use of resources and potential impacts on the environment, 100 per cent said they were developing programmes to improve their environmental management in a preventive way, in addition to vigorously respecting current standards. In order to implement these programmes, the firms rely on special areas or units responsible for the generation of environmental actions and also include environmental variables in their strategic planning.

An analysis of these responses shows that mining companies generally apply responsible global strategies with the predominance of a corporate ethic and a special preoccupation for the most affected areas within their activities. However, some firms are still reluctant to publish their CSR achievements, fearing that these may be seen and rejected by the population as strategic marketing tools, or because they are not aware of the needs and benefits associated with CSR practices.

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<sup>9</sup> See “Chile exige que el gobierno cumpla. Organizaciones ciudadanas, sociales y sindicales demandan cumplimiento de compromisos ambientales al gobierno de la Presidente Bachelet”, *La Tercera* (10 November 2009).

<sup>10</sup> From an interview with Soledad Teixido, Executive Director of Prohumana.

<sup>11</sup> In total, 16 companies from the large mining sector were surveyed. The results are available at [www.cochilco.cl](http://www.cochilco.cl).

Furthermore, through various participatory institutions and in other ways, large mining sector companies have achieved substantive projects related to CSR and keep on working on those topics, alone or in cooperation. This can, for instance, be observed with the structuring of a specific conceptual development through the notion of sustainable development. Likewise, they cooperate on a cluster criterion basis, i.e. a group of companies or institutions that work in a specific geographical area and that are linked together through interdependencies in the supply of some products or services (Consejo Minero, 2009). According to different analyses, this cluster already exists (Lima y Meller, 2003) and the state, together with some private groups, is working on how to improve the concept, as in practice it can support economic development, the implementation of standardized environmental policies and human development.

### **3.1 International standards of social responsibility implemented in Chile**

The application of international standards, allowing for the qualification and quantification of a company's degree of responsibility in different areas, is another achievement of the Chilean mining sector in terms of CSR development.

The Chilean mining sector has been very active in the certification of environmental, quality and security standards, as part of an integrated management approach and for the improvement of its relationship with stakeholders. Those standards are:

- The OHSAS 18001 standard, for the certification of health and safety management systems. This is a particularly relevant topic in the mining sector, and is being addressed by companies to improve the workers' quality of life;
- The ISO 9000 standard, for the certification of quality management systems;
- The ISO 14001 standard, for the certification of environmental management systems. This is a fundamental element in the case of the mining sector in Chile, as the consequences of mining activities for the environment are the main focus when mining companies are monitored.

Likewise, the mining companies have been actively participating in the *Mirror Committee*, a brainstorming group, organized by the Institute of Normalization of Chile to discuss the ISO 26000 standard, which should be the future CSR management standard applied.

Other standards used by the mining companies in Chile are:

- The Global Reporting Initiative's (GRI) framework for the realization of reports on sustainability, which gives key elements for the firms to write reports about their economic, social and environmental achievements. Both companies presented in this paper follow the GRI parameters for the mining sector.
- The UN Global Compact. Many national companies have voluntarily subscribed to this standard since 2002. The Global Compact, proposed by the former UN Secretary General, establishes ten principles related to human rights, labour standards and the environment;
- The World Business Council for Sustainable Development, a group of 165 international companies watching over sustainable development. In this context, the mining sector specifically created the International Council on Mining and Metals (ICMM) within which a series of principles have been approved. ICMM members can be evaluated according to those principles.

The OECD standards should become part of the management guidelines for Chilean companies, and especially MNCs, as Chile has just entered the OECD as a full member. The organization created an important international precedent with its guidelines for MNCs, which completes the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy of the International Labour Organization, agreed in 1977.



The OECD guidelines are optional standards suggested by governments to MNCs. They were signed by Chile as an observer country and are currently acquiring more validity and legitimization from the perspective of the implementation of CSR practices in Chile, since the country has become a full member of the organization.

### 3.2 The case of Los Pelambres

The case of Los Pelambres has been analyzed in the scope of this study for various reasons. First, the mining activity is not located within the prime Chilean mining area – the Norte Grande – but is settled in the region of Coquimbo, a semi-arid zone located 300 km away from Santiago. Its installations are 120 km long and go from the mountains to the ocean, i.e. from the extraction area to where the raw material is being transformed, in Puerto Chungo, in the area of El Vilos.

The geographical factor brings up major challenges for the company, as it must deal with a mountain range, a valley and a coast. Another major challenge is the fact that this area is a traditional rural area that has had no experience with mining activities before; neither has the fishing community in Los Vilos where the material is shipped. The closest town, Cuncumén, is located 4 km away from the artificial tailings pond and uses the river for its agricultural activities.

Secondly, the mining company has had a major economic impact, nationwide for the last 40 years, and in the region since it has started its activity in 2000. According to 2007 figures, the mining industry of Los Pelambres is the fifth biggest copper producer in Chile and extracts 6 per cent of total production; with around 330,000 tons of copper per year it is one of the ten biggest copper deposits in the world (Zahler & Co., 2008). Between 2000 and 2006, the company represented between 0.3 and 0.4 per cent of Chile’s GDP (USD 277 million of USD 86,200 million in 2006) and contributed to 32 per cent of GDP growth in the mining sector (ibid.).<sup>12</sup>

The impact of Los Pelambres’ activities on the region is also significant. Since its arrival, the company has directly and indirectly provoked a major change. Between 1999 and 2006, it was responsible for half of the growth in the region of Coquimbo (from \$ 255 million to \$ 466 million). Likewise, it is directly associated with 15 per cent of the regional GDP – and indirectly to a further 3 per cent – and employs 4.8 per cent of the region’s labour force (Zahler & Co., 2008).

Thirdly, the company is of particular interest because of its structure of ownership. Los Pelambres is one of the biggest industrial groups in Chile, with the Luksic family owning 60 per cent of it through Antofagasta Minerals and the remaining 40 per cent owned by two Japanese consortiums (Nippon Mining & Metals, Marubeni and Mitsui & Co.; and Mitsubishi Materials and Mitsubishi Corp.).

According to indicators from the Central Bank of Chile, the owners of Los Pelambres are among the major foreign investors in the large mining sector through the period 1974-2007.

**TABLE 3: HOLDINGS IN LOS PELAMBRES, DECEMBER 2007 (IN THOUSANDS OF US DOLLARS)**

Los Pelambres Investment Company Limited <sup>13</sup>	658,535
MM LP Holding BV (Japan)	173,862
Nipon LP Ressources BV (Japan)	262,761

Source: Central Bank of Chile

<sup>12</sup> These figures from Zahler and Co. (2008) use data from the Central Bank of Chile, COCHILCO and Minera Los Pelambres.

<sup>13</sup> Los Pelambres Investment Company Limited appears as a foreign investor, although it is owned by Antofagasta Minerals – a Chilean company – because it has registered its head office in the UK and is related to the London stock market.

This association of foreign owners generates a series of challenges in corporate governance, not least because it requires finding a consensus between Antofagasta Minerals' criteria and the standards of international partners that are used to work in a different cultural setting.

Finally, the company has experienced difficulties in developing its activities in the area. Indeed, one of the most emblematic recent cases of protest against a Chilean company was about the El Mauro artificial water reservoir, where Los Pelambres was very much involved, as will be discussed below.

In this context, as soon as the company started its activity in the new area, it assumed fundamental that it should work at the internal and external levels to comply with higher standards than those required by the Chilean legislator. In this regard, environment is a major topic, in particular the water issue, as Los Pelambres owns an entire 'row' of water from the mountains to the sea, which is situated precisely in the way of access to the region. Air pollution is another concern, due to possible contamination and consequences for the population living in that area.<sup>14</sup>

With regard to relations with the community, the company agreed on the concept of intelligent social investment according to which corporate citizenship develops gradually in three ways:<sup>15</sup>

The Minera Los Pelambres Foundation created in 2002, located in Salamanca, with \$ 3 million seed money. Its principal objective is the development of a social responsibility policy contributing to the sustainability of the activities implemented in the Choapa valley, with the idea that these activities will continue independently from the mining industry (Foundation Minera Los Pelambres, 2009).

The Foundation centres its work in three areas of development: education (improving the quality of education in the towns of Salamanca, Illapel and Los Vilos, fundamentally at a technical stage); productivity (focusing on the concepts of entrepreneurship and added-value to activities in the valley); and the water issue (i.e. improving the lands for the farmers in the Choapa Valley). All the different productive sectors of the region are involved in these initiatives. When the company ends its activity in the region, i.e. theoretically in 40 years, the idea is that the infrastructure related to agriculture and fishing remains installed.<sup>16</sup>

The Foundation develops its projects mainly in coordination with local authorities and other actors from the regional and national levels.

The Minera Los Pelambres' Vice Presidency for External Matters, which basically deals with topics such as infrastructure improvement, social capital and education, and the removal of camps. The latest is developed together with the programme "One Roof for Chile", the Chilean Housing Department and the workers of the company itself, in order to build new houses for around 700 families in the region.

Corporate volunteering: Workers play an important role in the development of CSR practices in the region, and in that sense the company's recruitment policy requires that 60 per cent of the employees come from the region of Coquimbo itself.

The company pays attention to direct contact with the community and has invited its workers to take part in the dialogue, in order to better understand the challenges, costs and reality of work in the field.

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<sup>14</sup> From an interview with Flavio Angelini, Director of Sustainability and Internal Communications, Minera Los Pelambres.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

Another rising issue is the nature of the company's links with the authorities, the neighbouring community and investors. Trustworthy contacts with authorities are a priority for the company, especially after two spillages occurred in the Cuncumén River in 2007, which did not provoke any environmental damage but emphasized the need for permanent and good contacts with the regional and provincial governments. Indeed, the major costs for the company are linked to credibility and the subsequent re-establishment of trust. In that sense, Los Pelambres installed offices, with representation of its Environment and External Affairs departments in the city of La Serena, where the principal regional authorities are located.

In view of potential similar accidents, the company chose to denounce itself and put forward the development of a fast information system regulated by authorities and communities.

A recent example of this is the accident that happened on 1 August 2009. Caused by an anomaly in the pipe transporting condensed copper from the plant at Chacay to the port of Los Vilos, part of the material drained out towards the platform of the sector, reached a gully and finally flowed into the Choapa River (Minera Los Pelambres, 2009). The company initiated an investigation, warned the authorities, the vigilance group of the Choapa River and the community, and started work on the clean-up.

However, the community remained unsatisfied with the company's proposals and called for other measures, in particular economic compensation for the caused damage, since according to them the accident rendered the water supply useless for this part of the Coquimbo region (Chile Sustainable, 2009). Eventually, after a long discussion, the company and the community in the area reached an agreement that put an end to the protests and permitted the resumption of mining activity. Among the principal points of agreement were the creation of a Community Fund and a commitment by the company to fix potential environmental damages.

At the internal level, a major objective has been the creation of a new culture of sustainability within the company itself, with a focus at environmental, social and economic perspectives in order to develop a modern mining company that would involve interest groups and seek the active participation of all the components of the company. This translated into a lot of educational work with the idea that the internal cultural change should occur prior to external conquest.<sup>17</sup> In 2006, a group was created at the executive level to consider the company's main priorities regarding sustainability. This led to Pelambres obtaining the ISO 9001, ISO 14001 and OHSAS 18001 certifications.

Corporate governance has been another central element for both the Luksik family (that owns 60 per cent of the company) and the Japanese partners (owners of the remaining 40 per cent). Until now, it has always been possible to take important decisions by consensus.

The Minería Los Pelambres acts in accordance with the principles and strategies of Antofagasta Minerals, but it also runs certain projects independently. It is currently implementing its \$ 1,000 million Integral Development Project, which manages the construction of works to consolidate its operation and an artificial tailings pond in the El Mauro area.

The construction of this reservoir, which started operating at the beginning of 2009, at a cost of \$ 580 million, has been the major challenge for the company in its management of the region and is an emblematic case of the Chilean large mining sector, firstly in the way it was dealt with legally and secondly because the temporary non-resolution of the case never paralyzed mining activities. For these reasons, it is necessary to consider more details about the case and the agreement that was reached, as follows.

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<sup>17</sup> Ibid.

### 3.2.1 The El Mauro case

Chronology of the facts:

- 2001: Pelambres acquires the field of El Mauro for the construction of the tailings pond that would extend the activity of the company from 30 to 50 years;
- 2001 to 2003: Dialogue with local organizations and introduction of measures of possible impacts on the environment, among them a reservoir of 600 thousand cubic meters;
- May 2003: introduction of the project Evaluation of Environmental Impact, which was approved after eight months by the fourth region's environment commission (COREMA);
- 30 November 2005: the Department of Water authorizes the company to start raising the dike;
- 30 December 2005: opponents of the project present a claim before the Court of Appeals in Santiago to revoke the Department of Water's permission, arguing that the reservoir would contaminate the water and affect the community's rights of utilization;
- 3 November 2006: the Court of Appeals in Santiago halts the construction of the reservoir, receiving an appeal from organizations from the village of Caimanes, in the fourth region;
- Pelambres and the Department of Water appeal to the Supreme Court, and although there were four other appeals from opponents, construction never stopped;
- May 2008: the company grants compensation of \$ 23 million in order to make the opponents retract their claims, since if the El Mauro reservoir did not start functioning by the approved date, it would have been necessary to stop the entire activity;
- Since the end of 2008, three trials have been under way in Santiago and Los Vilos in order to stop the construction of El Mauro, leaving without effect the compensation that was agreed. The plaintiffs argue that the persons who reached agreement with the company did not really represent the community. Moreover, they demand compensation for the damages the reservoir has allegedly caused, and for the contamination of the families living nearby they call for existing filtrations;
- June 2009: The company argues it is part of the current process of bringing large investment projects in Chile before court, as a series of appeals against El Mauro have already been rejected, and the aim of the trials is to hit the company and force it to negotiate;
- August 2009: Pelambres brings a prosecution before the Tribunal of Guarantees in Los Vilos against four lawyers, led by Ramón Ossa Infante, and the leader of the Committee of Defence of Caimanes, Cristián Flores, for the crimes of accusation or slanderous denunciation, attorney's prevarication, presentation of false evidence, threats and illicit association. Its argument is that Ossa, through different actions, hindered the previously agreed grant of \$ 5 million to the farmer Victor Ugarte in exchange for land and water rights necessary for the construction of the reservoir.

The El Mauro case is emblematic for various reasons. First, because it highlights the challenges and requirements the mining companies have to cope with in order to work in Chile, as they are confronted with a demanding civil society that has become aware of its rights and obligations. Second, it is an example of the mistrust that exists in some sectors regarding the efficiency of environmental institutionalization. Third, it shows how the cost engendered by judicial proceedings can force the company to choose to negotiate in order to avoid the paralysis of its activity.

### 3.3 Los Bronces

The Los Bronces mining company presents a series of characteristics that make it interesting to analyze from the CSR perspective. First, its geographical location: it is located in the Cordillera de

Los Andes, 3500 meters above sea level and 65 km away from Santiago de Chile, in central Chile which is the most populated area in the country. Its environment is therefore rather urban. The town of Lo Barnechea emerged as the access point for services for the deposit and is one of the fastest growing towns in Gran Santiago. Yet, the company also has some connections in rural areas, especially the zones of Til Til and Colina.

Second, Los Bronces forms an almost unique unit with the Andin Division of CODELCO for its location, 80 km away from Santiago. These two firms share the same deposit and must therefore coordinate their work in certain areas.

Third, Los Bronces is part of the Anglo American company operating in 45 countries with its head office in London. This company does not have Chilean capital; it is one of the major mining companies worldwide and has recently been involved in a large internal reform in order to generate more responsible activity.

Fourth, Anglo American is deeply involved in the Chilean mining sector. According to the Chilean Central Bank, as of 31 November 2007, the Anglo American Corporation of Chile Holdings Limited had invested \$ 4,103 million in Chile. Likewise, according to Anglo American Chile's Report of Sustainable Development and Financial Statements, the total production of copper in Los Bronces reached 253,792 tons in 2008.

From the CSR perspective, Anglo American generally follows two levels of organization: at the first stage, each division of the company follows global guidelines; and at the second stage the division takes national and local particularities into account, in order to achieve an integrated management approach, which allowed Anglo American to receive the ISO 14001 and OHSAS 18001 certifications.

At the first level of organization, Anglo American developed a new strategy in 2008, called "One Angle", which should improve the synergy and the creation of value between its different activities worldwide. The pillars of this initiative are: sustainable development, value-based management, talent and optimization of assets. This strategy is directly linked to the declaration of principles that the company published in a document untitled "the good citizen" in June 2004. It explains the principal elements of managerial ethics and integrity: corporate citizenship – that essentially affirms the respect for dignity and human rights of people and communities linked to its activities – employment and labour rights, security, health and environmental management.

This framework – One Angle and the Good Citizen – sets out the guidelines Anglo American Chile has to follow for every initiative it takes, from the CSR perspective and with global parameters that allow corresponding lines of actions to those developed in other countries. At the operational level, for instance, this led to the creation of the Operational Excellence Management section within the Chilean division.

In that sense, every initiative of the company is based on the concept of sustainable development, established by Anglo American according to five fundamental pillars:<sup>18</sup>

- Financial capital
- Human capital
- Social capital
- Natural capital
- Capital created by people

From this perspective, regarding social development, the objective has been the improvement of the quality of life of the related communities through a series of development programmes. Those programmes were evaluated for the second time in 2008 using the Socioeconomic Assessment Toolbox (SEAT) methodology, which was designed by Anglo

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<sup>18</sup> From an interview with Marcelo Esquivel, Director of External Affairs, Anglo American Chile.

American and is applied to every operation worldwide. According to Beatriz Calderón (2009b), “this group of instruments allows [the company] to identify the most relevant problems affecting the neighbouring communities associated with the activities of the company and therefore leads to efficient solutions for its development”. The programmes have been adapted according to the neighbours’ needs by means of this application (Anglo American Chile, 2008). The SEAT II process is essentially composed of seven steps, listed in the following table:

**TABLE 4: THE SEVEN STEPS OF THE SEAT II PROCESS**

Step I	Outline of the operations of Anglo American
II	Step Profile and involvement with the community
III	Step Identification and evaluation of the social and economic impacts of the operation of Anglo American, evaluation of the key development problems and the existing measures of management and social investment
IV	Step Improvement of the management of the socio-economic impacts and problems during the operation and closing
V	Step Support for the development of the community
VI	Step Development of a monitoring and management plan
VII	Step Preparation of a socioeconomic report, retro alimentation for the community and evaluation of the SEAT process

Source: Report of Sustainable Development and Financial Statements, Anglo American Chile (2008)

In the case of Los Bronces, two challenges in particular were identified when applying the SEAT II process: first, opening more spaces for direct communication with the community, and second, reinforcing the connections between the company and the productive activities developed in the region and the influential local communities of Lo Barnechea, Til Til and Colina, inside the Metropolitan Region (Anglo American Chile, 2008).

Specific policies and initiatives have been established from the identification of those needs and preoccupations. This is the principal sector that guides the design of the company’s work together with the community, generally supporting governmental policies, but also leading to its own initiatives. The idea is not creating dependency but building greater autonomous capacity at the time when the company ends its activity in the zone.<sup>19</sup>

The strategy of Anglo American in Chile appears in the Minería Chilena Review (2009) as follows:

“Anglo American considers that its role as neighbour of the communities where it works not only consists in providing support, contributing to the improvement of some local and particular conditions, but is convinced that it is necessary to find new models guaranteeing that the contribution of the company is sustainable and delivers effective tools of economic development and social mobility between its neighbouring communities. In 2008, Anglo American Chile invested \$ 6 million and plans to invest a similar amount this year.” (Minería Chilena Review, 2009).

Among the programmes developed by the company involving the towns close to Los Bronces, the “Emerge” programme stands out as having supported 2701 entrepreneurs. Likewise, specific initiatives have been realized for these towns, prioritizing the sectors of education, health, prevention of addictions, community development and environmental education. On the blog of

<sup>19</sup> Ibid.

the Cultural Corporation of Lo Barnechea (COBA) some projects developed and supported by the mining company are highlighted: sponsorship of the Lo Barnechea youth orchestra and the Farellones children's orchestra, funding for the extension of the dependent reader centre of the Lo Barnechea municipality, apprenticeship projects, an early drug prevention project and collaboration with the firemen of Lo Barnechea (COBA, 2007).

From the internal perspective, recent relevant topics regarding the sustainability of the projects developed by the company have been the use of energy and water resources and the relationship with suppliers. Facing a lack of laws about minerals, the company increased its use of energy considerably. The development of equipment for optimizing the use of resources has therefore been prioritized. This is a special need for Los Bronces, as it is located in one of the main areas for the conservation of biodiversity.

The suppliers' issue is fundamental because they have to develop sustainable practices according to the standards of the company. This follows Nuñez' (2003) argument, according to which, "in general terms, the presence of foreign groups in countries of the region has coincided with the arrival of schemes and concepts of environmental and corporate management in countries where the social responsibility is internalized by the corporate citizenship". One of the positive effects of transfers of experiences is that the environmental and socially responsible conduct of a company that has developed a policy of environmental management can be transferred to its suppliers (principally local), generating a "chimney" effect (Nuñez, 2003).

In order to generate more responsible management, the company channeled the different initiatives at three levels: the head office, when the initiatives refer to a corporate level; Los Bronces, when they concern a special division; and the Anglo American Foundation, located within the company, without any own interests.<sup>20</sup> This logic of internalization reflects the experience of Minera Escondida and its Foundation, which has gained major autonomy and visibility, according to Soledad Teixido, Executive Director of Prohumana. In her opinion, the other mining companies have deliberately chosen to maintain their foundations within the firms.

Although Los Bronces did not experience severe environmental accidents, the company did face some minor incidents according to the typology developed by Anglo American. Following this topology, accidents are categorized into three levels: the first level refers to lower impact and short-term effects, the second level refers to moderate impact and mid-term effects, and the third level refers to significant impacts and long-term effects. In 2008, 28 accidents of levels 1 and 2 occurred in Los Bronces. There was no environmental accident in 2007, although an incident occurred in the previous year during the transport of pulps and wastewater between Los Bronces and Las Tórtolas. The latter plant has been questioned most by the environmentalist sector because of its potential for infiltration. In 2008, Los Bronces had to pay an environmental penalty for the maintenance inactivity of a molybdenum dryer during a pre-emergency episode in 2007.

From the environmental perspective, rock glaciers represent a potential challenge for Los Bronces and the neighbouring Andin Division. An academic study by Alexander Brenning from the University of Waterloo, Canada, put emphasis on the loss of the equivalent of 21 millions cubic meters of frozen water due to the activities of Los Bronces and the Andin Division of CODELCO between 1990 and 2005. Anglo Chile answered that, "there are no safety risks or problems of stability for the rock glacier, or are there any risks of affecting the quality of water in the basin of the Mapocho River, provided that the activity of Los Bronces does not have water effluents towards natural courses" (La Nación, 2008).

In December 2007, Los Bronces started working on its Programme of Development, which plans an investment of \$ 2,200 to 2,500 million in order to build a series of installations to increase the production of fine copper to 400,000 tons per year. Although this project has been

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<sup>20</sup> From an interview with Jorge Poblete, Director of the Anglo American Foundation.

delayed by the international economic crisis, it is expected to start functioning for the second part of 2011. It complements an announcement made by Anglo American in August 2009 about the discovery of two deposits close to Los Bronces that, put together, present a presumed capacity of 2,100 million tons of mineral. The first deposit, Los Sulfatos, is located six kilometres south of Los Bronces, and the second, San Enrique Monolito, is adjacent to the Los Bronces mine itself (La Tercera, 2009). As a result, Los Bronces, the new deposits and the Andin Division of CODELCO together form the biggest mining district in the world.

These new deposits could also be of interest to the Chilean state-owned company that holds a call option for 49 per cent of Anglo American Sur – including Los Bronces – which is activated every three years (El Mercurio, 2009).

## 4. Conclusions

Corporate Social Responsibility has gradually been inserted in Chilean entrepreneurial practices and especially within the mining sector. For internal and external reasons, the mining companies have had to adapt to integrated, responsible management. At the global level, progress is still needed in regard to the application of responsible practices on behalf of the small and medium mining sectors as well as the governmental sector. Both companies and civil society organizations emphasize the lack of governmental incentives, which are perceived as fundamental for the development of CSR policies.

The cases of Los Pelambres and Los Bronces, analyzed in this study, represent two of the most remarkable initiatives in the large mining sector. Although each case has its specificities and differences, both initiatives are part of a similar process towards more responsible management and have to cope with large and various challenges.

If we compare the two cases, we notice that one of the fundamental challenges for both projects is the geographical location. The Antofagasta Minerals project is located in an agricultural region without any mining tradition and has to cope with 120 km of mountain range, valley and coast, whereas the Anglo American project is very close to Santiago de Chile, the most populated area of the country. Both are confronted by very different challenges compared to those faced by the mining companies from the “Big North”.

The relations between Los Pelambres and the local communities have certainly been more complicated, experiencing backward as well as forward steps. A range of environmental accidents have actually diminished their trust and the company constantly has to find ways to approach the local communities. The Foundation Los Pelambres has played an important role in that sense, creating visibility for its work in the region, and the workers themselves have been crucial, as 70 per cent of them come from the region where the deposits are located.

Anglo American did not experience the same problems, because other Chilean companies had previously started mining activities in the region of Los Bronces, before Anglo American arrived in 2002. Like in the case of Los Pelambres, the management is very much linked to the local community, Lo Barnechea. It faced some difficulties when environmental incidents occurred in the Colina and Til Til zones. Unlike Pelambres, Anglo American has not exposed the work of its foundation, which has rather operated internally. However, this has not had a negative impact on the visibility of the company in the region, since Anglo American Chile developed an significant advertising campaign about its management from a CSR perspective. Moreover, the company is located in the most populated area of Chile, which guarantees a potentially high visibility.

Both companies are working on the adequacy of their management practices in compliance with international norms, and they are promoting CSR initiatives; however, they do so in different ways. Anglo American Chile organizes its activities on a more global level, due to its



presence in 45 countries and its engagement in a global process of transformation. On the other hand, Los Pelambres is a subsidiary of Antofagasta Minerals, which essentially relies on Chilean capital and only recently started working internationally. Moreover, although Los Pelambres is promoting CSR both at the internal and external level, it has not joined the UN Global Compact as whereas Anglo American has done so.

Both have to think about how to deal with energy and water issues in order to develop sustainable management practices. Concerning the water issue, Antofagasta Minerals is evaluating different possibilities in order to remove salt from seawater to use it in its plants, while Anglo American is analyzing various options that would permit a more effective use of water. With regard to energy, which is a major issue for a country like Chile, the mining companies have asked the government to explore the possibility of developing nuclear energy, which has been rejected by environmental institutions until now.

The opinion of the analyzed companies about these topics rests goes back to the concept of sustainable development, which is reflected in a series of good practices of management policies with regard to health, safety, environment and the community. Among these practices are the following (Bereton, 2004):

- The adoption of a ‘beyond compliance’ philosophy by companies and individual sites;
- A strong focus on resource use efficiency and waste minimization (so-called “ecoefficiency”);
- Responsible stewardship of the natural environment;
- Mine closure policies that aim to leave a positive long-term legacy – both environmentally and socially;
- Responsible and safe workforce management practices;
- Sensitivity to local community concerns, combined with a commitment to advancing the long-term social and economic well-being of communities affected by mining;
- The integration of economic, social and environmental considerations into corporate decision-making processes.

These are common elements that can be observed in the Chilean mining sector. In terms of CSR, the priority issues for this sector are: water and energy resources, sustainable practices of suppliers and the objective to generate a culture of corporate responsibility within the different sectors of the productive system.

Chile’s mining sector will face greater challenges with the country joining the OECD and being required to implement new environmental rules. This process “will tie to the change of paradigm that occurred in Chile with the introduction of CSR in the working environment and that should generate a deeper process of modification of management practices.

Basically, new requirements at the internal and external level have to be faced. At the external level, responsible management has shown that Chile, and especially the Chilean mining sector, is ready to develop effective and responsible global integration stage, although work still has to be done in order to implement higher standards.

On the other hand, at the internal level, civil society is more and more aware of its needs and rights, and, in the case of El Mauro we have seen that the requirements of stakeholders related to the mining sector have increased substantively, and that further active work needs to be done in order to improve its management.

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## **Annex: OECD Guidelines for Multinational Enterprises**

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development.
2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
3. Encourage local capacity building through close cooperation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
9. Refrain from discriminatory or disciplinary action against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.
10. Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.
11. Abstain from any improper involvement in local political activities.

# **Corporate Social Responsibility in Uruguay: What enterprises do and what people think about it**

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# 1. Introduction

In recent years, the idea that social problems should be resolved exclusively by the public sector, has been changing. The role of non-governmental organizations (NGOs) has become relevant as they have been managing more and more activities that were previously linked to the State. In this process, private and public enterprises emerged as relevant actors as well to develop Corporate Social Responsibility (CSR).

General interest in CSR has been growing worldwide and in particular, in developing countries. The actions linked to social responsibility are considered as an additional tool that may contribute to development, increased competition, a better position in international markets, as well as a way of increasing foreign investment.

In Uruguay, several organizations aim to promote social responsibility, generating tools and support materials to facilitate its implementation.<sup>21</sup> In this context, the Department of Economics (Faculty of Social Sciences, University of the Republic, Uruguay) carried out the design and implementation of two surveys (a public opinion survey and an enterprise survey), to allow further research on different aspects of CSR in the country. The public opinion survey was carried out in 2006 and the enterprise survey in 2007.

In this paper, the first section assesses what we understand as CSR, the evolution of this concept and its current relevance. Section two is devoted to the methodological aspects of both surveys. Section three sketches the main features of the descriptive results of both surveys and section four presents the econometric results. Finally, the conclusions are presented in section five.

## 2. Corporate Social Responsibility: Evolution of the concept and its relevance

Corporate Social Responsibility (CSR) is a relatively new concept which is still changing and hence, there is a large variety of definitions in the literature with some common characteristics.

Historically, the first initiatives of private agents in assisting the community were principally carried out by charities, while the Catholic Church was responsible for the distribution of goods. In the early twentieth century, corporate philanthropy started to emerge, as enterprises provided charity and contributed to social projects. However, these actions were informal and were not related to business strategies (Vives *et al.*, 2005).

After the Second World War, philanthropy was legally strengthened by the creation of foundations that helped in allocating resources. In addition, large enterprises started to focus on protecting workers' rights, even before the approval of the laws that imposed it. These events can be considered as the beginning of Corporate Social Responsibility.

Carroll (1979) argues that the book written by Howard R. Bowen (1953) *Social Responsibilities of the Businessman* started a new stage of CSR. After this book, several authors tried to develop the concept. For example, Friedman (1962) gave another point of view: Managers should follow shareholders' wishes. In other words, the basic idea is to maximise benefits following the rules.

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<sup>21</sup> Since 2003, the *Asociación Cristiana de Dirigentes de Empresa* (ACDE) computes the CSR index, *Índice Nacional de Responsabilidad Social Empresarial* (IRSE). Moreover, in 2001 *Desarrollo de la Responsabilidad Social* (DERES) was founded, its most relevant target is to link enterprises, professionals, researchers and civil society agents in issues related to CSR.

In the early 1980's, the concept of social investment was developed. It was based on a criticism of previous actions and it promoted activities that focus on improving the quality of life of the community.

It was in the 1990's that the actions that define CSR, and the concept itself started to take shape. Since then, the number of enterprises and organizations engaged in these practices has continuously grown:

The United Nations Global Compact (1999) contains ten principles that members must fulfil. These principles were grouped in four categories related to human rights, labour standards, environment and corruption;<sup>22</sup>

The European Commission's Green Paper on CSR (2001) sets out strategies to promote corporate contributions to social and environmental progress;

SA-8000 standards (promoted by the accrediting agency of the Council on Economic Priorities) and the standard AA-1000 (Institute of Social Ethical Accountability) are codes that attempt to standardize ethical management of business;

International Standards Organization (ISO) standard ISO 26000 is currently under discussion. It will provide new guidelines regarding social responsibility, and will be published in 2010.

Carroll (1998) states that CSR can be defined taking into account four dimensions that characterize the enterprises' responsibility towards society:

Economic dimension: the provision of goods and services with the purpose of maximizing profits (enterprises' traditional role);

Legal dimension: fulfilment of the laws that regulate their activity;

Ethical dimension: the group of activities that, even when legal, are considered as correct or incorrect by society;

Social dimension: those activities that are not an obligation but are considered as good for society (supporting social or community projects).

It should be noted, that the environmental dimension was not included, but nowadays has become one of the most relevant aspects linked to well-being and CSR.

Authors such as Porter and Kramer (2006) and De la Cuesta González (2004) added different arguments in favour of CSR. Firstly, a moral reason: Enterprises are entities with economic objectives but also with moral responsibilities and therefore, their behaviour should be in accordance. Secondly, there is a strong relationship between enterprises and their stakeholders.<sup>23</sup> This relationship may impact in the level of profits. Shareholders, employees and consumers positively value some intangible goods such as external reputation or internal culture. These intangible goods have become central issues to CSR philosophy.

Bechetti *et al.* (2009) found that the enterprises involved in CSR have redirected their objectives from shareholders to their stakeholders. Finally, the authors considered that when enterprises are socially responsible, CSR management contributes to sustainable development. Basically, the objective is to meet present needs without compromising the capability of meeting future needs. According to Bechetti *et al.* (2004) there are external pressures that make it convenient (and profitable) to be socially responsible. This change in attitude does not damage the relationship with stakeholders. Moreover, it has the potential of creating product differentiation and therefore increases profits.

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<sup>22</sup> <http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/index.html>

<sup>23</sup> Stakeholders: group of agents that is interested in the activity and profits of a company: community, consumers, employees, investors and suppliers (Davis *et al.*, 2006)

Consumer demand for CSR has also increased. This specific demand is an incentive to its implementation. Calveras *et al.* (2006) showed that consumers take into account enterprises' behaviour when purchasing a product, with some consumers preferring to change to a socially responsible supplier even when the change implies a higher price. Therefore, consumers are agents that internalise the externalities.

A research carried out in United States by the National Consumers League in 2005, showed that enterprises' behaviour played a relevant role in determining purchasing decisions. It was also found that consumers dedicated resources and time to obtain information about CSR, mainly through the internet. Consumers linked CSR to employees (27 per cent), community (23 per cent), the product (16 per cent), the environment (12 per cent) and charity (3 per cent).

In sum, even when CSR implies actions that involve some costs, CSR creates higher benefits than expected, that compensate the costs incurred, leading to improved reputation, higher productivity, product differentiation and consumer fidelity, amongst others.

In this sense, Zadek (2007) held that CSR should be assessed considering the five stages of the organizational learning:

Defensive stage: the enterprise is faced with unexpected criticism. The responses are designed and implemented by legal and communications teams and tend to involve either outright rejections of allegations ("It didn't happen") or denial ("It wasn't our fault");

Compliance stage: corporate policy is established and observed. Compliance is understood as a cost of doing business; it creates value by protecting the enterprise's reputation and reducing the risk of litigation;

Managerial stage: the enterprise realizes that it is facing a long-term problem that cannot be brushed away with attempts at compliance or a public relations strategy. Managers should take responsibility for the problem and its solution;

Strategic stage: the enterprise learns how realigning its strategy to address responsible practices can give it an advantage on the competition and contribute to the organization's long-term success;

Civil stage: enterprises promote collective action to address society's concerns. Some organizations look even further ahead and think about meta-strategy: the future role of business in society and the stability and openness of global society itself.

Additionally, Porter and Kramer (2006) held that the interdependency between enterprises and society has strengthened. Successful enterprises need healthy societies and vice versa. Rather than merely acting on well-intentioned impulses or reacting to outside pressure, the enterprise can set a CSR agenda that produces maximum social benefit as well as gains for the business.

