

Corporate Social responsibility in the field of human rights and the environment in the Americas

CJI/doc.436/13

**CORPORATE SOCIAL RESPONSIBILITY IN THE FIELD OF
HUMAN RIGHTS AND THE ENVIRONMENT IN THE AMERICAS**

(presented by Dr. Fabián Novak Talavera)

1. Scope of Mandate

During the 82nd ordinary period of sessions of the OAS Inter-American Juridical Committee, held in Rio de Janeiro, Brazil, the members of this main body of the Organization unanimously decided, upon the vice chairman's request, to include the topic of "Corporate Social Responsibility in the Field of Human Rights and Environment in the Americas" in their agenda, based on the competence granted to the Committee under article 100 of the Charter, 12(c) of the Statute and under article 6(a) of the Regulation thereto, to initiate, under its own initiative, the studies and works it deems convenient for the region.

It was considered of the utmost importance to develop a report on the current status of corporate social responsibility in the region, so it could be used as an input to later prepare a set of Guiding Principles to be made available to the OAS Member States.

To that end, the Juridical Committee Secretariat was requested to support the Rapporteur on the topic, Dr. Fabián Novak, in asking the Member States to provide the existing domestic legislation on the matter and any other documentation that might be deemed relevant to this end.

2. Preliminary Remarks

In starting this report, we must begin by pointing out that there is certain consensus that there is no one-size-fits-all definition for social responsibility, as there is not only one kind of social responsibility. Social responsibility reaches the different players, such as the State, corporations, NGOs, universities, unions, consumers associations, among others, with different features.

Nevertheless, this study will only refer to corporate social responsibility understood as a new manner of doing business, in which enterprises try to find a

balance between the need to reach their economic and financial goals and, at the same time, have a positive social and environmental impact through their business¹.

Moreover, this topic will be addressed exclusively from the regional perspective and the reality of the Americas. This first report will basically focus on Latin American and Caribbean countries² (as this issue has had significant developments in countries such as the United States or Canada, without that implying that they are free of troubles or that they will be excluded from the Guiding Principles that will be prepared). Many of the Latin American countries that are OAS members have had a particularly positive economic development in the last few years, which in turn has led to their adoption of policies and legislation on corporate social responsibility.

In fact, in Latin American practice there has been a gradual transition from a social responsibility approach associated with philanthropy—which is rooted in Catholic traditions and institutions—to a long-term commitment linked to corporate strategy. As Mejía and Newman put it:

Crisis, both political and economic, the region's integration into the international market, a more aware and participatory civil society, and enterprises acting in a more competitive field, have brought about a definitive shift in Latin America towards corporate social responsibility.³

Latin American enterprises have gradually followed this trend for several reasons: for some, social responsibility is part of their culture, others are convinced of it, so they adopt the practice; some others bring it in to emulate other enterprises, and others do it for competitive reasons, out of consumer pressure or as a reaction to a crisis. Nonetheless, if one was to establish the main cause for this, it could be said that, due to the insertion of many Latin American enterprises into the world economy as a result of the entry into free trade agreements⁴, enterprises are faced with pressure from foreign clients, governments and consumers, who demand not only they deliver that specific quality of products or services, but also that the production standards meet legal and ethical requirements, thus strengthening the incorporation of corporate social responsibility into their business strategies.⁵

In this regard, we could say that corporate social responsibility in Latin America has made notable progress, all the more in countries with relatively more developed industrial sectors and with more corporations in their economies, in which the emerging notion of responsibility has been tied to aggregate value. But the

¹. OLCESE, Aldo. **El Capitalismo Humanista**. Madrid: Marcial Pons Ed. Jurídicas y Sociales, 2009, p. 40-59.

². From this point on, our analysis will concentrate on Latin American countries given the lack of information made available to the Rapporteur by the Caribbean countries by this report's closing date.

³. MEJÍA, Marta and Bruno NEWMAN. **Responsabilidad Social Total**. México D.F.: EFE, 2011, p. 38.

⁴. *Ibid.*, p. 40.

⁵. *Ibid.*, p. 41.

weakness of the process is due to the slim oversight or follow-up capacity by the authorities, enterprises' resistance to accepting normative regulations on the matter⁶, and the lack of dissemination strategies and incentives.

In Latin America, there is also a difference in practice between large enterprises and small and medium enterprises. As Mayer explains:

Large multinational enterprises are in a better position to implement socially-responsible policies. They mainly apply the guidelines that have been defined by their headquarters and they generally have established standards. These multinational enterprises are usually recognized for their actions, but they are perceived as being disconnected from the local situation. The perception is that they just replicate initiatives without taking into consideration the expectations and interests of local associations. Many large private Latin American enterprises are deeply rooted in the communities where they operate (examples include Bimbo in México and Gerdau in Brazil) and their managers are public personalities. These enterprises are generally positively perceived by the communities in which they operate.

[...]

Small and medium enterprises have a lower incorporation of responsible practices, as they are perceived to entail financial contributions to society-at-large. It is thus considered that enterprises with fewer resources are more restrained to afford responsible actions.⁷

Another relevant feature worth noting in Latin America is the work of unions, religious organizations, NGOs and other organizations, which act and protest against the violation of employment rights or practices against human rights or failure to preserve the environment by the enterprises. These entities are useful not only to draw the authorities' attention to possible abusive practices by the enterprises but also to demand from the enterprises respect for the norms and a closer relationship with the place in which they carry out their business⁸. However, these organizations also face criticism—sometimes justified—, as they may sometimes stand for extremist ideologies or interests that work against any kind of investment and development projects.

In any case, it is a work in progress that, while it is not free from difficulties and resistance, it is still making positive progress reaffirming the region's certainty

⁶. MAYER, Charles. **Responsabilidad Social y Ambiental: El Compromiso de los Actores Económicos**. Paris: Diffusion, 2006, p. 174-175.

⁷. *Ibid.*, p. 177.

⁸. *Ibid.*, p. 181.

that business development implies a production process that respects human rights, labor norms, and the environment.

3. Regional regulation

3.1 Resolutions by the Organization of American States (OAS)

No regional regulations (mandatory or voluntary) on social responsibility have been established in Latin America, and there are only a few OAS resolutions, recommendations, that refer to the issue.

In fact, at the Inter-American level, the issue of corporate social responsibility has been a matter of concern since the beginning of the 21st century and the OAS General Assembly has several consecutive resolutions on the matter.

So the OAS General Assembly started to address the matter in 2001, when Resolution AG/RES. 1786 (XXXI-O/01) was approved, requesting the OAS Permanent Council to analyze the matter, in order to detail its contents and scope so it can inform the OAS Member States and disseminate in them its elements.

On the following year, that is June 4, 2002, the OAS General Assembly approved Resolution AG/RES. 1871 (XXXII-O/02) stating the need for OAS Member States to exchange experiences and information on the matter and to share them with other multilateral organizations, international financial institutions, the private sector and civil society organizations, with a view to coordinating and strengthening cooperation activities in the field of corporate social responsibility.

Then, on June 10, 2003, the General Assembly approved Resolution AG/RES. 1953 (XXXIII-O/03) and Resolution AG/RES. 2013 (XXXIV-O/04) on June 8, 2004, which describe the efforts made by other international organizations and multilateral financial entities to study the topic and establish certain principles that can be applied by the enterprises.

On June 7, 2005, the OAS General Assembly approved a new resolution on the matter, Resolution AG/RES. 2123 (XXXV-O/05) which shifts away from statements and starts making recommendations to Member States on corporate social responsibility, although they were still general recommendations. Member States were encouraged to “develop, promote and encourage broader dissemination, experiences and information exchange of, training and outreach in the area of corporate social responsibility”. States are also encouraged to facilitate “adequate participation and cooperation of the private sector, business associations, unions, academic institutions and civil society organization in these efforts”. It also recommends the governments of the Americas “to play an active role in the negotiations under way in the International Standards Organization to establish a standard for corporate social responsibility (ISO 26000)”. Finally, it recommends Member States “to become knowledgeable about existing voluntary internationally

recognize principles and guidelines, as well as private sector initiatives to promote corporate social responsibility and as appropriate to their circumstances, support such internationally voluntary principles and guidelines and private sector initiatives”.

Further OAS resolutions have had similar purposes. Thus, Resolution AG/RES. 2194 (XXXVI-O/06) of June 6, 2006 urges the Member States to promote corporate social responsibility programs and initiatives. Resolution AG/RES. 2336 (XXXVII-O/07) of June 5, 2007 even points out to certain documents prepared by other organizations, and calls the Member States “to promote the use of corporate responsibility guidelines, tools and best practices, including the International Labor Organization's (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the Voluntary Principles on Security and Human Rights”.

Then, on June 4, 2009, the General Assembly passed Resolution AG/RES. 2483 (XXXIX-O/09), which states not only the measures that had been adopted on the matter by the G8, the Asia Pacific Economic Cooperation (APEC), the Organization for Economic Cooperation and Development (OECD) the Summit of the Americas and the United Nations Organization, but it also urges the Member States to follow the ILO directives set out in the aforementioned resolution and added others, such as the “OECD Guidelines for Multinational Enterprises, the United Nations Global Compact and the Voluntary Principles on Security and Human Rights, and the principles contained in the ILO Resolution on the Promotion of Sustainable Enterprises and the United Nations Millennium Development Goals”. This resolution contains an interesting item on our issue of interest, as it urges the Member States that actively exploit natural resources to “promote best environmental protection practices, particularly in exploitation of natural resources and manufacturing sectors, to promote the Voluntary Principles on Security and Human Rights, and to take part in the Extractive Industries Transparency Initiative (EITI)”.

Then, Resolution AG/RES. 2554 (XL-O/10) of June 8, 2010 and Resolution AG/RES. 2687 (XLI-O/11) of June 7, 2011 were passed. Both resolutions urge the Member States “to support initiatives tending to strengthen their management capacities and natural resources development in an environmentally-sustainable manner and with social responsibility”. In addition, they stress the importance of “the best social responsibility practices being applied with the participation of the interested parties”.

Finally, Resolution AG/RES. 276 (XVII-O/12) of the OAS Inter-American Council for Integral Development of May 15, 2012 and Resolution AG/RES. 2753 of the General Assembly of June 4, 2012. The former acknowledges enterprises’ responsibility “to promote and respect the observance of human rights in the course of their business”, adding that enterprises should honor the principles of “respect for

labor and environmental regulations”. On the other hand, the second resolution encourages dialogue on social responsibility between the private sector and national congresses, as well as the Member States to train and advise their small and medium enterprises so they get involved in corporate social responsibility initiatives.

In short, corporate social responsibility has been a matter of concern to the OAS, and while it has not established a binding regulation or a recommendation on the matter, it has accepted the validity of the directives, principles, and initiatives proposed by other international forums, and has recommended their implementation by the OAS Member States. Likewise, it has shown special concern for small and medium enterprises to also adhere to the trend of bringing forward a corporate social responsibility policy, particularly in the field of human rights and the environment. Finally, the OAS has developed some studies on the matter, which have been made available to the States so they learn and act on them.⁹

3.2 The Inter-American Conferences

Since 2002, the Multilateral Investment Fund of the Inter-American Development Bank (BID) has held periodical Inter-American conferences on corporate social responsibility. These conferences were created as a consequence of the mandate of the III Summit of the Americas, which took place in Quebec in April 2001.

It was then that in 2002, the first Conference was held in Miami, United States of America, and they started to be numbered after the following conference. Thus, the I Conference took place in Panama in 2003; the II Conference in Mexico in 2004; the III Conference in Chile in 2005; the IV Conference in Brazil in 2006; the V Conference in Guatemala in 2007; the VI Conference in Colombia in 2008; the VII Conference in Uruguay in 2009, the VIII Conference in Paraguay in 2011; and the IX Conference in Ecuador in 2012.¹⁰

These meetings are attended by authorities, specialists, businessmen, students and institutions engaged in the matter, and several presentations are made on different corporate social responsibility topics, seeking at all times to highlight the benefits for the society and the enterprises obtained from applying a social responsibility policy, without overlooking the limitations and difficulties present in the region for their full implementation, and the way to overcome them.

While these Inter-American conferences have not produced binding or voluntary regulations, they have served to inform the countries of the region and to learn about the statistical and field works that have been taken into consideration by

⁹. See, for example, OAS UNIT FOR SUSTAINABLE DEVELOPMENT AND ENVIRONMENT. *Sustainable agriculture, corporate social responsibility (CSR) & the private sector of the financial services industry*. Washington: OAS, November 22, 2006.

¹⁰. Available at: <<http://cumpetere.blogspot.com/2012/05/diez-anos-de-la-conferencia.html>>

the participating countries in building their own internal corporate social responsibility regulations, as we will see below. This has also stimulated the organization of other national and international events, which have contributed to the adoption of responsible practices in the enterprises.¹¹

3.3 National regulations

As we have said before, at the Inter-American level, countries have not sought to develop a regional standard, guideline or directive on corporate social responsibility, but have rather accepted as valid or applicable in the relevant countries—of course, with a voluntary nature—the universal documents prepared by different organizations, such as the 1997 Global Reporting Initiative¹², 2000 United Nations Global Compact,¹³ the 2006 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,¹⁴ and 2010 ISO 26000.¹⁵

However, many of the countries of the region have issued, in parallel and progressively, internal binding legal norms on the matter, while others are debating their approval with the national congresses, convinced that this issue is of the utmost importance to ensure regional industrial and business development that respects the environment, the employment norms and human rights.

In this regard, we can refer to some examples from North, South and Central America:

¹¹. Available at <<http://www.esamericas.org>>.

¹². This initiative seeks to provide a set of guidelines to facilitate and improve the quality of reporting on corporate social responsibility throughout the world, based on comparability, credibility, rigor, periodicity and authenticity of the information contained in sustainability reports.

¹³. This was an initiative launched by former US Secretary General, Kofi Annan, to contribute to enhance the values and principles that humanize the market, and to attain an inclusive and sustainable economy by respecting labor laws, human rights and the environment. Those principles are: 1. Businesses should support and respect the protection of internationally proclaimed human rights; 2. Businesses should make sure that they are not complicit in human rights abuses; 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; 4: the elimination of all forms of forced and compulsory labour; 5: The effective abolition of child labour; 6: The elimination of discrimination in respect of employment and occupation; 7: Businesses should support a precautionary approach to environmental challenges; 8: Undertake initiatives to promote greater environmental responsibility; 9: Encourage the development and diffusion of environmentally friendly technologies; and 10: Businesses should work against corruption in all its forms, including extortion and bribery. This Compact is inspired in the Universal Declaration of Human Rights, the International Labor's Organization's Declaration of Fundamental Principles and Rights at Work, the Rio Declaration on the Environment and Development, and the United Nations Convention against Corruption. See DURÁN, Gemma. **Empresa y Medio Ambiente. Políticas de Gestión Ambiental**. Madrid: Pirámide, 2007, p. 68-69. And, FERNÁNDEZ, Roberto. **Administración de la Responsabilidad Social Corporativa**. Madrid: Universidad de León/Thomson, 2005, p. 39-ss. In 2006, approximately 45% of the Global Compact participants were from Latin America. On the latter, see OFFICE OF THE UN GLOBAL COMPACT. *IV Global Compact Local Networks Annual Forum*. Barcelona, September 26-27, 2006, p. 10.