Raynard and Forstater (2002) assess the impact of CSR on small and medium enterprises (SMEs), and they found that SMEs have more opportunities than risks when carrying out CSR activities. In this sense, they held that the relationship between enterprises and civil society has radically changed, with the new focus being environmental and social issues, rather than corruption. The relationship between enterprises and society has been defined in terms of legal responsibility, especially regarding three groups of issues: 1) taxes, health and security, 2) workers' rights and consumers and 3) environmental regulations, minimization of damages (audits, reports about pollution, conduct codes, measures of efficiency, etc.). Furthermore, the value creation, through involvement with society, dialogue, social investment and construction of institutionality that companies have toward stakeholders.

Given the previous arguments, our analysis and surveys were based on the definition of the Asociacion Cristiana de Dirigentes de Empresa (ACDE): "*CSR is the enterprise's compromise to contribute to social and economic development*". With the aim of improving the quality of life of the people that are (directly or indirectly) related to the enterprise, they may take actions that positively affect employees and their families, the community and society. This set of actions includes issues such as: protecting the environment, employees and community members' well-



being or promoting transparency. It should be highlighted that CSR involves voluntary actions that enterprises take.

Therefore, CSR could be seen as the mechanism through which an enterprise could contribute to community welfare. The minimization of the negative impacts that enterprises may cause and the maximization of their contributions to society, are the principal explanations for CSR. Given these reasons, CSR may be defined as the group of actions that promote some social good that is not linked to enterprises' interests or with the fulfilment of laws (McWilliams and Siegel, 2001).

### **3. Surveys**

The Department of Economics designed the questionnaire and carried out the two CSR surveys. The first survey was focused on public opinion views and the second survey was based on enterprises' opinions and behaviour.<sup>24</sup> The following subsections describe the methodological characteristics of both surveys. The public opinion survey was carried out in 2006 and the enterprise survey in 2007.

#### **3.1 Public opinion survey**

The public opinion survey (POS) was carried out in November and December 2006. Only people aged 18 years or above, that lived in urban areas (more than 5,000 inhabitants) were surveyed.

The sample was selected taking into account the 2001 Census sampling frame that was designed by the National Statistics Institute (INE). A probabilistic, stratified, clustered sample was employed where the selected unit was a person aged 18 years or above that was chosen randomly among domestic cohabitants.<sup>25</sup> The sample size was 1,031 houses. The response rate was 70.6 per cent; this ratio is acceptable if we consider international standards.

It was the first CSR survey in Uruguay and it allowed us to develop the first dataset that would enable us to obtain information on people's knowledge and information about CSR. The questionnaire was designed taking into account that Uruguay is a developing country, where awareness of CSR is incipient but raising.<sup>26</sup>

#### **3.2 Enterprise survey**

Enterprises located in Montevideo and in the metropolitan area were surveyed between April and June 2007. The enterprise survey (ES) is representative of enterprises that have 50 or more employees. The sample was selected using stratified simple random design. The employed sampling frame was the 2005 Economic Activity Register (INE). The sample size was 122 enterprises, of which 95 answered the questionnaire.

The questionnaire was designed following the CSR index (that is computed by ACDE). We included a set of questions about the components of ACDE's CSR index. ACDE considered these answers to compute the weight of each component.

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<sup>24</sup> In both cases, the fieldwork was designed by Soc. Ferre and Soc. Piani. This report takes into account three previous working papers (that are included in the references) written by Ferre, Melgar, Pastori, Piani and Rossi (Ferre *et al.* 2007a; 2007b).

<sup>25</sup> Ec. Zoppolo from the Statistics Institute (IESTA) was in charge of the sample design.

<sup>26</sup> We designed the questionnaire after the survey "Rethinking Corporate Social Responsibility", Fleishman-Hillard/ National Consumers League, USA 2005.

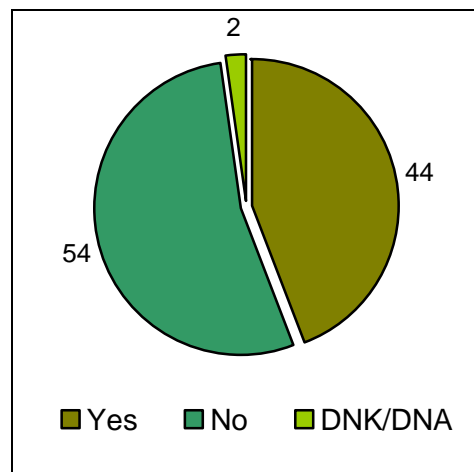
Our survey included questions about the activities that the enterprises could have implemented and their future plans. These questions contemplated the four dimensions: “community, State and environment”; “consumers, competitors and providers”; “employees”; and “shareholders”. With the aim of avoiding misreporting, we asked for specific examples. Questions related to enterprises' characteristics and with the enterprises' role were also included.

## 4. CSR in Uruguay: Descriptive results

### 4.1 How many people have information about CSR?

Firstly, we analyze the level of information on CSR. Respondents were asked whether they had ever heard about CSR, and we find that more than half of the sample had never heard about CSR.

FIGURE 1: INFORMATION LEVEL (PER CENT)



Source: CSR, POS (dECON-FCS, 2006)

Moreover, findings indicate that women have a lower level of knowledge than men: While 48 per cent of men answered “no”, in the case of women this ratio is up to 57 per cent. Regarding age groups<sup>27</sup>, more than 50 per cent of people aged between 50 and 69 years old gave an affirmative answer and at the other extreme, nearly 60 per cent of those aged 34 or younger reported not having ever heard about CSR.

If we accept that the information level is linked to the educational level, it is expected that more years of schooling increases the percentage of people that may answer affirmatively. As the table indicates, this relationship is confirmed. However, only in the case of people that finished university, the percentage is higher than 50 per cent. However, even in the case of those with the lowest level of education (primary), the percentage of those who answered affirmatively is relatively high (almost 33 per cent). Given these results and remembering that this is a relatively new issue in the country, we consider that the level of knowledge on CSR is not so low.

<sup>27</sup> We consider the following groups: a) 18-34, b) 35-49, c) 50-69, and d) 70 years old or older.

**TABLE 1: KNOWLEDGE ABOUT CSR AND EDUCATIONAL LEVEL (PER CENT)**

	Yes	No	DNK/ DNA
Primary	32.5	64.5	3.0
High School	47.0	51.3	1.7
University	69.1	30.5	0.4
Total	45.9	52.2	1,9

Source: CSR, POS (dECON-FCS, 2006)

We also find that the knowledge about CSR is higher in the case of employed people than amongst those who are inactive or unemployed. This may be due to the fact that employed people are more likely to be in touch with CSR practices.

**TABLE 2: KNOWLEDGE ABOUT CSR AND LABOUR MARKET (PER CENT)**

	Yes	No	DNK/ DNA
Inactive	40.4	56.2	3.4
Unemployed	37.6	61.8	0.6
Employed	50.6	48.1	1.3
Total	45.8	52.3	1.9

Source: CSR, POS (dECON-FCS, 2006)

## 4.2 What do agents understand as Corporate Social Responsibility?

In Uruguay, there is no previous empirical literature on people's opinion about CSR. Hence, both questionnaires include an open question (no list or categories were provided) that captures a great diversity of ideas linked to CSR. The responses were grouped and the following table shows the most mentioned concepts.

Regarding the public opinion survey (POS), it is worth noting that almost 25 per cent of respondents were not able to give a definition, even though they indicated that they had heard of CSR. This discrepancy is common when conducting surveys as people may feel uncomfortable in admitting that they are not informed about a topic that seems to be important.

**TABLE 3: CATEGORIES LINKED TO CSR (PER CENT)**

	Public opinion	Enterprises
Employees	21.6	16.5
Society and/or community	19.2	54.5
Enterprises and/or employers	17.3	11.2
Environment	8.3	7.9
Clients and/or consumers	1.4	6.6
Government	0.0	1.6
Others	7.3	1.7
DNK/ DNA	24.9	0.0

Source: CSR, POS and ES (dECON-FCS, 2006)

As the table shows, while the public refers mostly to "employees" (citing aspects such as fulfilling laws and maintaining good working conditions), followed by "society and/or community" (citing aspects such as the integration among enterprises and society) and "enterprises and/or employers" (citing aspects as honesty, the contributions to economic growth and development and commitment to employees) enterprises strongly focus on "society and/or

community". It should also be noted that in both cases of spontaneous responses, "environment" and "consumers" have a low ratio.

In order to make available a conceptual framework before the survey continued, the next question provided ACDE's definition of CSR that the respondent could read:<sup>28</sup>

"CSR is the enterprise's responsible and compromised behaviour with respect to the employees, clients, providers, shareholders, community and environment where their activity is located (production, commercialization, etc.)".

This definition will allow us to develop the dimension that nowadays characterized the concept of CSR which has been mentioned by several authors such as Carroll (1988) and Raynard and Forstater (2002).

### 4.3 CSR and responsibility for social issues

Firstly, with the aim of assessing what people think about the role of enterprises in areas beyond its traditional activities, we included the following questions.

**TABLE 4: WHO SHOULD BE RESPONSIBLE FOR...? CITIZENS' ANSWERS (PER CENT)**

	Governments	Enterprises	Governments and enterprises	DNK/DNA
Supporting community projects and charity	34.5	5.5	56.0	4.0
Helping in reducing the gap between rich and poor people	48.5	6.2	40.3	5.0
Resolving social problems such as crime poverty or illiteracy	71.2	2.6	22.0	4.2
Assuring that enterprises do not damage the environment	35.0	12.2	48.7	4.1
Informing the society about the social and environmental activities that enterprises undertake	35.9	13.3	45.2	5.6

Source: CSR, POS (dECON-FCS, 2006)

In general, the answers are concentrated in the category "governments and enterprises". In relative terms and considering only the categories "governments" and "enterprises", most respondents indicated that the main responsibility lies with governments. Moreover, aggregated responsibility for the governments (columns 1 and 3) reach more than 80 per cent. As it was expected, the table shows that the government is considered as primarily responsible for resolving social problems (71.2 per cent) and for reducing the gap between rich and poor people (48.5 per cent). On the other hand, approximately 12 per cent and 13 per cent of respondents held that enterprises are primarily responsible for ensuring that enterprises do not damage the environment and for providing information about their social and environmental activities.

Firstly, some of the items, such as security, are linked to the role of the State; hence it is not surprising that respondents consider governments have the main role. Secondly, given that the practices connected to CSR go far beyond the fulfilment of laws, we highlighted that this result should not be linked to the possibility of developing a legal frame on CSR.

<sup>28</sup> From this point, the definition on CSR that respondents have is the one that we provided.

The enterprise survey also captures their opinions on responsibility for a set of social issues. Respondents indicated who should be responsible for carrying out these actions. Table 5 shows that in most cases firms perceived that they have a joint responsibility with the government. However, in cases that are more related to enterprises' interests, the percentage of respondents that indicated that they should be mostly responsible is higher. On the other hand, most respondents indicated that the government should be responsible for issues related to general interest such as income-equality and crime.

**TABLE 5: WHO IS THE MOST RESPONSIBLE AGENT? ENTERPRISES' ANSWERS (PER CENT)**

	Governments	Both are equally responsible	Big enterprises <sup>29</sup>	DNK/ DNA
Resolving social problems such as crime, poverty and illiteracy	78.3	21.7	0.0	0.0
Helping in reducing the gap between rich and poor people	53.1	46.9	0.0	0.0
Supporting community projects and charity	26.2	70.7	3.1	0.0
Informing the society about the social and environmental activities that enterprises undertake	13.4	60.5	26.1	0.0
Assuring that enterprises do not damage the environment	13.0	72.0	14.7	0.3

Source: CSR, ES (dECON-FCS, 2007)

When considering who should be responsible for supporting community projects and charity, we find relevant differences per activity sector. While the responses of enterprises of the service sector are concentrated in the category “government”, any company in the industry sector answered “big enterprises”. With respect to equity and poverty, respondents consider the government to have the primary responsibility.

Secondly, we examine how citizens evaluate enterprises' performance on CSR. The following two questions asked for a general classification about enterprises' performance. The first question considered the evaluation at the moment of the survey, while the second question referred to a comparison with two years ago.

**TABLE 6: CLASSIFICATION**

	1 Deficient	2	3	4	5 Excellent	DNK/ DNA
Per cent	9.4	14.3	52.2	11.5	4.5	8.1

Source: CSR, POS (dECON-FCS, 2006)

<sup>29</sup> The questionnaire did not provide a definition on “big enterprises”

**TABLE 7: COMPARISON WITH TWO YEARS AGO<sup>30</sup>**

	Much worst	Worst	Equal	Better	Much better	DNK/ DNA
Per cent	1.3	7.0	38.8	40.1	7.2	5.6

Source: CSR, POS (dECON-FCS, 2006)

While 23.7 per cent of respondents believed that enterprises performed weakly or deficiently, 16 per cent considered that it was good or excellent. In comparison with two years ago, results indicate that the evolution is favourable.

After this general evaluation, respondents were asked for a classification per industry; the following table describes the distribution of affirmative answers.<sup>31</sup> In general industry and commerce were ranked higher than services.

**TABLE 8: CLASSIFICATION OF INDUSTRIES**

Classification	Industry
High (more than 40% of affirmative answers)	Food, health, pharmaceutical and telecommunications
Medium (between 29% and 39% of affirmative answers)	Agriculture, beverage, commerce, communications, energy, chemistry, technology and transport
Low (less than 29% of affirmative answers)	Car-parts, financial services and clothing

Source: CSR, POS (dECON-FCS, 2006)

## 4.4 CSR dimensions

This section analyzes the main areas linked to social responsibility, and what are the relevant factors for respondents.

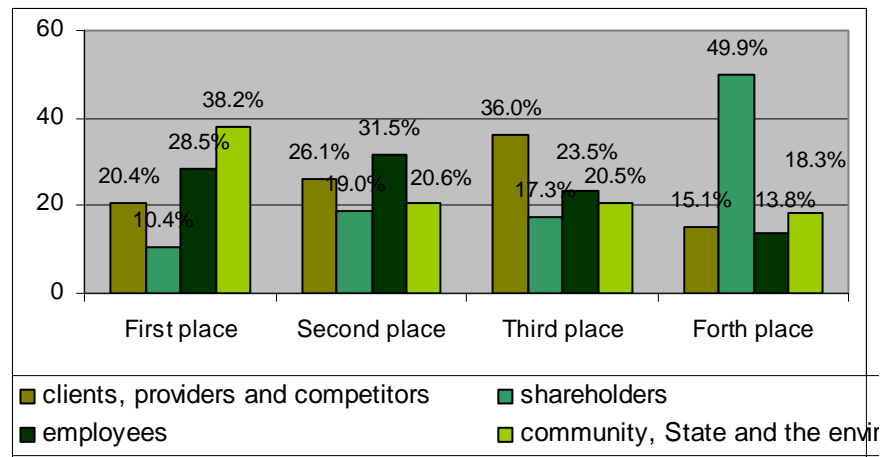
Firstly, respondent graded the four dimensions that characterize the enterprises' responsibility towards society, by placing the most important dimension first. They are: 1) "consumers, competitors and providers", 2) "shareholders", 3) "employees" and 4) "community, State and environment". The following chart summarizes the distribution of answers.

Considering public opinion survey, the chart shows that 38.2 per cent of respondents ranked first "community, state and environment" and only 10.4 per cent indicated "shareholders." In second and third place, "employees" registered the highest percentage followed by "consumers, competitors and providers". Moreover, the category "shareholders" was placed in fourth place in three cases.

<sup>30</sup> We only consider 2 years, because ACDE has computed the CSR index since this time, representing the first organized initiative with the aim at starting to discuss the issue among enterprises.

<sup>31</sup> Distribution of industries among activity sectors: commerce (16 per cent), industry (30 per cent) and services (54 per cent).

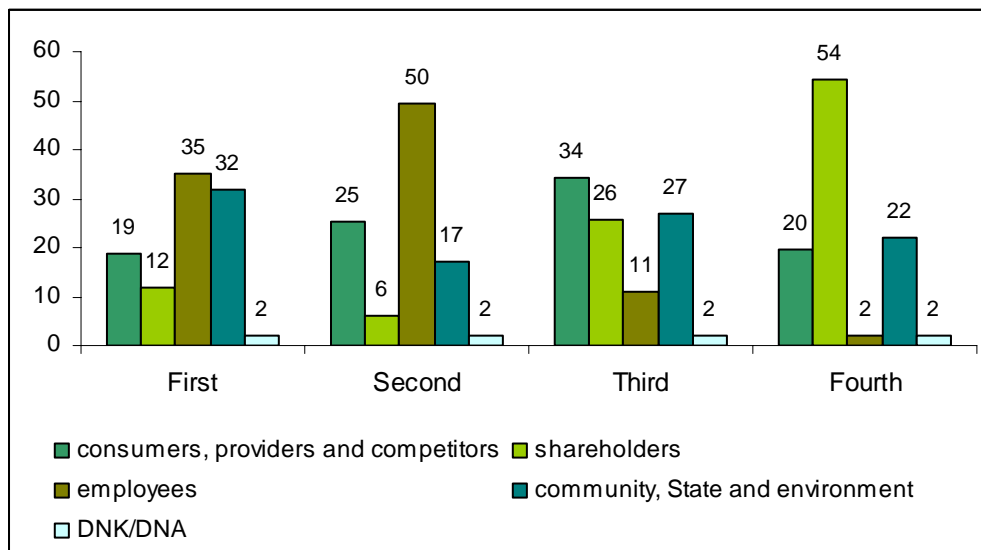
**FIGURE 2: RELATIVE IMPORTANCE OF EACH DIMENSION (PER CENT), PUBLIC OPINION VIEW**



Source: CSR, POS (dECON-FCS, 2006)

With regard to enterprises' opinions, a special card showed four areas where they could act to be socially responsible: 1) “clients, providers and competitors”, 2) “shareholders”, 3) “employees and 4) community, State and environment”. They were asked to order them placing the most important first.. The following figure shows that "employees" is considered the most important area and "shareholders" the least relevant.

**FIGURE 3: RELATIVE IMPORTANCE OF EACH DIMENSION (PER CENT), ENTERPRISES' VIEW**



Source: CSR, ES (dECON-FCS, 2007)

Regarding how much people value social responsible practices we find that if we focus on the category “very important”, the most relevant aspects are those connected with employees.

**TABLE 9: RELEVANCE OF PRACTICES (PER CENT)**

	Very important	Important	Neither important nor not important	Little important	Not important	DNK/DNA
D1. Obtaining high benefits for the shareholders	21.8	54.7	13.6	6.5	1.4	1.8
D2. Respecting labour norms	69.2	27.6	1.7	0.4	0.2	0.9
D3. Giving good treatment and good salary to employees	70.6	26.5	2.1	0.0	0.1	0.7
D3. Sharing your values	30.7	48.5	10.0	5.1	2.1	3.6
D4. Making Charity	33.7	46.0	8.4	7.6	3.4	0.9
D4. Worrying about employees' standard of living	68.4	29.7	0.8	0.3	0.0	0.8
D4. Contributing to the community	31.7	46.1	12.1	5.0	1.2	3.9
D4. Respecting clients' necessities	49.0	43.4	4.7	1.6	0.0	1.3
D5. Protecting the environment	63.8	31.9	2.7	0.9	0.0	0.7

Source: CSR, POS (dECON-FCS, 2006)

Note:  $D_i$  = dimension  $i$ .

These elements can be grouped into five dimensions that are related to the concept of CSR. The first four dimensions are linked to Carroll's definition while extending it, we add a fifth dimension: environment.

Economic: approximately 75 per cent of respondents evaluated as positive that the enterprises get high profits for shareholders.

Legal: respondents found "very important" (69 per cent) or "important" (28 per cent) that the company respects workers' rights.

Ethics: we find that more than 75 per cent of respondents considered the two aspects as being relevant: "giving good treatment and good salary to employees" and "sharing your values" (97 per cent and 79 per cent, respectively).

Social: in the three cases included, more than 75 per cent of respondents evaluated them positively. Moreover, 78 per cent responded positively to the contribution of enterprises to the community, in a way that goes beyond the fulfilment of laws.

Environment: findings indicate that it is a key factor, given that more than 90 per cent of respondents considered that it is, at least, important. When giving their spontaneous definition, few respondents mentioned the environment (Table 3), however, when this aspect is explicitly mentioned, it is highly valued.



**TABLE 10: ARE THE FOLLOWING CASES RELEVANT TO CONSIDER THAT A COMPANY IS SOCIALLY RESPONSIBLE? (PER CENT)**

Giving priority to...	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	DNK/DNA
... hike wages before making charity or donations	44.8	43.8	8.4	1.8	0.4	0.8
... company's growth before making charity or donations	25.2	45.3	16.9	8.6	2.6	1.4
... raise the number of employees before making charity or donations	35.1	44.3	14.5	3.3	0.8	2.0

Source: CSR, POS (dECON-FCS, 2006)

Results clearly corroborate previous findings. Most respondents consider that higher salaries should be a priority, and in general more than 50 per cent considered that giving charity was less relevant than the other aspects. Opinions on the relevance of company's growth showed higher dispersion.

## 4.5 What actions have enterprises taken?

Considering the above-mentioned dimensions, the following sub-sections focus on the concrete practices that enterprises had carried out. The set of practices come from the ACDE's list of socially responsible practices.

### 4.5.1 The company and its employees

Previous findings suggested that people place a higher value on activities related to employees. This sub-section develops different actions that enterprises do not carry out, that are directly related to their employees. While it is high, the percentage of firms reporting actions linked with work-place conditions or those activities that may raise productivity, less than fifty percent of companies indicated to have done something related to the health of their employees or their families.

Firstly, enterprises were asked whether they had a recruitment plan for hiring people with disabilities, problems in accessing the labour market, or those without work experience. As shown in Table 11, few enterprises had such recruitment plans in place, only in the latter case, more than half of enterprises answered affirmatively.

**TABLE 11: RECRUITMENT PLANS IN 2006 (PER CENT)**

Specific plan to recruit:	Yes	No
people with physical and/ or mental disabilities	8.5	91.5
people that have problems with labour market access	21.3	78.7
Young people with no experience	52.1	47.9

Source: CSR, ES (dECON-FCS, 2007)

On the other hand, a high percentage of enterprises indicated that they had implemented a CSR programme involving their employees during 2006. As expected, most enterprises realized training programmes (85 per cent) and activities to improve work-place conditions (60 per cent).

However, only 5 per cent of enterprises had made a programme to prevent sexual, moral or psychological harassment. In all activity sectors, less than 50 per cent of enterprises indicated that they had a plan related to families of employees.

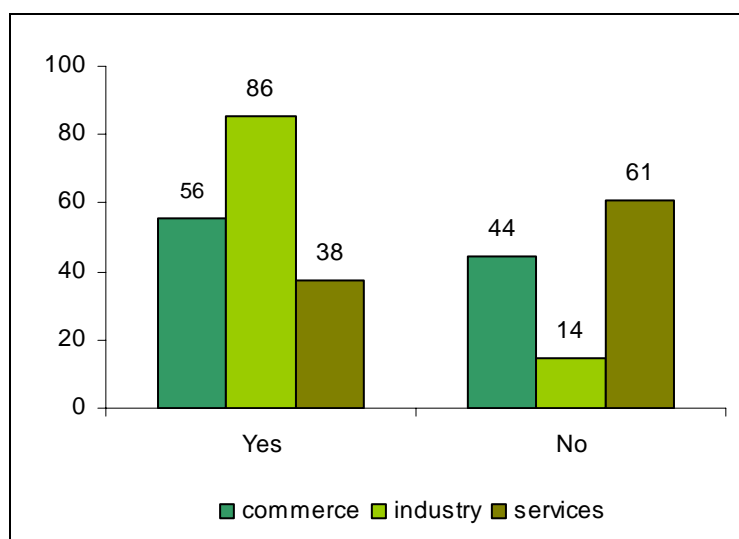
**TABLE 12: CSR ACTIVITIES INVOLVING EMPLOYEES (PER CENT)**

	Yes	No	DNK/ DNA
Training for employees	84.6	15.4	0.0
Improving work-place conditions	59.7	40.3	0.0
Stimulating the participation and involvement of employees	55.8	44.2	0.0
Guaranteeing security conditions and safety at the work-place	54.9	44.3	0.8
Improving the health of employees	45.1	52.5	2.4
Helping employees with the development of their families	32.5	66.2	1.3
Preventing sexual, moral or psychological harassment	5.1	94.9	0.0

Source: CSR, ES (dECON-FCS, 2007)

In the case of a programme to guarantee security conditions and improve safety at the work-place, we find a different behaviour depending on the activity sector. The industry sector registered the maximum of affirmative answers in conducting training programmes (87 per cent).

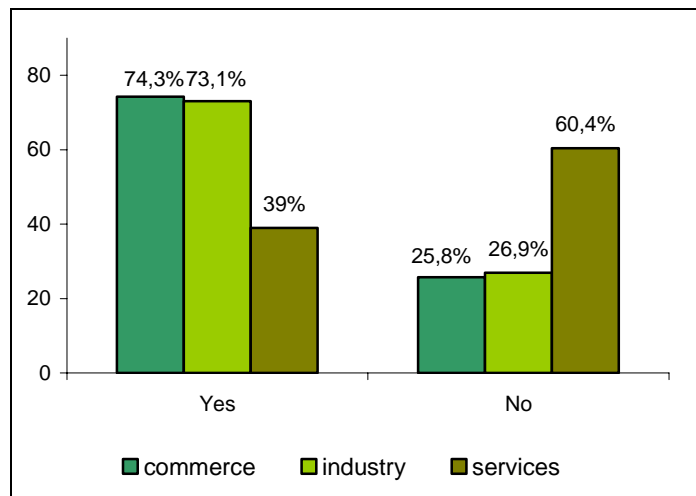
**FIGURE 4: ACTIVITIES TO GUARANTEE SECURITY CONDITIONS AND IMPROVE SAFETY AT WORK-PLACE (PER CENT)**



Source: CSR, ES (dECON-FCS, 2007)

On the other hand, enterprises were asked whether they had established a formal space to listen to employee suggestions, and approximately 70 per cent responded affirmatively.

**FIGURE 5: GRANTS AWARDS TO EMPLOYEES IF PRODUCTIVITY GOALS WERE MET IN 2006 (PER CENT)**

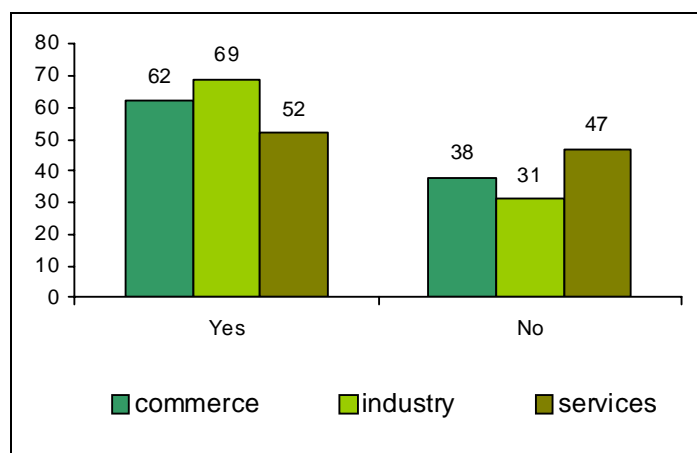


Source: CSR, ES (dECON-FCS, 2007)

Less than a half of the enterprises stated that in 2006 the company had undertaken a programme of distributing the company's results (15 per cent among some employees and 20 per cent among all employees). However, in 2006, 55 per cent of the enterprises gave some kind of reward to workers according to their productivity or performance.

We also find that 55 per cent of the enterprises reported that they had given to their employees a written description of their duties and/or responsibilities, and 60 per cent said that the company had a formal process of evaluation. Finally, 60 per cent of the enterprises indicated that there was an association or union.

**FIGURE 6: CURRENT EXISTENCE OF AN EMPLOYEES' UNION OR ASSOCIATION PER ACTIVITY SECTOR (PER CENT)**



Source: CSR, ES (dECON-FCS, 2007)

#### 4.5.2 Relationship with the community and the environment

We found that one third of the enterprises had carried out a programme of communication with the community (non-advertising) in 2006.

They were also asked whether they had implemented programmes involving the community. The following table summarizes the distribution of responses.

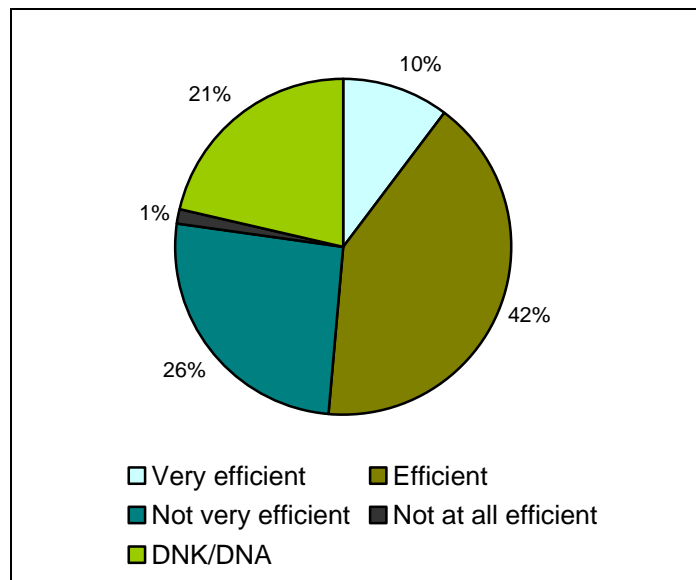
**TABLE 13: IMPLEMENTATION OF COMMUNITY PROGRAMMES (PER CENT)**

	Yes	No	DNK/ DNA
Supporting educative institutions such as universities, technological institutes, high schools and schools.	48.1	51.9	0.0
Cultural, sport or social activities between the company and the community	41.0	59.0	0.0
Carrying out social programmes jointly with non-governmental organizations	25.8	73.6	0.5

Source: CSR, ES (dECON-FCS, 2007)

Given that some firms declared to have implemented programmes jointly with non-governmental organizations, it was asked how they qualified these activities. Additionally, 48% conducted a programme to support educational institutions. As Figure 7 shows these experiences had been positive.

**FIGURE 7: EVALUATIONS OF PROGRAMMES WITH NON-GOVERNMENTAL ORGANIZATIONS**



Source: CSR, ES (dECON-FCS, 2007)

Surveyors were also asked about the implementation of programmes related to the environment. The following table shows that while less than a third of the enterprises implemented programmes to reduce the direct impacts of their activities on the environment, 28 per cent believed that the company did not pollute.

**TABLE 14: PROGRAMMES LINKED TO THE ENVIRONMENT (PER CENT)**

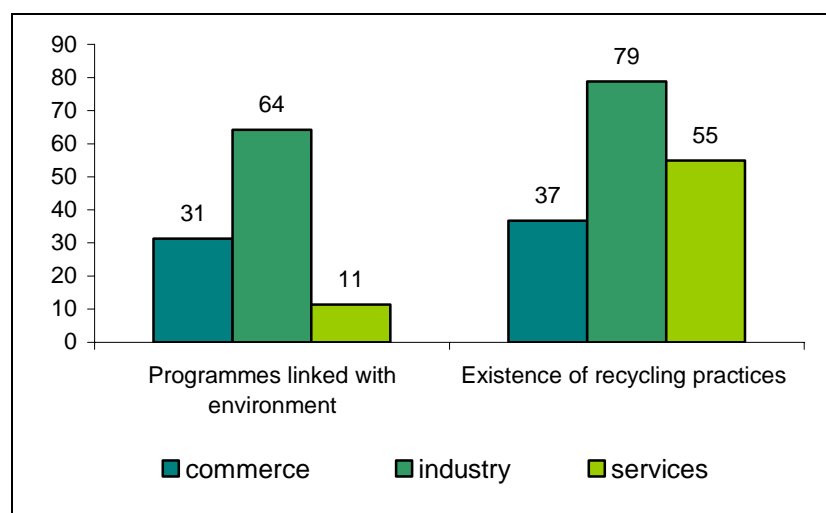
	Yes	No	DNK/ DNA	The activity does not pollute
The existence of recycling policies	59.1	39.9	1.0	0.0
The existence of policies that promote a responsible use of energy and water	57.0	43.0	0.0	0.0
The existence of measures that dampen the negative effects of the activity on the environment	30.4	38.8	2.7	28.1

Source: CSR, ES (dECON-FCS, 2007)

Among the programmes to dampen the negative impacts on the environment, respondents indicated from the fulfilment of laws to having special recycling programmes. The following figure shows the distribution of answers per activity sector.

Secondly, regarding the existence of recycling policies, significant differences were found when considering the activity of the sector. Enterprises that belong to the industry sector were those which mostly implemented those programmes, followed by enterprises of the service sector. This result is not surprising, considering that the industry sector has been subject to greater regulatory and consumer pressure compared to other sectors.

**FIGURE 8: PROGRAMMES LINKED TO THE ENVIRONMENT AND EXISTENCE OF RECYCLING PRACTICES PER ACTIVITY SECTOR (PER CENT)**



Source: CSR, ES (dECON-FCS, 2007)

## 4.6 How does enterprises' behaviour impact on consumers?

According to the respondents' conscious answer, all factors play a relevant role in determining purchasing decisions, but with different intensity (Table 15). Moreover, in all cases the responses are concentrated in the category "very influential".

Examining the two most favourable answers, we find that except in case number six, all factors concentrate on these categories (more than 50 per cent of responses). The more relevant aspects are the cases five (70.4 per cent), one (69.2 per cent) and six (63.8 per cent). It is worth noting that 28.7 per cent believed that case three is not very or not at all influential.

**TABLE 15: ASPECTS THAT MAY INFLUENCE PURCHASING DECISIONS (PER CENT)**

	Extremely influential	Very influential	Quite influential	Not very influential	Not at all influential	DNK/DNA
1) The impact of the products on consumers' health	28.2	41.0	15.6	10.1	3.5	1.6
2) The impact of the company on the environment	19.3	39.1	20.9	13.0	5.0	2.7
3) Donations and/or charity	11.2	34.9	22.4	18.8	9.9	2.8
4) If enterprises' behaviour is in line with your values	13.1	41.2	22.0	11.7	6.4	5.6
5) The way in which the company remunerates and treats employees	30.2	40.2	14.3	7.8	4.6	2.9
6) Whether the firm is recognized as socially responsible	16.2	47.6	21.2	9.0	3.3	2.7
7) The nationality or origin of the product	24.6	36.2	16.4	13.2	8.2	1.4

Source: CSR, POS (dECON-FCS, 2006)

These set of results are clearly in line with previous findings. While charity is not an important factor, issues related to health, employees and enterprises recognition are ranked first. Considering people's opinion on a variety of issues linked to CSR, we included the following questions.

**TABLE 16: DO YOU AGREE WITH...? (PER CENT)**

	Strongly agree	Agree	Neither <i>agree</i> nor <i>disagree</i>	Disagree	Strongly disagree	DNK/DNA
My respect increases when the enterprise declares to be socially responsible	23.5	54.9	14.3	3.4	2.2	1.6
I have a more positive image of enterprises that support a social cause	27.1	55.9	11.6	2.8	1.3	1.3
Given the same price and quality, I would change to the brand/company that supports a social cause	30.0	53.0	7.5	7.0	1.2	1.3
Given the same price and quality, I would change the place where I buy if another supports a social cause	29.0	52.3	10.2	6.0	1.1	1.4
CSR should be part of the normal practices	28.7	53.3	12.8	1.4	0.4	3.4
I do not trust in the motivation of enterprises that support social causes	11.7	41.5	28.4	12.2	2.0	4.2
I prefer that enterprises support local social causes	31.7	58.2	5.3	1.7	0.2	2.9
As a consumer I can make that enterprises behave socially responsible	12.9	42.6	17.2	16.0	6.3	5.1

Source: CSR, POS (dECON-FCS, 2006)

*Note: The questionnaire did not provide a specific definition on social cause.*

We find that in general, responses are concentrated in the categories “strongly agree” and “agree”, these ratios are higher than 75 per cent in six of the eight cases. This suggests that while people believe that they cannot have an influence on enterprises' decisions, their decisions are influenced by the company's image and behaviour regarding CSR. On the other hand, 53.2 per cent of respondents were suspicious about a company's motivation to support social causes.

Findings show that a large ratio of citizens may be more satisfied if enterprises do not focus their actions on charity. The negative perception that people have on the intrinsic reasons for enterprises to give charity, seems to devaluate the relevance of this kind of actions.

#### **4.7 Sources of information about CSR**

Findings indicate that the three most reliable sources of information seem to be: self-experience (73.5 per cent), certificates of quality (73.3 per cent) and other clients (55 per cent). At the other extreme, the less reliable sources of information seem to be: directors or managers (33.5 per cent), enterprises' websites (26.4 per cent) and government (26.9 per cent). Not only do people not trust the enterprise's motivation, but also the information published by them.

**TABLE 17: ARE THE FOLLOWING SOURCES OF INFORMATION RELIABLE? (PER CENT)**

	Fully reliable	Very reliable	Quiet reliable	Not very reliable	Not at all reliable	DNK/ DNA
Information provided by directors or managers of the enterprises	4.0	13.5	46.0	23.4	10.1	3.0
Information provided by employees (neither directors nor managers)	6.5	34.7	42.6	9.8	4.3	2.1
Information provided by other clients	10.0	45.0	33.5	6.7	2.4	2.5
Information provided by the government	7.3	25.1	37.3	17.0	9.9	3.3
Your own experience with both the company and its products or services	20.3	53.2	18.6	4.1	1.0	2.8
Your own research about the company on sources such as Internet or media	9.4	34.3	29.2	10.5	5.0	11.6
Specific reports on CSR published by the company	4.8	23.3	38.6	17.0	7.9	8.4
Certificates of quality granted by independent groups (the Technology Laboratory of Uruguay, LATU, Uruguayan Institute of Technical Standards, or UNIT )	25.0	48.3	16.0	4.0	1.8	4.9
Enterprises' websites	2.8	21.5	31.5	16.6	9.8	17.8
Recommendations that your friends, relatives or colleges make	11.2	40.1	33.9	7.1	5.7	2.0
Media news (printed press, TV, etc.)	3.6	23.3	44.2	18.7	7.7	2.6

Source: CSR, POS (dECON-FCS, 2006)

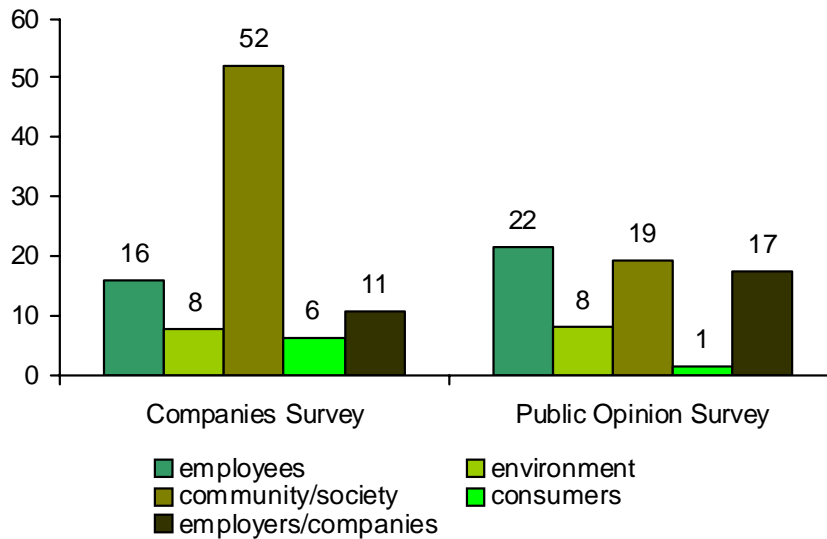
With the aim of evaluating the role of the press media as a source of information on CSR, respondents were asked to express their opinion on whether there was more or less available information than three years ago. The result is positive, with 53.5 per cent of respondents saying that they were more informed and only 6.3 per cent said they were less informed.

#### 4.8 Summary

Findings indicate that both public opinion and enterprises relate CSR to “employees” and “society and/or community”. However, even when those categories ranked first, the relative importance is very different. We highlight the fact that 52 per cent of enterprises linked CSR to the activities oriented to the community.



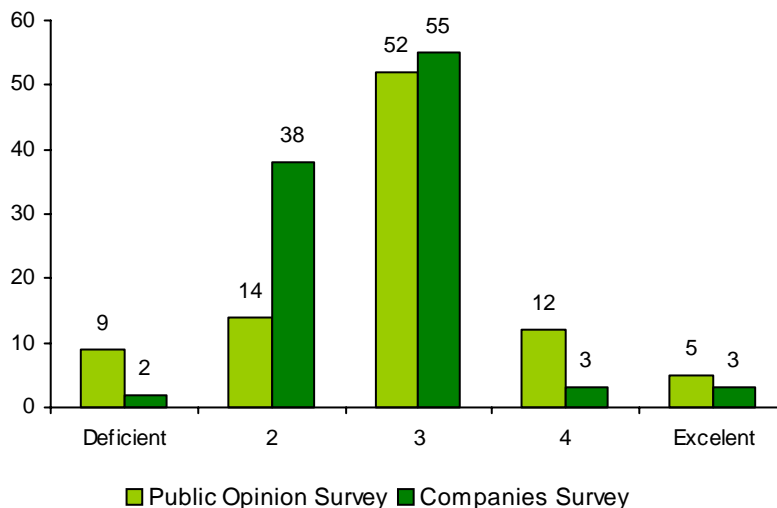
**FIGURE 9: CONCEPTS LINKED TO CSR (PER CENT)**



Source: CSR, POS and ES (dECON-FCS, 2006 and 2007)

When evaluating enterprises' CSR performance, we find similar opinions. However, on average, enterprises are more critical than people. In both cases responses were concentrated in categories two and three, but the percentage of people that indicated “excellent” was higher than the percentage of enterprises that answered the same (5 per cent and 3 per cent, respectively). It is worth mentioning that enterprises are the main actors when considering CSR practices. Those who have more information, and given that CSR is a relatively new issue in Uruguay, enterprises might have a more negative view of it.

**FIGURE 10: CLASSIFICATION OF ENTERPRISE PERFORMANCE (PER CENT)**



Source: CSR, POS and ES (dECON-FCS, 2006 and 2007)

Both surveys included questions about the role of enterprises and the government, and their respective responsibilities (see Figure 11). Considering the POS, we find that 71 per cent of respondents considered that both, enterprises and the government, were responsible for supporting community projects and charities. It should be noted that they also indicated they preferred that firms made actions directly related to their employees, instead of supporting charities. Moreover, it

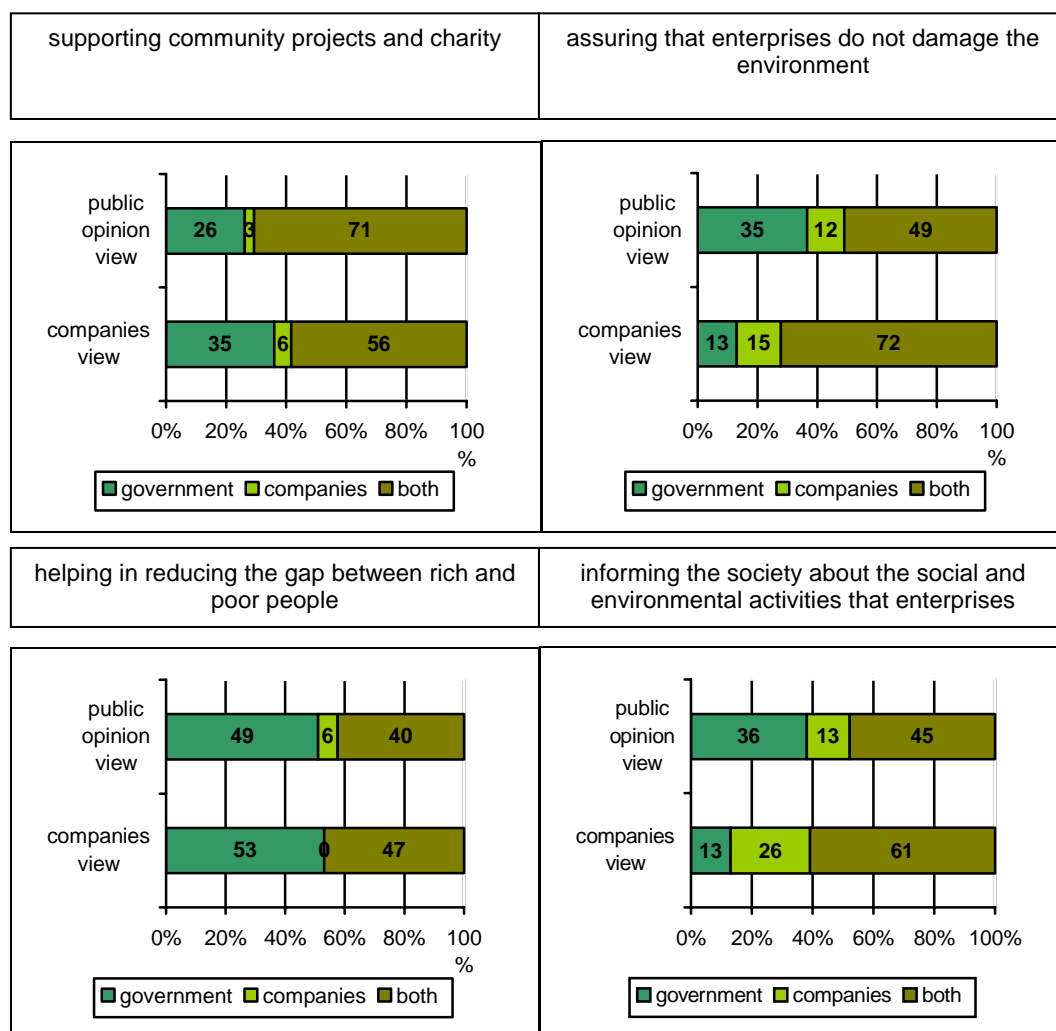
emerged from the enterprise survey that this ratio was down in favour of higher government responsibility.

Regarding the environment, we find that approximately 33 per cent of the people considered that the government should be the most responsible agent. On the other hand, enterprises showed high involvement; 72 per cent considered that both enterprises and government should be responsible. In both surveys, we find that respondents considered that the government is the most responsible agent for helping in reducing the gap between rich and poor people. In both cases, almost zero percent answered that enterprises have the primary responsibility.

It is worth noting that while it emerged from the POS that people thought that only the government should be responsible for “informing society about the social and environmental activities that enterprises make” (36 per cent), enterprises considered that they had a relevant role in that issue (26 per cent answered “enterprises” and 61 per cent indicated “both”). However, it seems to be that people do not trust the information provided by enterprises' reports or managers.

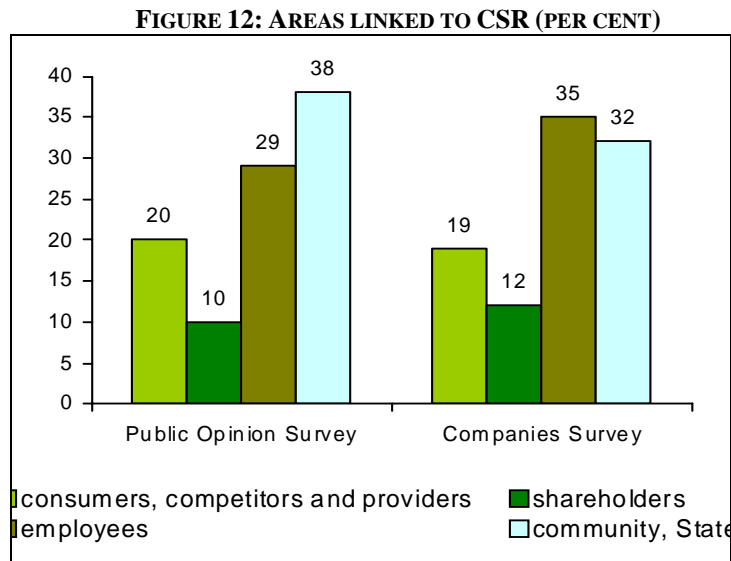
This finding implies that enterprises should strengthen their communication channels with the public, in particular regarding CSR activities.

**FIGURE 11: WHO SHOULD BE RESPONSIBLE FOR ...? (PER CENT)**



Source: CSR, POS and ES (dECON-FCS, 2006 and 2007)

Regarding CSR dimensions and even when the frequency distributions are not identical, enterprises and the public valued more “community, State and environment” and “employees” (see Figure 12). In both cases “consumers, competitors and providers” ranked third and “shareholders” was found at the end of the ranking.



Source: CSR, POS and ES (dECON-FCS, 2006 and 2007)

As the following table shows, the activities carried out by the enterprises are strongly correlated to public opinion views. As mentioned, measures that tend to improve employees' well-being are the most valued activities for the public.

**TABLE 18: ACTIVITIES LINKED TO CSR (PER CENT)**

	Very important/ Important
<b>Public opinion view: Are the following activities important?</b>	
<b>Employees</b>	
those that improve their well-being	98
those that imply respect to their rights	97
good treatment and/or higher salaries	97
<b>Community, State and environment</b>	
those that protect the environment	96
charity or donations	80
those that imply contributions to the community (beyond laws fulfilment)	78

<b>Enterprises view: Did the company carry out some of these activities during 2006?</b>	<b>Yes</b>
<b>Employees</b>	
training programmes	85
taking into account employees' ideas, comments or suggestions	69
improving work-place	60
measures to promote employees participation or involvement	56
grants awards to employees	55
measures to assure security at work-place	55
measures to improve employees' health	45
measures to help employees' families	33
sharing profits with employees	15

<b>Community, State and environment</b>	
recycling programmes	59
improving life conditions in the community	52
supporting educative institutions	48
supporting social programmes carried out by the State	31
measures to diminishing the negative impact on the environment	30
carrying out social programmes jointly with non-governmental organizations	26

Source: CSR, POS and ES (dECON-FCS, 2006 and 2007)

Moreover, we also find that these activities play a relevant role in determining consumers' purchasing decisions (see Table 19). All the considered examples were valued as "extremely important" or "very important" by at least 46 per cent of the respondents. This result also confirmed our previous findings: the public prized activities connected with employees' well-being as the most important, followed by *product's impact* on consumers' health, with charity and donations valued as least important. Less than half of respondents considered "extremely important" or "very important" that the company made donations or contributed to charity.

**TABLE 19: HOW IMPORTANT ARE THE FOLLOWING FACTORS WHEN PURCHASING? (PER CENT)**

<b>Public opinion view</b>	<b>Extremely important / Very important</b>
The way that the company treats employees and the salary	70
<i>Product's impact</i> on consumers' health	69
That the company had been recognized as being socially	64
Product's nationality	61
<i>Company's environmental impact</i>	58
Charity or donations	46

Source: CSR, POS Survey (dECON-FCS, 2006 and 2007)

In summary, the level of knowledge (only 44 per cent indicated that they had ever heard about CSR) is not related to the number of firms that declared to have carried out CSR practices (more than 60 per cent). The relatively low level of knowledge and the fact that the public considers the government to be responsible for some issues related to CSR, stresses the necessity

for enterprises to develop communication channels thorough with the public may have information about enterprises' CSR activities.

## 5. Determinants of citizens' attitudes toward CSR

With the aim at understanding the personal characteristics that shape people's opinions toward CSR, this sub-section presents a set of probit models.

Keeping in mind that the questionnaire (POS, dECON-FCS, 2006), allows us to generate multinomial variables, we estimate probit models that are included in Table 21.

The following table describes the dependant and independent variables included in the models. Dependant variables are equal to 1 when the respondent answered "very important", "strongly agree", "extremely influential" and 0 in other cases.

**TABLE 20: DESCRIPTION OF VARIABLES**

<b>Independent Variables</b>	<b>Categories</b>
woman	1 if respondent is a woman
age	respondents' age
education	years of schooling (0 to 27)
single	1 if being single
married	1 if being married or living as married
widowed	1 if being widowed
income	self-placement in income scale (1 to 13)
left	1 if party affiliation is left
right	1 if party affiliation is right
unemployed	1 if being unemployed
self employed	1 if being self-employed
full time	1 if working full time
public sector	1 if employed at the public sector
Montevideo	1 if living in Montevideo (capital city)

<b>Dependent Variables</b>	
giving charity	1 if considering that making charity is very important to consider that a company is socially responsible
respecting clients' necessities	1 if considering that respecting clients' necessities is very important to consider that a company is socially responsible
protecting the environment	1 if considering that protecting the environment is very important to consider that a company is socially responsible
respecting labour norms	1 if considering that respecting labour norms is very important to consider that a company is socially responsible
employees' well-being	1 if considering that giving good salaries and treatment to employees is very important to consider that a company is socially responsible
directors or managers	1 if considering that the information provided by directors or managers is fully reliable
Government	1 if considering that the information provided by the government is fully reliable
enterprises' reports	1 if considering that enterprises' reports are fully reliable
the company is socially responsible	1 if considering that the acknowledgement that the firm is socially responsible is very influential in the purchasing decision
change to another company	1 if given the same prices and quality, he/she strongly agrees with changing to a company that supports an important social cause

We estimated three sets of models, the first set includes five models whose dependent variables are linked to the actions that a company should take in order to be considered socially responsible. In particular, we focus on the following facts: 1.1) giving charity, 1.2) respecting clients' necessities, 1.3) protecting the environment, 1.4) respecting labour norms and 1.5) giving good treatment and good salary to employees. The second set of models aims at determining people's confidence in some sources of information (we consider: 2.1) directors or managers of the enterprises, 2.2) the government and 2.3) enterprises' reports). The third set of models assesses whether the enterprise's behaviour influences consumers' decisions (we include two cases: 3.1) the company is recognized as socially responsible and 3.2) whether respondents would change to a brand or company that supports an important social cause, given the same prices and quality). Table 21 shows the marginal effects after estimation (only significant variables were included).

In line with previous findings, people consider that the most relevant component of CSR is linked to employees (fulfilment of labour market laws and their well-being). This component is highly likely to appear in a definition of CSR (70 per cent). The second relevant element is the environment.

The second set of models clearly shows that citizens have no confidence in sources of information directly related to the enterprises or government (such as reports written by managers or government representatives). The public considers that the information provided by enterprises or government as reliable is 3 per cent and 7 per cent percent, respectively. As mentioned, enterprises should strengthen the communication channels with the public.

From the third set of models, it is worth noting that approximately a third of the respondents agree that they would change to a brand or company that is considered as a socially responsible enterprise. This finding is a proof of the relatively high disposition of the public

toward this set of practice, and in line with previous findings; it is connected to the necessity of strengthening the communication channels with the public.

As illustrated in Table 21, we find that age plays a relevant role in determining opinions. Older people give less priority to CSR activities, and they do not trust the information provided by the enterprises, government or directors (and the former seems to be the least reliable source), and they are less likely to be influenced by a firm's reputation.

In general, we find no significant gender bias, with gender differences apparent in only three of the cases. Women seem to be more sensitive to issues such as environment, protection and employees' well-being than men. They are also more likely to change between enterprises or brands to one that supports a social cause. This fact might be due to the fact that traditionally men see the world in more competitive and conflictive terms, while women are more cooperative and nurturing. Although, these traditional gender roles and perspectives have been changing in recent decades, some influences persist.

Results show that education has a mixed impact. More educated people value that firms respect clients' necessities, employees' well-being and labour norms. However, they do not consider the firm's charitable activities as very important. More educated people do not trust the information provided by the enterprises, government or directors; with the government seen as the least reliable source of information. Finally, more educated people seem to be less influenced by the firm's reputation. This finding once again highlighted the communicational problems between enterprises and the public, not only in terms of the amount of information but also regarding its veracity given that more educated people are more likely to be informed.

We find that marital status does not determine people's opinions on the relevant actions to be considered socially responsible. Previous literature has shown that marital status is highly connected to the stability of the family and that shapes people's opinions, attitudes and behaviour. However, there are some exemptions: the probability of considering charity as "very important" hikes if the individual is married (or living as married) or widowed. Regarding sources of information on CSR, we find that being single reduces the probability of trusting in all sources of information. Moreover, being married also reduced the probability of having confidence in the information provided by the government. Finally, married and single people when purchasing, are less likely to consider whether the company is socially responsible or not.

We find that income does influence the purchasing decision of people more likely to change between enterprises or brands. On the other hand, the models show that those who have a higher income pay more attention to environmental protection, accepting that environmental quality is a luxury good; this result is not surprising.

While political affiliation with the right makes people more worried about the respect for clients' necessities and employees' well-being; political affiliation with the left also makes people value environmental protection, employees' well-being and labour norms. Moreover, the latter also implies higher trust in the information provided by the government and it also determines a higher probability of changing to a firm that is socially responsible.

When we consider the relationship with the labour market, we find that, in all cases, being self-employed is not significant. On the other hand, being unemployed reduces the probability of trusting the information provided by the government. Unemployed people are less likely to value charity or environmental protection, and they are also less likely to be influenced by enterprises' performance. Those who are employed full time do not tend to consider that charity is very important. Moreover, they also tend to consider that the information provided by the government is less reliable, and they are less likely to change between enterprises or brands. Finally, the factor of employment is influential only in one case; people working in the public sector are less likely to change between enterprises or brands.

Given the characteristics of the country, living in Montevideo or in other regions implies significant differences in everyday life. For example, income levels, educational levels, and employment opportunities are much higher in the capital than in other areas; a high percentage of

enterprises are located in Montevideo as are universities and unions. Montevideo is the smallest “*Departamento*” and the capital city of Uruguay, where 50 per cent of the total population lives.

Living in Montevideo makes people more sensitive to the actions that firms take (respecting clients` necessities is the exception). Therefore, living in a relatively large city where a high ratio of enterprises are located or represented has a significant impact on peoples` opinions about what is socially responsible and what is not: environment protection, respecting labour laws and employees' well-being. Moreover, those people who live in Montevideo do not consider charity as a relevant factor. However, it makes no significant differences in information reliability. Finally, those living in Montevideo tend to consider whether the firm is socially responsible. Differences in knowledge on CSR may explain these divergences.

The estimated models confirm the preponderant role that the public gives to some CSR components. In addition, the models highlight that there is a communicational problem between enterprises and the public, and even when the enterprises have carried out CSR activities, people have no information.

Those people who seem to be more worried about CSR practices are those worried about labour relations, the environment and those who consider that the information provided by the enterprises and the government is not reliable. When purchasing, this group of people is more likely to be influenced by enterprises' performance on CSR.



**TABLE 21: MARGINAL EFFECTS AFTER PROBIT MODELS ESTIMATION**

	Set 1: actions to be considered socially responsible					Set 2: reliability in the information provided by			Set 3: determinants of purchasing decision	
	1.1	1.2	1.3	1.4	1.5	2.1	2.2	2.3	3.1	3.2
	making charity	respecting clients' necessities	protecting the environment	respecting labour norms	employees' well-being	directors or managers	government	companies' reports	the company is socially responsible	change to another company
Probability of dependent variable equals 1	32,85%	47,50%	61,53%	70,91%	69,23%	2,95%	6,60%	3,01%	16,15%	30,06%
Age	-0,003***	-0,005***	-0,002***	-0,001*	-0,002**	-0,002***	-0,002***	-0,001***	-0,003***	-0,004***
	[0,001]	[0,001]	[0,001]	[0,001]	[0,001]	[0,000]	[0,000]	[0,000]	[0,001]	[0,001]
Woman	0,036	0,055	0,069*	0,047	0,105***	0,002	-0,029	-0,008	-0,015	0,066**
	[0,034]	[0,036]	[0,036]	[0,033]	[0,034]	[0,011]	[0,019]	[0,012]	[0,026]	[0,033]
Education	-0,012***	0,009**	0,001	0,011***	0,008*	-0,005***	-0,007***	-0,004***	-0,007**	-0,006
	[0,004]	[0,004]	[0,004]	[0,004]	[0,004]	[0,002]	[0,002]	[0,002]	[0,003]	[0,004]
Married	0,126***	-0,033	0,048	0,022	0,025	-0,004	-0,056***	-0,017	-0,055*	0,063
	[0,043]	[0,046]	[0,045]	[0,042]	[0,043]	[0,012]	[0,022]	[0,012]	[0,032]	[0,042]
Single	0,072	-0,047	-0,029	-0,013	0,002	-0,044***	-0,048**	-0,029**	-0,104**	0,003
	[0,056]	[0,055]	[0,054]	[0,051]	[0,051]	[0,009]	[0,016]	[0,009]	[0,029]	[0,051]
Widowed	0,261***	0,027	0,022	0,057	0,078	0,048	-0,040	-0,006	0,006	0,071
	[0,074]	[0,073]	[0,070]	[0,061]	[0,060]	[0,041]	[0,022]	[0,021]	[0,053]	[0,072]
Income	-0,003	0,013	0,018**	-0,006	-0,001	0,004*	0,004	0,000	0,004	0,016**
	[0,008]	[0,009]	[0,009]	[0,008]	[0,008]	[0,002]	[0,004]	[0,003]	[0,006]	[0,008]
Right	0,040	0,103**	0,052	0,047	0,083**	0,012	-0,012	-0,002	-0,016	-0,013
	[0,045]	[0,047]	[0,043]	[0,039]	[0,039]	[0,016]	[0,022]	[0,014]	[0,034]	[0,043]
Left	0,047	0,081**	0,127***	0,146***	0,138***	0,011	0,060***	-0,005	0,052*	0,056
	[0,037]	[0,039]	[0,037]	[0,034]	[0,035]	[0,013]	[0,020]	[0,012]	[0,029]	[0,036]
Unemployed	-0,100*	-0,010	-0,116*	0,014	0,010	-0,013	-0,048**	-0,031	-0,063**	-0,059*
	[0,055]	[0,067]	[0,069]	[0,061]	[0,062]	[0,013]	[0,017]	[0,009]	[0,038]	[0,056]
Self employed	0,045	0,061	0,038	0,007	-0,024	-0,007	-0,018	-0,013	-0,001	-0,035
	[0,038]	[0,040]	[0,039]	[0,037]	[0,038]	[0,011]	[0,017]	[0,011]	[0,029]	[0,036]
Full time	-0,072*	-0,009	-0,005	0,049	0,033	-0,014	-0,039**	-0,007	-0,045	-0,090**
	[0,036]	[0,039]	[0,038]	[0,034]	[0,035]	[0,012]	[0,018]	[0,011]	[0,028]	[0,035]
Public sector	-0,001	0,031	0,002	-0,023	0,020	0,003	-0,007	-0,025	0,020	-0,077*
	[0,048]	[0,050]	[0,048]	[0,046]	[0,045]	[0,015]	[0,022]	[0,012]	[0,038]	[0,043]
Montevideo	-0,061*	0,038	0,101***	0,092*	0,096***	-0,004	0,020	0,026	0,029**	-0,015
	[0,035]	[0,038]	[0,036]	[0,033]	[0,034]	[0,012]	[0,019]	[0,014]	[0,028]	[0,034]
Observations	856	856	856	856	856	856	856	856	856	856

Notes: Robust standard errors in brackets; \* significant at 10%; \*\* significant at 5%; \*\*\* significant at 1%.

## 6. Conclusions

This paper presents the results of the first survey on CSR that was held in Uruguay at the national level; it considers both the actions that enterprises declare that they have been carrying out and the perception of the public about CSR and enterprises actions.

Firstly, considering the public opinion survey (POS), the first conclusion from this study is that the level of knowledge on CSR is relatively low; more than half of respondents answered that they had never heard of it. Moreover, when the interviewers asked for a definition, respondents linked CSR to society, the respect of labour conditions, the employees' well-being and environmental protection. Both findings seem to be consistent with the fact that this is a new issue in the country.

Secondly, we highlight the preponderant role that agents give to the government. By definition, CSR practices are voluntary practices and if the government regulates them, they would lose this crucial aspect. Moreover, regarding opinions about enterprises' performance on CSR in Uruguay, almost 16 per cent of respondents considered that it was high and approximately 25 per cent declared that it was low.

When modelling peoples' attitudes, we find a relevant set of outstanding results. First, the role of age and educational level in shaping these attitudes. Becoming older tends to reduce the importance of being socially responsible. This can be affected by the fact that such actions are relatively new and older individuals have had less opportunity of being in touch with these actions.

Moreover, although it is noteworthy that education is not significant in explaining the importance of environmental protection, it is significant in determining attitudes towards the relevance of fulfilling labour norms and employees' well-being.

Findings also indicated that more educated people and the elderly are more critical towards the information provided by enterprises and the government, and place less importance to charity.

Additionally, socioeconomic status is relevant in explaining the importance of the actions linked to environmental protection. This could be explained by the fact that good environmental quality might be considered as a luxury good, hence its demand is up when income rises. Moreover, the relationship with labour market affects the people's opinion on certain CSR activities. Unemployed people have a more negative view on charity and environmental protection. It also diminishes the importance of CSR in determining purchasing decisions. City size seems to play an important role in peoples' attitudes towards CSR. Living in Montevideo (where almost 1.5 million live) gives special emphasis to environmental protection, respecting labour laws and employees' well-being.

The enterprise survey allowed us to collect data on the CSR activities that enterprises have undertaken. We find that industries have a greater degree of involvement in CSR practices, particularly those related to the environment and formal development of the organization. Industries and service sectors in Uruguay are the most modern and innovative sectors with the most amount of implemented CSR activities.

More than half of the enterprises consider that socially responsible activities consist of interventions in society and/or the community. Even when it is also important for the public, it is not the most important factor. Indeed, they focus on employees. Notwithstanding this opinion, 85 per cent of enterprises report having conducted training activities for their employees and 60 per cent had implemented improvements in working conditions.

Moreover, it is worth noting that more than 50 per cent of enterprises have undertaken activities related to the environment. We find that industries were more involved in CSR practices, especially, those connected with environmental protection.

Even when a great part of the activities that enterprises have carried out are linked to charity, we provide evidence that people prefer other actions. This finding seems to be related to the fact that people do not trust in enterprises' motivation in providing charity.

An interesting fact to note is the comparison between citizens' views and enterprises' opinions about the performance of the latter. A low ratio of respondents (in POS and ES surveys) indicated that enterprises' performance had been very good or excellent, drawing attention that companies are more critical than the citizens.

A key issue that emerges from this analysis is the lack of a good and credible communicational policy that provides information to consumers. We find that people do not trust in the reports provided by enterprises and the government. This finding is very important given the fact that a high percentage of people are likely to change to a socially responsible product or service.

Finally, following Zadek's typology (Zadek, 2007), Uruguay would be in the early stages of CSR, not only by the few activities that enterprises have undertaken, but also by the scarce knowledge that citizens have about their activities involving CSR. Clearly the most frequent actions on CSR by companies target their employees.

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# **Beyond CSR: Evidence of Social Responsibility Networks in the banana industry**

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# 1. CSR and the emergence and function of the SRN in the banana industry in Colombia

Within the banana industry, CSR initiatives vary according to the motivations and capacities of different actors. For instance, at the local level, there are initiatives planned and implemented by banana producing companies (mostly MNCs) aimed at building trust with workers, local communities and national governments. When local CSR efforts are connected to a wider set of domestic stakeholders, they can be conceptualized as part of an SRN. The rationale for a banana company to become embedded in an SRN is that if local trust is built and maintained, they benefit because the SRN stabilizes relationships (and therefore controls production costs), which enhances economic efficiency and improves the predictability of profits.

According to the European Commission (2001), CSR is defined as “the concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”. This means that for a corporation to become socially responsible, it must go beyond legal compliance and the fulfilment of legal expectations; it also implies the reconciliation of financial objectives with social and environmental ones.

At the transnational level, CSR implies diverse forms of collaboration with stakeholders directly involved in social, labour and environmental problems. However, there are several perceived benefits to using a social responsibility approach for a banana corporation. As a profit-driven enterprise, one of the most widely agreed benefits of CSR is its functionality as a marketing strategy, i.e. advertising good practices in relation to the environment, workers and local communities. Ethical practices, concerning the well-being of workers and engagement in local programmes, have been identified as potential messages to be communicated to consumers.

Conversely, opting for making use of CSR practices in a marketing portfolio has been identified by companies themselves as a questionable practice, since they would prefer to present their CSR actions as genuinely disinterested, and using their benevolent behaviour for advertising could increase societal expectations, which they are not necessary interested in or capable of fulfilling (Bishop, 2006).

Some stakeholders at the local level have noted that some corporations have manipulated CSR initiatives for marketing purposes. Evidence of this, and the lack of systematic accountability and multi-level governance, has increased scepticism about CSR. Professor Eberhard Schmidt, an international expert on CSR and trade unions, describes the perception of the lack of enforcement on the ground as follows:

“The unions are sceptical about Corporate Social Responsibility, because there is normally no means of accountability, which means monitoring, reporting, and so on [...] For the companies, it is very easy to say, well, we respect Corporate Social Responsibility, if there are no means of checking what they do [...] So, the unions have to establish external auditing, external checks, to see if the companies really are serious about this or not”.<sup>32</sup>

It has been argued in the literature that the increasing interconnection of different movements at the global level has been based on the fact that certain problems can only be tackled at the international level (Castells, 1999; Castells, 2000; Della Porta and Diani, 1999). This justifies the creation of a series of international organizations, which have the power to exercise influence over agenda setting at the national and international levels.

The tendency to see states as the sole providers of collective goods, as discussed by Florini (2000), is increasingly viewed as simplistic and, moreover, inappropriate. Since the 1970s,

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<sup>32</sup> Interview with Professor Eberhard Schmidt, Professor of Political Sciences at the University of Oldenburg, Germany, in Porto Alegre, January 2005.

the debate on foreign policy and world politics has increasingly moved away from state-centred approaches, with more attention being paid to the impact of non-state transnational actors (Risse-Kappen, 1995; Willetts, 2001).

Within the banana producing regions of Colombia, minimal government presence over an extended period of time has affected the expectations of social actors, who have limited their expectations about the role of the government at the local level. The government's social responsibility for providing social and developmental infrastructure, such as access to clean water, roads, and health care, was identified by research participants as insufficiently addressed. Even though being recognized as minimal, the research participants perceived the government's intervention in physical infrastructure as greater than investment in community/societal development. The nominal investment in physical infrastructure was considered by the local actors to be superficial and short term. Investment in the social fabric, through training of new skills and education for developing socio-economic understanding and analytical capacity to anticipate future problems and take proactive measures, was considered essential for a more sustainable economic development. At the local level, trade unions, political and social organizations regard it as a responsibility of the national and regional government to exercise sovereignty and to involve all the society's actors democratically. There was a consensus among all actors interviewed that political participation within the banana producing regions is less developed than economic participation and that there is a concentration of power (both political and economic) that needs to be addressed.

There are different civil society actors/organizations involved in the Colombian banana industry's SRN: trade unions; the Catholic church; international organized civil society; MNCs; domestic companies; shareholders; and certifying agencies.

There is legal recognition and social approval of trade unions as legitimate workers' representatives in banana producing regions in Colombia. In the case of regions such as Urabá in Colombia, this representation goes beyond the workplace and has extended to political processes at the local level and in local elections.

Three local unions were involved in the development of the SRN in Colombia: Sintrainagro, Sinaltraifrutí and Sintraexpoban. Sintrainagro has been a crucial node in the development of the SRN at the local and international levels, gaining major social recognition and political leadership in the region. Many of its union leaders were elected town councillors in the regions of Urabá and Santa Marta, and its president ran in mayoral elections on two occasions. Therefore, Sintrainagro is not just an industry trade union, but also a regional union that acts as a regional engine of social representation.