¹⁴. The principles contained in this international instrument provide employment, training, working conditions, life and employment relations orientation to enterprises, governments, employees and workers. Available at: <<http://www.ilo.org/wemsp5/groups/public>>. While this Declaration was originally adopted in 1977, it was amended in 2000 and then in 2006.

¹⁵. Standard ISO 26000 was approved and prepared by the International Standards Organization in November 2010 with the purpose of establishing a set of corporate social responsibility standards and the form of implementing them in the organization.

a) **Argentina**

For many authors, Argentina is the pioneer Latin American country in the implementation of corporate social responsibility. Argentinean enterprises have incorporated and developed this culture for several years now.¹⁶

While this country does not have a main agency that leads the social responsibility agenda from the civil society standpoint, it does have a Foundation Board (Consejo de Fundaciones) that in practice plays that role.¹⁷ Likewise, the Argentine Republic has a set of constitutional and significant legal rules on the matter. Thus, article 48 of the Constitution of the Autonomous City of Buenos Aires, specifically provides that: “It is the policy of the State that the economic activity enhances personal development and is based on social justice. The City of Buenos Aires promotes public and private economic activity under a system that ensures social welfare and sustainable development”.

It was under this constitutional framework that is replicated in the rest of the country, that Law N° 25877 – the Law on Labor Order of June 2004—was enacted, which in Chapter IV, title II, provides that domestic or foreign enterprises with a certain number of workers have to prepare an annual social balance statement for the company. In furtherance of this obligation, Law N° 2594 of December 6, 2007 was enacted and then published on January 28, 2008, in the Official Gazette of the City of Buenos Aires. This law governs the content and scope of the Social and Environmental Responsibility Balance Statement.

This obligation has been imposed on industrial, commercial and service enterprises residing in Buenos Aires, with over 300 employees and billing above the level set by Provision SEPyME N° 147/06. These enterprises have to submit this statement annually, which consists on a financial statement of the company’s actions on the social and environmental fields. This disclosure allows for their comparison and quantification, and also allows interest groups, and not only the state, to oversee them.¹⁸

On the other hand, enterprises that are not included in the scope of the norm but that voluntarily submit this statement will enjoy certain benefits in connection to access to credit, incentives for technology innovations and others established by the authorities.

Finally, the Law provides that breach of this norm, for example, by failure to submit the statement, misrepresentation or omission of information, etc., will cause removal of the company from the list of conforming enterprises and will be classified

¹⁶. MAYER, Charles. *Ob. cit.*, p. 178.

¹⁷. AGÜERO, Felipe. **La responsabilidad social empresarial en América Latina: Argentina, Brasil, Chile, Colombia, México y Perú**. Miami: Universidad de Miami, 2002, p. 43.

¹⁸. FABRIS, Lorena. **La responsabilidad social empresarial y la Ley 2594 de la ciudad de Buenos Aires**. In: *CODIGO R, Portal de las Responsabilidades y el Desarrollo Sostenible*. Buenos Aires, 2009.

as non-compliant company, while incentives will be withdrawn from enterprises that make voluntary submissions and fail to perform their obligations.¹⁹

b) Brazil

Brazil has a very extensive and powerful business and industrial sector, and also has legal norms linked to corporate social responsibility, particularly for the control of contaminant gas emissions.

In this regard, it is worth mentioning Río de Janeiro Municipal Law N° 4969 on climate change and sustainable development of January 2011, which sets a greenhouse gas emissions reduction goal of 20% by 2020, provides for the obligation to recycle, reuse or treat waste, and encourages the use of motor transportation, with an aim to improving the environmental conditions of the city through the responsible actions of enterprises and citizens in general.

Another pioneering statute is São Paulo Municipal Law N° 14933 on climate change of June 2009, which contains similar provisions to the Río legislation, but it is more ambitious in that it set the goal of reducing greenhouse gas emissions by 30% in 2020.²⁰

It is also of the utmost importance that we point out to certain voluntary documents that have been developed and approved within the scope of the prestigious Instituto Ethos²¹ of Brazil, an NGO created in 1998 by Brazilian businessmen in order to help enterprises develop their business in a socially-responsible manner. This institute started out with 11 enterprises and in 2005, ant it has now more than 1,000 affiliates that account for more than 30% of the gross domestic product of Brazil.²²

Such regulations include the Declaration of the CEO Meeting on Corporate Social Responsibility and Human Rights of June 24, 2008, subscribed, among others, by the presidents of Grupo Telefônica de Brasil, Banco Real, Wal-Mart, Alcoa, Petrobras, Binds, Caixa Econômica Federal, HP de Brasil, Banco Itaú, Banco HSBC, among other important businessmen, signed this document in which they committed to respect human rights and the environment in their business, thus assuming the need to progressively implement a set of actions, particularly promoting gender equality at the workplace, maintaining racial equality at the workplace, eradicating slave work, inclusion of the handicapped and favor the rights of children, teens and youth.²³

¹⁹. PALADINO, M., A. MILBERG, and F. SANCHEZ IRIONDO. **Emprendedores Sociales y Empresarios Responsables**. Buenos Aires: Temas, 2006, p. 49.

²⁰. See “Río de Janeiro fija por Ley la reducción del cambio climático” In: *Comunicación de responsabilidad y sustentabilidad empresarial. Comunicarse*. February 15, 2011.

²¹. In this regard, it is worth mentioning other similar institutions, such as the Group of Institutes, Foundations and Enterprises (Grupo de Institutos, Fundaciones y Empresas (GIFE)) and the Brazilian Institute for Social and Economic Analysis (Instituto Brasileiro de Análisis Sociales y Económicos (IBASE)). Brazil also has a good number of academics in management schools and companies that are working in developing business ethics. See AGÜERO, Felipe. *Ob. cit.*, p. 25 and 34.

²². MEJÍA, Marta and Bruno NEWMAN. *Ob. cit.*, p. 38.

²³. Available at: <www3.ethos.org.br>.

Then, in 2012 the Business Charter for Human Rights and the Promotion of Decent Work was issued. It emphasizes the need to include respect to human rights in all business processes, including top management, creating follow-up mechanisms on the delivery of commitments, supporting the government in the implementation of measures that ensure decent employment, according to the ILO provisions, among others.

c) Chile

In the case of Chile, corporate social responsibility has been driven not only from the State but also from private organizations, as is the case of Acción Empresarial, created in May 2000; Generación Empresarial, an organization that brings businessmen together with the purpose of promoting a person-centered business culture; and Prohumana, created in 1998, as a non-profit organization destined to promote social responsibility through active citizenship.²⁴

There are no specific domestic provisions on corporate social responsibility, but the matter it is referred to in a scattered fashion in several different regulations. For example, DFL N° 1046-Law on extraordinary work of December 20, 1977; Law N° 18985-Law on donations for cultural purposes of June 28, 1990; Law N° 19247-Law on donations for educational purposes of September 15, 1993; Law N° 19284-Law on the social incorporation of the disabled of January 14, 1994; Law N° 19300-Law on the Basics of the Environment of March 9, 1994; Law N° 19404-Law on Hard Labor of August 21, 1995; Law N° 19505-Law on special leaves of workers in the event of grave disease of their minor children of July 25, 1997; Law N° 19988-Law on seasonal workers of December 18, 2004; and Law N° 19712-Law on donations for sports purposes on February 9, 2011; among others.²⁵

To all these standards, one should add voluntary norms, such as ISO 9000, ISO 14000 and in particular ISO 26000 on social responsibility, that have been implemented by several Chilean enterprises.²⁶

d) Colombia

Colombia is one of the countries in which the interest for corporate social responsibility is more advanced. There are several innovating business experiences that have introduced this culture in the organizational matrix. At first, the tax laws allowed that donations from individual and corporations to non-profit organizations could be deducted from income tax. The concept was subsequently adopted by

²⁴. AGÜERO, Felipe. *Ob. cit.*, p. 36 and 41.