At the international level, IUF's<sup>33</sup> position regarding accountability and enforcement strongly suggests that the role of trade unions on the ground is critical. If trade unions play a role in the development, establishment and monitoring of CSR programmes, then CSR might be recognized as positive by trade unions. The IUF claims that external auditing is not enough to ensure the enforcement of improvements in living and working conditions on the ground. The approach of the IUF is compatible with organizations that view CSR as a stakeholder-focused system, based on the integration of actions in a systematic form rather than the practice of isolated actions, as illustrated by the Agriculture Coordinator of the IUF:

“One of the strategies is that the IUF is trying to take a more global approach to look for the major players in the industry, and say: we want you as a responsible company to agree to a framework of rights in your company, rights based on the conventions of the

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<sup>33</sup> The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association.

International Labour Organization, and to ensure workers in your company have the right to join trade unions, and we use that to be sure that workers have the right to bargain, health and safety, decent wages, and increasingly issues concerned with women workers like maternity leave, child care, and education for children too”.<sup>34</sup>

In the specific case of Colombia, demands on the federal government regarding the trade union movement by international civil society are divided into three tracks:

- The assassination of trade unionists
- Impunity of those responsible for the assassination of activists
- Legislative divergences between international and national legislation

According to government representatives interviewed in Colombia in July 2004, as a result of international pressure the government allocated half of its national budget for protecting civilians to the protection of trade unionists. In 1997 the Colombian government created a special programme to protect the lives of trade unionists. In April 2008, a joint strategy between the National Police Department and the Ministry of Social Welfare was launched, including a rewards-based programme to fight against the impunity of those responsible for crimes against trade unionists, and also to stimulate the collaboration of citizens in investigating assassinations of trade union members (Ministerio de la Protección Social, 2008).

There is undoubtedly a broad recognition, at both the national and international levels, that trade unionists in Colombia have been the target of killing and systematic persecution. However, other social groups, such as non-unionized workers, *campesinos*, journalists, community development workers, medical doctors, school teachers in rural areas, local politicians and priests, have also been specific targets of persecution, assassination, kidnapping and disappearance by armed groups in Colombia. They have not received the same attention as trade unionists. Trade unions and trade unionists that have asked the international community for help in protecting their lives and safety have received assistance from solidarity groups both within the international trade union movement and from other institutions with shared aims.

The international community has been calling on the Colombian state for the protection of groups persecuted by the extreme right since the beginning of the 1990s. This international pressure had a consequence on the government’s commitment to specifically protect trade unionists, as revealed by the Former Chief of Intelligence:

“ The decrease in murder cases of trade unionists can be demonstrated with numbers but with certainty it can be said that this wasn’t a spontaneous priority of this government [...] the government had to allocate proper resources to tackle this, and it did so exclusively because of the international pressure over this”.<sup>35</sup>

This international pressure resulted in protection measures and the establishment of humanitarian organizations working exclusively to help threatened trade unionists leave Colombia and gain political asylum in foreign countries.

The civil society’s social responsibility in the banana industry is to foster and regulate social, economic and political activity through non-state/non-corporate interdependent governance. In other words, it can act through monitoring agencies to encourage desirable behaviour by corporations and governments; and regulate their interdependent relations via its networks, in the absence of overarching political power. Organized international civil society, composed of local and international non-governmental organizations (INGOs), regard themselves

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<sup>34</sup> Interview with the Agriculture Coordinator of the IUF in Brussels, April 2005.

<sup>35</sup> Interview with the Former Chief of Intelligence, Government Officer, in Bogotá, July 2004.



as the main alternative form of regulation operating outside the framework of the nation-state. Although at the moment there is not a globally-defined framework enforceable by international legislation, international civil society organizations generally operate based on western principles of human rights.

In the specific case of Colombia, an additional source of employment in the banana producing regions was the security industry, specifically within both the legal (army) and illegal (left-wing guerrillas and right-wing paramilitary groups) armed forces. Beyond individual or collective political or military interests in participating in the armed conflict, the armed forces represented an economic institution for civilians, which were often regarded by them more as employers, rather than as institutions with an ideological rationale. Since the end of the 1990s, paramilitary groups (AUC)<sup>36</sup> have been opposing the presence of the guerrillas, with the financial support of big landowners (including some MNCs such as Chiquita Brands).<sup>37</sup>

Within the banana industry's SRN, instruments that involve the interaction of international actors towards achieving concrete local goals can be observed. For instance, an international framework agreement (IFA) is an accord negotiated between an MNC and a sectoral trade union federation regarding international activities. Chiquita Brands International became the first, and so far the only, banana company to sign an IFA with the global union IUF and national union COLSIBA<sup>38</sup> in June 2001. The agreement, "Freedom of Association, Minimum Labour Standards and Employment in Latin American Banana Operations," involved Chiquita Brands committing to the ILO conventions regarding freedom of association and collective bargaining, and also covers other issues such as forced labour, child labour, non-discrimination and health and safety. These ILO conventions are also reflected in the SA8000 certification and in Chiquita's code of conduct.

For Chiquita, the IFA brought business benefits (Riisgard, 2004). The main gain was the increased visibility of its public good-citizen profile, which has improved relationships with international trade unions and other international civil society organizations. In the case of Colombia, this IFA was maintained even after the sale of the farms to Banacol.

The IFA brought several benefits for Chiquita Brands as a company; for instance, it was an exercise in regional coordination that brought together, and instigated alliances between, solidarity organizations in consumer markets and workers' representatives. For COLSIBA, as a regional federation, the IFA meant a closer relationship with the IUF, a global trade union federation, and therefore further recognition at the international level. At the local level, the IFA promoted coordination between social and economic actors (such as the Catholic church and corporations) and focused efforts towards the improvement of living conditions in the region.

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<sup>36</sup> The United Self Defence Forces of Colombia (Auto Defensas Unidas de Colombia, AUC) was formed in 1997. It originates from the paramilitary armies built up by big landowners, and in some cases drug lords, who took over local self-defence groups and set up their own to protect their property and interests. As big landowners, they faced extortion and kidnapping by the left wing guerrillas.

<sup>37</sup> After a federal court case initiated in March 2007, Chiquita Brands International received a sentencing memorandum from the US Department of Justice on 10 September 2007, imposing a fine of USD 25 million (Chiquita 2007). The sentence was handed down after the company was charged with making payments of USD 1.7 million to paramilitary groups over the 1997-2004 period. The court decision sparked outrage from the Colombian government and others, who have accused the company of buying impunity. At the same time as the court case was taking place in the US, Colombia's government was investigating and prosecuting several cases of paramilitary intervention at different socio-economic and political levels in the country. Therefore the decision in the US court case, along with the legal process taking place in Colombia, gave the Colombian government the moral authority to request that the USD 25 million be transferred to the region of Urabá to be allocated to social programmes in aid of victims of paramilitary violence (El Tiempo 2007). According to testimony given at the US court by the paramilitary group, all banana companies operating during that period in the region made payments to paramilitary groups (Ibid.).

<sup>38</sup> Latin American Federation of Banana Workers Unions.

At the local level, both trade union representatives and workers perceived the IFA to be part of a process of internationalization of local issues, in which the IUF acted as a global arbitrator.

Another critical civil society actor is the Catholic church, which played a decisive role in promoting the peace process in Urabá. It acted as a mediator in labour conflicts, but also led several international peace commissions to analyze the violence in the region and devise strategies to resolve the humanitarian crisis there, which included the repression of trade unionists and massacre of peasants, grassroots activists, banana workers and community leaders. The Catholic church was an important node in the development of the SRN, since it promoted a local commission integrating a broad set of social actors focusing on peace and justice. It also provided connections with the international Catholic church, raising concerns over the humanitarian crisis in the region and generating pressure on the national government to intervene. At the same time, the Catholic church in the region of Urabá promoted the solidarity economy as an alternative for the *campesinos*, and created six education centres in the region aiming to provide alternatives for employment outside the armed groups. Furthermore it created an organization to care for widows and orphans, victims of the armed conflict.

Additional imperative nodes of the SRN in the banana industry are CBOs. As local civil society actors, CBOs play an important role in providing local services, such as micro-credit, social support, entrepreneurial initiatives to generate alternative jobs and support for the banana industry. They work in several fields, such as gender issues, health, education, recreation, community development, etc. The CBOs in the region operate independently of government agencies and the banana companies. They are service-oriented, non-profit based organizations, and they rely mostly on voluntary donations for financial support, labour and physical resources. Some of them receive technical assistance and economic support from international non-governmental organizations. These INGOs sometimes operate directly in the region, or act via contact with CBOs. Besides mutually reinforcing each other's presence in the region, CBOs provide information to INGOs. They report to INGOs on local conditions, both for contextualization and to seek to maximize alternatives for the solution-making process.

Amongst the SRN's actors, there are concerns associated with the lack of mechanisms to regulate the activities and behaviour of NGOs. These concerns are also reflected by NGOs themselves – the International Coordinator of a major INGO operating in the Urabá region demonstrates a level of self-awareness of the lack of NGO accountability in the following:

All NGOs have in common that we have to watch ourselves [...] we have to be legitimate, and credible when talking to businesses or government about social responsibility [...] this means we have to watch our own working conditions, our environmental impact, and our social impact [...] we have to be critical of ourselves and not think that because we are NGOs we are on the good side.<sup>39</sup>

Within the banana industry, NGOs and INGOs operating in consumer markets use mechanisms such as rallies, protests, marches, demonstrations, boycotts and other public actions as a catalyst for change when the dialogue with decision-makers in a corporation or government has failed. These actions are usually strategically designed to gain immediate attention and short-term responses. The main mechanism is to attract press coverage by exposing and in some cases exaggerating socially unacceptable behaviour by governments or corporations.

Over the last decade, consumer movements have created several NGOs dealing with the banana industry to challenge practices in producing countries. There are seven main INGOs active within the banana industry SRN: BananaLink, BanaFair, the European Banana Action Network

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<sup>39</sup> Interview with the International Coordinator of Caritas International in London, December 2005.

(Euroban), Rainforest Alliance, Ethical Trade Initiative (ETI) and Social Accountability International (SAI).

It is widely understood that CSR has evolved in large measure as a response to consumers' concerns about the social, labour and environmental conditions in which goods are produced. Consumer awareness of the ethics of food production and trade was increased by cases such as the second International Tribunal on Water in Amsterdam in 1992, which condemned Dole (Standard Fruit Company) for seriously polluting the Atlantic region of Costa Rica through its banana plantation. Campaigns were launched with regard to these cases by various NGOs committed to human rights, environment and development (Chambron, 2005). Several consumer and action groups have been created in the agricultural trade area, and associated marking strategies, such as Fair Trade (FT) and organic production, are encouraging the exercise of politics by consumers.

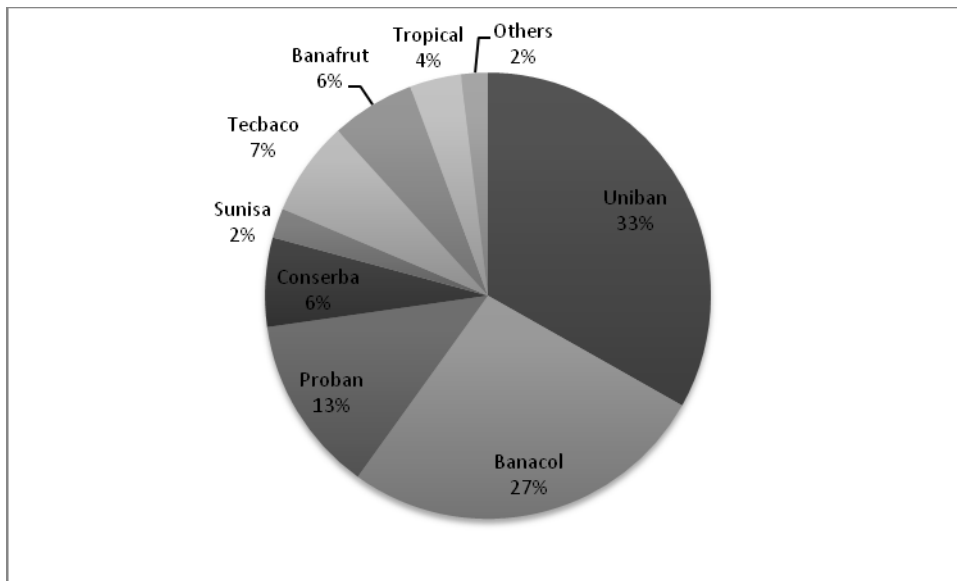
Consumer actions in importing markets have a potential impact in re-addressing trade relationships at the policy level that would at least allow the survival of developing countries within a competitive international market. Consumer actions have also developed niche markets, which offer an alternative to free trade goods. Promoting an understanding of the conditions under which bananas are produced has emotional and social implications in the consumer-worker relationship, and may potentially be translated into a willingness to pay a premium cost when buying bananas.

Workers have sought to share knowledge of their conditions with consumers, through trade unions with established international connections and CBOs with contacts in consumer markets. Banana workers and social actors on the ground understand that consumers' demands can have a positive impact on living and working conditions. Workers are aware that consumers eat bananas that were planted, harvested and packed under difficult conditions. Workers are economically linked to consumers, and beyond that they feel emotionally attached to what they produce and to those who are going to consume the product they have produced. Workers imagine that if a relationship of reciprocity could exist, in which consumers were also emotionally attached to them, it would have a positive impact on their realities.

The MNCs that have operations in the banana industry in Colombia, and have played a crucial role in the development and consolidation of the SRN, are Chiquita Brands International, Dole Food Company, Fyffes and Fresh Del Monte. Besides these MNCs, there are also domestic banana companies. Prior to 1965, Colombia's banana industry was controlled in its entirety by the United Fruit Company (today Chiquita Brands International), Castle & Cook (today Dole Food Company) and Del Monte (today Del Monte Fresh Produce). These three US-based multinationals had exclusive control over the transportation, marketing, finance and production technology of the banana industry worldwide. During the 1960s an elite group of Colombians created the first economic group within the country engaged in agricultural activities in the region of Urabá, aiming to sell their fruit directly on international markets without intermediaries and thus to reduce their dependency on MNCs. In January 1966 the Unión de Bananeros de Urabá S.A (Uniban) was created.

The following graph represents the division of domestic companies' market share of banana exports from Colombia in 2007.

**FIGURE 1: DIVISION OF DOMESTIC COMPANIES' BANANA EXPORTS FROM COLOMBIA, 2007**



Source: Augura (2008)

Uniban has a 33 per cent market share in domestic companies' banana exports from Colombia. It also has a 43 per cent market share in Colombian plantain exports to the world market. Uniban's main markets are the EU, the US, Russia, China and the Middle East.

Banacol, created in 1980, currently employs over 8,500 workers and has operations in Colombia, Costa Rica, the US and Belgium. It started the vertical integration process (cultivation, production of plastic and labels, boxes manufacturing, aerial fumigation and harvesting) in Uraba in 1984, and opened its operations in Costa Rica in the mid 1980s and in Santa Marta in 1989. Since 2001, Banacol has also had marketing operations in, and direct access to, the US and Canadian markets. Banacol mainly produces bananas, but also pineapples. In June 2004, Banacol bought the port operations and farms owned by Chiquita Brands in Colombia.

In the banana producing regions, each of the international producing companies has a social foundation at the local level. Even though these foundations receive direct funding from the subsidiaries of the MNCs, each of them is an independent legal entity, registered as a non-profit organization under Colombian national legislation. Each social foundation usually has an executive manager who is generally on the payroll of the banana producing company. It is the responsibility of the executive manager to administer the financial resources allocated to the social foundation. This means that social foundations are CSR vehicles, since they are responsible for decision-making, implementation, monitoring and reporting of corporate social investment in the local communities.

The main objectives of the banana companies' social foundations are focused on the living conditions of the workers, their families and the communities in the banana regions. This includes areas such as housing, education, recreation and sports, health, the promotion of local cultural activities (such as traditional dancing) and environmental protection. Each social foundation has specific priorities, and differs in the amount of funding they receive from the producing companies and in their ability to gather additional resources from local, national and international development agencies.

The social foundations were established at the end of the 1980s in response to difficult social conditions in the banana regions, especially in Urabá. At that point, their claimed vision was to construct a collective peace in the region through an integrated vision of local development. Thus it could be said that the social foundations were CSR responses for entry into SRNs.

From the data collected from interviews, direct observation and reviewing documentary evidence, it can be concluded that social foundations do stimulate the formation of social capital in the region. They have played a role in training facilitators in leadership skills, especially women and young people. They have also served as a platform for the further development of programmes focused on quality of life, such as sports and recreation, health, housing and education.

Although the literature on corporate governance (Buck and Shahrim, 2005; Licht *et al.*, 2005; Wieland, 2005) clearly agrees that owners critically affect companies at multiple levels, including by cultural ethos, no evidence was found in this study of shareholders influencing the local community in the banana industry in Colombia.

It is important to consider that corporate shareholders are often institutional investors who are owners of shares across a range of industries and therefore usually have no involvement, and in most cases do not wish to be involved (Gillan and Starks, 2000; Godfrey and Hatch, 2007). The role of shareholders in the SRN model being proposed needs to be studied in more detail, since the literature on ethical investment suggests the crucial role that shareholders can play in CSR initiatives.

Small banana producers in Colombia depend heavily on national companies or cooperatives, which offer them more support than the government. National companies provide small-scale farmers with production inputs and loans at low interest rates, which at the same time help large companies to secure their banana supply. In turn, national companies are dependent on importers and retailers who offer them stable business. Retailers/supermarkets manage the supply chain through the rules of the voluntary standard setting organization EurepGAP.

Table 1 below summarizes the status of the social and environmental certifications of the leading banana companies.

**TABLE 1: SOCIAL AND ENVIRONMENTAL CERTIFICATIONS OF THE LEADING BANANA COMPANIES**

	EurepGAP	ISO 14001	SA 8000	ETI Base Code
Chiquita	✓	✓	✓	✓
Del Monte	✓	✓	✓	
Dole	✓	✓	✓	
Fyffes	✓			✓

Source: Companies' annual reports (2009)

Local producers experience problems with the increased number of social and environmental labels and what they perceive to be volatile changes in terms of priorities, scope, content and coverage, as illustrated by a small producer interviewed:

We feel very threatened by new certifications. Every year there are more and more requirements. We fear that the priorities for the current certifications will be different from new certifications. The ideal scenario would be to have a unique standardized norm which would include food and safety and environmental management for all markets.<sup>40</sup>

Despite the fact that there are tangible benefits from social and environmental certification imposed by buyers, for local producers certifications are viewed as additional production costs. Local producers question the economic benefits of some of the environmental

<sup>40</sup> Interview with a small producer in Urabá, August 2004.

and social upgrading demanded by buyers. They are certain, though, of the penalties if a certification standard is not met:

Every new demand in the market we have to adapt to it, but there is no economic reward for this [...] we get paid the same price by the foreign buyers, and the prices of supplies and labour increase all the time [...] we are aware these certifications benefit the industry and the region, but at the individual level for us as producers, the benefits are questionable.<sup>41</sup>

From the view expressed above we can see that certifications in general can be perceived as a burden by producers. This means that local producers often comply with certification solely in order to avoid negative consequences, such as exclusion from the market. Therefore, at the level of local producers, CSR initiatives such as certifications are not voluntary.

In the case of the banana industry, we can state confidently that local producers meet the certification requirements made by buyers in order to avoid penalties through market pressure.

Companies didn't pay any attention in the past to social responsibility; it was just because of certifications that they do now, those are compulsory requirements [...] people have no alternative but to do it [...] things are simple, because those who don't take on board the expected social responsibility are just out of the market! [...].<sup>42</sup>

There is a generalized perception at the local level that if local producers do not comply with certifications they might have their place in the market filled by a producer who will assume the commitment. As certification involves a long-term commitment to organizational culture, infrastructure and production practices, new producers have no certain immediate return on the investment or sustainability in terms of market access.

Certifications and so-called ethical quality demands on the product can be perceived as additional threats to workers and small producers in poor economic situations. The frustration of workers due to a lack of recognition of their efforts has accentuated their disillusion with these market-demanded initiatives, which are often perceived as obstacles to market accessibility.

Nonetheless, it is essential to emphasize that the overall picture derived by this study strongly suggests that the impact of consumers' ethical demands for community improvements have generally been effective in recent years, due to the SRNs. The collective education towards social development has had tangible benefits and a positive impact, especially in the health and safety areas: a decrease in the number of accidents at work, an increased budget in health and safety programmes, improved cleanliness, good standards for eating and toilet facilities and increased proper usage of safety equipment. Workers and local communities have benefited from the process of being certified in the sense that corporations have to pay attention to their needs, and implement solutions to improve their conditions. The benefits to banana companies and MNCs of obtaining and maintaining certifications for their producers are associated with upholding market access, the reduction of absenteeism and increasing employee retention.

Fyffes and Chiquita are members of the Ethical Trade Initiative (ETI). The ETI is a UK government-sponsored alliance of companies, NGOs and labour unions working together to advance good practices in business ethics, corporate responsibility and human rights. It exists to promote and improve the implementation of corporate codes of practice that cover supply chain working conditions, thus ensuring that the conditions of workers producing for the UK market meet or exceed international labour standards.

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<sup>41</sup> Interview with a small producer in Urabá, August 2004.

<sup>42</sup> Interview with the President of Sintrainagro in Urabá, August 2004.

Similarly, other social labelling mechanisms, such as the current Fair Trade model, impose specific conditions on producers for participation in the scheme. But the extent of their success is not yet entirely known for either local or national economies.

Though the FT model is presented as a possible alternative to the liberal economic model, it does not deal with inherent unequal opportunities in market access. Like the organic movement, FT has focused on consumers in rich countries. It can be understood as a political action to create a sense of global solidarity with citizens in more economically disadvantaged countries.

For local producers in the banana regions in Colombia, the FT model appears promising. Producers under the FT scheme are paid more than conventional producers. This represents an increase in income, which, following the logic of the model's promoters, should be reflected in an enhancement of development indicators for the local communities. Though producers under the FT model are paid 15 to 20 per cent more than those who operate under conventional trade, producing FT goods carries additional costs (see Forero-Madero *et al.*, 2008).

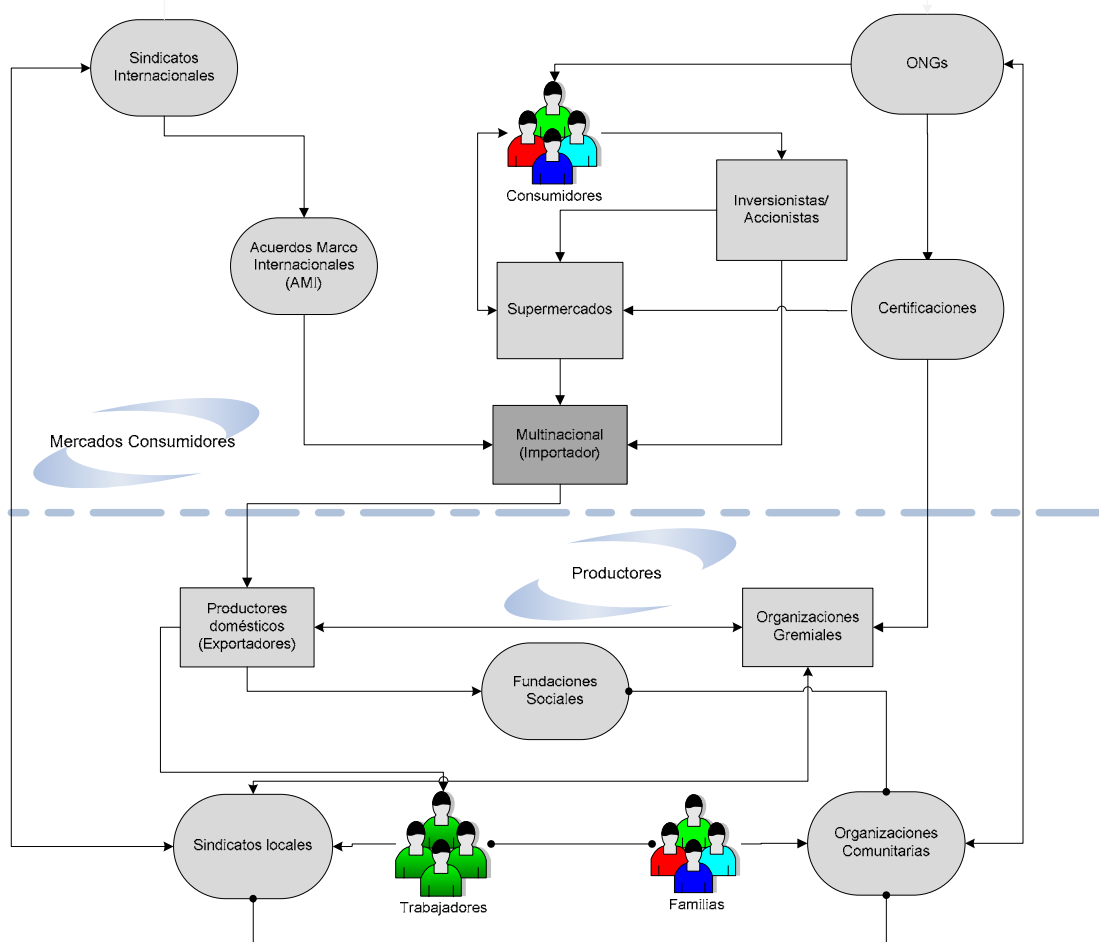
Fair Trade in Colombia is functioning but remains limited. By contrast, actors in conventional trade have strong alliances not only at the local level but also with retailers in consumer markets in rich countries. Their coordination and relationships are strengthened by these secure links along the chain.

## **2. The dynamics of the SRN for bananas in Colombia**

As presented above, the SRN for bananas in Colombia is composed of local and international civil society actors. The nodes at the local level are: workers, local trade unions, CBOs (church and cooperatives), the social foundations of banana companies, banana trade organizations and domestic banana producing firms. At the international level, the nodes of the SRN are: MNCs, shareholders, retail chains and shops, international trade unions, INGOs and certifications. This network for social responsibility through direct and indirect contacts is able to make changes that finally improve conditions at the local level.

The figure below provides a diagrammatic representation of the actors and the interdependence of the relationships among them in the banana industry's SRN in Colombia. It presents the relations between the nodes in terms of the principal influences of increasing responsibility.

**FIGURE 2: GRAPHICAL REPRESENTATION OF THE SRN ACTORS IN COLOMBIA**



The benefits of this SRN in the banana industry for workers, their families and communities, are specifically in the areas of health and safety, trade union recognition and security in the region.

With regards to health and safety issues, the explicit benefits of having an SRN have been: a decrease in the workplace accident rate, a reduction of hazards in the workplace, a reduction in exposure to pesticides and chemical fertilizers, and an increase in environmental awareness. The influences of top-down initiatives for these improvements are traceable to the demands by consumers on retailers and supermarket chains. Consumers receive information from INGOs on the conditions experienced by the workers and their communities where bananas are produced; the INGOs themselves receive information on living and working conditions from CBOs in Colombia. INGOs have been involved in the design, implementation and monitoring of certifications such as SA8000, ISO14001 and EurepGAP, which have explicit provisions for health and safety. Consumers also influence MNCs via INGOs and trade unions in the consumer market countries. Top management in the MNCs have adopted objectives related to corporate citizenship and social performance through technocratic mechanisms such as balance scorecards, key performance indicators (KPIs), operation planning, etc. These social performance indicators often include explicit reference to gaining or maintaining certifications in the area of health and safety. In the case of MNCs, the objectives of the CEOs and vice-presidents come down through the organizational layers until they reach the lower structures at the farm level. Therefore, in the banana industry, the pressures from the consumer markets are, in some cases, assumed as a high-level priority within MNCs, and are formulated as goals by management. Some elements of these



top-down initiatives include training, leadership development and the allocation of financial resources to social foundations. Nevertheless, they require bottom-up initiatives in order to be implemented.

The influence of bottom-up initiatives can be traced to the workers. Workers organize themselves in the banana industry, generally in trade unions, which act politically at the domestic level via CBOs, and political parties, in which workers and their families participate. At the local level, workers' activism mobilizes resources (financial, labour and political) in order to focus attention on the areas that affect them most. Social foundations, which are financially supported by banana producing companies, formulate their priorities partially based on the key needs identified by workers and their families, and allocate resources either to satisfy these needs or to mobilize further resources from external or federal funding agencies.

The second way in which the banana industry's SRN has been influential is in the improvement of security in Colombia's banana regions. Specifically, in the critical area of security in the region, several groups manifested interest and demonstrated commitment towards reduction in the generalized violence in the region. These groups were part of both organized and unorganized civil society. National and regional government also played a significant part in the peace-building process.

Specific improvements in security as a consequence of the SRN in the banana regions include an increase in democratic spaces for political participation, with different actors participating in political and socio-economic development processes within the region, increased collaboration with government agencies, the intensification of dialogue, and informed communication with international actors.

The improvement in the security of the region began with bottom-up initiatives. Workers and their families reported to the IUF via Sintraingro the killings of trade union members. At the same time, CBOs reported human rights violations to INGOs in the banana regions. Simultaneously, the Catholic church in the region of Urabá began negotiations with the EPL guerrilla group, working together with the armed groups in order to gain recognition for them as a political movement. Moreover the church acted as a mediator in labour relations. The Catholic church also mobilized financial resources from the private sector and funding from INGOs in order to create CBOs for the purpose of generating employment for widows of banana workers who were killed in the armed conflict.

The situation of violence, especially in the Urabá region, was also reported to the world at international events by local political leaders. Leaders from the trade union movement, together with local leaders, gained the attention of the media in Europe. These actions, which took place in Europe, were soon echoed in Colombia via top-down mechanisms. The Colombian government was pressured by INGOs to take control over the violations of human rights that were occurring in the region. These INGOs acted both as observers and as mediators in the process of recognition and legitimization of political struggles for the EPL.

The third area in which the SRN in the banana industry had direct influence was in enhancing the negotiating power of workers via union recognition. This gave the banana producers in the region an opportunity to compete with a 'high road' strategy in international markets based on social and moral grounds rather than just price. This 'high road' strategy provided the possibility of maintaining market access by meeting the requirements of social, labour and environmental certifications. It also involved a combination of top-down and bottom-up mechanisms. International visits took place to lobby for the improvement of security and health and safety conditions. Trade union leaders and workers organized rallies to report to the world that they were the legitimate representatives of workers at the workplace and they were also important political actors at the local level. Trade unions financed trips to political meetings in consumer markets in the EU and US, meeting activists from INGOs and consumer organizations to demand

an improvement of their conditions. This caused the arrival in the region of international observers who became interested in the situation. The Colombian government and banana producers soon realized that workers were closely engaged with these organizations in consumer markets and identified as a pivotal priority the maintenance of improvements that workers and their trade union representatives had made and were reporting to the world. This also coincided with corporate goals of gaining and maintaining certifications such as SA 8000, which had direct provisions in relation to freedom of association and recognition of trade unions as the legitimate representatives of workers.

This development of the SRN in the banana producing regions in Colombia has been the result of several historic developments in different areas. As described above, the banana producing regions have both socio-economically and politically re-emerged from a period of extreme violence that cost the lives of hundreds of workers and members of the local community. This recovery has been a process in which both the federal government and civil society structures have taken part. It also coincides with changes as a result of demands in international consumer markets for ethically produced goods. These demands found expression through two types of actors: market-related actors responding directly to market demands (supermarkets and retailers) and civil society actors (solidarity organizations, mostly NGOs, and trade unions). Consumer demands were imperative claims requesting the traceability of bananas in order to reveal the conditions under which they were produced. In other words, consumers demanded to know how the bananas they were buying and eating were affecting the lives of those who planted, picked and packed them. This political and economic movement in the 1990s also had repercussions in managerial practices and in investment decisions.

As presented, the process of assembling the SRN in the Colombian banana industry has been simultaneously bottom-up, top-down, and outside-in. The bottom-up aspect includes several decades of union organization including militant action up to and including strikes. Coupled with this was an extremely fraught and difficult process of conflict resolution and military demobilization in the region. This process involved local community organizations and a mediation effort by the Catholic church. The entry of demobilized elements of the EPL guerrilla organization into employment in the banana industry with the support of both the unions and the banana producers' organization changed the terms of dialogue between the social actors.

A process of compromise and corporatist negotiation, supported by newly organized political forces, opened up the possibility of the pursuit of a more socially responsible strategy of production organization and labour relations.

At the same time, Chiquita, the major transnational company in the banana industry, was pursuing a more top-down strategy. Following a period of severe business failure, Chiquita reoriented its business strategy. Sensitive to its negative coverage in the press, the company sought to turn its image around. In order to overcome its traditional portrayal as the paradigmatic example of exploitative corporate practice in Latin America, Chiquita undertook to meet a range of criteria laid down for socially responsible behaviour. Other companies have followed this lead to a lesser extent.

It is unlikely that this effort would have gained much traction without the availability of a number of civil society organizations set up specifically to pressure corporations to undertake social responsibility initiatives. These groupings were the outside-in forces that made up the emerging SRN in addition to the bottom-up and top-down elements. These groupings included the Rainforest Alliance, a number of social accountability standards, the Ethical Trade Initiative and a range of NGOs exerting pressure and monitoring compliance.

The dynamics of interconnecting consumer concerns and workers' struggles increased the power that could be exercised through international civil society, in the sense that workers' voices could be echoed in market-driven ethical practices. The most significant effect it achieved was in the tacit power gained for workers on the ground. Workers and their representatives (trade unions

and CBOs) gained an understanding that their circumstances, conditions and needs were known and heard internationally by groups of people with demonstrated commitments based in solidarity and social responsibility. This has given them not just negotiating power when bargaining working conditions, but has also situated them in an international network, opening new fields of activity and strategies of influence. This bottom-up phenomenon, which is based on acquired knowledge in international politics and business, and transnational social networks, serves the purpose of connecting workers and local communities to markets and international communities.

At the same time as pressure for responsible action by corporations is growing, the banana industry faces severe problems. These include the changing EU regulations (i.e. the European Commission's case at the World Trade Organization and tariff dispute), oversupply in the international market, the accelerated search for cheaper goods which is shifting production to non-unionized areas of Africa, Asia and Latin America, concentration in the retail chain and, finally, ongoing price wars. Banana businesses (mostly MNCs) have frequently responded to these real difficulties by passing them on to the producing countries and workers, who then face serious consequences such as migration, subcontracting and increasing poverty.

### 3. Conclusions

This paper provided an explanation of how local initiatives, together with the demands of international civil society in consumer markets, emerged and evolved into an SRN in the Colombian banana industry. It also analyzed the effects of this international SRN on working and living conditions in the banana industry in Colombia.

It was found that in the banana industry in Colombia, relationships between international actors (such as international civil society) and local actors (such as local trade unions, CBOs, the church and governmental bodies), as well as MNCs, have been crucial for the improvement of banana workers' living and working conditions. It was shown that the social structures of social responsibility go beyond corporate strategy (CSR) and include initiatives led by civil society (at both the local and international level).

CSR, in general, has been identified as a positive corporate contribution to sustainable development (Jenkins *et al.*, 2002). Moving from a CSR approach to an SRN framework provides a more explicit, holistic and broader view of the context and role of other stakeholders in improving social and economic conditions on the ground.

The difficulty of demonstrating causal relations in social science research is notorious, and this paper is no exception. There are a great number of factors having an impact at some level or other on the lives of workers on the ground in Urabá; the task of identifying all of them and assessing their effects would be an exercise quite beyond the scope of this research. Nevertheless, despite this caveat, when one considers the evidence gathered here, and particularly the statements made by people with personal knowledge of day to day life for workers in the area, there is evidence of the positive impact of the SRN on working people.

None of this should be taken to mean that SRNs constitute some kind of panacea; plainly they do not. There remains much work to be done in such areas as wages and income stability, and the role of government in SRNs needs strengthening in order to provide sustainable structures for development.

What does seem clear is that SRNs offer serious potential for improving the lives of working people in developing countries. They merit further research to identify the actors, structures and dynamics in other industries and locations that could facilitate an improvement in the conditions of people and their communities on the ground.

The emergence of what can be characterized as ethically-modified goods has been a response to market incentives that reward well-behaved brands whose goods are guilt-free, and whose labour and environmental behaviour is accountable and traceable. Nevertheless, the financial costs associated with the proliferating industry of certifications are generally passed to local producers.

These dynamics are traceable throughout formal and informal SRNs, through which socially responsible behaviour is defined, monitored and enforced through the value chains. These networks consist of multiple stakeholders at various points of the production, distribution and marketing processes and include relationships between stakeholders. Actors in such networks include transnational NGOs, trade unions, CBOs, social movements, political parties and state agencies. These new actors in industrial relations, networks and coalitions of actors offer scope for new forms of workers' representation.

The effect of this SRN on the local community in the banana industry in Colombia is to offer an alternative strategy to reverse the race to the bottom caused by the negative effects of globalization. What we can see here is the emergence of a strong politically shaped globalization process, in contrast to economic globalization with pure market logic (Lipschitz, 2005). The most significant results of the SRN's intervention in terms of local living and working conditions are in health and safety issues, trade union representation and security in the region. Indicators, such as a decrease in the workplace accident rate (due to a reduction of hazards at the workplace), a dramatic cutback in exposure to pesticides and chemical fertilizers and approximately 95 per cent of the total labour force being unionized, have been associated with demands by consumers implemented and monitored by certifications such as SA8000, ISO14001 and EurepGAP. Other effects of the SRN in the banana industry include increasing democratic spaces for political participation. This is expressed in different actors participating in political and socio-economic development processes within the region, increasing collaboration with government agencies in terms of working and living conditions, and increasing dialogue and informed communication with international actors. At the regional and international levels, organized workers were given power that they lacked before to exercise both direct and indirect pressure to improve their conditions.

These improvements, in environmental awareness, health and safety, worker representation and security in the region, have given Colombia an opportunity to compete with a 'high road' strategy in international markets based on social and moral grounds rather than just price. The success of the SRN has given Colombia the possibility of maintaining market access by fulfilling the requirements of social, labour and environmental certifications. It has also given Colombian bananas access to specific niche markets based on ethical considerations. This international SRN has provided economic, social and political incentives for local actors to interact with international civil society and to respond to its demands. Nonetheless, there are issues related to social mobility and economic development, such as the lack of stable employment alternatives and inadequate formal education. Access to these is limited in the banana producing regions and networking initiatives at the international level have not produced major improvements.

Criticism of the CSR model is generally based on seeing it as a primarily market-driven tool. Once CSR demonstrates collaboration with the relevant stakeholders in a systematic manner and demonstrates sustainability in the sense that expectations are fulfilled, it legitimizes itself and therefore gains credibility. Once a reputation for good ethical practice is earned it can then be used as tool for marketing campaigns.

Investigating the transferability of SRNs to other banana producing regions was not the aim of this research and further study needs to be carried out in other countries to explore the relevance of SRNs in different contexts.

In spite of the presence of an SRN, it is still necessary to establish and reinforce standard regulatory institutions, both at the local and transnational levels. It is important to highlight that SRN is also compliance related, and therefore legislation and inspection remain critical. Open and voluntary spaces for communication and dialogue will be important mechanisms for this. Common areas of interest such as climate change and other environmental affairs, international markets, trade policies and alternative forms of economic development require coordinated dialogue amongst stakeholders.

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# **TNCs in the dock: Corporate complicity in human rights abuses in Latin America**

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*Hundreds of organisations from Latin America, the Caribbean and Europe presented in Lima their alternatives to the neo-liberal model, consolidating the basis for a new internationalism.*

“Lack of international jurisdiction to try a corporation does not mean that the corporation is under no international legal obligations. Nor does it mean that we are somehow precluded from speaking about corporations breaking international law.” (Clapham, 2006: 31)

# 1. Introduction

The value of corporate social responsibility (CSR) in preventing human rights abuses by transnational corporations (TNCs) is being questioned by many civil society organizations throughout Latin America. CSR is often regarded as a defensive response by TNCs to the mounting criticism that results from the harmful socio-ecological consequences of corporate activity and its impact on sustainable development (Murphy and Bendell, 1997; Bendell, 2000; Soederberg, 2007; Svampa and Antonelli, 2009; Starr, 2000). Corporate behaviour in extractive industries, in particular, has been identified with social conflicts and recurring cases of human rights abuses across Latin America (IfP, 2008; Utting, 2007). Such cases highlight the limitations of CSR, mainly with respect to its voluntary basis and its unenforceability.

Many socio-ecological conflicts derived from TNC practices in Latin America, and elsewhere, show that corporate behaviour can be detrimental to internationally recognized human rights norms. This has led to efforts to create new regimes, comprised of rights and responsibilities, to hold TNCs responsible for their harmful actions. Under international law the state is responsible for human rights. Yet, in the context of neoliberal globalization, the wrongdoers are often TNCs. This suggests that it is not sufficient to rely exclusively on the state to prevent human rights abuses. On the contrary, there is an increasing consensus that TNCs have obligations under international criminal law in addition to states (Monshipouri, Welch and Kennedy, 2003; Ratner 2001; Wouters and Chanet, 2008). Henceforth, TNCs are equally liable for claims of corporate complicity in international crimes related to the impact of their investments and practices on human rights (Clapham, 2006, 2008; Jochnick, 1999; Roseberry, 2007). It is in this context that CSR can be seen as a corporate strategy to take part in the political dynamics of the definition of new regimes for the regulation of transnational business. Latin America is a region where interesting developments are taking place in this regard.

The power implications of CSR are often overlooked in mainstream CSR discussions. CSR approaches are presented as technocratic interventions formulated by leading firms with the aim of minimizing malpractice and improving the social, environmental and human rights dimensions of business performance. CSR becomes a series of 'problem-solving' interventions to remedy the unwanted consequences of some business practices. This has led to the collaboration of the business sector with government agencies and pro-CSR non-governmental organizations (NGOs) in the development of the international CSR standard ISO 26000 over the last two years.

The adoption of CSR duties by firms is not a neutral gesture. Business leadership in the CSR realm can be seen as an opportunity for TNCs to shape their own roles, expectations and legitimacy in relation to the ongoing debate about their rights and responsibilities. Namely, CSR constitutes a power discourse that intervenes in the boundary-setting process and in which rights and responsibilities are being defined as part of the effort to regulate corporations.

Contrary to the view that CSR is a voluntary initiative by a business, acting alone as good corporate citizen, the spread of the CSR model has also been supported and legitimated by public institutions and civil society actors (Haslam, 2004: 5; Shamir, 2004). Originally emerging in the US and Europe, CSR was brought to Latin America in the 1990s by multilateral organizations (e.g. the OECD, UNDP and OAS), private firms, private foreign foundations, educational institutions and some networks of international/national civil society organizations (such as Red Puentes) (Haslam, 2004; Slob, 2004). Increasingly CSR has also been promoted regionally through higher education. This is the case of Redunirse,<sup>43</sup> a network of 85 Iberoamerican universities (public and private) throughout Latin America sponsored by UNDP and the Spanish

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<sup>43</sup> See [www.redunirse.org](http://www.redunirse.org) (accessed 20 November 2009).

Cooperation Agency, and financed by the Santander Bank as part of its international programme to establish alliances with the academic world.

The fact that CSR was imported in Latin America bears relation with the disconnection of its agenda from the development priorities affecting the region (Haslam, 2004: 13-14; Newell and Wall, 2006: 65; Carrón-Prieto *et al.*, 2006; Valente, 2005). CSR instruments do not stress responsibility for pressing areas such as poverty, redistribution, social inequality and public health, as well as the need to strengthen national development policy (Newell and Frynas, 2007: 678-679; Utting, 2007). Instead, there continues to be a view that CSR is largely about philanthropic work.

Over time the CSR agenda has started to be expanded to embrace more explicitly the broader set of rights enshrined in the Universal Declaration of Human Rights. This has been in response to growing evidence of corporate complicity in human rights abuses, particularly in the extractive industries, and to related pressures from activists and consumers. It is also a reaction to new CSR institutions such as the World Bank/International Finance Corporation guidelines related to indigenous peoples, the UN Global Compact, the Financial Times/London Stock Exchange's (FTSE) ethical indices (FTSE4Good), the Voluntary Principles on Security and Human Rights, and the draft UN Norms on the Responsibilities of TNCs and other Business Enterprises with Regard to Human Rights. The guidelines of the Global Reporting Initiative have also been revised to strengthen, *inter alia*, indicators relating to human rights (Utting, 2007: 703).

However, the recent incorporation of human rights into the CSR agenda does not suggest that there have been advances with regard to the realization of human rights and the compliance of TNCs with such human rights responsibilities. A clear example of this is in the oil industry, where most of the major oil companies refer to human rights in their principles and codes of conduct. In spite of this, firms like British Petroleum (BP), Unocal and Total continue to be on the receiving end of bad practice 'awards' (or nominations) for human and labour rights abuses, while others like Shell and Chevron figure prominently in awards for environmental malpractice (Utting, 2007: 703).

The gap between corporate rhetoric and practice is partly explained by the absence of adequate reporting and monitoring mechanisms to account for the impacts of CSR and the verification of CSR implementation. Many firms operating in Latin America (particularly the local ones) have not yet incorporated specialized indexes to measure CSR activities or management tools to systematize CSR activities. They rarely undertake external audits to assess their CSR practices. As a consequence, there is insufficient information to be able to assess the degree of implementation and impact of CSR commitments, ensure transparency and guarantee adequate monitoring conditions (Corral *et al.*, 2006: 228; Flores *et al.*, 2007: 241). The fact that CSR practices are not legally binding is often used by firms as a justification for not incorporating adequate procedures for monitoring compliance (Picciotto, 2003: 2).

This also undermines third party monitoring efforts conducted by civil society organizations. The general and largely non-specific nature of the CSR agenda in Latin America makes compliance difficult (Haslam, 2004: 13-15). In this context, the standards set by the OECD Guidelines for Multinational Enterprises has provided a useful framework to monitor corporate activity (OECD Watch, 2009; Slob, 2004).

CSR is a compliance-plus model of corporate self-regulation, which assumes that companies already fulfil their legal obligations. This assumption has proven to be contradictory with the experience of many TNCs in Latin America. Companies operating in the region often violate national legislation and international norms (dealing with labour rights, environmental standards and others). And, even so, CSR in Latin America is not explicit about firms' responsibilities to comply with legal obligations (Flores *et al.*, 2007: 240). This creates a situation in which TNCs can improve their public credibility, cultivating an image as ethical citizens committed to CSR, without having to *demonstrate* publicly the scope of their responsibilities to

human rights and the coherence of their actions with such commitments. In Latin America and in other developing countries, the discourse of corporate responsibility effectively serves to legitimate a model of corporate self-regulation that risks consolidating a public-private framework of complicity in the abuse of human rights.

The scale of the challenges posed by corporate-related rights abuses in Latin America requires the development of new global institutions to ensure that international human rights norms create enforceable legal obligations on TNCs. Past efforts to create a UN code on multinational corporations failed due to the lack of political support from northern industrial countries. There continues to be resistance to this sort of initiative, particularly with large corporations opposing any institutional framework that may restrict or condition their actions. CSR is the response by TNCs to mitigate renewed pressure to create novel international instruments for corporate regulation.

In Latin America there has been growing pressure to roll back the power of TNCs through compliance with international human rights principles. Since 2006, the Permanent Peoples Tribunal (PPT) process in Latin America has articulated and systematized several grassroots initiatives by environmental groups, trade unions, citizens organizations, and indigenous and peasant movements across the region to increase corporate accountability. As international opinion tribunals, the PPTs expose patterns of corporate *ir*responsibility towards human rights, which are embedded in structures of impunity involving states and international organizations as well as the firms themselves. The evidence of rights abuses committed by TNCs challenges the legitimacy of the voluntary approaches to corporate responsibility proposed by the CSR model. The groups that participate in the PPT process advocate the creation of binding and enforceable rules to regulate TNCs in line with obligations under international human rights principles.

This chapter explores some important issues brought to light by the PPT process in Latin America. It locates the ongoing struggles of grassroots social organizations taking place in Latin America as being at the centre of global political dynamics over the creation of emerging international norms and institutions for corporate regulation. The main claim here is that the PPT process in Latin America has contributed to the evolution of international norms and institutions governing the regulation of transnational business. As a contested terrain between competing forces and interests, the content and scope of such norms are open to definition. The tensions between the creation of a binding and enforceable international framework or a system of voluntary standards reflect such contesting positions in this process. But it is by this process that ‘consensus’ will eventually emerge to establish the foundations for a future institutional and policy paradigm in the context of post-neoliberal globalization.

This chapter analyzes the contributions of the PPT process to the evolution of norms and institutions for the regulation of TNCs. The first section discusses PPTs as a non-judicial space where victims of corporate-related rights abuses can find recognition. The PPT process exposes crimes that would otherwise remain ‘invisible’ due to the victims’ lack of access to justice and the normative indeterminacy over the responsibility of TNCs regarding human rights abuses.

In addition to serving as a forum to denounce instances of corporate abuse, the PPTs also contribute to the transformation of international norms and institutions for regulating transnational business. This is addressed in the second section of the chapter with reference to the notion of localization/re-signification of international norms. Here the view is that victims and social organizations that have been exposing corporate abuse in Latin America are part of a broader process of evolution of international public law. Grassroots initiatives of affected communities are using the PPT process to hold TNCs accountable for their actions. This is explored in terms of the PPT as a *rights-claiming practice* for victims and as a space for the articulation of critical *ideas of corporate responsibility* that go beyond the CSR model of self-regulation. To illustrate this, a selected number of cases of TNC human rights violations, which were presented at the PPT

sessions in Peru and Colombia in 2008, are discussed. These cases suggest the existence of public/private *regimes of impunity* in human rights abuses, linking TNCs and public authorities at various institutional levels.

Finally, the concluding section identifies some of the impacts that the PPT process has had so far in establishing corporate responsibility towards human rights. It also discusses future challenges facing the PPT process and opportunities to bolster its contribution to the evolution of international norms and institutions to regulate business. Whereas the CSR agenda is likely to continue being the dominant regulatory framework to tackle the practices of transnational business for some time, there is a growing global movement looking further ahead and showing that only a system of binding and enforceable rules on business responsibility towards human rights can ensure that globalization be equitable, democratic and ecologically sustainable.

## **2. The PPT as a forum for ‘invisible’ cases of human rights violations**

The international system does not recognize corporate responsibility in human rights abuses. This is the case since human rights obligations of TNCs have not yet been fully established as an international norm. There is still a conceptual gap in current thinking about human rights. Some of the negative externalities derived from transnational production – associated with the increasing economic power and influence of TNCs – are not regarded as being integrally related to the possibility of fulfilling human rights. Although these two spheres of activity are inseparable from each other, they are still regarded as independent. This is evidenced in the absence of any international norms framework that explicitly recognizes the links between corporate activity and human rights, and the obligations of TNCs to them. Consequently, many instances of human rights violations committed by TNCs remain ‘invisible’.

This is reflected in the absence of institutional provisions to ensure that victims can secure adequate remedy in cases of corporate-related rights abuses. Victims tend to be from poor communities located in remote areas with little or no state presence. This is particularly so in the case of communities affected by extractive industries. Access to litigation is often unrealistic, considering the institutional, cultural, geographic and economic obstacles. The high costs make litigation against a TNC simply beyond their reach.

Under international public law, states are responsible for the enforcement of human rights obligations. Yet not all states are the same. In many developing countries states do not have the institutional capacity to regulate, monitor and prosecute corporations that violate human rights. In spite of this, no international provision is in place to offset the institutional asymmetries between states in relation to the limited ability of some to enforce their human rights obligations. This affects victims of corporate abuse in countries with weak institutional capacities and rule of law. The US Alien Tort Claim Act allows foreign citizens to file suits against American firms in US courts for corporate complicity with human rights violations – though only a few cases have actually been filed. Notwithstanding the value of this institutional mechanism in offering some access to victims seeking justice beyond their own national jurisdiction, it does not compensate for the absence of an international court with global jurisdiction.

The obstacles to victims accessing a fair judicial process within their own national jurisdiction often have less to do with frail institutional capacities in developing countries than with the complicit involvement of public authorities. National responsibility for human rights is compromised in cases of corruption or administrative irregularities that result in situations where companies are left to violate human rights with impunity. It is also compromised when public authorities obstruct victims’ access to seeking compensation through a fair and transparent legal process. The criminalization of social protest is a common method used to discourage claims for

compensation. This has been notable in Peru, where protests led by the National Coordination for Communities Affected by Mining (CONACAMI)<sup>44</sup> have led to the death, wounding and judicial prosecution of many indigenous and peasant community leaders (CorpWatch, 2007; Palacio Páez *et al.*, 2008).

Complicity between public authorities and corporations goes beyond the countries where investments are located. It also extends to the countries in which the firms' headquarters are registered. However, under international law there is no legal obligation on states to ensure that companies with investments abroad are liable to respect human rights. The OECD Guidelines on Multinational Corporations establish a code of conduct for foreign direct investment (FDI) coherence with human rights, but their applicability is low as it remains subject to voluntary adoption by companies, without effective accountability instruments. In a global context characterized by unequal economic and institutional development and the growing power of TNCs, a state-based normative and enforcement system of human rights principles does not resolve the deficits of democratic control over corporate power.

The still distant prospect of having a global framework linking corporate responsibilities with human rights contrasts with the pace of innovation in international commercial law. Neoliberal globalization has been associated with the creation of global juridical/institutional frameworks to lock in market liberalization reforms and to limit the transformative scope of democratic politics (Gill, 2002). Developments in international commercial law have given corporations greater rights over key areas of state policy and regulatory instruments, without corresponding legal responsibilities. Investor-state provisions were included in dispute-settlement mechanisms of international investment treaties and of bilateral free trade agreements (FTAs). Under these agreements, companies can sue states in tribunals that are not under the jurisdiction of any country when they consider that changes in national public policy and regulatory context have affected the expected revenue of their investments (UNCTAD, 2009). Such developments created a situation of 'normative asymmetry' between international commercial and public law. The legal regulation of transnational business is given full normative strength while the normative 'weakness' of human rights law runs against the 'hardness' of TNCs (Hernández Zubizarreta, 2009).

In the absence of established normative and institutional spaces to link TNCs' behaviour and human rights principles, the Permanent Peoples Tribunal process in Latin America has taken on the role of increasing the visibility of human rights violations that have not been recognized or addressed officially. The PPTs were created in 1979 by legal experts, writers and other intellectuals, as an international opinion tribunal independent from state authorities. It formalizes and gives continuity to the Russell Tribunals (also called the International War Crimes Tribunal) on the Vietnam War and on Latin America in the late 1960s. The authority of the PPT decisions is guaranteed by the integrity of the jury. The PPT is institutionally located at the Lelio Basso International Foundation for the Rights and Liberation of Peoples in Italy – established in 1976 and inspired by the Universal Declaration of the Rights of Peoples at Algiers.<sup>45</sup>

The PPT understands that the jurisdiction of the International Court of Justice (ICJ) is relevant only for states that have voluntarily accepted its competence – the majority of UN bodies can be accessed only by states and not by 'peoples' or other collective actors. This is the gap the PPTs intend to bridge. Hence, the PPTs' work is directed not only to states but also to people and their petitions. Since the 1970s, PPTs have judged cases tabled in a number of sessions (see Table 1 for a list of PPTs). Two PPT processes dealing with corporate power and rights abuses were launched almost simultaneously, though independently, in Latin America.

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<sup>44</sup> See: <http://www.conacami.org> (accessed 28 August 2009).

<sup>45</sup> See: <http://www.internazionaleleliobasso.it/> (accessed 7 July 2009).

The first, a PPT session on “Neoliberal Policies and European Transnationals in Latin America and the Caribbean”, was held in Lima, Peru, on 13-16 May 2008, to coincide with the Summit of the Heads of State of the EU, Latin America and the Caribbean. This tribunal was the result of a joint effort by Latin American and European social organizations to leverage ongoing inter-regional negotiations of Economic Partnership Agreements (EPAs) between the EU and MERCOSUR, the Andean Community and Central America. The coordination came from the bi-regional network Enlazando Alternativas (EA, Linking Alternatives)<sup>46</sup> set up in 2004 between organizations of the Hemispheric Social Alliance (HSA) – a regional network that had a central role in the resistance to the Free Trade Area of the Americas (FTAA) project (Saguier, 2007) – and European social organizations linked to the Transnational Institute (TNI) in Amsterdam.

The second PPT initiative in Latin America came from a group of Colombian organizations who held a PPT on “Transnational Corporations and the Rights of Peoples in Colombia, 2005-2008” on 21-23 July 2008. This PPT process was held in the context of social resistance to the establishment of a controversial US-Colombia Free Trade Agreement. Both governments signed an agreement on 22 November 2006, which was later approved by the Colombian Congress in 2007 and reviewed by Colombia’s Constitutional Court in July 2008. However, the ratification of the agreement at the US Congress is still pending, largely due to the accusation of gross human rights violations associated with the Colombian administration, particularly in relation to assassinations of trade unionists. Many of the cases of human rights violations that subsequently had international repercussions were presented at this PPT in Colombia.

Until an international system with binding rules is set up to hold TNCs accountable for human rights violations in all their dimensions, and to allow access to victims seeking remedy, the PPT processes in Latin America will continue to serve as a forum where these demands are channelled, articulated and voiced. The PPT process represents the victims of corporate abuse.

### **3. Localization/re-signification of international norms**

The PPTs act as a process for the localization of international norms dealing with the regulation of transnational business. This takes place when local grievances associated with the harmful consequences derived from exposure to, and involvement in, TNC production practices are framed, by social organizations attending the PPT sessions, in terms of human rights and peoples’ rights.

Rajagopal’s (2003) critique of the partiality of mainstream accounts of the formation of international law is relevant to understanding the role of the PPT process in the creation of new international systems for the regulation of TNCs. According to the author, narratives of the evolution of international law obscure the role that social movement resistance in the developing world has had in shaping important aspects of international law in the twentieth century. These narrow narratives function within specific paradigms of western modernity and rationality that predetermine the actors for whom international law exists – i.e. state officials, economic actors, such as corporations, and cultural actors, such as the atomized individual who is the subject of rights. They do not ask the elemental question of *for whom* international law exists. They privilege instead what happens in certain institutional arenas, and in doing so these accounts neglect that most of the people in the developing world live and interact in non-institutional spaces (Rajagopal, 2003: 4-5). This is not simply a claim about the need to incorporate the ‘inputs’ of subaltern forces in explanations of how international law develops. Rather, it shows the ways in which defining features of the system have resulted from the demands of resistance forces, which were incorporated as necessary concessions in order to create hegemonic credibility.

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<sup>46</sup> See: <http://www.enlazandoalternativas.org> (accessed 7 July 2009).

There is a codetermining relationship between the path-dependent evolution of international law and the practices/ideas of social movement resistance in the field of development. It is the conflict-ridden interactions between the agency of subaltern forces, dominant forces and institutional building processes which explain the nature of existing arrangements, as well as the possible future directions of this evolution. The place of Latin American social movements in this scenario needs to be highlighted. After all, in Latin America, just as elsewhere in the developing world, social movements “represent the cutting edge of resistance in the Third World to antidemocratic and destructive development” (Rajagopal, 2003: 12-13).

Taking this approach, the PPT process can be seen as a non-judicial forum, where norms related to corporate regulation are created through demands for greater corporate accountability in a system of binding TNC obligations to international human rights principles. Following the notion that the creation and evolution of international public law is also the outcome of social movement practices and ideas, the PPTs are here approached as a social *practice* to claim human and peoples’ rights in response to corporate abuse, as well as a space for the articulation of critical *ideas* of corporate responsibility.

### 3.1 Rights claiming practices

With respect to its rights claiming practice, the PPT process enables social organizations to frame and advance local grievances associated with harmful TNC activities in terms of international human rights principles. As legal-conceptual resources, human rights are used instrumentally to legitimate as well as to rationalize claims that often deal with demands for compensation or reparations.

A good example of how international norms are localized is the recent case of an Aymara indigenous community in Chile that has won a longstanding legal dispute against a mineral water company over the rights to water. In an unprecedented decision, the Chilean Supreme Court applied the International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples to rule over the Aymara’s water rights. ILO Convention 169 refers broadly to resource rights, and can be extended to all natural resources within aboriginal areas of use, including forestry, hydroelectric and geothermal energy. The ruling’s potential impact on major industries such as mining could be far-reaching, since water supply is an important factor in the feasibility of many mining projects (Valencia, 2009). This case sets a precedent in the region that could inspire a movement towards a greater judicialization of socio-ecological conflicts over the use of natural resources. Whereas the case was disputed in a national court, the process of localization of international norms is not necessarily restricted to formal institutions, as the PPT process demonstrates.

Yet the framing of grievances in terms of human rights *also* leads to the transformation of such international norms. Human rights norms cannot be abstracted from the historical context of the struggles of real people experiencing real instances of domination (Stammers, 1999). Formal norms, existing as abstract legal constructs, are bestowed with ‘legitimacy’ and ‘reality’ that comes from the lived experiences of those exposed to harmful corporate activities. Since norms are inscribed by culturally specific perspectives, they are always open to cultural re-interpretation. That is why the use of human rights involves a change of legitimating logic of those norms. Norms are transformed when the prevailing understandings and expectations about ‘rights’ and ‘responsibilities’, which are socially ingrained and reproduced in the sphere of civil society, are modified.

The PPT process in Lima, Peru and Colombia incorporated the concept of *illegitimate, ecological and historical debt* in order to rationalize and qualify violations of economic, social and cultural rights against persons and peoples by governments, financial institutions and TNCs. This concept highlights the historical responsibilities of industrialized countries in the plundering of natural resources in the developing world, starting with conquest and subsequent colonization. Today this continues with the removal and exportation of raw materials – such as oil and minerals,



forestry, marine and genetic resources – and the related impacts of this activity in terms of destruction of the eco-systems and the local population's source of survival. In order to comply with the obligations and interest inherent in foreign debt, developing countries are coerced into exporting more and more resources, thereby generating more ecological debt. In relation to climate change, industrialized countries also have an ecological debt for the production of toxic waste, chemical weapons, the undertaking of nuclear tests, and carbon emissions.<sup>47</sup>

The concept of illegitimate, ecological and historical debt, articulated at Latin American PPTs by various social organizations and indigenous peoples, introduces a framework in which to conceptualize the links between corporate power and rights abuses. Its rationale unpacks the ties between rights, debt and the world economic system in which TNCs are the key actors. This notion goes beyond a critique of the impacts of corporate behaviour. It relates this behaviour to a broader policy/institutional framework of neoliberal globalization that is responsible for TNC violations of human rights, both as direct infringements of rights as well as instigators of socio-economic inequality and ecological devastation.

The appropriation of human rights principles as a means of expressing grievances has also had a transformative effect in the subjectivities of social organizations and communities mobilized in response to the impacts of TNC practices. This has led to community-based strategies directed at holding TNCs accountable for their actions becoming widespread, particularly among communities affected by the impacts of extractive industries (CorpWatch, 2007; Garvey and Newell, 2005). Grassroots initiatives expose shifting notions of citizenship rights over natural resources and rights-claiming practices (Wheeler and Newell, 2006), as well as critiques of the lack of sustainability in the extractive development model being promoted in Latin America by TNCs and public authorities (Svampa and Antonelli, 2009). In this respect, the localization of international norms is far from a passive incorporation of international instruments to local struggles. Rather, as the PPT process evidences, it is an active process of empowerment in which the impunity of local action is overcome while disembodied international norms are incarnated in power struggles.

The cases presented at the Lima, Peru and Colombia PPT sessions were the result of extensive processes of assembling documentation and hearing *viva voce* testimony from numerous experts and victims. Each tribunal was preceded by various regional hearings, in which victims and social organizations provided testimony and evidence.<sup>48</sup> The Lima session considered 21 cases of European TNCs from 12 sectors (mining, oil, the logging and pharmaceutical industries, telecommunications, agro foods, the iron and steel industry, electricity, water, agro-chemicals, banking and financial instruments, and genetically modified seeds) operating in Latin American countries (see Annex 1 for a list of organizations involved in organizing the Lima PPT and presenting cases). At the time of writing, a PPT session is being planned to be held in Madrid in May 2010 as a continuation of this process of incorporating legally binding instruments in currently negotiated association agreements between both regions. The Colombian PPT session covered 31 cases (see Annex 2 for a list of groups involved in organizing the Colombia PPT and presenting cases). Each individual case clearly demonstrated that the reported violations were no accident. They evidence structural forms of impunity: recurring patterns of complicity that involve TNCs and the permissiveness of the responsible public authorities in the TNCs' countries of origin and/or in the countries where the victims of the violations are located (see Table 2 for a

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<sup>47</sup> See: <http://www.deudaecologica.org> (accessed 30 August 2009).

<sup>48</sup> Previous actions leading to the Lima PPT included a hearing held in May, 2006, in Vienna, Austria, held in parallel to the EU-Latin America Heads of States Summit, and pre-hearings organized in Colombia, in Bilbao on the case of the BBVA (October 2007), in Managua on the case of Union Fenósa (12-13 October 2007) and parallel events organized in Glasgow, Madrid and The Hague. A hearing prior to the Colombia PPT took place in Medellín (10-11 November 2006), as well as pre-hearing meetings on Nestlé in Berne (October 2005), followed by five in Colombia that dealt with TNCs in: the agro-food sector (Bogotá, 1-2 April 2006); biodiversity (Cuenca Esperanza humanitarian zone, 25-26 February 2007); the oil industry (Bogotá, 3-5 August 2007); public services (Bogotá, 7-8 April 2008); and indigenous peoples (Atánquez, Sierra Nevada de Santa Marta, 18-19 July 2008) (PPT-Colombia 2008).

selection of cases presented at the PPT sessions in Lima, Peru and Colombia discussed in this chapter).

### 3.2 Ideas of responsibility

Ideas of responsibility articulated in the PPT process also contribute to the evolution of international norms for business regulation. This is done by challenging the legitimacy of the voluntary principle at the core of the CSR approach to corporate self-regulation. Contrary to the emphasis on self-regulation, the responsibilities of public institutions are reasserted under the focus of human rights violations.

CSR is a field of action that is shaped by the interplay of popular pressures and the responses of corporations to those pressures. In this process, notions of responsibility are shaped by corporate practices in ways that diffuse its radical transformative potential. CSR is ‘de-radicalized’ when its scope and meaning are biased towards the voluntary, the philanthropic and the non-enforceable (Shamir, 2004). The view that corporations have a *voluntary* responsibility over certain rights has come to represent a defining component of mainstream understandings of CSR. In this regard, “CSR is an important terrain of struggle, one where organized business interests have proven to be extremely adept and savvy” (Utting, 2007: 706).

CSR as a model of corporate self-regulation assumes coherence between private and public interests. This is evidenced in arguments used by advocates of CSR that stress the ‘business case’ for social responsibility (Flores *et al.*, 2007). The understanding that there is a potential for economic profit in ‘being responsible’ underpins leading CSR initiatives like the UN Global Compact and ISO 26000. One problem with this rationale is that it colludes public and private interests in ways that obscure who benefits and who loses from production, to what extent and in what ways. Some claim that, “theoretically there are strong grounds for assuming that CSR reinforces corporate power. This is implicit in the so-called business case for CSR and the fact that it is many of the world’s largest TNCs that have engaged more proactively with this agenda” (Utting, 2007: 706).

Furthermore, CSR narratives downplay the role of policy and regulation in addressing the challenges derived from the re-articulation of state-market relations in a context of transnational production, growing inequality and environmental degradation. By voluntarily adopting the responsibility for tackling the challenges of sustainable development, corporations effectively become the ‘representatives’ of public interests. In this respect, the CSR model implicitly promotes the privatization of institutional responsibilities away from nation-states and international organization.

As the indictment of the PPT held in Lima reads:

The European transnationals claim the right to incorporate the general interest into their actions through their own rule of conduct (corporate social responsibility). This is unacceptable, not only because it serves to falsely legitimate corporate interests, but also because public interests cannot be left in the hands of the managers of any kind of private interest, much less with the voluntary focus given by the European transnationals. (PPT-Lima, 2008: 10)

In other words, dominant views of CSR function as the discursive mechanics of corporations for the privatization of state responsibilities and for the dilution of deeper obligations with regard to international human rights principles.

In contrast, ideas of responsibility that emerge from the PPT process re-engage both public authorities and private actors. While a CSR approach sees responsibility centred on voluntary corporate behaviour, the PPT locates it in a series of public-private arrangements

(formal and informal) that have been shown to relate to human rights abuses. The *regimes of impunity* associated with human rights abuses involve corporations, national and sub-national public authorities as well as international institutions.

In addition to the responsibilities of states to protect human rights under international public law, the PPT also extends responsibilities to the states and regional bodies where the headquarters of TNCs are legally registered:

“It is important to be clear that the liability corresponds both to the state of origin or parent company of the TNC (be that the location of their main headquarters or the country where the bulk of their capital resides) and to the State or States where they develop their activities’ (PPT-Lima, 2008: 12).

This also applies to national public instruments like development banks that may finance corporations that commit abuses in its operations abroad.

Likewise, international institutions such as the World Bank, the Inter-American Development Bank and the European Investment Bank are also deemed responsible in their roles as lenders to companies accused of violating human rights. Along with the International Monetary Fund, these institutions have promoted structural adjustment policies (SAPs) since the 1980s, which enabled the opening of markets in Latin American countries to TNC products and investment through low-priced and often scandalous privatization processes. This favoured TNCs from the global North and caused more poverty, socio-economic inequalities and environmental degradation, resulting in human rights being seriously undermined. The World Bank poverty reduction strategy papers (PRSPs), which replaced the SAPs during the 1990s, have had similar problems.

Moreover, obligations set by the norms of the World Trade Organization and FTAs limit states’ policy space to respond to their development priorities – mainly in the areas of production, environmental protection and human rights. These institutions and policies are considered by the PPT to be responsible for situations of human rights violations insofar as they constrain the role of the state to guarantee social, economic and cultural rights (PPT-Guatemala, 2008).

The PPTs understand that TNCs, states and international institutions partake in patterns of complicity responsible for human rights abuses. These patterns of complicity involve the absence of regulatory control, criminalization of resistance, use of violence, obstruction of access for victims to justice, and the adoption of policies that weaken the advancement and the exercise of human rights. It is not just about companies that violate human rights through irresponsible practices, but also concerns states allowing abuses to take place, whether passively through inaction or actively through a policy context that affects the exercise of human rights. Complicity can even be crystallized institutionally in policy and institutional frameworks such as FTAs, International Investment Agreements (IIAs) and EPAs. These kinds of agreements facilitate FDI and trade, but do not incorporate binding rules to expand corporate responsibilities on TNC investments in Latin America, as well as effective mechanisms of enforcement. In this respect they formalize a regime of impunity for the operations of TNCs in Latin America.

At the PPT held in Lima, Peru, the case of the mining company Minera Majaz – owned by Monterrico Metals – evidenced the complicity of the Peruvian state in the repression, torture and murder of two indigenous and peasant community leaders in April 2004 and August 2005, in addition to tens of people injured and nearly 200 villagers reported to the authorities. Protestors were demonstrating against illegal mining practices. Witnesses talk about torture in the company’s facilities. Some villagers were falsely accused of terrorism and of affiliation with extremist parties. The Peruvian legislation guarantees the participation of and consultation with peasant (indigenous) communities, so it demands a social license for local communities to be able to grant a permit to a company to carry out activities on communal lands. But in the case of Majaz, the

communities rejected such authorization many times. However, the Minister of Energy and Mining granted the necessary permission to the company to carry out exploration activities. The government has a clear position in favour of the mining project: the corporate interests seem to be above the public interests (Ríos, 2009; PPT-Lima, 2008).