²⁵. ACCIÓN RESPONSABILIDAD SOCIAL. Available at: <www.accionrse.cl/contenidos.php?id=45&normas-y-estandares-RSE.htm>.

²⁶. *Idem*.

academics and businessmen, who started to realize the benefits of this new business culture.²⁷

In the case of Colombia, there are several laws that refer to social responsibility directly or indirectly. That is the case of Law N° 9 on Protection of 1979, Law N° 99 of 1993, Law N° 344 on Resources of 1996, Law N° 430 on Hazardous Waste of 1998, Law N° 685 or Mining Code of 2001, Law N° 697 on Energy of 2001, Law N° 1014 on Entrepreneurship Promotion of 2006, and Laws N° 1328 and 1333 of 2009.

From all of the above, it is worth mentioning Law N° 1328 of July 15, 2009, which has created a social balance statement program to disclose the impact of the responsible activities that financial entities undertake voluntarily. This standard has been in turn regulated by Decree N° 3341 of 2009.

However, for several years (2006), Bill N° 70/10 has been discussed in the Colombian Congress. This bill defines a set of norms on corporate social responsibility, destined to child protection, eradication of child work, eradication of poverty, respect for human rights and to stimulating responsible environmental behavior based on prevention and remediation of environmental damage caused.

e) Costa Rica

As for Costa Rica, in addition to the laws indirectly connected with the matter—as is the case of the General Public Administration Law on Institutional Transparency or the Law on the Inclusion and Protection of Disabled Persons--, we also have the Framework Law on Corporate Social Responsibility and the Law on Corporate Social Responsibility in Tourism, both approved in June 2010.

The Framework Law on Corporate Social Responsibility provides for the obligations of enterprises established in Costa Rica with more than 200 workers, to submit a social balance statement of their activities. This commitment must also be undertaken by any company that wishes to take part in public bids or obtain public funds. The Law also provides that the balance statement must take into consideration the policies, practices and programs implemented to enhance human and sustainable development of workers, etc. These balances are public and will be followed-up by the Ministry of Economy, Industry and Trade. Finally, incentives will be given to enterprises that stand out for compliance with this norm, such as tax exemptions and receiving the annual award to excellence.

As regards the Law on Corporate Social Responsibility in Tourism, it intends to stimulate the sector enterprises to take part in social responsibility programs aimed at fighting sexual tourism, child exploitation, promote the care for the environment, among others, by stimulating them to taking part in several benefit programs, such as

²⁷. CARAVEDO, Baltazar. **Empresa, Liderazgo y Sociedad**. Lima: Ed. Perú 2021, 1996, p. 33.

preferred promotion at the national and international level and obtaining the Corporate Social Responsibility Certificate. Finally, the Law introduces the concept of social tourism, such as a new way of understanding business management and their relationship with society, and rewards the enterprises that offer tour packages that favor indigenous communities, disabled people, senior citizens and children, etc.

f) Mexico

After the approval of NAFTA, several regulatory requirements from the United States and Canada were imposed on Mexico in order to implement in state-managed enterprises and in private report enterprises, practices that were compatible with respect for the environment and human rights, which would give them more opportunities to sell their products to countries from these two countries.²⁸

This has permitted the integration of corporate social responsibility into a series of Mexican domestic norms and to introduce social responsibility badges that assess and grade the commitment of enterprises to this responsibility²⁹ culture, as the one granted by the Mexican Center for Philanthropy (Centro Mexicano para la Filantropía (CEMEFI)),³⁰ the most important organization regarding corporate social responsibility, organizational sustainability and civil involvement. Another organization is the Mexican Confederation of Employers (Confederación Patronal de la República Mexicana (COPARMEX)), which brings together enterprises from throughout the country and advocates for a market economy with social responsibility based on the human person and in a liberty system inspired in Christianity. There is also the National Committee for Technology Productivity and Innovation (*Comité Nacional de Productividad e Innovación Tecnológica, COMPITE*), which promotes the matter among small and medium enterprises.³¹

Mexico has several norms that contain provisions that seek corporate social responsibility, particularly in the spheres of employment and the environment. By way of example, there is the Federal Labor Law, the Federal Law to Prevent and Eradicate Discrimination, the General Law for the Disabled, the Income Tax Law, among others, which provide for corporate obligations aimed at safeguarding the rights of the workers and also for incentives to those enterprises that implement protection measures, especially for vulnerable groups.

Additionally, Mexico promotes the implementation of the Social Responsibility Guidelines-NMX-SAST-26000-IMNC-2011/ISO 26000:2010. This Mexican standard contains the principles and topics enshrined in the concept of social

²⁸. EPSTEIN, Marc. **Sostenibilidad Empresarial**. Bogotá: ECOE Ed. 2009, p. 61-62.

²⁹. MEJÍA, Marta and Bruno NEWMAN. *Ob. cit.*, p. 10.

³⁰. *Ibid.*, p. 39.

³¹. AGÜERO, Felipe. *Ob. cit.*, p. 18, 20 and 24.

responsibility, thus helping the organization, regardless of their size and location, to contribute to sustainable development and to adopt positive social decisions.

g) Peru

Corporate social responsibility has begun to grow significantly in the country, mostly after the entry into effect of free trade agreements with various countries throughout the world and the significant amount of foreign investment received in the last decade. Even back in the 1990s, a private organization called Peru 2021 was created, which aimed at promoting corporate social responsibility as part of the new national vision that they intend to promote, through several incentives — such as the creation of a national award—aimed at promoting enterprises, that integrate this issue into their organizational strategy.³²

As a supplement to this, on September 20, 2011, the State issued Supreme Decree N°015-2011-TR, which provided for the creation of the *Perú Responsable* program within the scope of the Ministry of Labor and Employment Promotion, as part of the process to deploy inclusive policies and dialogue between the State, society and the private sector. With the *Perú Responsable* program, the Ministry of Labor and Employment Promotion began designing corporate social responsibility public policies that would generate decent employment. *Perú Responsable* undertook the challenge of an across-the-board concept of corporate social responsibility from the perspective of promotion, articulation and certification.³³

In the last few years, a set of provisions—although not a specific regulation—on this matter have also been issued in Peru. However, we will not point out or analyze them here because the topic will be broadly addressed in our next study.

In any case, from the aforementioned internal regulations, one may conclude that many of the countries in our region—particularly those that have attained a higher level of relative development— have incorporated corporate social responsibility matters in their domestic legislation, whether through a specific regulation or a generic one. Hence, they assume that the issue has to have clear and binding rules for the enterprises and the State has to play an oversight and a promotion role.

Additionally, in several of these countries civil society organizations associations have emerged to promote corporate awareness, whether by granting national awards or by assuming ethical commitments, all of which has given rise to a set of positive corporate practices, which will be the topic addressed below.

4. Positive regional business practice

³². *Ibid.*, p. 47-50.

³³. Available at: <<http://www.trabajo.gob.pe/mostrarResultado.php?id=863&tip=850>>.

In the Inter-American context, the issue of corporate social responsibility has been gradually incorporated in many enterprises practices those, which are convinced of the benefits for their country's society and for the economy and the prestige of their business organization.

We could refer to many positive examples from throughout the region which evidence that, while there is still a long way to go in this issue significant progress has been made towards developing corporate social responsibility. There are several examples that are worth mentioning just from the financial field, as is the case of Bancolombia, which has a development strategy in the communities it operates in, which includes giving priority to environmental and social aspects, developing educational programs, reducing the impact of business over the environment, and recruiting volunteers to develop high-impact social projects.³⁴ Banamex has culture and welfare promotion and environmental protection divisions. Banco de Chile supports education and rehabilitation of disabled persons; Itaú Unibanco supports several efforts in the fields of education, health and environmental protection, among others.