Another instance of complicity between the state and a TNC is exemplified in the case of the world-leading agri-business Syngenta in Brazil, which documents the Brazilian justice system acting to secure the privileges and immunity of the company by criminalizing peasants and violating their rights. The case shows that Syngenta is responsible for the assassination of a peasant activist and for injuring seven rural workers in October 2007. The company hired a group of 50 gunmen to clear a tract of land that had been peacefully occupied by members of peasant movement Via Campesina to repudiate the cultivation of *illegal* genetically modified plantations. The Brazilian justice system has not held this company accountable for the murder, and instead two peasants were convicted (PPT-Lima, 2008). The illegal use of public force to safeguard corporate interests was also evidenced in the case of Cerrejón Coal in Colombia, co-owned by BHP Billiton, Anglo American and Xstrata. In August 2001, the small farming village of Tabaco, inhabited mainly by Colombians of African descent, was forcibly evicted by the mining company in a brutal operation accompanied by hundreds of armed soldiers and security personnel (PPT-Colombia).

Links between TNCs and paramilitary groups, with state complicity, have also been found in Colombia. Chiquita Brands has been accused of giving financial support to paramilitary groups of around USD 1.7 million between 1997 and 2004 (HRW, 2008; PPT-Colombia, 2008). Other cases include Multifruits, Anglo American, BHP Billiton, Glencore A.G., Union Fenósa and Drummond. These links have been shown to be responsible for 100 assassinations of trade unionists in Colombia since 2005 (PPT-Colombia, 2008). These cases also expose the responsibilities of both the Colombian and US governments. The US-funded Plan Colombia supported the creation of military brigades to provide protection for oil production. This established an arrangement in which oil and mining companies have been able to contract private security providers for protection within their installations and sign agreements with the military and police for protection. Individual oil companies provide complementary payments to augment these resources when they sign agreements to protect specific companies and installations (IfP, 2008: 17).

Moreover, some cases that were addressed in the PPTs also show the collusion of harmful corporate behaviour and state negligence, resulting in the violation of rights concerning health and the environment, due to the contamination of aquifers and poisoning from insecticides. Bayer is held responsible for the poisoning of 44 children from the Taucamarca community in Peru on 22 October 1999, with the highly toxic pesticide Parathion. This led to the deaths of 24 indigenous children and to others suffering serious neurological consequences and learning problems. Bayer is accused of introducing Parathion in Peru and commercializing it specifically for the Andean crops of small- and medium-sized farms, knowing in advance that it would be used by Peruvians, often members of the indigenous Quechua People, with a high rate of illiteracy. The company did not anticipate the chance that its users would fail to read the product's label, which did not provide much information anyway, increasing the chance that the poison would be used incorrectly. Peru's National Service of Agrarian Health is also accused of not enforcing adequate controls or applying sales restrictions in accordance with national regulations. The legal proceedings over the poisoning of children have already taken seven years and no judgment has been issued against the defendants (PPT-Lima, 2008).

A similar case was presented against Shell Oil Company, Dow Agro Sciences and Dole Food Corporation for the production and distribution of the pesticide Nemagon in banana plantations in Nicaragua and Honduras during the 1960s and 1970s, which caused illnesses and deaths among peasant workers. The companies are accused of disregarding a ban on the pesticide

in their countries of origin. Public institutions in charge of health and safety regulations are also held responsible (PPT-Lima, 2008).

Union Fenósa has been accused of human rights violations and serious environmental and social impacts in Colombia, Guatemala, Mexico and Nicaragua. The local governments, international financial institutions and the Spanish government have also been accused of conniving in those crimes. Union Fenósa was also accused of causing serious damage to the ecosystems in the Salvajina Dam and the Anchicaya River at the Cauca Valley in Colombia. Likewise, Thyssen Krupp was accused of environmental destruction at Sepetiba bay in Brazil, causing serious impacts on craft fishery, as a result of a spill on mirror-still water. The oil company Repsol was also found responsible for environmental impacts and violating indigenous peoples' rights in Colombia, Ecuador, Bolivia and Argentina (PPT-Lima, 2008).

The violation of labour and human rights were demonstrated in relation to the agro-food corporations Camposol and Mainstream – a member of Norwegian aquaculture group Cermaq – in Peru and Chile, respectively. Camposol's sustained growth in the non-traditional agriculture sector has been based on social dumping. Precarization of labour conditions was institutionalized by the Agrarian Labour Regime created in Law 27360 and the Andean Trade Promotion and Drug Eradication Act (ATPDEA), which favoured exports to the US market (PPT-Lima, 2008). This case exemplifies the working of a regime of impunity between a company and two states via an FTA (PPT-Lima, 2008).

These are only some of the cases presented at the Lima and Colombia PPTs that evidence the systematic abuse of human rights through *regimes of impunity*, which link public institutions and corporations within and across national borders. Corporate abuse of rights is therefore not a problem that can be reduced to instances of unethical behaviour that may cause harm to populations and the environment. Rather, the recurring violation of human rights is explained by the permissive institutional and policy contexts that allow for corporations to operate in ways that contradict international obligations to human rights. While most of these TNCs have CSR programmes, they have not prevented them from participating in practices that violate national laws and international norms, with or without the complicity of state officials.

#### **4. Conclusions: PPT impacts, future opportunities and challenges**

The PPT process has positioned grassroots struggles against corporate power in Latin America in the midst of a global dynamic where the construction of new norms and institutions for the regulation of transnational business is being contested. In doing so, the PPTs challenge the voluntary principles that underpin the CSR framework of self-regulation proposed by TNCs. Instead, they advocate a system of binding rules that can ensure the effective compliance of corporations with international human rights principles. This is an enormous challenge, since it requires that corporate activity is not ruled exclusively by the pressures of global market competition, which has been identified as providing incentives for human rights abuses. Hence the importance of politics in its capacity to mobilize leadership in the development of a system of rules and institutions that set different sorts of incentives for business to respect human rights, as well as costs for not doing so.

The main contributions of the PPT process in Latin America to the evolution of a new system of corporate regulation have been in impacting public opinion and creating advocacy opportunities. The tribunals were widely covered by the mass and independent media. This contributed to raising public awareness about the crimes involving companies in complicity arrangements with states and international institutions. These cases undermine the nurtured image of TNCs as responsible organizations, which CSR plays a part in. They also make a compelling case that TNCs need to be duly regulated. Likewise, they also evidence the contradictions between neo-liberal policies and institutions with democratic sustainable development.

The PPT process also led to the generation of transnational links between groups that prepared cases for the tribunal. This facilitated the realization of the regional/global scale and scope of abuses. The cases have shown that corporations with investments in more than one country and sector undertook similar practices in different places. This revealed the systemic dimension of their crimes. Likewise, the PPT also contributed to building a sense of being part of a 'transnational community of resistance' to corporate power among many local groups. The grassroots level is a key condition for the possibility of sustaining social pressure at various institutional levels for the adoption of binding rules of regulation.

The PPT process constitutes a political tool that *complements* the political and juridical tools used by various civil society groups working on corporate power issues. The research process and assembling of information required in each of the cases later comprised advocacy resources for some organizations to take the accusations against TNCs to other forums. Evidence of this is that some of the PPT cases were later filed at the OECD National Contact Point Argentina: cases against Skanska for corruption; Cermaq Mainstream for breaching OECD guidelines on sustainability, employment conditions and human rights; Shell for violating domestic law in environmental and human health areas; and BHP Billiton, Anglo American and Xstrata for forced evictions (OECD Watch, 2009). Moreover, in Brazil, delegates of fishermen organizations that had been affected by the activities of Thyssen Krupp used the PPT indictment as a document to prove that the company had committed violations. The ethical-moral pressure helped create a favourable space to negotiate with the company.

Furthermore, some interesting steps have been taken in strengthening juridical strategies to develop the articulation of lawyers in concrete cases against TNCs, exploring opportunities for international litigation and systematizing accumulated litigation experience in dealing with these kinds of cases. Cases presented at the PPTs which were later filed in legal courts include one by Colombian farmers against BP, in an unprecedented case at the high court in London, for allegedly causing serious damage to their land, crops and animals following the construction of pipelines in the Casanare region (Taylor, 2009). Also, Monterrico Metals is facing a multimillion-pound claim at the high court in London (2 June 2009) for damages after protesters were detained and allegedly tortured at an opencast copper plant in Peru. The case was also taken to a Peruvian court, yet prosecutors accused the police of torture but cleared the mining company of wrongdoing (Cruz, 2009; Cobain, 2009). In March 2009, a lawsuit was also filed against Drummond in the US federal court for complicity in the killings of trade unionists in Colombia, and in May 2009 another lawsuit was filed against the company for making payments to paramilitary forces to kill the trade unionists (Reeves, 2009). The evidence compiled at the Colombian PPT about links between Chiquita and paramilitary groups had probative value in a trial held in the US.

In addition to the judicial strategy in national courts, the PPT in Lima, Peru set out to take the 24 cases presented there to the International Criminal Court (ICC), the UN Economic and Social Council, the UN Human Rights Council, the EU Human Rights Tribunal and the Inter-American Commission on Human Rights (Salazar, 2008).

The PPT process also opened some advocacy opportunities in several institutional spaces, such as at the European Parliament, in alliance with Members of the European Parliament (MEPs) that support the European Coalition for Corporate Justice (ECCJ). The ECCJ is a platform of 250 European civil society organizations that advocate a regulatory approach towards corporate accountability and the establishment of legal measures within the EU to address the environmental, social and human rights costs of EU-based companies.<sup>49</sup> Advocacy is directed towards EPA negotiations between the EU and Latin American countries. Another instance of wider institutional use of the PPT findings was the application, by trade unions and social organizations in the US linked to organizations in Colombia, of evidence of human rights violations to oppose a US-Colombia FTA that does not address these crimes.

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<sup>49</sup> See: <http://www.corporatejustice.org> (accessed 5 July 2009).

In the context of the UN Human Rights Council, another opportunity for advocacy was opened with the process led by the Secretary-General's Special Representative John Ruggie. This initiative has made important steps in forging consensus for an international framework to delineate the nature and scope of business responsibilities towards human rights. Through their participation in various consultations, social organizations that have been involved in PPTs in Latin America are demanding a greater representation in the UN process of persons and communities affected by the human rights abuses caused by TNC activities (EA, 2009; Ruggie, 2009; NGO Statement, 2009).

Advocacy groups have also focused on obtaining support from the financial community. In November 2008, delegates from the U'wa indigenous community in Colombia met representatives of JP Morgan and a dozen of other financial institutions in New York to convince potential investors in Colombia's state-owned Ecopetrol not to buy the company's shares (the company listed public offerings of stocks on the New York Stock Exchange (NYSE)). JP Morgan Chase bank was the underwriter of the process, facilitating the sale of shares on the NYSE. Ecopetrol took over exploration projects left by Oxy after its departure in 2002, following its denunciation by an international campaign led by the U'wa community. It is also trying to expand exploration in an U'wa reservation (Rodríguez, 2008).<sup>50</sup> The U'wa petition to the financial community was supported by the record and testimony of abuses committed by Ecopetrol and Oxy against indigenous and environmental rights produced and publicly disseminated by the PPT process held in Colombia.

Some changes in corporate behaviour have taken place in the aftermath of the PPTs in 2008. On 14 October 2008, Syngenta decided to hand over its 127-hectare experimental farm to the Paraná state government in Brazil. This marked an end to a violent conflict over the site (Amnesty International, 2008). However, there have also been different responses to the increasing awareness raised by the PPTs of the rights violated by corporations. On 25 October 2009, a Guatemalan trade union leader who had taken part in testimony against labour rights violations by Union Fenósa was murdered after repeated attempts to intimidate him (USLEAP, 2009).

Future challenges faced by the PPT process in Latin America, if they are to continue to contribute to the regulation of TNCs, relate to the need to continue developing conceptual tools, effective advocacy opportunities to leverage institutional processes and judicial strategies in national and international courts. Greater conceptual clarity is needed in the definition of the scope and substance of TNCs' responsibilities to human rights in concrete cases. Who is responsible and why? What counts as complicity? How should responsibilities be delimited when many parties are involved?

Moreover, the organizations behind the PPTs need to ensure sustained efforts to maintain the dynamism created by the tribunal sessions. This requires strengthening their communication and working methodology to enable the coordination of many ongoing initiatives by social organizations in the aftermath of the PPT sessions. Likewise, much more work needs to be done at the level of political strategy. That is, to formulate a long-term strategy that captures the best ways to make use of the moments of high public exposure during the PPTs; find valuable political allies; make good use of the PPT indictment declarations as advocacy instruments; and direct more efforts at UN agencies and programmes dealing with different aspects of corporate power.

The regional and transnational dynamics generated by the PPT process in Latin America constitutes a force to generate a regional jurisprudence on TNCs. This is because it adds to the unification of common criteria to monitor cases of TNC rights violations, generate and systematize

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<sup>50</sup> A recent antecedent to this kind of advocacy action was a peaceful protest organized by the U'was on 12 October 2009, which resulted in the decision of Fidelity Investment (one of the world's largest investment funds and main shareholders of Oxy) to sell Oxy shares for more than USD 18 million. This led to Oxy canceling future oil exploration plans in their territories (Rodríguez 2008).

evidence, and develop a common legal rationality among regionally located social organizations. In this sense it can also be said that the PPT process contributes 'from below' to the evolution of international norms and institutions (Rajagopal, 2003). Recent developments at the UN suggest promising steps towards setting up an international system to bring TNCs under closer oversight. UN Special Rapporteurs Martin Scheinin and Manfred Nowak have produced and submitted a proposal to create a World Court of Human Rights (Scheinin, 2009; Nowak and Kozma, 2009). This global tribunal would, for the first time, carry *a mandate to try private companies accused of human rights abuses*. Although the battle against corporate abuse is far from being over, the Latin American movement for corporate accountability has something tangible to set its eyes on.



**TABLE 1: LIST OF PERMANENT PEOPLES' TRIBUNALS**

<b>Theme</b>	<b>Location</b>	<b>Date</b>
Western Sahara	Brussels	1979
Argentina	Geneva	1980
Eritrea	Milan	1980
Philippines and Bangsa Moro People	Anversa	1980
El Salvador	Mexico	1981
Afghanistan	Stockholm	1981
	Paris	1982
East Timor	Lisbon	1981
Zaire	Rotterdam	1982
Guatemala	Madrid	1983
Armenian Genocide	Paris	1984
US Intervention in Nicaragua	Brussels	1984
IMF and World Bank policies	Berlin	1988
	Madrid	1994
Puerto Rico	Barcelona	1989
Brazilian Amazonia	Paris	1990
The impunity for crimes against Humanity in Latin America	Bogotá	1991
The conquest of the Americas and International Law	Padova/Venice	1992
Tibet	Strasbourg	1992
Industrial Hazards and human rights	Bhopal	1991
	London	1994
Asylum rights in Europe	Berlin	1995
Crimes against Humanity in the former Yugoslavia	Berne	1995
	Barcelona	1995
The violation of fundamental Child rights	Trento / Macerata / Naples	1995
Chernobyl: environment, health and human rights	Vienna	1996
Workers and consumer rights in the garment industry	Brussels	1998
Violation of fundamental rights of children and adolescents in Brazil	Sao Paulo	1999
Elf-Aquitaine	Paris	1999
Global corporations and human wrongs	Warwick	2000
The international law and new wars	Rome	2002
The violations of human rights in Algeria (1992-2004)	Paris	2004
The violations of human rights in Colombia	Bogotá	2006
	Medellin	2006
About the destruction of Biodiversity in Colombia	Colombia	2007
The violation of human rights in the Philippines	The Hague	2007
Neoliberal policies and European transnationals in Latin America	Lima	2008
Transnational enterprises and the Rights of Peoples in Colombia	Bogotá	2008

**TABLE 2: SELECTION OF CASES PRESENTED AT THE LIMA AND COLOMBIA PPTs, 2008**

<b>FIRM</b>	<b>ORIGIN</b>	<b>SECTOR</b>	<b>FDI LOCATION</b>
Camposol	Norway	Agro-food	Peru
Ecopetrol	Colombia	Oil	Colombia
Chiquita Brands	USA	Agro-food	Colombia
Union Fenósa	Spain	Public utilities service	Colombia, Guatemala, Mexico, Nicaragua
Monterrico Metals	UK	Mining	Peru
Syngenta	Switzerland	Biotechnology	Brazil
British Petroleum	UK	Oil	Colombia
Bayer	Germany	Pharmaceutical	Honduras, Nicaragua
Repsol	Spain	Oil	Colombia, Ecuador, Bolivia, Argentina
Thyssen Krupp	Germany	Metalwork and Infrastructure	Brazil
Shell	Netherlands; UK	Oil	Argentina; Brazil
Skanska	Sweden	Metalwork and Infrastructure	Peru
Cermaq Mainstream	Norway	Agro-food	Chile
BHP Billiton,	Australia	Oil	Colombia
Xstrata	Switzerland	Oil	Colombia
Anglo American	UK	Oil	Colombia
Drummond	USA	Mining	Colombia

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## **Annex 1: Groups involved in organizing the Lima PPT and presenting cases**

Acción Ecológica (Ecuador), Alianza de Pueblos del Sur Acreedores de Deuda Ecológica (Latin America), Friends of the Earth Latin America – ATALC, Friends of the Earth Europe – FoEE, Asamblea del Pueblo Guaraní Itika Guasu (Bolivia), Asociación Aurora Vivar (Peru), Asociación de Usuarios del Agua de Saltillo (Mexico), Associações de Pescadores Artesanais da Baía de Sepetiba (Brazil), Asud (Italy), ATTAC (Argentina), ATTAC (Chile), Campaña Internacional: La Ir-Responsabilidad Social de Union Fenósa. Capítulo I: Nicaragua a Oscuras, Campaña por la Reforma de la Banca Mundial CBRM (Italy), Campaña en Defensa de la Amazonía y Movimiento de los Damnificados por el Complejo del Rio Madeira (Brazil and Bolivia), Colectivo Alternativa Verde– CAVE (Brazil), Ceiba – Amigos de la Tierra (Guatemala), Censat Agua Viva – Amigos de la Tierra (Colombia), Centro de Documentación e Información de Bolivia – CEDIB (Bolivia), Centro de Estudios Aplicados a los Derechos Económicos, Sociales y Culturales CEADDESC (Bolivia), Centro de Políticas Públicas para el Socialismo – CEPPAS (Argentina), Centro Ecocéanos (Chile), Colectivo SKAMSKA (Sweden), Confederazione dei Comitati di Base-COBAS (Italy), Confederación Nacional de Comunidades Afectadas por la Minería-CONACAMI (Peru), Confederación General de Trabajadores– CGTP (Peru), Confederación General del Trabajo – CGT (Spanish State), Confederación Sindical de las Américas-CSA (America), Corporate Europe Observatory– CEO (Netherlands), Deudos de la Comunidad de Taucamarca (Peru), Ecologistas en Acción – Ekologistak Martxan (Spanish State), Federación Nacional de Sindicatos de Unilever Chile– FENASIUN (with the support of the CUT Chile), Federación de Trabajadores de ENTEL (Bolivia), France – Amérique Latine (France), Foro Ciudadano por la Justicia y los Derechos Humanos –FOCO (Argentina), Fórum de Meio Ambiente e de Qualidade de Vida do Povo Trabalhador da Zona Oeste e da Baía de Sepetiba (Brazil), Fundación de Investigaciones Sociales y Políticas – FISyP (Argentina), Fundación Solón (Bolivia), Fundación Rosa Luxemburgo – RLS (Brazil), Institute for Policy Studies-IPS (United States), Instituto de Ciencias Alejandro Lipschutz (Chile), Instituto de Políticas Alternativas para o Cone Sul – PACS (Brazil), Jubileo Sur (Peru), Land is Life (Ecuador), Movimiento Mexicano de Afectados por las Presas y en Defensa de los Ríos MAPDER (Mexico), Movimento dos Atingidos por Barragens– MAB (Brazil), Movimento dos Sem Terra-MST (Brazil), Movimiento Social Nicaragüense (Nicaragua), Movimiento de los Afectados por el Nemaqón (Honduras), Movimiento de los Afectados por el Nemaqón (Nicaragua), Observatorio de Conflictos Mineros, Centro de Ecología y Pueblos Andinos– CEPA (Bolivia), Observatorio de Multinacionales en América Latina – OMAL Paz con Dignidad (Spain), Observatorio Social de Empresas Transnacionales, Megaproyectos y Derechos Humanos (Colombia), Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo PIDHDD (Americas), Proceso de Comunidades Negras – PCN (Colombia), Red Brasileira por la Integración de los Pueblos – REBRIP (Brazil), Red Caribe de Usuarios de Servicios Públicos Atarraya en Defensa del Agua y la Energía (Colombia), Red de Acción en Agricultura Alternativa –RAAA (Peru), Red Latinoamericana contra las Represas – REDLAR, REDES Amigos de la Tierra (Uruguay), SETEM (Spanish State), Shell to Sea (Ireland), Sindicato dos Trabalhadores no Comércio de Minérios e Derivados de Petróleo no estado de São Paulo – SIPETROL (Brazil), Sindicato Eicosal 2 de la Multinacional Noruega Marine Harvest (Chile), Sindicato de Electricidad de Colombia Sintraelecol (Colombia), Sindicato de Trabajadores de Camposol SITECASA (Peru), Sindicato CERMALC MAINSTREAM (Chile), SOMO (Netherlands), Terra de Direitos (Brazil), Transform (Italy), Transnational Institute-TNI (Netherlands), Via Campesina (Brazil), Xarxa de l’Observatori del Deute en la Globalització – ODG (Catalonia, Spain).

## **Annex 2: Groups involved in organizing the Colombia PPT and presenting cases**

Acción Ecológica; Acción Permanente Por La Paz; Acikek; Acadehum; Adida, Antioquia; Afavit; Amnistía Internacional; Alebrije; App, Panamá; Asamblea Permanente De La Sociedad Civil Por La Paz; Asem, Barrancabermeja; Asipab; Asmulider, Bogotá; Asocandespo; Asociación Campesina De Antioquia; Asociación Colombiana De Abogados Defensores "Eduardo Umaña Mendoza"; Asociación Colombiana De Estudiantes Universitarios, Aceu; Asociación De Abogados Defensores De Derechos Humanos; Asociación De Mujeres, Palmira; Asociación Internacional De Jusirtas Demócratas; Asociación Nacional De Usuarios Campesinos Unidad Y Reconstrucción, Anuc Ur; Asociación Para La Investigación Y Acción Social "Nomadesc"; Asoinca, Popayán; Asoproa, Oriente Antioqueño; Asou'wa; Banco de datos, Armenia; Banderbilt University, Estados Unidos; Baso; Brigadas Internacionales De Paz; Cabildo Guambía; Cabildo Indígena Honduras, Cauca; Cahucopana; Campaña Prohibido Olvidar; Cedsala España; Central Unitaria De Trabajadores, Cut; Centro Cultural Caleidoscopio; Centro De Desarrollo Panafricano De Miami (Usa); Censat Agua Viva; Cepalc; Cgt, España; Christian Aid; Cima; Cinelibertad; Codhes; Codehsel; Colectivo Antígona, Univesridad Nacional; Colectivo Bachué; Colectivo Brecha; Colectivo Cable A Tierra; Colectivo Coliche, España; Colectivo De Abogados "José Alvear Restrepo"; Colectivo De Derechos Humanos "Semillas De Libertad", Codhesel; Colectivo Identidad; Colectivo La Colmena; Colectivo Maíz Rebelde, Bogotá; Colectivo Pensamiento Crítico; Colectivo Somos Sudacas; Colectivo Vivo Arte; Colegiatura De Abogados, Cali; Colegio Liceo Ecológico Del Norte; Colegio Manuela Beltrán, Valledupar; Colegio Saludcoop Sur; Colombia Solidarity Campaign, Reino Unido; Comisión Intereclesial De Justicia Y Paz; Comité De Integración Social Del Catatumbo, Cisca; Comité De Solidaridad Con América Latina, Asturias; Comité Internacionalista, País Vasco; Comité Nuruego De Solidaridad Con América Latina; Comité Permanente Por La Defensa De Los Derechos Humanos, Cpdh; Comité Pro Defensa De Taganga (Cooperativa De Pescadores, Corporación De Chinchoreros, Asociación De Profesionales, Expendedoras De Alimentos, Transportadores De Turistas, Grupo De Teatro, Junta Administradora Local, Asociación De Kioscos); Comité Sindical De Solidaridad Con Colombia, Nueva York; Comité De Solidaridad Con Los Presos Politicos; Comunidad De Paz De San José De Apartadó; Comunidad Hijas De San José; Comunidad Muisca; Comunidad De Autodeterminacion Vida Y Dignidad De Cacarica; Concejo Juventudes; Confederación Nindígena Tayrona; Consejo Regional Indígena De Caldas; Consejo Regional Indígena De Risaralda; Cooperación; Coordinación De Jóvenes Del Cauca; Coordinador Nacional Agrario, Cna; Coordinadora Nacional De Desplazados, Cnd; Copdiconc; Corporación Alotropia; Corporación Ambientalista Bosque Montano; Corporación Aury Sara Marrugo; Corporación Avocar; Corporación Avre; Corporación Cactus; Corporación Claretiana; Corporación De Servicio A Proyectos De Desarrollo, Podion; Corporación Juridica Libertad; Corporación Niños Y Niñas Por La Paz; Corporación Nuevo Día; Corporación Pescar; Corporación Sembrar; Corporación Social Para La Asesoría Y Capacitación Comunitaria – Cospacc; Credhos; Cuba Labor Exchange; Defensoría Juvenil; Desde Abajo; Diócesis De Quibdó; Entrepueblos; Equipo De Educación Popular "Pañuelos En Rebeldía", Argentina; Escuela De Liderazgo Ambiental; Escuela Nacional Sindical; Escuela Popular De Jóvenes; Esg, Colonia; Federación Agrominera Del Sur De Bolívar, Fedegromisbol; Federación Colombiana De Educadores, Fecode; Federación De Estudiantes De Agronomía; Federación De Estudiantes Universitarios, Feu; Federación Mixta De Pensionados De Antioquia Fempa; Federación Nacional De Trabajadores Al Servicio Del Estado – Fenaltrase; Federación Nacional Sindical Unitaria Agropecuaria – Fensuagro; Federación Universitaria Nacional Comisiones; Foro Energético Latinoamericano Y Caribeño, Rep. Bolivariana De Venezuela; Frente Popular "Darío Santillán" Argentina; Forcoffes; Fumpaz; Fundación Bio Andina; Fundación Cese Al Fuego; Fundación Comité De Derechos Humanos "Joel Sierra" – Arauca; Fundación Comité De Solidaridad Con Los Presos Políticos; Fundación Fica; Fundación Franciscana Santo Tomás Moro; Fundación Jaide; Fundación San Isidro; Galería De La Memoria; Grupos Ecológicos De Risaralda; Grupos Estudiantiles Confederados, Bogotá; Hijos E Hijas; Human Rights Everywhere; Identidad Lafkenche, Chile; Iepri; Instituto

Latinoamericano De Servicios Legales Alternativos, Ilsa; Instituto Nacional Sindical; Internacional De Servicios Públicos, Isp – Subregión Andina; Interpares, Canadá;Kairos;La Bruja Films;Mencoldes; Mesa Distrital De Servicios Públicos, Bogotá; Mesa Permanente Kofán; Movimiento De Víctimas De Crímenes De Estado; Movimiento Popular Regional; Movimiento Por La Defensa De Los Derechos Del Pueblo Modep; Mujeres Por La Resistencia; Novib;Objetores De Onciencia; Observatorio De Derechos Indígenas; Observatorio De Megaproyectos De Pereira; Observatorio Internacional De Paz; Observatorio Social De Empresas Transnacionales, Megaproyectos Y Derechos Humanos En Colombia Oset; Observatorio Socioambiental, Pereira; Oficina De Derechos Sociales Seco, España; Opción Legal; Organización De Los Pueblos Indígenas De La Amazonía Colombiana Opiac; Organización De Solidaridad Con Los Pueblos De Asia, África Y América Latina, Ospaaal; Organización De Vecinos De Onleyville; Organización Femenina Popular; Organización Indígena Kankuama Oik-; Organización Nacional Indígena De Colombia Onic; Organizaciones Sociales De Arauca (Asociación Departamental De Usuarios Campesinos Aduc-, Asociación Juvenil Y Estudiantil Regional Asojer, Cooperativa Agropecuaria Del Sarare -Cooagrosarare, Asociación De Juntas De Acción Comunal Asojuntas, Central Unitaria De Los Trabajadores De Colombia Cut, Seccional Arauca, Asociación Amanecer De Mujeres Por Arauca Amar); Oxfam; Pan Para El Mundo; Partido Comunista Colombiano; Pasc, Canadá; Pastoral De Trabajadores De Barrabquerque; Pastoral Social De La Diócesis De Quibdó; Pax Christi, Alemania; Paz Con Dignidad; Periódico Desafío; Periódico El Nuevo Oriente; Periódico El Turbión; Periódico Polo; Pescar; Planeta Paz; Plataforma Colombiana De Derechos Humanos, Democracia Y Desarrollo; Plataforma Rural; Polo Democrático Alternativo; Prensa Latina, Argentina; Prensa Rural; Proceso De Comunidades Negras De Colombia, Pcn; Productora Todos Los Pueblos; Project Councelling Service (Consejería En Proyectos) Pcs; Proyecto Nunca Más; Proyecto Aurora; Pueblo Nasa; Pueblo Wayuu; Pueblo Bari; Pueblo Embera; Pueblos UZWA; Pueblo Sikuani; Pueblo Kogi; Pueblo Wiwa; Rapalmira; Recalca; Red Colombiana De Acción Contra El Libre Comercio Y El Alca, Recalca; Red De Bibliotecas Comunitarias; Red De Organizaciones Comunitarias De Medellín; Red De Organizaciones Sociales De Bogotá; Red De Usuarios De Servicios Públicos De La Costa Caribe; Red Estudiantil Antorcha; Red Europea De Hermandad Y Solidaridad Con Colombia, Redher; Red Juvenil, Medellín; Red Revuelta; Reditoco; Semilleros De Investigación De Las Universidades Monserrate Y Distrital; Serpaj Colombia; Sindicato De Trabajadores Agrarios De Sumapaz, Sintrapaz; Sindicato De Trabajadores De Empresas De Servicios Públicos Sintraemsdes-; Sindicato De Trabajadores De La Empresa Minera De Colombia, Sintraminercol; Sindicato De Trabajadores De La Industria Del Tabaco Sintraintabaco; Sindicato De Trabajadores De La Industria Metalúrgica Sintrametal; Sindicato De Trabajadores De Las Electricificadoras De Colombia Sintraelec; Sindicato De Trabajadores De Las Empresas Municipales De Cali Sintraemcali; Sindicato De Trabajadores Y Empleados Universitarios De Colombia Sintraunicol; Sindicato Nacional De Trabajadores De La Industria De Alimentos, Sinaltrainal; Sindicato Nacional De Trabajadores De La Industria Del Carbón Sintracarbón; Sindicato Nacional De Trabajadores Del Instituto De Seguros Sociales Sintraiss; Sintraclínica, Medellín; Sintradistritales; Sintraemsirva; Sintraicollantas, Cali; Sintrainquigas; Sintralimenticia; Sintramarítimo, Buenaventura; Sintrapresan; Siudat; Sociólogos Sin Fronteras; Solifonds/Unia; Somos Río; South Face News; Sutima, Medellín; Take Back The Land, Estados Unidos; Tejdhes; Tejido Comunicación; Telesur; Terra Nova; Territoriosur;Unidad De Amigos De Mosquera; Unimotor, Bucaramanga; Unión Sindical Obrera, Uso; Universidad En Realidad; Uoafroc;Veeduría "Ojo Al Parque"; Veedurías Ciudadanas.



**Strengthening enforcement of  
core labour rights: Can a new investment  
agreement model help multinational  
corporations be more socially responsible?**

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# 1. Introduction

The history of international regulations governing business activities reveals a significant unbalance between investment promotion and protection on the one hand, and investor's responsibilities on the other (Muchilinsky, 1999; Mann *et al.*, 2006: 28). Perhaps the most salient expression of this statement might be found in the fact that, notwithstanding the plethora of international legal instruments aimed at guaranteeing foreign investment protection currently in existence, free trade initiatives have remained mainly silent about labour and human rights obligations of Multinational Corporations (MNCs) operating in foreign countries (Summers, 2001).

Thus, bilateral investment treaties (BITs) and chapters on foreign investments regulation in broader international economic agreements<sup>51</sup> typically take the form of a list of obligations binding exclusively upon host states.<sup>52</sup> In stark contrast, provisions related to the conduct of MNCs operating in foreign countries, dealing with issues such as transparency and the respect of human rights, core labour rights and minimum environmental safeguards in the course of their operations abroad, are virtually inexistent. Instead of the legally-binding obligations that govern protection of foreign investors' assets, these issues have been largely left to self-regulation by private agents.

In fact, when developed states finally decided, under strong pressures of domestic interest groups, that in order to tackle the perceived "social dumping threat" they would need to put in place some legally-enforceable mechanism to guarantee minimum labour and environmental standards abroad, they turned the blind eye on the conduct of their MNCs, and focused their efforts in pressing for the adoption of international obligations, tying down the governments investment-importing states.

Interestingly, this notable division between MNC's mandatory, legally-enforceable rights on one hand, and MNC's voluntary, non-enforceable "duties" on the other, appears to have been paralleled in academic debates. Whereas investment protection has been traditionally framed within the International (Economic) Law research agenda, the regulation of the conduct of MNCs has been discussed almost exclusively, at least from the 1970s onwards, within the realm of Corporate Social Responsibility (CSR) studies.<sup>53</sup> To the extent that one of the basic assumptions of CSR is the voluntary, non-binding character of its principles and guidelines<sup>54</sup>, the discussion on the possible enactment of legally-binding obligations upon MNCs has become a "blind spot" in the specialized literature.<sup>55</sup>

This paper aims at bridging the gap between these two areas of studies. Its main goal will be to explore the feasibility of bringing the conduct of MNCs back to the legal arena. To that end,

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<sup>51</sup> We will refer to both, investment chapters in international economic agreements and BITs as "investment agreements".

<sup>52</sup> Popular provisions in these agreements include relative treatment standards (i.e. most favoured nation, national treatment); absolute treatment standards (i.e. the respect of "international standards" or "fair and equitable treatment"); fund transfers liberalization; guarantees against (direct and indirect) expropriation without compensation; and arbitral dispute settlement mechanisms, both state-state and investor-state, the latter being the only ones used in practice at the bilateral and regional levels (with the exception of the European Community framework).

<sup>53</sup> One notable exception is the IISD Model International Agreement on Investment for Sustainable Development and, in particular, Part 3 of the proposed Model, referred to "Obligations and Duties of Investors and Investments" (Mann *et al.*, 2006)

<sup>54</sup> Thus, in a recent systematic study of the definitions of Corporate Social Responsibility put forward in the literature, Alexander Dahlsrud (2006) found that 80% of the surveyed definitions envisage, as one of their necessary elements, the "voluntariness dimension" (expressed in language such as: "based on ethical values", "beyond legal obligations", "voluntary")

<sup>55</sup> For the concept of "blind spots" in international legal studies, see Kennedy, 1999.

it will focus on one of the areas in which the imbalance between rights and obligations of MNCs appears to be more untenable: the protection of core labour rights.

The enquiry will start with an historical account of the failed attempts during the 1970s to regulate the behaviour of MNCs through mandatory codes of conduct. It will then turn to the analysis of two developments in the field of the protection of core labour standards that began to unfold almost simultaneously in the 1990s. First, it will refer to the worldwide spread since the 1990s of a series of voluntary instruments which, under the label of “Codes of Corporate Conduct” (CCCs), typically included language requiring subscribing firms to respect minimum labour standards. It will be contended that, due to their reduced scope of application, their selective content, and their lack of enforcement or monitoring mechanisms, these initiatives cannot constitute an effective substitute for legally binding obligations. Second, the paper will present a scrutiny of a much less studied phenomenon: the introduction of labour aspects in foreign investment agreements. In view of the regional focus of the project within which this paper was developed, the analysis will concentrate on the agreements concluded with Latin American countries by the two main sources of foreign investment in the region, the United States (US) and the European Union (EU). It will show that, to the extent that these actors have pushed during the last years for the introduction of labour standards in their Preferential Trade Agreements (PTAs) and BITs with Latin American countries, they have done so only through the imposition of obligations binding upon the governments of states hosting their investors. To the contrary, provisions referred to the duty of US-based or EU-based MNCs to guarantee certain minimum labour standards to their workers in the course of their activities in foreign countries, and to the possibility of holding these firms liable in their home countries for violations to such standards, have been completely neglected.

Against that background, the following questions will be posed: would it be feasible, under the current international context, to impose legally-binding obligations on MNCs? Furthermore, would it be possible to hold MNCs liable at home whenever they fail to comply with such obligations? In answering these questions, the paper will challenge mainstream explanations which, building upon some of the findings of International Political Economy (IPE) studies, consider that compliance of MNCs with core labour standards has remained almost untouched in international investment agreements due to the lack of bargaining power that periphery countries suffer within a global context of fierce competition for foreign direct investment (FDI) (Guzmán, 1997-98: 669-674, Oman, 2000: 19; see also Chang y Ross, 2002). Moreover, it will address a possible objection to the viability of holding MNCs liable at home, based on the alleged limitations of domestic legal systems in core countries to enable extraterritorial exercise of jurisdiction.

It will be posited that, contrary to these pessimistic accounts based on IPE and legal explanations, the absence of obligations binding upon MNCs results, to a great extent, from the difficulties that policy makers face to overcome the inertial power wielded by investment “model agreements”. If that is the case, it will be argued, that academia has a fundamental role to play: by devising new “templates” of investment agreements, scholars may help developing-countries’ negotiators in their quest to strike, in the agreements they sign, a balance between the rights and obligations of MNCs operating in their territories. This study will seek to take the first few steps in that direction.

The paper is organized as follows. Section 2 will describe the attempts launched during the 1970s to regulate the activities of MNCs, and will analyze the causes of their failure. Section 3 will look at the spread of non-binding initiatives in the 1990s and will assess the extent to which these initiatives, and, in particular, CCCs, can constitute an effective substitute for the lack of international obligations. Section 4 will explore current international rules on minimum labour standards. It will present a detailed analysis of labour provisions in investment agreements concluded by the US and the EU with Latin American countries, and will show that they foresee no obligations upon MNCs or their home states. Section 5 will address the question of why obligations upon MNCs and their home countries have not been so far envisaged in international

investment agreements. Section 6 will outline a proposal for a more-balanced model of agreement. Finally, Section 7 will present some final remarks.

## **2. A failed attempt to regulate activities of transnational business: The United Nations Centre on Transnational Corporations (UNCTC) Draft Code of Conduct on MNCs**

The post-war global economic order was originally intended to rely on three major international organizations: the Bank for Reconstruction and Development (World Bank), the International Monetary Fund (IMF) and the International Trade Organization (ITO). Since the ITO never came into being, international trade relations were governed, until 1994, by a much more *ad hoc* arrangement: the General Agreement on Tariffs and Trade (GATT). While the International Trade Organization envisaged provisions referred to the protection of investment and the control of business restrictive practices, these aspects did not come within the purview of the GATT (Jackson, 1997: 35-44). The post-war system thus left MNCs activities unregulated.

To be sure, individual nation states were able to impose controls on foreign corporations that operated in their territory, and the enactment of the various conventions of the International Labour Organization (ILO) did provide for an international framework of minimum labour standards. Still, these conventions were addressed to ILO's Member States, as the principal actors in a Public International Law Regime (Hepple, 1999, quoted in Jenkins, 2001: 2), and did not address directly the behaviour of international business (Jenkins, 2001: 2)

The discussion on the regulation of the behaviour of MNCs re-emerged in the 1970s, with the appearance in developing countries of a more critical attitude towards transnational corporations. The conduct of MNCs in developing countries gained much attention as a result of the "ITT scandal", at the beginning of that decade, when a US company was found to be involved in the attempts to overthrow the democratically elected government of Salvador Allende in Chile (Jenkins, 2001: 2). This and other events led both the governments and organized labour in developing nations to believe that the power of MNCs should be restrained by binding rules (Murray, 1998).

This belief was crystallized in the 1974 UN resolution advocating for a New International Economic Order and, in particular, in the Report of the Group of Eminent Persons convened by the United Nations Economic and Social Council to report on the regulation of MNCs (Murray, 1998). Within this context, international organizations such as the International Labour Organization (ILO), the United Nations Centre on Transnational Corporations (UNCTC) and the United Nations Conference on Trade and Development (UNCTAD) worked almost simultaneously on the enactment of codes of conduct aimed at setting boundaries to the activities of MNCs (Kok, van Tulder and Welters, 1999: 144-45). Thus, the International Labour Organization elaborated its Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy of 1977; UNCTAD proposed its codes on Restrictive Business Practices and on the Transfer of Technology; and the UNCTC pressed for the adoption of perhaps the most ambitious of these initiatives, the Draft Code of Conduct on MNCs.

The main goal of these codes was to increase the bargaining power of Southern states in their efforts to obtain a greater share of the benefits accruing from the activities of MNCs. Under the mainstream paradigm of that time, the interests of MNCs were not believed to be necessarily identical to the ones of their host countries in the South. Thus, rather than a policy of total openness to foreign capital, development studies pointed to the necessity of ensuring that foreign investment was channelled into strategic areas of the economy, and investors were required to promote local development, through joint ventures, local purchasing and indigenization policies (Jenkins, 2001: 3).

Original intentions to enact global mandatory codes of conduct watered down as a result of differences between developed and developing countries with respect to these code's function and wording and, especially to whether they should envision potential sanctions against non-compliant firms (Kok, van Tulder and Welters, 1999). The compromise solution was the adoption of non-binding instruments, the clearest illustration being the Organisation for Economic Co-Operation and Development's (OECD) Declaration on International Investment and Multinational Enterprises, of 1976 (hereinafter, the "OECD Declaration").

This Declaration was described as a "pre-emptive Western strike" (Robinson, 1988, quoted in Jenkins, 2001: 2) through which core countries attempted to "respond to the growing criticism of MNCs from the South while, at the same time, making it clear that they were not prepared to see excessive control imposed on MNC activity" (Jenkins, 2001: 2). Furthermore, according to Rubin and Hufbauer (1983; quoted by Murray, 1998), trade unions originally called for the OECD code to be legally binding and, as a response, the USA, Switzerland and Germany made a counter-claim for a legally-binding investment protection code. The current code emerged after both these claims were dropped.

The OECD Declaration, along with the ILO Conventions, was the only major international code to survive. Neither the Declaration nor the Conventions is binding, nor do they foresee an effective enforcement mechanism. This "voluntary" approach was taken up by a new development in the 1980s: the adoption of Codes of Corporate Conduct (CCCs).

### **3. The (non-) regulation of the MNCs' activities overseas: Corporate codes of conduct, self-regulation and minimum labour standards**

The 1980s assisted to a major shift in both the will and the ability of developing countries to control MNCs activities. The increased globalization of economic activity added new difficulties in the aptitude of states to perform their traditional regulatory functions. This was accompanied by a major ideological shift: increasingly, the attitude of Southern governments shifted emphasis toward attraction, rather than regulation of MNCs and foreign investment (Jenkins, 2001: 1). In the words of Compa and Hinchliffe-Darricarrere (1995: 670), "for most of developing world, multinational companies are now prized investors, not malfeasors". A new emphasis was thus placed on self-regulation and the "social responsibility" of business.

Corporate Codes of Conduct (CCCs) were the most salient expression of this trend in the areas of labour and environment standards and human rights (Jenkins, 2001: 1). A series of emblematic cases which were largely exposed in the media by well-known NGOs – for instance, the sinking by Shell of its oil platform in the North Sea-, showed MNCs that their reputation could be quickly undermined if their actions, though "legal", did not comply with a "responsible" way of conducting their business in foreign countries hosting their investments. As a consequence, in quite a short period of time, many companies and business associations began to adopt their own voluntary codes of conduct (Piccioto, 2003: 141-142).

Levi Strauss' Business Partner Terms of Engagement, adopted in 1992, was one of the first of these types of codes, and it was quickly followed in the United States by a number of other clothing manufacturers and retailers (Sajhau, 1997). By the mid-1990s, CCCs had spread into Europe (Jenkins, 2001: 5) and in 2000, the OECD reported that there were 246 codes in existence, out of which almost a half corresponded to individual companies, around forty per cent to business associations and the remainder to different coalitions and NGOs (OECD, 2000). Furthermore, in his speech to the World Economic Forum held in Davos in 1999, the UN Secretary-General Kofi Annan challenged world business leaders to embrace and enact in their individual corporate practices and through their support to corresponding public activities, a series of values and

principles universally recognized, which derive from UN instruments, which were embodied in the “UN Global Compact” (Piccioto, 2003: 141-142).

In spite of its similar label, CCCs are to be distinguished from the international codes that were proposed in the 1970s and, in particular, from the UNCTC Draft Code. Whereas the latter were seen as a means of regulation of MNCs by international bodies, CCCs are voluntary initiatives, adopted by the business sector itself (Jenkins, 2001: 5). In fact, as private and facultative schemes, drafted by the very same subjects whose conduct they are meant to regulate, and which were only developed in those areas in which companies voluntarily decided to create them. Codes of Corporate Conduct (CCCs) face at least three main lines of criticism: their reduced scope of application; their selective content; and their lack of enforcement or monitoring mechanisms.

With respect to their scope of application, even though codes might have involved high-profile companies, such as Nike, Shell and Exxon Mobil, they failed to take on broad enough participants. Daniel Litvin (2003: 69) points out that only a small portion of the more than 50,000 MNCs around the world have introduced codes of conduct with a reference to the respect of fundamental human rights and, among the ones that did, not many can claim that they have effectively honoured that commitment.

As regards to their content, it has been argued that, for their very logic, CCCs are designed to concentrate in the consumer goods sector, where brand names and corporate image are very important. In sectors in which the cost of individual purchases is relatively low, and where production costs often make up a relatively small part of the final product price. In addition, there is a tendency in CCCs to focus on particular issues regarded as highly damaging for companies to be associated with, and that have a high profile in developed countries, such as, for instance, the eradication-of-child-labour campaign (Jenkins, 2001: 27-28).

Moreover, a series of studies have demonstrated that the great majority of CCCs is based on self-defined principles, and that only a tiny percentage has resorted to international standards (Piccioto, 2003: 142). Table 1 below presents an analysis of labour rights coverage made by the OECD of over 148 codes of conduct covering labour relations. As it can be observed, only three aspects of labour rights are covered in more than half of the surveyed codes: a rather general commitment to a reasonable working environment; compliance with local labour laws; and protection against discrimination or harassment. Furthermore, the ILO codes were mentioned in only 10 per cent of the codes, and most codes do not cover ILO core labour standards, particularly those on freedom of association and collective bargaining (Jenkins, 2001: 21, 27). On top of that, CCCs are generally designed without the participation of those who are meant to benefit from them and, as a consequence, they are not necessarily consistent with the needs of their potential beneficiaries (Barrientos and Orton, 1999).

**TABLE 1: THE LABOUR CONTENT OF CODES OF CORPORATE CONDUCT**

<b>Attribute</b>	<b>Percentage of codes mentioning attribute*</b>
Reasonable working environment	75.7
Compliance with laws	65.5
No discrimination or harassment	60.8
Compensation	45.3
No child labour	43.2
Obligations on contractors/suppliers	41.2
No forced labour	38.5
Provision of training	32.4
Working hours	31.8
Freedom of association	29.7
Specific mention of “human rights”	25.0
Monitoring	24.3
Right to information	13.5
ILO codes mentioned	10.1
Promotion	8.8
Reasonable advance notice	3.4
No excessive casual labour	3.4
Flexible workplace relations	0.7

Source: OECD, 2001

Note: \* These are calculated as:  $100 * [\text{the number of codes mentioning attribute}] \div [\text{the number of codes citing labour}]$ .

These challenges are far from being solved by the appearance of a series of organizations during the 1990s aimed at assisting companies in the definition of minimum standards and on voluntary monitoring of compliance, such as ISO 14000, the Sullivan Global Principles and the MacBride Principles, or in measuring and reporting their economic, environmental, and social performance, such as the Global Reporting Initiative. In fact, these same organizations that emerged with the purpose of standardizing the principles enshrined in CCCs, became “lost in a sea of competing frameworks and guidelines” (Simaika, 2004: 345-346).

As for their implementation, almost all codes are non-binding, based on internal follow-up and monitoring systems, and it is rather difficult to access information about compliance from sources other than the companies themselves (Piccioto, 2003: 142; Simaika, 2004: 344). As noted by Jenkins (2001: 25-26), the International Organization of Employers estimated that 80 per cent of codes are really statements about general business ethics, which have no implementation methods (ILO, 1998: 7). Around 62 per cent of the company and business association codes in the OECD inventory fail to specify any penalties for non-compliance (OECD, 2001: table 8). Furthermore, of the 246 codes included in the OECD inventory, only just over 10 per cent included provisions for independent (external) monitoring, and only seven out of 118 company codes had such provisions (OECD, 2001: table 8). Even in the few cases in which the participation of a third party is envisaged, serious doubts have been raised about their impartiality (Simaika, 2004: 345-346).<sup>56</sup>

More generally, there is evidence showing that those companies that have adopted CCCs do not evince a better performance in their compliance with the standards set out in those codes

<sup>56</sup> Whether the publication in 2010 of ISO 26000 will make a contribution to surmount some of these flaws remains an open question. In any case, it is worth mentioning that the guidelines are voluntary, and that, to the extent that it will not include requirements, it will not be a certification standard.

(Piccioto, 2003: 143) and, in fact, some scholars even suggest that codes of conduct constitute a tool used by MNCs to avoid governmental regulation (Newell, 2001: 911).

To sum up, a series of weaknesses in MNCs self-regulation initiatives cast doubts about their ability to effectively substitute international legal regulations. The next section will describe a parallel process of legalization of labour rights that resulted from the introduction of minimum labour standards in international investment agreements. However, as it will be shown, this process focused exclusively on the governments of capital-importing countries, while MNCs managed to remain completely immune to any legally-enforceable obligation.

#### **4. Bound hosts, unbound guests: Labour standards in US-led and EU-led international economic agreements concluded with Latin American countries**

The international protection of labour rights gained an unexpected advocate in the mid 1990s: the governments of developed countries. The highly competitive international environment, together with the diffusion of production over different sites, made MNCs “footloose”, readily willing to relocate or utilize the comparative advantage of different sites, notably, low labour costs (Murray, 1998). This possibility of MNCs to engage in “jurisdiction shopping” brought about strong incentives on investment-importing countries to lower labour standards, a well-documented phenomenon, generally referred to as “race to the bottom” (Oman, 2000: 19; Chang y Ross, 2002). This situation was seen with preoccupation by core countries which, under the influence of labour unions and other powerful domestic interests groups, were increasingly concerned about “social dumping” and unfair competition by “regulatory havens”.

Developed countries reacted by pressing for the inclusion of minimum labour and environmental standards in the WTO Doha Development Round agenda. These efforts were intensely rejected by developing countries, out of their concern that linking labour and environmental issues with trade would provide developed countries with yet another means of imposing non-tariff barriers in the name of “unfair trade”. On account of developing countries’ strong opposition, negotiations on labour standards and international trade were excluded from the WTO Doha Round agenda, and kept within the sphere of the International Labour Organization forum.<sup>57</sup>

As in the case of other issues successfully resisted by developing countries at the multilateral level, labour and environmental standards were moved by developed countries to the bilateral and regional fora, where their bargaining power may be exerted more effectively (Grynberg y Qalo, 2006: 4). As a result, provisions on labour issues are increasingly popular in preferential trade agreements, especially in those concluded under the auspices of the US. Thus, in a recent exhaustive study on the scope of issues regulated under PTAs concluded by the US and the EU with other WTO members, Horn, Mavroidis and Sapir (2009: 26) found that all but one of the PTAs concluded by the US until October 2008 comprise provisions governing labour market regulations, the exception being the US-Israel PTA.<sup>58</sup> Half of the agreements containing these kinds of provisions were signed with at least one Latin American country: North American Free Trade Agreement (NAFTA), US-Chile, US-Central American Free Trade Agreement (CAFTA), US-Peru, US-Colombia, and US-Panama.

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<sup>57</sup> Accordingly, paragraph 8 of the 2001 Doha Declaration states that “We reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the International Labour Organization (ILO) on the social dimension of globalization”.

<sup>58</sup> The US-led PTAs containing labour provisions are the following: NAFTA; US-Jordan; US-Singapore; US-Chile; US-Australia; US-Morocco; US-CAFTA/DR; US-Bahrain; US-Peru; US-Colombia; US-Panama; and US-South Korea (Horn, Mavroidis y Sapir, 2009: 27)



The European Union in contrast, has not shown an appetite for this sort of regulations in its PTAs and Association Agreements (Grynberg y Qalo, 2006: 5). Only two out of fourteen PTAs concluded by the EU with other WTO Members introduce provisions on labour regulations. Notably, one of these two agreements was concluded by the European Commission (EC) with a group of American (Caribbean) countries: the EC-CARIFORUM Agreement (Horn, Mavroidis y Sapir, 2009: 26).<sup>59</sup>

The following sections will present a detailed account of the regulation on labour issues in US and EU-led investment agreements, with a view to assessing the extent to which this approach is able to overcome some of the weaknesses of CCCs that we identified above. The analysis will thus focus on three axes: coverage of the agreement, in terms of labour rights protected; substantive obligations and, in particular, the subject or subjects targeted by the obligations; and dispute settlement and enforcement mechanisms. Bearing in mind the regional focus of this research project, the analysis will concentrate in those agreements that were concluded with at least one Latin American country. A summary of the main aspects of this analysis can be found in Annex I.

## **4.1 Labour regulations in investment chapters of US-led international economic agreements concluded with Latin American countries**

Since most labour rules currently in existence at the bilateral and regional levels can be found in agreements signed by the US, we will start our enquiry with an analysis of the BITs and chapters on investment of international agreements signed by this country.

Labour chapters of US-led investment treaties concluded with at least one Latin American country can be grouped into three “models”: (1) the North American Agreement on Labour Cooperation (NAALC), signed with Mexico (and Canada), as a side agreement to the NAFTA; (2) the PTAs signed by the US with Chile (2003) and CAFTA-DR (2004)<sup>60</sup>; and (3) the PTAs signed with Peru (2006), Colombia (2006) and Panama (2007).<sup>61</sup>

### **4.1.1 Coverage (definition of labour rights protected)**

A first aspect to be analyzed is the coverage of the agreements, i.e. the definition of the labour rights that the norms seek to protect.

The first US-led preferential trade agreement encompassing a set of obligations on labour rights is the NAALC. The rights addressed by this agreement are the following: (1) freedom of association and protection of the right to organize; (2) the right to bargain collectively; (3) the right to strike; (4) prohibition of forced labour; (5) labour protections for children and young persons; (6) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements; (7) elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws; (8) equal pay for men and women; (9)

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<sup>59</sup> The other investment agreement concluded by the EC which contains provisions on labour standards is the European Economic Area (EEA). The remaining PTAs, i.e. EC-Turkey; EC-Tunisia; EC-Israel; EC-Morocco; EC-Jordan; EC-South Africa; EC-Mexico; EC-FYROM; EC-Egypt; EC-Croatia; EC-Chile; and EC-Albania do not contain such provisions (Horn, Mavroidis y Sapir, 2009: 26). It is worth mentioning, though, that until the agreement with Chile, these PTAs used to include provisions relating to the granting of national treatment to migrant workers legally employed within the EU Member States, a feature as important as neglected in the literature.

<sup>60</sup> PTAs with the same template were also signed with Singapore, Morocco, Australia, Bahrain and Oman.

<sup>61</sup> A PTA with the same template was also signed with South Korea.

prevention of occupational injuries and illnesses; (10) compensation in cases of occupational injuries and illnesses; and (11) protection of migrant workers.

This rather exhaustive list of protected rights was subsequently reduced in the Chile and CAFTA-DR agreements to five categories of so-called “internationally protected labour rights” (IPLRs): (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition on the use of any form of forced or compulsory labour; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. The same catalogue of protected rights was kept almost unmodified in the PTAs with Peru, Colombia and Panama, the sole difference being the addition of a reference to “the elimination of discrimination in respect of employment and occupation”.

As it can be observed, all these agreements encompass within their scope of application the core labour rights protected by the ILO Conventions.

#### **4.1.2 Substantive obligations**

A second aspect to be assessed refers to the substantive obligations undertaken by the parties and, in particular, to the subject or subjects that are targeted by these obligations.

In this respect, the NAALC require signatory parties, i.e. the governments of US, Mexico and Canada to: (1) ensure that their own labour laws and regulations provide for high labour standards; (2) promote compliance with, and effectively enforce their own labour law; and (3) ensure appropriate access to administrative, quasi-judicial, judicial or labour tribunals for the enforcement of own labour law.

The PTAs with Chile and CAFTA-RD require that the parties “shall not fail to effectively enforce its labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties”. This obligation is complemented by a series of additional commitments, drafted in a more programmatic language, according to which each party “shall strive to ensure” that: (1) IPLRs (as defined in the treaty) are recognized and protected by its domestic law; (2) it does not waive or otherwise derogate from such laws as an encouragement for trade with the other Party; (3) ensure that its laws provide for labour standards consistent with the IPLR.

Finally, the language used in the PTAs with Peru, Colombia and Panama shows a slightly different approach, which makes them more “enforceable”. Thus, in contrast with previous generations of PTAs – which referred to obligations to “strive to ensure”-, this latter PTAs prescribes that parties “shall adopt and maintain in its statutes and regulations, and practices” the IPLRs, and that “neither Party shall waive or otherwise derogate from” its statutes or regulations implementing such rights in a manner affecting trade or investment between the Parties. Furthermore, an obligation is set forth not to “fail to effectively enforce its labour laws”, including those it adopts or maintains to ensure protection of IPLRs, “through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties”.

A general pattern that can be inferred is that labour chapters in investment agreements include some enforceable language, at least with respect to some labour rights and some grave violations to these rights. However, all the obligations stemming from these agreements are targeted at host countries, while no obligation whatsoever is placed on the investors or their home states.

#### **4.1.3 Dispute settlement and enforcement**

Lastly, all the surveyed agreements foresee some sort of dispute settlement procedures and enforcement mechanisms.

To begin with, the NAALC envisages the recourse to consultations and, subsequently, the possibility of referring the matter to a Committee of Experts, which is entitled to propose “recommendations” to solve the dispute. Only in cases of disputes concerning a “persistent pattern of failure by a Party to effectively enforce occupational safety and health, child labour or minimum wage technical labour standards”, may the requesting party resort to further instances, including an Arbitral Panel which may impose a monetary enforcement assessment. The requesting party is enabled to unilaterally suspend benefits granted under NAFTA if the other party refuses to pay the assessment.

In the agreements with Chile and CAFTA-DR, access to dispute settlement stages beyond simple consultations is only envisaged in cases in which a party “fails to effectively enforce its labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties”. Moreover, the requesting party is not automatically entitled to take unilateral actions in cases of non-compliance with the Panel award. Instead, it has to request the Panel to impose an “annual monetary assessment”, capped at 15 million US dollars per year. Only if the party complained against fails to pay the monetary assessment, does the complaining party have the possibility of suspending tariff benefits.

Finally, dispute settlements in the PTAs concluded with Peru, Colombia and Panama is not restricted to cases of violations of any of the listed obligations, and it envisions a series of stages that may lead to the adoption of an award by an Arbitral Panel which, in cases of non-compliance, enables the complaining party to unilaterally suspend tariff benefits.

Thus, in clear contrast with the CSR commitments studied in previous sections, labour provisions in international economic agreements provide for legal means of enforcement that could even lead to the imposition of counter-measures in cases of non-compliance.

## **4.2 Labour standards in the US-Uruguay Bilateral Investment Treaty**

The inclusion of labour standards in PTAs signed by the US seems to be extending to its BITs as well. This is the case of the BIT signed by the US with Uruguay in November 2005, which has introduced provisions referring to the protection of labour rights.<sup>62</sup>

Following closely the language in the PTAs described above, the US-Uruguay BIT prescribe that the parties “shall strive to ensure” that they do not “waive or otherwise derogate from” their respective labour laws “in a manner that weakens or reduces adherence to the internationally recognized labour rights ... as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory”. The “internationally recognized labour rights”, in turn, are defined in terms similar to the ones used in the PTAs with Chile and DR-CAFTA. It is worth mentioning, though, that disputes related to violations to this obligation are to be settled only through consultations between the parties, and are not eligible to be referred to the arbitral procedures envisaged in the agreements.

## **4.3 Labour standards in the EC-led investment agreements: the EU-CARIFORUM Agreement**

The EU seems to be "bandwagoning" the US in its trend towards the inclusion of minimum labour standards in its international economic agreements. Thus, the Economic Partnership Agreement

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<sup>62</sup> An identical provision was introduced in the more recent BIT signed with Rwanda, in February 2008. No such obligation existed in BITs signed by the US prior to the ones concluded with Uruguay and Rwanda.

signed in October 2008 by the EC and its Member States on one side, and thirteen CARIFORUM members on the other<sup>63</sup>, envisages a chapter on “Social Aspects” (Chapter 5), which resembles to a great extent the obligations set out in the US-led agreements described above.<sup>64</sup>

Similar to the case of US investment agreements, Article 191 in this Chapter on Social Aspects reaffirms the parties’ commitment to the “internationally recognized core labour standards, as defined by the relevant ILO Conventions”, and makes a explicit reference to the following labour rights: freedom of association; right to collective bargaining; abolition of forced labour; elimination of the worst forms of child labour; and non-discrimination in respect to employment.

The treaty recognizes the right of the parties to establish their own labour standards in accordance with their own social development priorities. However, it prescribes, as in the case of US-led agreements, that each party “shall ensure that its own social and labour regulations and policies provide for and encourage high levels of social and labour standards consistent with the internationally recognized rights set forth in Article 191 and shall strive to continue to improve those laws and policies”.<sup>65</sup> Furthermore, the parties agree “not to encourage trade or foreign direct investment to enhance or maintain a competitive advantage by: (a) lowering the level of protection provided by domestic social and labour legislation; (b) derogating from, or failing to apply such legislation and standards.”<sup>66</sup>

In cases of disputes related to the interpretation and application of these provisions, parties can hold consultations<sup>67</sup> and, if they are unsuccessful, they may request that a Committee of Experts be convened to examine the matter.<sup>68</sup> The Panel must issue a report within three months of its composition<sup>69</sup>, though no enforcement mechanism is envisaged.

Interestingly, Article 71, under the suggestive title of “Behavior of Investors”, prescribes that the European Parties and the signatory CARIFORUM States shall “cooperate and take, *within their own respective territories*, such measures as may be necessary, *inter alia*, through domestic legislation, to ensure that: (...) (b) Investors act in accordance with core labour standards as required by the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, 1998 (...) (c) Investors do not manage or operate their investments in a manner that circumvents international environmental or labour obligations arising from agreements to which the EC Party and the Signatory CARIFORUM States are parties”.

It is not clear from the language in this provision whether the measures that each party is required to adopt refer to its own investors operating abroad, to foreign investors operating in its own territory, or both. It could be presumed that, at least the required “cooperation” between the parties would refer to both cases. In any case, the explicit reference to the fact that such measures are to be adopted only “within their own respective territories” seems to suggest that the provision is to be construed as not requiring (or authorizing) an extraterritorial exercise of jurisdiction over acts of national firms in foreign territories.

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<sup>63</sup> The thirteen CARIFORUM members parties to the agreement are: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Christopher and Nevis, Suriname, and Trinidad and Tobago and Guyana.

<sup>64</sup> As mentioned *supra*, Horn, Mavroidis and Sapir (2009, 26) also report the European Economic Area (EEA) within the EU-led PTAs including labour provisions. However, we consider that this agreement is not relevant to this study, since it seeks to replicate almost all the aspects of European Community law related to the establishment and functioning of the internal market (except in the areas of Customs Union, Agriculture and Taxation).

<sup>65</sup> EC-CARIFORUM Agreement, Article 192

<sup>66</sup> EC-CARIFORUM Agreement, Article 193. This obligation is further reinforced in Article 73 of the Agreement, which requires the parties to the treaty to ensure that foreign direct investment “is not encouraged by lowering domestic environmental, labour or occupational health and safety legislation and standards or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity”

<sup>67</sup> EC-CARIFORUM Agreement, Article 195(4)

<sup>68</sup> EC-CARIFORUM Agreement, Article 195(5)

<sup>69</sup> EC-CARIFORUM Agreement, Article 195(6)

It is worth mentioning that the EU-CARIFORUM agreement could constitute a turning point, which may have inaugurated a trend that might strengthen during current negotiations with Central America and the Andean Community, as it seems that the EU is also pushing in these fora for the inclusion of provisions referred to the acceptance and implementation of ILO agreements.

#### **4.4 Some features common to all the surveyed investment agreements. The inexistence of obligations binding upon investors and home states**

The previous paragraphs have presented a description of labour provisions in investment agreements concluded by US and the EU with Latin American Countries. A similar structure can be observed in all these surveyed instruments. They all define a set of minimum standards of labour rights, or “IPLR”, mostly drawn from the ILO Conventions, and then impose a series of substantive obligations with respect to those rights. In general, these obligations refer to the requirement that domestic law embody and be consistent with these minimum labour rights, that these laws be effectively enforced, and that parties do not derogate from these minimum labour rights as an encouragement for trade or investment.

Furthermore, in cases of non-compliance, the parties can hold consultations and, if unsuccessful, they can generally refer the matter to an arbitral tribunal. While in some cases any breach may trigger the whole dispute settlement procedure, in other cases breaches triggering arbitral instances or implementation measures are only those referred to specific labour rights, or those serious violations that distort trade or investment flows between the parties. In either case, the complaining party can be authorized to suspend tariff benefits if its counterpart fails to comply with the arbitral decision.

Therefore, labour provisions in international investment agreements seem to overcome some of the weaknesses of CCCs, at least in two of the studied dimensions: coverage, since they encompass all the core labour rights protected by the ILO Conventions; and enforcement, as they provide for effective enforcement mechanisms.

However, as it can be noted, one feature common to every one of the analyzed labour chapters is that all the provisions dealing with labour standards take the form of obligations binding only upon the investment’s host state. None of these agreements impose obligations upon investors themselves as regards to the treatment that they should guarantee to their workers within the territories of their host states, let alone provisions requiring home states to prosecute violations of labour rights by their MNCs operating abroad.<sup>70</sup>

This feature of labour provisions in investment agreements tend to reproduce -and even to reinforce – the unbalance between rights and obligations of MNCs vis-à-vis the ones of their host states. Then, the question arises as to whether it would be possible to replace, or at least to complement, these obligations upon the parties of investment agreements with the imposition on investors of an obligation to respect the same minimum labour standards that their host states are required to comply with.

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<sup>70</sup> To be sure, a similar conclusion can be drawn with respect to the EC-CARIFORUM Agreement, the sole caveat being that, if broadly construed, its Article 71 could be interpreted as imposing an obligation on home states to cooperate and pass legislation to ensure that its firms comply with IPLRs. Still, this provision does not seem to enable, even in an expansive reading, an extraterritorial exercise of jurisdiction of the home state over acts of its firms within the territory of a foreign country.

## **5. Is the introduction in investment agreements of labour obligations binding upon MNCs and their home states conceivable?**

The analysis presented in the previous sections showed that, while some developed countries – notably, the US-, as well as different interest groups within those countries, have been pushing for the introduction of labour standards in preferential trade agreements, those standards are only used to set the labour protection level that investment-importing states should guarantee. To the contrary, there is in those agreements no provision aimed at regulating the treatment that MNCs should grant to their workers employed in the course of their operations in foreign territories, nor obligations compelling countries of origin of these MNCs to monitor their activities abroad.

Since, as it has also been shown, this lack of regulation cannot be effectively substituted by self-enforceable initiatives, such as CCCs. The question arises as to whether it is feasible to introduce language in “hard” international instruments, i.e. BITs and investment chapters of broader economic agreements, requiring firms to respect minimum labour standards, and authorizing their liability at home for violations to such standards. A positive answer to this question requires dealing with two possible counterarguments, one political and one legal.

### **5.1 The alleged political obstacles**

#### **5.1.1 Collective action problems and “race to the bottom”**

The most popular answer to the question of why clauses similar to those binding upon host states have not been introduced with respect to foreign investors focuses on the “collective action” problems that developing countries would supposedly face as a result of their intense competition for the attraction of foreign capital flows.

In its more general version, this approach puts forward the idea that developing countries are trapped in a prisoner’s dilemma which would result in that, despite being optimum for them as a group to reject any preferential treatment to foreign investors, each of them, individually, may obtain an even higher benefit by “deserting” the group (Guzmán, 1997-98). For if it does so, the argument goes, it would have the possibility of pulling investors in, that, in the absence of such preferential treatment, e.g. a pledge to grant special tax treatment or reduce labour and environmental requirements, would choose a different country to locate their investments. This logic would drag developing countries into costly “bidding wars”, in which they progressively increase concession proposals offered to potential investors, notably tax and financial incentives, and would subject them to strong pressures to lower their labour and environmental standards (Guzmán, 1997-98: 669-674; Oman, 2000: 19; see also Chang y Ross, 2002).

This interpretation appears to provide an appealing explanation for the fact that investment agreements only include a series of burdensome obligations upon investment-recipient countries, whilst they do not entail any provision on the conduct of investors themselves. Thus, in one of the few studies that specifically addresses this question, Simaika points out that “developing countries are too busy competing with one another to attract FDI, and that none of these nations wish to appear to place burdensome requirements on foreign corporations” (Simaika, 2004: 340).

This rather gloomy picture of the world leaves little room for politics and for developing countries to maneuver. Indeed, in the absence of effective multilateral regimes setting “focal points”, i.e. minimum labour and environmental standards, would-be host states seem to have no choice but to resign themselves to compete amongst each other for potential investments, and fall in a bottomless deregulation downward spiral.

Auspiciously, some of the assumptions underlying this model do not seem to verify in the real world. To begin with, this approach presumes that states are rational agents, permanently making instrumental calculations of their actions, in their quest to fulfil a univocal “national interest”. An alternative view, which we believe provides for a more accurate (and promising) description of reality, sees the state as a “field”, in which different domestic groups compete to transform their private interest into public policy and, in particular, into foreign trade policy (see, for instance, Moravcsik, 1997; Putnam, 1988). Within this context, preferences of parties to an international economic negotiation are not previously “given”, but are rather subject to the shifts that might result from the relative power and pressures from different domestic groups.

Moreover, the collective-action model assumes that preferences of investment-exporting countries, i.e. their “national interest”, only reflect concerns about safety of their national assets abroad. In this approach, thus, governments of host countries would be the only party interested in regulating the conduct of investors. In contrast, one conclusion that may be drawn from the alternative approach adopted here is that, in their quest for the inclusion of principles that govern the conduct of MNCs, developing countries might find important allies in the domestic politics of their developed counterparts (Putnam 1988; Moravcsik 1997). Thus, for instance, the preferences of an investment-importing country, which would normally include the respect of core labour rights within its territory, can match with the preferences of labour unions in investment-exporting countries, concerned about the “social-dumping” threat.

Still, it could be argued that even when investment-exporting countries may be prone to introducing minimum standards of treatment of workers abroad, they would have little incentives to accomplish that goal through the imposition of obligations upon their own firms, and that they would rather seek this goal through the imposition of obligations on host countries. However, if their firms were taking the compromises enshrined in CCCs seriously, there would be in principle no reason why they should object to such an approach. In addition, as noted by Mann *et al.*, compliance with the ILO core labour principles should be non-controversial, given the acceptance of this instrument by almost all countries of the world in the tri-partite ILO structure, in which labour, business, and governments are represented (Mann *et al.*, 2006: 26).