However, there are examples of other socially responsible enterprises beyond the exclusive financial sphere, to wit:

- a) San Cristóbal Coffee Importers (SCCI) and *Cafés Sustentables de México (CSM)*. These two enterprises, one in production and the other one trading, have managed to very successfully place their *premium* coffee in the North American market, the same which the coffee growers from Nayarit take part.³⁵ The company's policy is to pay the growers fair prices for their coffee and even paying above (0.09 US dollars per kilogram) the average price paid by their purchasers. Furthermore, the company advises the growers so that they can form cooperatives and improve their crop yields. The company also provides them with the material and equipment that permits growers add more value to their product, as well as with training and education to improve product quality and be able to get better prices. A special concern during the training course delivered by the company to growers is the need to reconcile the growth of coffee crops with environmental protection and preservation with special care placed on the products used in growing the coffee. The company's philosophy is respect for the workers' human rights and fair profit distribution throughout the

³⁴. COLUMBIA UNIVERSITY SCHOOL OF INTERNATIONAL AND PUBLIC AFFAIRS TEAM. **Corporate Social Responsibility in Latin America: The Financial Services Perspective**. 2012, p. 12, 15 and 19.

³⁵. SCHROEDER, Kira and Bernard KILIAN. "San Cristóbal Coffee Importers y Cafés Sustentables de México apuntan al mercado de cafés diferenciados". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe**. Washington: Inter-American Development Bank, 2007, p. 31.

production chain, which in turn ensures that the company will operate sustainably in the long term.³⁶

- b) Pali in Costa Rica and Nicaragua. This is a discount supermarket chain whose target population is the low-income socioeconomic sectors in Costa Rica and Nicaragua. The company has developed a program (*Tierra Fértil*) aimed at supporting small and medium-size farmers that supply fruits, vegetables and cereals to the supermarkets.³⁷ Pali contributes to the economy of the poorest households, to the creation of direct and indirect employment, to narrow the exclusion gap between population sectors, but also to the training of small and medium-size farmers under a partnership scheme based on the agronomist. Farmer relationship, where care for the environment and respect for their workers' human rights are among the company's main concerns.³⁸
- c) Ingenios Pantaleón of Guatemala. Pantaleón is the main agro-industrial sugar producer in Central America, known for being an efficient company and with a corporate social responsibility approach as part of their competitive strategy. This company does not only have an environmental protection policy for sugar production in place, but also integrates programs to improve the health, education, nutrition, and working conditions and systems of employees, aimed at attaining a more productive and competitive sugar production process in its different stages. The company also invests a significant amount of money in workplace safety and security, in creating consumption cooperatives and savings banks, and in implementing rural housing and health programs. This has contributed to making Guatemala one of the main sugar exporters in the world, offering the most competitive price in the Mesoamerican region.
- d) British Petroleum in Trinidad and Tobago. Here we have before an oil company that has started a series of activities to promote local social and economic development through a series of programs and initiatives that have contributed to the domestic oil industry and to the country's sustainable development. The company not only implements employee training programs in the communities in which it operates, but also brings high-school students into entrepreneurship and business

³⁶. *Ibid.*, p. 47.

³⁷. LEGUIZAMÓN, Francisco et al. "La RSE y los negocios con los sectores de bajos ingresos: Los casos de Pali y Tierra Fértil". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe**. Washington: Inter-American Development Bank, 2007, p. 49.

³⁸. *Ibid.*, p. 81.

programs seeking to promote the creation and development of new local businesses that can be competitive worldwide. It also has environmental protection programs in order to develop a sustainable production, which has contributed to improving the image of the energy sector in the country.³⁹

- e) Banco ABN AMRO Real de Brasil. This is the third largest private financial institution of Brazil, as measured by its assets. From its foundation, the organization was established with the objective of including environmental sustainability as part of the company's everyday business. Thus, all of the bank's divisions manage socio-environmental programs. In fact, it was the first Latin American private Bank to launch a socially-responsible investment fund and credit lines specifically aimed at promoting sustainability. It was also the first financial institution in the region to create a socio-environmental risk studies section to grant financing to business customers. Finally, it was a pioneer in promoting microcredits and in the intermediation of carbon credit transactions among enterprises globally.⁴⁰ All of these practices have caused the bank to be positioned as the "green bank" of the Brazilian financial system.
- f) RECYCTHE Chile S.A. This is the first company in Chile and Latin America to be environmentally authorized for the recycling of technology waste (computers, printers, mobile phones, copying machines and scanners, game boxes, etc.). They are known for bringing in social programs and respect for their workers' human rights at all company levels, thus creating a work atmosphere with a highly willing and motivated team. It has also created programs for the reinsertion of former convicted individuals. This practice has attracted the interest of the academics, who have participated in improving their business model. In addition to the positive environmental impact of the company's line of business, this has also allowed the company access to state sources of financing and to potential business partners in other countries of the region.⁴¹

³⁹. GONZÁLEZ, Connie and Lawrence PRATT. "BP Trinidad y Tobago". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe**. Washington: Inter-American Development Bank 2007, p. 143 and 160.

⁴⁰. SCHARF, Regina and Lawrence PRATT. "Sostenibilidad rentable: La experiencia del Banco ABN AMRO Real". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe**. Washington: Inter-American Development Bank, 2007, p. 87. On the Brazilian practice, see OSORIO, Miguel (coord.). **Empresa y Ética. Responsabilidad Social Corporativa**. Madrid: Vozdepapel, 2005, p. 83-87.

⁴¹. CORTES, Cristián and John ICKIS. "Recycla Chile S.A.". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe**. Washington: Inter-American Development Bank, 2007, p. 131 and 142.

- g) Pelambres mining company in Chile. The Pelambres mining company is the fifth largest copper producer in Chile and one of the ten largest deposits in the world. The company has shown major concern for environmental protection, and more specifically for water and air protection. To this end, it has developed a social responsibility policy aimed at protecting their workers and the communities in which it operates (Salamanca, Illapel and Los Vilos) on the one hand, and to maintaining international environmental production standards, on the other. So, through the Los Pelambres Mining Company Foundation, it provides productive education aimed at creating an environment of partnership, and seeks to improve the quality of soil for farmers in the valley of Choapa. The company also carries out activities so that when it finishes its activity in the zone, other capacities, such as agriculture and fisheries, would have been installed in the area. It also helps build housing that will benefit some 700 families and promotes corporate citizenship and corporate volunteering. Its production process includes environmental protection and prevention measures, among other actions.⁴²
- h) Cementos Lima. This is the largest cement producer in Peru. The company has a responsible human resources management and a responsible outreach program to approach the community and other interested groups. To this end, it has implemented a series of infrastructure, education and economic development projects and programs in favor of the community in which it carries out its business. These programs include coverage of basic needs, such as running water and sewage, as well as training to create more job opportunities. This has to be added to Cementos Lima's activities aimed at reducing the environmental impact of its operations.⁴³
- i) EPM Medellín. Empresas Públicas de Medellín is the result of a merger of three independent entities that provided utility services (energy, water and sewage and telephony) to the Municipality of Medellín in Colombia. Its purpose is to provide services at differentiated rates depending on the user's economic capacity and to develop an aggressive policy to provide services in very poor marginal

⁴². MILET, Paz. "Corporate Social Responsibility in the large mining sector in Chile: Case Studies of Los Pelambres and Los Bronces". In: **Corporate Social Responsibility in America Latina. A collection of research papers from the UNCTAD Virtual Institute**. Network. UNCTAD, 2010, p. 7-28.

⁴³. FLORES, Juliano and John ICKIS. "La responsabilidad social de Cementos Lima y sus efectos en la creación de valor para el negocio y en la gestión del riesgo". In: FLORES, Juliano et al. *El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe*. Washington: Inter-American Development Bank, 2007, p. 165 and 181.

neighborhoods in the city. The company has also developed a series of social programs for its workers, which has allowed 84% of them to be homeowners thanks to the loans granted by the company at rates below the market. The company also acts as household products supplier, which allows the workers to save in domestic expenses and house-cleaning products. Finally, the company also offers healthcare and specialty training, all of which reflects the company's commitment to its employees and respect for their fundamental rights.⁴⁴

- j) PROPAL S.A. PROPAL paper company is one of the largest enterprises in Colombia and is engaged in the manufacture of white printing and writing paper from sugarcane fiber. This company established Fundación PROPAL, which is destined to developing social programs in favor of their workers and of the other community members in the locations where it operates. Thus, the foundation brings self-managed development programs, such as community health, with the aimed of reducing the population's mortality for controllable diseases; the education program, which consists in grants, loans and training of teachers; business management, which consists in training the workers' families as micro businesspeople; environment improvement, whose purpose is to increase the amount of households with running water and adequate environmental conditions.⁴⁵ To this, we must add the medical centers dedicated to providing the community with better healthcare at the lowest prices. PROPAL also has environmentally-friendly paper manufacturing process at all production stages.⁴⁶

While these ten cases are not the only examples of the American corporate social responsibility universe, their geographical diversity shows how the matter has been undertaken by several enterprises in the region with the seriousness and commitment that it deserves. Almost all countries in the region have positive business practices that are worth mentioning due to their level of commitment to the economic and social development of the communities in which they operate and for their concern with their workers' human rights and with maintaining clean production in harmony with the environment.

However, it is also fair to recognize that there is still a good amount of enterprises in the region that have not yet undertaken corporate social responsibility

⁴⁴. CABALLERO, Karina and Francisco LEGUIZAMÓN. "Empresas Públicas de Medellín: 50 años creciendo con la gente". In: FLORES, Juliano et al. **El argumento empresarial de la RSE: Nueve casos de América Latina y el Caribe**. Washington: Inter-American Development Bank, 2007, p. 189, 206 and 225.

⁴⁵. AGÜERO, Ana, Juan Luis MARTÍNEZ and Cristina SIMÓN. **La acción social de la empresa. El caso español y latinoamericano**. Madrid: Prentice Hall, 2003, p. 168-172.

⁴⁶. On this case, also see CARAVEDO, Baltazar. *Ob. cit.*, p. 38-42.

commitments and continue to carry out negative human right or environmental practices, as we will see below

5. Negative regional business practices: cases brought to the IACHR and the Inter-American Court for Human Rights

While at the Inter-American level progress has been made towards corporate social responsibility, a series of problems yet persist, which has caused the activity of several enterprises, human rights violations, employment rights violations, and violations to the right of a healthy and balanced environment

In many cases, these violations have brought about violent protests from the affected people⁴⁷ and communities and in other cases, such violations have been brought as judicial claims under the relevant domestic law and the national courts. But many of these cases have also been brought to Inter-American human rights protection instances, that is, before the Commission and the Inter-American Court for Human Rights, after considering that the national courts have failed to deliver on their function to protect these rights.

In this regard, it is worth mentioning that while the processes and accusations were brought against a State and not enterprises, it is also true that it was corporate activities against human rights and the environment that caused the claims that were brought to these protection agencies; hence the importance of reviewing and analyzing these processes.

The following cases are presented in chronological order:

a) Yanomami vs. Brazil (1985)

Yanomami natives live in the Brazilian State of Amazonas and in the territory of Roraima. According to the Brazilian Constitution, they have the permanent and inalienable right of ownership on the territories on which they live and the exclusive use of the natural resources found there.

The first problem emerged in the 1960s, when the Brazilian government carried forward a natural resource exploitation and development program in the zone, and in the 1970s it built highway BR-210 (Rodovia Perimetral Norte) which went through Yanomami territory. This work forced the Yanomamis to abandon their territories and seek shelter in other areas. This caused disease and death (from epidemics) without the Brazilian government adopting the necessary measures to prevent them.

⁴⁷. Only by way of example, we have the cases of Peru and Chile, two countries that encourage foreign investment and that have suffered several social protests against projects that are fundamental for their development. In the case of Peru, the Conga project, the largest mining project in the country's history, was paralyzed. In the case of Chile, a village of artisans and fishermen rioted to stop the construction of the largest thermal power station in South America, a plan of the Brazilian millionaire Eike Batista. Both cases were due to fear of environmental threats. Available at: <<http://m.gestion.pe/movil/noticia/2000991>>.

The second problem arose when rich mineral deposits were discovered in the Yanomami territories (Couto de Magalhães, Uraricãa, Surucucus and Santa Rosa), which attracted mining enterprises and independent explorers (*garimpeiros*), whose activities caused a new displacement and damages to their property (the lands) and the environment in which these natives lived.

What we have described caused the Yanomamis to resort to the IACHR, making the Brazilian State responsible for violating their rights (right to life, to health, to wellbeing, to property (among others) as a consequence of the activities pursued by the building and mining enterprises that were operating in the area. After analyzing the case, the IACHR declared the responsibility of the Brazilian State for “failing to adopt timely and effective measures to protect the human rights [property, live, health, etc.] of the Yanomamis”.⁴⁸

b) Maya Indigenous Communities vs Belize (2000)

The Maya Indigenous Communities of Toledo resorted to the IACHR stating that the State of Belize had been granting several concessions to timber and oil companies that extended over more than a half million acres of lands that were the traditional settlement of those communities. Such were the concessions granted to the Malay timber enterprises Toledo Atlantic International Ltd. and Atlantic Industries Ltd., and the concession to the oil company AB Energy Inc. The behavior of these enterprises—as the communities sustain - “threatens [to cause] long term and irreversible damage to the natural environment upon which the Maya depend. [This] threat is intensified by the alleged inability or unwillingness of the State of Belize to adequately monitor the logging and enforce environmental standards”.⁴⁹ Additionally, the Mayas sustain that the State of Belize has systematically ignored consulting them on the granting of concessions, which threatens their right to property, maintaining their health and wellbeing, and the preservation of their environment.

In this regard, the IACHR established that:

[T]he right to use and enjoy property may be impeded when the State itself, or third parties [enterprises] acting with the acquiescence or tolerance of the State, affect the existence, value, use or enjoyment of that property without due consideration of and informed consultations with those having rights in the property. In this regard, other human rights bodies have found the issuance by states of natural resource concessions to third parties [enterprises] in respect of the ancestral territory of

⁴⁸. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. Report 12/85. Case 7615, *Yanomami vs. Brasil*, March 5, 1985, see paragraph. 11; see also 2, 3, and 7.

⁴⁹. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. Report 40/40. Case 12.053, *Maya Indigenous Communities vs. Belice*, October 12, 2000, paragraphs 34 and 35.

indigenous people to contravene the rights of those indigenous communities.

[...]

Such damage resulted in part from the fact that the State failed to put into place adequate safeguards and mechanisms, to supervise, monitor and ensure that it had sufficient staff to oversee that the execution of the logging concessions would not cause further environmental damage to Maya lands and communities.⁵⁰

Thus it was concluded that the State of Belize should refrain from any act that could affect the existence, value, use or enjoyment of the property located in the geographical area occupied and used by the Mayan people, and shall also repair the environmental damage caused by the concessions granted by the State.⁵¹

c) *Mayagna (Sumo) Awas Tingni Community vs. Nicaragua* (2001)

The Mayagna community is settled in the North Atlantic Autonomous Region of Nicaragua and is integrated by some 600 individuals that survive from farming, hunting and fishing, which activities they perform within a territory according to their traditional community organization scheme.⁵²

En 1996, the State of Nicaragua granted a 30-year logging concession to SOLCARSA over an area of approximately 62,000 hectares over the Wawa River and Cerro Wakambay. One year later, it finds that the company carried out works without an environmental authorization, including logging in the community's site. Even the Constitutional Chamber of the Supreme Court of Justice of Nicaragua declared the unconstitutionality of the concession granted to SOLCARSA. Before all these facts, the Mayagna community carried out several actions to have the Nicaraguan authorities defined and delimited their lands, so that they did not continue to stand the abuse and damage caused by the enterprises operating in the area under the concession. However, these actions were to no avail, so the community resorted to the IACHR and then to the Court seeking protection of their rights.