What is more, there are solid policy reasons that would support the feasibility of the inclusion of rules governing MNCs’ operations abroad. First, MNCs themselves may have good grounds to welcome the introduction of legally-binding minimum labour (and environmental) standards. In fact, legal regulation could constitute an effective means of leveling the playing field among competing firms. As noted by Jenkins (2001: 9), in highly competitive industries, a company will be unable to improve working conditions or reduce environmental damages unless its competitors do the same. In such a situation, where a market leader feels that it needs to act to protect its image, it will be in its interest to ensure that its competitors have to meet the same standard (Jenkins, 2001: 9). Legally enforceable obligations in investment treaties would provide a much more efficient and reliable way of accomplishing this goal than voluntary and self-enforceable initiatives.

Second, the inclusion of obligations upon investors could be pushed through issue-linkages strategies (Odell, 2000; Sebenius, 1983). It would be perfectly reasonable, for instance, to tie corporate social responsibility commitments and, in particular, the respect of minimum labour standards, to other issues, such as investment incentives. Arguably, these two issues are conceptually different and, moreover, they can be identified with different stages in the investment process – incentives play a major role during the access phase (though some incentives, e.g. fiscal ones, could be considered as having a “permanent” effect), while the question of corporate social responsibility relates mainly to the subsequent, post-establishment phase. Still, the fact remains that both issues are intimately related. On the one hand, the rationale behind the incentives is to channel FDI to specific sectors of the national economy. This goal is achieved through the relaxation of general obligations imposed by national regulations on private companies. On the other hand, corporate social responsibility commitments place additional burdens on foreign companies, with a view to encourage certain national policy goals, such as the respect of certain

minimum standards of protection of workers. It could be argued that the incentives on one hand, and the CSR on the other, are two complementary “bargaining chips” at hand of the two negotiating parties (the MNCs and national governments).

### **5.1.2 An alternative explanation: the inertial effects of international investment treaties’ “templates”**

In our view, rather than exclusively in exogenous, structural, collective-action explanations, the inexistence of obligations binding upon MNCs and their home states should be also (or even mainly) looked for in the invisible inertial power exerted by the repetitive utilization of authentic “templates” or models of international investment agreements. These templates have appeared within a certain context, partly as the product of improvisation, and have remained in place long afterwards.

This resilience should not be surprising: once that the exhausting task of reaching an agreement on a text between the numerous national and sub-national agencies involved in the design of one of these agreements has been accomplished, there are strong incentives to use this text as a model for subsequent negotiations. This is especially true in the case of investment treaties, which generally envisage a Most-Favoured-Nation clause. A country has little motivation to “customize” agreements containing such a clause, since it automatically extends to its counterpart a treatment equal to the one provided for in the most favourable clause of all the agreements it has signed.

Some facts seem to verify the impingement of templates on international investment agreement negotiations.<sup>71</sup> First, after reproducing the typical set of investment protection provisions in dozens of North-South BITs, core countries finally “discovered” their real content and far-reaching implications when attempting to import this template into their North-North Multilateral Agreement on Investment (MAI) project. Whereas the pressures of NGOs and some governments played a key role in the failure of these negotiations (Walter, 2001), those of us who followed the process closely know very well that one of the main reasons behind their collapse lies in the fact that developed countries realized that the mould they had been imposing for years to periphery countries was unacceptable<sup>72</sup>.

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<sup>71</sup> As with any argument related to the actual practice of international negotiations and the problems encountered when drafting agreements, its justification is not to be found so much in academic literature, but rather in the lessons drawn from real-life negotiations. Therefore, the next paragraphs rely heavily on the experience of one of the authors, Ramon Torrent, who as member of the Legal Service of the Council of the EU from 1988 to 1998 and its Director for International Economic Relations from 1993, followed very closely all international economic negotiations in which the European Community and its Member States participated, including in particular the ones tending to launch the so-called Multilateral Agreement on Investment within the OCDE framework.

<sup>72</sup> A detailed explanation of why this “template” was considered to be “unacceptable” exceeds the limits of this paper. In a nutshell, the two main reasons were the following: (1) Some EU Member States discovered that all of them had been systematically violating their BITs, among other reasons, because many of their domestic and European Community norms failed to grant National Treatment to foreign firms established in their territories and, in contrast with US-led BITs, no list of exceptions was envisaged; and (2) the investor-State dispute settlement mechanism, that seemed to be convenient when looked at from the perspective of the most likely “claimant”, i.e. a firm from a developed country filing a complaint against a developing country; turned out to be unacceptable when looked at from the perspective of a potential “respondent” state, i.e., a developed country brought to an international tribunal by an investor of another developed country. It seemed unconceivable, indeed, that a developed country be deprived of its jurisdiction and capacity to examine the conformity with an international agreement concluded by that country of a piece of its own domestic legislation, applicable exclusively within its territory, to a domestic company, simply because this company is owned or controlled by foreigners and decides to bring the case to an international arbitral body. These reasons are discussed in detail in Torrent (2007). See also the quite revealing Rapport prepared for the French Prime Minister by Glimet, E., Lalumière, C., et Landau, J-P., at <http://www.ladocumentationfrancaise.fr/rapports-publics/994001783/index.shtml>.



Second, Bilateral Investment Agreements (BITs) led by the US, seek to liberalize access for foreign investments, while BITs led by individual Members of the EU do not. Is it because the EU is not interested in gaining access to the markets which US investors have access? Are European investments less attractive for developing countries than US investments, and thus their reluctance to open their markets? In the same vein, as regards to post-establishment treatment, US-led agreements envisage a list of exceptions, while the ones led by European countries do not. Does that mean that developing countries are willing to grant US investments a treatment less favourable to the one granted to European ones? The answers to all these questions seem to be in the negative. In fact, European countries are interested in gaining access to the same markets as the US does, European investments are at least as attractive as US ones, and developing countries are not willing to grant US investments treatment less favourable than the one granted to European ones. These architectural differences between EU and US-led agreements are not to be explained solely as the result of wilful choices or differences in bargaining power, but also rather as the involuntary result of the path-dependency effects of templates.

Third, as it is well known, the debate on whether BITs have been successful in attracting investments has been unable to provide an affirmative response (Hallward-Driemeier, 2003). Still, investment agreements have continued to be systematically signed, and their content has persisted almost unmodified. Contrariwise, Brazil does not seem to have suffered a plunge in its inward FDI flows, though not being a party to any investment agreement, neither at the bilateral nor the regional (Mercosur) level.

Forth, it seems unquestionable, that, for years, the conclusion of BITs by EU Member States has violated European Community law, since these agreements cover areas which, under the well-known European Road Transport Agreement (ERTA)<sup>73</sup> jurisprudence, fall within the exclusive Community competence. Moreover, these BITs have been systematically violated by EU Member States, because many pieces of domestic and Community law are inconsistent with the unqualified National Treatment obligation envisaged in these agreements (Torrent, 2007). European countries have nevertheless kept on signing BITs, all of them alike, with only infinitesimal changes.

Fifthly, it is also an unquestionable fact that, in the practice of international negotiations in the years 2000, the first choice that negotiators discussed when arriving to the services and investment chapters, has been whether to follow the “NAFTA/BIT model” or the “GATS model”.

These facts can be hardly explained as the result of collective action problems or relative-power asymmetries between negotiating parties. However, they do make sense if viewed as the product of a “cut-and-paste” approach when drafting international economic agreements.

If, as proposed in this paper, the non-inclusion in investment treaties of obligations upon MNCs does not respond exclusively to structural factors, but rather to the routine utilization of templates, then there is space for politics and for developing countries to push for the introduction of some language requiring MNCs to respect core labour rights in their territories.

However, in order to be effective, legally-binding obligations on MNCs operating overseas should be accompanied by some mechanism aimed at enabling their liability in their home state. The next question thus arises on whether there are legal avenues at hand of the states of origin to enforce CSR obligations abroad.

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73 From the case Case 22/70, Commission v. Council on the European Road Transport Agreement (Accord Européen sur le Transport Routier, in French), [1971] ECR 263.

## 5.2 The alleged legal obstacles

It could be contended that liability of MNCs at home for their acts in foreign countries would face an insurmountable legal obstacle, namely, the alleged impediments that the investor's countries of origin would face to exert its jurisdiction extraterritorially.

It has been argued that this obstacle could be solved through the introduction in investment treaties of a provision requiring investor's home states to ensure that "their legal systems and rules allow for, or do not prevent or unduly restrict, the bringing of court actions on their merits before domestic courts relating to the civil liability of investors for damages resulting from alleged acts or decisions made by investors in relation to their investments in the territory of other Parties" (Mann *et al.* 2006: 43). Such an ambitious obligation, however, which may definitely cause some uneasiness in some countries, such as the US, may not be a necessary element of this new investment treaty model. In fact, as it will be shown in the present section, both the US and the EC and its Member States' domestic legislation already provide some legal basis that may be considered to authorize the enforcement of international obligations governing MNCs operations in foreign countries.

### 5.2.1 Some thoughts on the feasibility of including obligations binding upon investor's countries of origin. The case of the US.

Scholars and jurisprudences in the US refer to three procedural ways to seek redress for the acts of MNCs operating abroad: the nationality principle of jurisdiction and the "effects doctrine"; the *Racketeer Influenced Corrupt Organizations Act* (RICO); and the *Alien Tort Claims Act* (ATCA). According to the nationality principle, any state may exercise its jurisdiction over the acts of its nationals abroad – including national companies – as long as this extraterritorial exercise of jurisdiction does not breach the laws of the state in whose territory the alleged illicit has been committed. Moreover, under the "effects doctrine", US courts have considered that they may exercise jurisdiction in cases in which a conduct outside the US has an effect in that country of such relevance that it would merit this extraterritorial exercise of jurisdiction (Simaika, 2004: 335)

Human rights and environmental activists have also attempted a series of legal actions based on RICO. One salient example of this strategy was the lawsuit filed against Wal-Mart, GAP, Sears, Dayton Hudson and other textiles retailers, under the charge of "racketeering conspiracy" to use indentured labour to produce clothing in the Northern Marianas Islands. In a more recent example, *Sinaltrainal and Gil vs. Coca-Cola Company*, the tribunal excluded the possibility of invoking RICO to pursue "international schemes largely unrelated to the US", but left the door open for extraterritorial applications of the Act in cases in which the allegations meet either the "conduct test" (i.e. cases in which conduct within the US directly causes a foreign injury") or the "effects test" (described above). It remains to be seen whether this precedent will lead to any successful suits against MNCs (Simaika, 2004: 337).

Finally, the ACTA grants districts courts "original jurisdiction of any civil action by an alien for a tort only committed in violation of the law of nations or a treaty of the US". This law remained almost untouched until a US court condemned, in 1980, a Paraguayan policy inspector general, for the torture and homicide of an individual, Mr. Filartiga, in 1976. This decision encouraged an avalanche of similar complaints, some of them targeted against US MNCs, for their alleged complicity in human rights abuses outside the US. Nevertheless, in a more recent case, *Alvarez Machain*, the US Supreme Court established the circumstances under which the ACTA enables foreigners to file a complaint in the US, and it clarified that such possibility is only available in cases of "serious human rights abuses" (Simaika, 2004: 338).

US law and jurisprudence thus seem to leave open the possibility for the US to comply with a potential provision in an investment treaty requiring it to police activities of its MNCs when operating abroad.

### **5.2.2 Some thoughts on the feasibility of including obligations binding upon investor's countries of origin. The case of the EU.**

Without entering into a detailed analysis of this question in each of the different European domestic legal systems, we would like to recall at this point a well known example in which extraterritorial application of norms governing European companies is fully accepted, namely, the application of European Community law governing competition to acts which took place outside the EU, even if conducted by third-country companies

Indeed, the European Court of Justice has consistently endorsed the extraterritorial application of internal European Community law, not only to Member States companies operating overseas, but even to third-country companies that operated abroad and created an international cartel overseas. The best example of this trend can be found in the pioneer case "Paper wood-pulp", in which a collection of firms and business associations from Scandinavia, Finland, Canada and the United States were found to have violated anti-trust provisions of the EC Treaty.<sup>74</sup> We note that such types of corporate behaviour are not very far from those that might be introduced under the CSR title.

Therefore, the possibility of introducing rules requiring the EC and its Member States home to patrol the activities of their companies abroad does not appear to be unfeasible.

## **6. A new template for international investment agreements**

As it has been shown, the introduction in investment treaties of obligations binding upon investors and their home states is both politically and legally feasible. An alternative template of investment agreements should thus include language obligating MNCs to respect in the course of their operations, in foreign countries, the same core labour standards that states hosting them are required to comply with (or, at least, some of them). Furthermore, this alternative model should envisage the possibility that MNCs could be liable in their home countries for violations of such standards abroad.

In fact, some timid indications of a nascent trend towards the adoption of international obligations along the lines presented in this paper can already be traced at the multilateral, bilateral and domestic levels.

Within the frame of the Doha Round negotiations at the WTO, the Governments of China, Cuba, India, Kenya, Pakistan and Zimbabwe submitted a joint communication expressing their concerns about the scarce attention paid in the Working Group on the Relationship between Trade and Investment to the development of obligations on investors and their countries of origin. In that opportunity, these countries set out some issues considered desirable for the discussion: the introduction of duties binding upon companies and their countries of origin, such as anti-competitive practices, technology transfers, balance of payments and consumer and environmental protection (WTO, 2002).

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<sup>74</sup> Judgment of the Court of 31 March 1993. *A. Ahlström Osakeyhtiö and others v Commission of the European Communities. Concerted practices between undertakings established in non-member countries affecting selling prices to purchasers established in the Community*. Joined cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85. ECR 1993 Page I-01307.

Similarly, at the bilateral level, a number of recent BITs have included some vague references to the compliance with CSR standards. Thus, for instance, the Norwegian BIT model states in its Article 32 that: “The Parties agree to encourage investors to conduct their investment activities in compliance with the OECD Guidelines for Multinational Enterprises and to participate in the United Nations Global Compact”. As it can be observed, the wording does not seem to be aimed at creating any enforceable obligation, but rather to introduce, in vague terms, an expression of will.

Finally, some initiatives at the regional and domestic level in investment-exporting countries are also pointing in the same direction. Thus, the European Parliament adopted in 1999 a Resolution calling for a Code of Conduct for European Enterprises Operating in Developing Countries.<sup>75</sup> Among its provisions, the Resolution requested the Commission and the Council “to make proposals, as a matter of urgency, to develop the right legal basis for establishing a European multilateral framework governing companies' operations worldwide”. Moreover, the European Parliament recommended that a model Code of Conduct for European businesses should comprise existing minimum applicable international standards and, in the field of labour rights in particular, the ILO core Conventions. It also called on the Commission to ensure that consideration was given to incorporating core labour standards when reviewing European company law. The European Parliament's recommendations found strong political opposition (Newel, 2001: 909), and were never formally implemented (Zerk, 2006: 170). Still, they constitute a first step towards the introduction in the international agenda of new “templates” that can accommodate for certain obligations binding upon the investors' countries of origin.

An even more interesting precedent was the Australian Bill on the Overseas Conduct of Australian Companies, presented for the Australian Senate approval in September 2000. The bill explicitly acknowledged its extraterritorial operation in relation to any corporation outside Australia which employed 100 or more persons in a country other than Australia.<sup>76</sup> As regards to labour rights, it prescribed that an Australian corporation meeting that condition must not use or benefit from any forced or compulsory or child labour. It also required overseas companies to: as a minimum, pay all its workers a living wage; not dismiss a worker for reasons other than illness or accident; respect the freedom of its workers to associate; respect the right of its workers to organize independently and bargain collectively; and enable any complaints about conditions of labour to be forwarded to independent authorities.<sup>77</sup> Furthermore, it obliged Australian companies operating overseas to comply with “minimum labour standards”.<sup>78</sup> Finally, any violation to such standards rendered the overseas corporation liable to proceedings for the recovery of a civil penalty<sup>79</sup>, and enabled any person who had suffered loss or damage as a result of the contravention to bring an action in the Federal Courts of Australia.<sup>80</sup> Whereas the bill could not be passed<sup>81</sup>, it represented another important precedent in the line of this paper.

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<sup>75</sup> European Parliament Resolution on EU standards for European enterprises operating in developing countries: towards a European Code of Conduct. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1999:104:0180:0184:EN:PDF>

<sup>76</sup> Australian Corporate Code of Conduct Bill 2000, Art. 4.

<sup>77</sup> Australian Corporate Code of Conduct Bill 2000, Art. 9.

<sup>78</sup> Australian Corporate Code of Conduct Bill 2000, Art. 9. Similar to the case of international investment agreement described above, this “minimum labour standards” are defined in Article 6 as the standards contained in the following International Labour Organization Conventions: (a) Freedom of Association and Protection of the Right to Organize Convention (No. 87); (b) Right to Organize and Collective Bargaining Convention (No. 98); (c) Forced Labour Convention (No. 29); (d) Abolition of Forced Labour Convention (No. 105); (e) Discrimination (Employment and Occupation) Convention (No. 111); (f) Equal Remuneration Convention (No. 100); (g) Minimum Age Convention (No. 138); (h) Occupational Safety and Health (No. 155).

<sup>79</sup> Australian Corporate Code of Conduct Bill 2000, Art. 16

<sup>80</sup> Australian Corporate Code of Conduct Bill 2000, Art. 17

<sup>81</sup> The Parliamentary Joint Statutory Committee on Corporations and Securities found the Bill to be ‘impracticable, unworkable, unnecessary and unwarranted’. See the report of the Parliamentary Committee available at [www.aph.gov.au/senate/committee/corporations\\_ctte/corp\\_code/report/report.pdf](http://www.aph.gov.au/senate/committee/corporations_ctte/corp_code/report/report.pdf)

## 6.1 Some selected issues to be addressed in a new investment treaty template

A new model of international investment agreements that adequately balances rights and obligations of host states, MNCs and their home states will not make a real difference if not accompanied by the reform of other aspects of current templates. The remainder of this paper will outline a series of elements to be taken into account when undertaking this task. The goal will not be to present those elements as indispensable components of this new model of agreement, but rather to show that a new template is, at least, “thinkable”.<sup>82</sup>

The first issue to be addressed is the definition of “investment”, and the distinction between FDI and portfolio investments. Potential contributions for development of FDI are widely recognized, among other reasons, due to its favourable impact on local productivity and technology transfers. Portfolio investments, in contrast, do not necessarily match long-term development goals of receiving states – it rather responds to a short-term logic of liquid funds or financial assets placement and distribution. Moreover, the link between FDI and trade is undisputable, while this link is practically inexistent in the case of portfolio investment. A very pedagogical way of emphasizing this fact would be entitling the chapter as “establishment of foreign firms” instead of “investment” (taking up the approach of the Treaty of the European Community, which clearly distinguishes, into two separate chapters, “Capital Movements” and “Right of Establishment”).

The second important topic that should be dealt with is the approach to be followed in the two relevant “phases” of FDI: (a) access (or “first establishment”)<sup>83</sup> and (b) post-establishment treatment. There is a curious coincidence between the GATS and the US-led model: both apply the same approach in the two phases, a “bottom-up” or “positive list” approach in the case of GATS<sup>84</sup>, and a “top-down” or “negative list” approach in the case of NAFTA and other US-led agreements. There is, in our opinion, no clear reason for this. Concerning access or first establishment, national governments may legitimately appeal to developmental, social, or security concerns in order to restrict foreign ownership or participation in certain economic sectors. Thus, setting limits to the far-reaching liberalizing obligations on access by the application of a “positive list” approach appear to be reasonable. To the contrary, it could be argued that foreign firms already established in the host country should only be discriminated against under very exceptional circumstances. Therefore, in the case of post-establishment treatment, it makes more sense to establish a national treatment with horizontal obligations subject to a “negative list” of exceptions.

Another important issue to be taken into account is the rules and disciplines governing some aspects of post-establishment treatment (i.e. the legal regime applicable to foreign companies established in the country) that go further than the (comparative) standard of national treatment. Although some language to secure basic guarantees against expropriation has to be included, the concept of “indirect expropriation” -which finds no parallel provision in domestic legislations and may thus turn into a “Damocles sword”, as the experience with NAFTA’s Chapter XI illustrates-, should be avoided.

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<sup>82</sup> This discussion was initiated in Torrent and Molinuevo (2004).

<sup>83</sup> We prefer these two expressions to that of “pre-establishment”, also widely used. Properly speaking, “pre-establishment” means either nothing (because “before establishment” there is no FDI) or everything (because everything can be considered to happen before establishment).

<sup>84</sup> For the sake of precision, it must be recalled that GATS also uses the “negative list” approach once a sector has been introduced in the “positive list” of sectors for which liberalization commitments are undertaken. However, as the “negative list” only applies after the sector has been included in the positive list, and the positive list embraces at the same time commitments on market access and on national treatment post-establishment, we still can argue, for our needs, that GATS’ approach is that of the “positive list”.

A last aspect that would be worth addressing in a new template of international investment agreement refers to dispute settlement. Although investor-State mechanisms should be definitely abandoned, especially in the light of all the conflicts that they have generated in Latin America during the last years<sup>85</sup> (without providing for a great deal of practical solutions), it would be completely feasible to introduce a State-to-State, fast, effective and transparent dispute settlement procedure, complemented by some provision referred to the investor's obligation to initiate the procedure before the authorities of its own state of origin, instead of granting him direct access to an international forum.

The approach outlined in this paper would constitute an authentic "new model", which would lie somewhere in-between the US-led agreements on one side, and the GATS and EC-led agreements on the other. At the same time, it would adopt a more restrictive approach than current agreements in some issues, while taking a more ambitious stand in others.

## 7. Conclusion

The history of foreign investment regulation is characterized by an exclusive focus on the obligations binding upon host states, and a complete lack of attention on the regulation of the ways in which MNCs conduct their operations outside their home countries.

The impetus of developing countries during the 1970s to revert this situation by passing global regulations to discipline the conduct of MNCs waned under strong resistance of their developed counterparts. Furthermore, the perceived necessity of setting some boundaries to MNCs did not see any response until the 1990s when, under a completely different paradigm, non-binding, self-enforcing Codes of Corporate Conduct (CCCs) started to flourish throughout the world. This was the rise of the era of "Corporate Social Responsibility".

In spite of the limited scope of application and the lack of enforcement that characterizes CCCs, the debate on the possibility of adopting international rules binding upon MNCs was never renewed. In fact, when developed countries perceived the necessity of strengthening labour rights in the developing world, they channelled all their energies towards the imposition of international obligations upon the governments of investment-importing states. Thus, while many international economic agreements envisage minimum standards of protection that host states must guarantee to workers within their territories, none of them refer to the minimum standards of treatment that MNCs should secure to their employees when operating abroad.

Traditional game-theory explanations based on collective action problems and race to the bottom dynamics are unable to account for this privileged treatment accorded to MNCs. As it has been shown, this approach presumes that the introduction of the obligation upon MNCs to respect core labour rights in the course of their overseas activities is a claim advocated exclusively by investment-importing countries. However, if developed countries were really concerned about compliance with "minimum labour standards" in developing countries, as the inclusion of labour chapters in investment agreements seems to suggest, they should by the same token endorse observance of these standards by their own MNCs operating abroad. In addition, if investors were to seriously take their CSR commitments, there would be in principle, no basis for them to object the introduction of provisions in investment agreements giving legal force to these codes of conduct. The inclusion of minimum labour standards in investments agreements and the adoption

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<sup>85</sup> It is commonplace nowadays that many Spanish TNCs established in Latin America (and some of their best legal advisors) recognize that BITs create more problems than they solve, and see with a lot of interest new ideas in the area of investment agreements (this position was expressed, for instance, in a recent international seminar, the Annual Meeting of the Chaire Mercosur of Sciences-Po, held in Paris the 12<sup>th</sup> June 2009)

of CCCs by multinationals thus appear to indicate that a re-edition of the North-South divide that buried efforts in the 1970s to enact binding codes on the conduct of MNCs would be unlikely.

This paper suggested that the causes of the silence in international economic law with respect to the regulation of the activities of MNCs abroad should be rather looked for, at least for a considerable part, in the invisible force that “templates” wield in international economic negotiations, and in the difficulties that policy-makers face when trying to “think out of the box” and design new models of agreements. If that is the case, then there is room to conceive a new model of investment agreement, which adequately balances rights and obligations of host states, investors and home states. Such a new template would reverse one of the most salient asymmetries of international law today, namely, that foreign investors have special rights since they are foreign investors, while, at the same time, they have no liability in the host or home state because, again, they are foreign investors (Mann *et al.*, 2006: 28). The question is then whether such a balanced agreement is feasible. This paper sought to make a contribution to answer this question in the affirmative.

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## Annex: Summary of labour regulations in US- and EU-led agreements concluded with at least one Latin American country

	PROTECTED RIGHTS	SUBSTANTIVE OBLIGATIONS	DISPUTE SETTLEMENT	ENFORCEMENT
<b>NAALC (NAFTA)</b>	Exhaustive list: <ul style="list-style-type: none"> <li>• association</li> <li>• right to organize</li> <li>• bargain collectively</li> <li>• right to strike</li> <li>• prohibition of forced labour</li> <li>• protection for children and young persons</li> <li>• minimum employment standards</li> <li>• no discrimination</li> <li>• equal pay for men and women</li> <li>• prevention of occupational injuries and illnesses</li> <li>• compensation for occupational injuries and illnesses</li> <li>• protection of migrant workers</li> </ul>	<ul style="list-style-type: none"> <li>• ensure “high labour standards” in own laws</li> <li>• effectively enforce its labour law;</li> <li>• ensure appropriate access to labour tribunals</li> </ul>	Consultations. Recourse to Arbitral Panel only in cases of persistent pattern of failure to enforce “safety and health, child labour or minimum wage technical labour standards”	Arbitral Panel may impose a monetary assessment. Requesting party enabled to unilaterally suspend benefits if the other party refuses to pay
<b>US-Chile and US-CAFTA- DR</b>	Reduced list (“IPLRs”): <ul style="list-style-type: none"> <li>• association,</li> <li>• bargain collectively</li> <li>• no compulsory labour</li> <li>• minimum age</li> <li>• acceptable conditions (wages, hours of work, safety and health)</li> </ul>	<ul style="list-style-type: none"> <li>• shall not fail to enforce its labour laws in a manner affecting trade</li> <li>• Also, “shall strive to ensure”:                             <ul style="list-style-type: none"> <li>- IPLRs recognized and protected in its law</li> <li>- labour standards in its law consistent with IPLR</li> <li>- not derogate as encouragement for trade</li> </ul> </li> </ul>	Consultation. Establishment of Panel only in cases of failure to effectively enforce its labour laws affecting trade between the Parties.	Requesting party may request “annual monetary assessment”, capped at 15 million dollars per year. If party complained against fails to pay, complaining party can suspend tariff benefits

<b>US-Peru, US-Colombia and US-Panama,</b>	Idem US-Chile and US-CAFTA-DR plus “elimination of discrimination”	<ul style="list-style-type: none"> <li>• not fail to enforce its labour laws affecting trade or investment</li> <li>• adopt and maintain IPLRs in its law and practices</li> <li>• not derogate from its law affecting trade or investment</li> </ul>	Dispute settlement not restricted to cases of violations of any of the envisaged obligations. Series of stages that may lead to the adoption of an award by an Arbitral Panel.	In cases non-compliance with panel award, complaining party may unilaterally suspend tariff benefits
<b>US-Peru BIT</b>	Idem US-Chile and US-CAFTA-DR	<ul style="list-style-type: none"> <li>• shall “strive to ensure” that it does not “waive or otherwise derogate from” IPLRs as encouragement for investment</li> </ul>	Only consultations between the parties. Labour issues are not eligible to be referred to the arbitral procedures envisaged in the agreements.	None
<b>EC-CARIFORUM Agreement</b>	<p>“IPLRs”:</p> <ul style="list-style-type: none"> <li>• association</li> <li>• bargaining collectively</li> <li>• no forced labour;</li> <li>• no child labour</li> <li>• no discrimination</li> </ul>	<ul style="list-style-type: none"> <li>• ensure high labour standards in own laws</li> <li>• ensure that own law are consistent with the IPLR</li> <li>• strive to improve laws and policies</li> <li>• not to fail to apply own law to encourage trade or FDI</li> <li>• cooperate and take within own territory measures to ensure that</li> <li>• investors act in accordance with IPLR <ul style="list-style-type: none"> <li>- investors do not circumvent other international labour obligations</li> </ul> </li> </ul>	Consultations and, if unsuccessful, any party may request a Committee of Experts.	None. Committee can only issue a “report”



## Conclusions<sup>86</sup>

### Social Responsibility beyond the firm

Latin America as a region has always been characterized by a strong integration into the international economy since colonialism. The nature of this integration has had numerous impacts. The most severe of these, including enslavement, labour exploitation and environmental degradation, were documented most polemically by Eduardo Galeano (1973), but they also reappear in official multilateral, bilateral and international civil society reports in more recent times. The 2002 ECLAC report on Globalization and Development noted, for example, that (p. 26):

“Its (labour flexibility) negative character stems fundamentally from the creation of poor quality jobs, reflected in the increasing expansion of informal labour and in the growth of temporary labour, in the reduction of worker social security in small firms and also, in some countries, in the rise in the proportion of workers without a contract.”

These historical impacts of firms, both public and private, large, medium and small, lead to questions about responsibility – responsibility for the externalities generated, remediation, compensation and the ways in which responsibilities are avoided. Whereas for most of the post-colonial period there were relatively few controls on firms, the twentieth century was marked by a growing number of conditions and requirements in this regard. Regulation was developed most often in the home countries of transnational firms. Later it is the host countries of Latin America that copied these codes or adapted them to their own needs. This has led to increasingly sophisticated fiscal and supervisory practices that constitute the regulatory framework of productive activities, covering a wide range of issues, from financial accounting to human rights.

The internalization of the costs of the impacts generated is the essence of Pigouvian thinking. A.C. Pigou, in *The Economics of Welfare* (1920), urged firms to internalize social and environmental impacts rather than pass these onto wider society and the state. The costs involved were effectively the differences between marginal social net product and marginal private net product, and involved precisions about the positive and negative externalities of diverse activities. This remains the essence of regulation and compliance thinking. Recognition that this area remains underdeveloped in Latin America, with often weak (under-resourced) national and local agencies for labour and environmental enforcement, is part of the discussion of responsibility. For example, where regulations do not exist, or are not enforced, what is expected of firms? Is there a moral imperative? If so, what is the relationship between this imperative and their competitive position *vis-à-vis* the actors who do not follow this same imperative? Above and beyond the discussion of social responsibility, there remains a need to address clearly and directly the regulatory state in the region. Without clarity in this regard, the issues of social responsibility understood as "compliance plus" remain often confusing for private, public and civil society actors.

Many of the social responsibility issues are related to problems in regulation, enforcement in particular. The interface between compliance and responsibility is frequently unclear. Social responsibility is constructed by most to mean "compliance plus", which constitutes a definitional issue. Firms may perform well in social responsibility, with relevant certifications, but they may also be subject to penalties for infringements of legal requirements at the same time. The compliance-"compliance plus" dividing line is far from clear, generating suspicion among analysts and critics, the NGO community in particular.

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The problems associated with standards and their enforcement raise questions of firm performance across a wide range of "non business" areas. The famous phrase coined by Milton Friedman: "the business of business is business", meaning that "...there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game" (Friedman, 1970), is no longer applicable.

Two reasons come to mind. One is that many of the CSR's "additional" fields of concern also affect the firm's financial balance sheet via increased costs or penalties. The second is that the market place – be it suppliers, clients or consumers – is also more sensitive to these other issues. The product chain now moves different pressures that influence market share, and therefore investment returns, upstream and downstream. If firm managers pursue similar objectives with a "for profit" motive, this would satisfy Friedman's concerns regarding social responsibility. However, if they are motivated by other reasons, this is questioned by Friedman, accusing them of "hypocritical window dressing" and of assuming political functions that belong to the state and its fiscal system. This relationship between social responsibility, private action and state regulation remains both central and complex.

Given the grey areas, the papers in this book highlight points for improvement and attention, and ways in which social responsibility can be strengthened, including stronger compliance as a condition for the promotion of social responsibility. This position emerges as a criticism of current regulatory systems and the uncertainty over which standards or regulations – i.e. home or host country standards – should apply to a firm.

International best practice and certifications, including codes of conduct, have run alongside the contemporary globalization process during the final decades of the twentieth century and into the current one. They have certainly had an importance in providing baselines of good practice against which management systems can be established. Along with the rise of a more critical civil society towards globalized firms, domestic large firms and SMEs, the agenda of responsibility has gained in prominence. The accountability agenda expects that firms meet best possible standards across wide-ranging issues that can be viewed as externalities, but also include ethical dimensions, relating to corruption and human rights, for example.

Debates as to the extent to which this accountability should form part and parcel of international trading agreements have been avoided for the most part, although frameworks exist and can be developed further where political will exists, as Torrent and Lavopa clearly identify. The failure to do so will generate increasing parallel actions from within international civil society, as evidenced in the peoples' tribunals, which expose firms to public accountability without certain formal judicial safeguards. As Marcelo Saguier observes, they clearly exist as a mechanism to express social frustrations at the failure of regulatory institutions in home and host states to take a more active role in enforcement, and to bring pressure to bear directly on the firms in question.

Although labour and environmental themes dominate the traditional social responsibility agenda, in the Latin American case the themes of corruption and human rights abuses also figure prominently and must be regarded as central to any twenty-first century responsibility agenda. Both these issues dovetail with mainstream political and social development, as demonstrated in the more emblematic cases of gang violence in Central America, drug-related crimes in Colombia and Mexico, and indigenous rights in resource extraction areas. The background of violence in the case of Colombia's banana social responsibility network is a further example. In all of these cases, the emphasis on transparency over corruption and commitment to upholding human rights as opposed to abusing them, reveals the ethical essence of the agenda, as opposed to a technocratic or purely instrumental approach.

The rising complexity of the CSR agenda has resulted in the formulation of a new ISO norm (26000) that will be operational in 2011. While the instrument will not be certifiable and thus remain non-binding, the standard recognizes the agenda that exists and attempts to

consolidate it further. The UN Global Compact and the Global Reporting Initiative are other initiatives that aim to create a more wide-ranging public-private-civil society framework for action, complementing ISO 26000 to some extent.

What is particularly interesting in contemporary debates is a shift in orientation. Two areas that emerge here are: the expansion of the CSR agenda beyond the regulatory relationship between firms and state, and the reconsideration of what compliance means and should mean to firms. Three papers in the book clearly point to these developments. Although focused on regulation, the papers implicitly find problems with the boundaries of "compliance plus" activities.

Responsibility for impacts on society, the workforce and the environment are not the exclusive concern of the firms that generate these impacts, but of the state that represents society. The Latin American state is unable to guarantee basic legal standards in many cases due to the remote location of the activities, political influences of the business sector, limited standards of development, lack of political will, and other reasons. In the face of this situation, a network of actors has been exerting more influence. Maria Alejandra Gonzalez-Perez defines these as social responsibility networks. These networks bring together diverse actors across production and consumption chains, at the "glocal" level (Swyngedouw, 2004), making responsibility no longer the sole remit of the producer but also of those who benefit from the product and its consumption.

More sustainable production and consumption chains, involving more actors and widening the net of responsibility, were identified as priorities by the Latin American Environment Ministers at the regional summits in Santa Cruz de la Sierra in 1996 and 2006, and they also figure in Agenda 21 and the Johannesburg Declaration. Furthermore, the 1994 Winnipeg principles for trade and sustainable development embody the criteria that are required to achieve these more virtuous chains: efficiency and cost internalization; equity; environmental integrity; subsidiarity; international cooperation; science and precaution; and openness. Responsible supply chains, distribution and consumption now come together with direct production responsibilities.

In this context, many firms are increasingly reaching out as "good neighbours" and take initiatives that contribute to society in general, such as the foundations of the two Chilean mining firms noted by Paz Verónica Milet. To open up Friedman's adage to the zeitgeist: "the new business of competitive business is responsible business". This responsible business is not only the remit of the producer firms themselves, but of the entire networks within which they operate and in which regulators, suppliers, distributors, workers, consumers, local communities and clients each have active roles to play in determining the agenda and defining acceptable practices and performance criteria.

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