The Inter-American Court for Human Rights finally decreed the obligation of the State of Nicaragua to delimit the Community's property and to refrain from (whether directly or through third-party enterprises operating under a concession) any actions that could impair the value or enjoyment of the

⁵⁰. *Ibid.*, paragraphs 140 and 147.

⁵¹. TANGARIFE, Mónica. *La Estructura Jurídica de la Responsabilidad Internacional de las Empresas Transnacionales y otras Empresas Comerciales en Casos de Violaciones a los Derechos Humanos*. México: Flacso, p. 81.

⁵². INTER-AMERICAN COURT OF HUMAN RIGHTS. *Mayagna (Sumo) Awas Tingni Community vs. Nicaragua*, Judgement of August 31, 2001 (Merit, Reparations and Costs), paragraph 103.

community's property,⁵³ including the land on which they live and the resources found in them, as is the case of their trees and forests.⁵⁴

d) Legal Condition and Rights of Undocumented Migrants (2003)

This case is about an advisory opinion requested by Mexico to the Inter-American Court of Human Rights regarding the impairment of the use and enjoyment of certain employment rights by migrant workers and the compatibility with the American States' obligation to guarantee such rights, in particular respect for the principle of equality and non-discrimination.

In this regard, the Inter-American Court establishes very clearly the need to respect the human rights of undocumented migrant workers, not only when the State is the employer but also when the employer is a private company. Thus:

In an employment relationship regulated by private law, the obligation to respect human rights between individuals should be taken into consideration. That is, the positive obligation of the State to ensure the effectiveness of the protected human rights gives rise to effects in relation to third parties (*erga omnes*). This obligation has been developed in legal writings, and particularly by the *Drittwirkung* theory, according to which fundamental rights must be respected by both the public authorities and by individuals [enterprises] with regard to other individuals.

[...]

The State should not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards.⁵⁵

Therefore, the Court concludes States are internationally responsible not only when the human rights of undocumented migrant workers are violated by national authorities, but also by the enterprises.

In short, employment relationships that occur between migrant workers and third-party employers could give rise to international responsibility of the State in several forms. First, the States have the obligation to see that all the employment rights stipulated under their laws are recognized and enforced in their territories, as well as the rights arising from international instruments or the internal norms. Moreover, the "States are responsible internationally when they tolerate third-party [enterprises] actions and practices that harm migrant workers, whether because they do not

⁵³. *Ibid.*, paragraph 153.

⁵⁴. TANGARIFE, Mónica. *Ob. cit.*, p. 75-78.

⁵⁵. INTER-AMERICAN COURT OF HUMAN RIGHTS. **Advisory Opinion OC-18 - Condición jurídica y derechos de los migrantes indocumentados**. 2003, paragraphs 140 and 148.

recognize that they are entitled to the same rights as national workers or because the same rights are granted but with a certain degree of discrimination.”⁵⁶

e) Ximenes Lopes vs. Brazil (2006)

This case was brought before the IACHR, and consists of a claim against Brazil for the lack of health protection. The specific argument was that the Brazilian State had failed to fulfill its duty to prevent and control private health centers (clinics), so that they do not abuse or behave arbitrarily against their customers.

The complaint was specifically against a private psychiatric care center, *Casa de Repouso Guararapes*, for having abused and threatened against the integrity of a patient, Damião Ximenes Lopes, a person with a mental disability.

In this regard, the IACHR considered that the claim was valid and was brought to the Inter-American Court of Human Rights, which stated that the State’s international responsibility also occurs when the State fails to fulfill its duty to prevent that private enterprises (clinics) breach the rights of patients. It was specifically said that:

[...]State’s liability may also result from acts committed by private individuals which, in principle, are not attributable to the State. The effects of the duties erga omnes of the States to respect and guarantee protection norms and to ensure the effectiveness of rights go beyond the relationship between their agents and the individuals under the jurisdiction thereof, since they are embodied in the positive duty of the State to adopt such measures as may be necessary to ensure the effective protection of human rights in inter-individual relationships.

[...]

As to the persons who are under medical treatment, and since health is a public interest the protection of which is a duty of the States, these must prevent third parties from unduly interfering with the enjoyment of the rights to life and personal integrity, which are particularly vulnerable when a person is undergoing health treatment.

[...].

The failure to regulate and supervise such activities gives rise to international liability, as the States are liable for the acts performed by both public and private entities which give medical assistance, since under the American Convention international liability comprises the

⁵⁶ *Ibid.*, paragraph 153.

acts performed by private entities acting in a State capacity, as well as the acts committed by third parties when the State fails to fulfill its duty to regulate and supervise them.⁵⁷

f) Saramaka people vs. Suriname (2007)

The IACHR presented this case before the Inter-American Court of Human Rights denouncing that the State of Suriname had failed to comply with a series of obligations in connection with the Saramaka people, in particular because it granted a series of concessions on the land of this people, which violated their right to use and enjoy the natural resources.

The Court considered that the logging concessions, granted by the State on the lands of the higher region of the Suriname River to private enterprises, damaged the environment and had a negative impact on the lands and natural resources that the Saramaka people have traditionally used for their survival. From this, it was concluded that:

[I]n order to guarantee that restrictions to the property rights of the members of the Saramaka people by the issuance of concessions within their territory does not amount to a denial of their survival as a tribal people, the State must abide by the following three safeguards: First, the State must ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan (hereinafter “development or investment plan”)¹²⁷ within Saramaka territory. Second, the State must guarantee that the Saramakas will receive a reasonable benefit from any such plan within their territory. Thirdly, the State must ensure that no concession will be issued within Saramaka territory unless and until independent and technically capable entities, with the State’s supervision, perform a prior environmental and social impact assessment. These safeguards are intended to preserve, protect and guarantee the special relationship that the members of the Saramaka community have with their territory, which in turn ensures their survival as a tribal people.⁵⁸

g) Pediatrics clinic in the Lagos region vs. Brazil (2008)

In this case, the Brazilian State was accused of liability for the death of 10 new-borns resulted from alleged malpractice by the personnel of the Pediatrics

⁵⁷. INTER-AMERICAN COURT OF HUMAN RIGHTS. **Ximenes Lopes vs. Brasil**. Sentence of July 4, 2006, paragraphs 85, 89 and 90.

⁵⁸. INTER-AMERICAN COURT OF HUMAN RIGHTS. **Saramaka People vs. Suriname**, Judgment on Preliminary Objections, Merits, Reparations and Costs of November 28, 2007, paragraph 129.

Clinic in the Lagos Region, city of Cabo Frio, in the State of Rio de Janeiro, in 1996.⁵⁹

The petitioners before the IACHR argued that while it was a private clinic, the State failed to fulfill its duty to inspect and evaluate and to supervise such clinic's operations.

Before that, the IACHR estimated that the petition could be sustained as the alleged failure by the State could be a violation of the right to life stipulated in article 4.1 of the American Convention on Human Rights.⁶⁰

h) **Xákmok Kásek indigenous community vs. Paraguay (2010)**

In this case, the Inter-American Court for Human Rights declared that Paraguay was internationally liable for violating the rights of the Xákmok Kásek indigenous community, settled in the region of the Paraguayan Chaco, where up to 17 different indigenous communities reside.

The State of Paraguay is specifically made responsible of violating the community's right to community property, as several portions of their territory (10,700 hectares) to private owners, including enterprises, so the community's territory and the use of the territory they kept were constrained, as there were guards controlling entrance to and exit from the territory, banning fishing and collection of foods, as had been their custom.⁶¹

i) **Kichwa of Sarayaku indigenous people vs. Ecuador (2012)**

The Inter-American Court for Human Rights declared that Ecuador was internationally liable for breaching the consultation rights, private property and cultural identity of the Kichwa of Sarayaku indigenous people, by permitting a private oil company (the consortium integrated by Compañía General de Combustibles S.A. and Petrolera Argentina San Jorge S.A.) to perform oilfield exploration works in their territories since the end of the 1990s without previously consulting them and causing damage to the environment.⁶²

It was also found responsible for jeopardizing the right to life and personal integrity of the community, by permitting the oil company to load 477 wells with approximately 1,433 kilograms of the explosive called pentolite, which destroyed at least one special site important for the spiritual life of the Sarayakus; for the destruction of caves, water sources and underground rivers that are necessary for consumption by the community, for logging of trees and

⁵⁹ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. **Report N° 70/08**, Petition 12.242, 16 de October de 2008, paragraphs 1 y 2.

⁶⁰ *Ibid.*, paragraph 50.

⁶¹ INTER-AMERICAN COURT OF HUMAN RIGHTS. **Xákmok Kásek Indigenous Community vs. Paraguay**, Judgment on Merit, Reparations and Costs of August 24, 2010, paragraph 107 ss.

⁶² INTER-AMERICAN COURT OF HUMAN RIGHTS. **Kichwa of Sarayaku Indigenous People vs. Ecuador**, Judgment on Merit and Reparations of June 27, 2012, paragraph 127.

plants with a high environmental value and necessary for community survival, and for the suspension of ancestral acts and ceremonies of the Sarayakus.⁶³

In short, from all these cases we can see that the region still sees several enterprises that have not undertaken their obligation to respect human rights, their workers' employment rights and the environment. In this token, the Inter-American Commission and the Court of Human Rights have contributed significantly to the development of corporate social responsibility in the region, by making it clear to the States and the enterprises, through their jurisprudence, that international responsibility may arise when the State tolerates that private enterprises violate their workers' or users' human rights (life, integrity, health, property, work, non-discrimination, etc.) or those of the communities in which they operate, when the State fails to oversee the concessions granted to private enterprises.

Thus, it is necessary that the States implement efficient policies to oversee enterprises during the normal course of their business, in addition to the enterprises themselves establishing policies that guarantee respect of human rights and of the environment during their operations. It is also important that they integrate these landmark cases in the settlement of judicial processes in their domestic courts, as is actually happening.

6. Conclusions and preliminary recommendations

From all of the above, we may conclude the following:

- a. Corporate social responsibility in the region has seen notable progress, all the more so in countries with relatively a more developed industrial sector and a more corporations in their economies, in which the emerging notion of responsibility is starting to be tied to creating value. As many Latin American enterprises insert themselves into the world economy as a result of their entry into various free trade agreements, they are faced with pressure from foreign customers, governments and consumers, who demand not only that specified quality of products or services be delivered, but also that their production processes standards meet legal and ethical requirements, thus strengthening the incorporation of corporate social responsibility into their business strategies. The weakness of the process lies on the slim oversight or follow-up capacity of the authorities, the enterprises' resistance to accepting normative regulations on the matter, and the lack of dissemination strategies and incentives by the States.
- b. Another relevant aspect is the work of unions, religious organizations, NGOs and other organizations, which act and protest against the

⁶³ *Idem.*

violation of employment rights or practices against human rights or failure to preserve the environment by the enterprises. These entities are useful not only to draw the authorities' attention to possible abusive practices by the enterprises, but also to demand from enterprises respect to the norms and a closer relationship with the location where they carry out their business. However, these organizations also face criticism—sometimes justified—, as they sometimes stand for extremist ideologies or interests that work against any kind of investment and development projects.

- c. No regional regulations (mandatory or voluntary) on corporate social responsibility have been established in Latin America. However, corporate social responsibility has been a matter of concern to the OAS, and while it has not established a binding regulation or a recommendation on the matter, it has accepted the validity of the directives, principles and initiatives proposed by other international forums and has recommended their implementation by the OAS Member States. Likewise, it has shown special concern for small and medium enterprises to also adhere to the trend of bringing forward a corporate social responsibility policy, particularly in the field of human rights and the environment. Finally, the OAS has developed some studies on the matter, which have been made available to the States so they learn and act on them.
- d. Parallel Inter-American conferences on corporate social responsibility have been organized by the Inter-American Development Bank, in which no binding or voluntary regulations have been produced. However, they have served to inform the countries of the region and to learn about the statistical and field works that have been taken into consideration by the participating countries in building their own internal corporate social responsibility regulations. This has also stimulated the organization of other national and international events, which have contributed to the adoption of responsible practices in the enterprises.
- e. As for domestic legal ordinances, in absence of a regional international regulation, the countries in the region—particularly those that have attained a higher level of relative development— have incorporated corporate social responsibility matters in their domestic legislation, whether through a specific regulation or a generic one. Hence, they assume that the issue has to have clear and binding rules for the enterprises.

- f. Additionally, in several of these countries civil associations have emerged to promote corporate awareness, whether by granting national awards or by assuming ethical commitments, all of which has given rise to a set of positive corporate practices in the business arena
- g. In practice, it is possible to find in the region several enterprises that approach corporate social responsibility with the seriousness and level of commitment the matter deserves. Almost all countries in the region have positive business practices that are worth mentioning given their level of commitment to the social and economic development of the communities in which they operate, for their concern for their workers' human rights and to maintain clean and environmentally-friendly production processes.
- h. It is also fair to recognize, however, that there is still a good amount of enterprises in the region that have not yet undertaken corporate social responsibility commitments and continue to carry out negative human right or environmental practices, which have led to protests and claims in national and international jurisdictions.

The Commission and the Inter-American Court of Human Rights have contributed significantly to the development of corporate social responsibility in the region, by making it clear to the States and the enterprises, through their jurisprudence, that international responsibility may arise when the State tolerates that private enterprises violate their workers' or users' human rights (life, integrity, health, property, work, non-discrimination, etc.) or those of the communities in which they operate, when the State fails to oversee the concessions granted to private enterprises.

In this regard, with the purpose of strengthening the progress in corporate social responsibility matters already attained in the region and to overcome the existing obstacles and weaknesses, we believe it is pertinent that the Guiding Principles to be prepared by the Inter-American Juridical Committee on RSE, shall take into consideration the following preliminary recommendations:

- a. Strengthening domestic follow-up, oversight and control of compliance with employment rights and other human rights and environmental protection requirements by the enterprises. This necessarily implies that the States implement efficient policies to oversee enterprises during the normal course of their business, in addition to the enterprises themselves establishing policies that guarantee respect of human rights and of the environment during their operations.
- b. This has to be supplemented with the establishment of incentives or other forms of acknowledgement that benefit or reward the enterprises that are actively committed to corporate social responsibility.

- c. Likewise, the principles of corporate social responsibility and good business practices that have brought benefits to the communities where they operate must be publicized, as must also be the positive impacts for the enterprises themselves. Corporate social responsibility must be part of a culture that is shared and assumed by businessmen, so training and raising awareness among businessmen is critical.
- d. Other players must take part in this endeavor, including universities and research centers, to provide knowledge and ideas to improve the behavior of enterprises, as well as NGOs, unions, media and churches, which could serve as pressure or reporting entities, as well as support and collaboration partners.
- e. Finally, trade associations can become key player in strengthening the conscious and voluntary adoption of corporate social responsibility, by providing technical advisory and training, by establishing information and experience exchange networks among enterprises, creating incentives and awards, among other actions.

* * *