

HUMAN RIGHTS DAYS. AN ENCOUNTER BETWEEN EUROPE AND CHILE

International Seminar: CSR, Human Rights and Social Dialogue

12-13 October 2011, Santiago, Chile

FINAL REPORT

By: Judith Schönsteiner PhD, Universidad Diego Portales, conference moderator

The dialogue with civil society on human rights, convened by the European Union in Chile, was aimed at informing about and discussing European experiences of human rights and social dialogue corporate social responsibility (CSR). Throughout the conference, the European input was juxtaposed with the Chilean situation, especially in the energy sector. In this sense, the one and a half day conference presented a variety of themes, leaving room for discussion and questions.



The conference was organized by the Business and Human Rights Research Area, Law School, University Diego Portales (Chile), and the Office of the ILO in Santiago.

The morning of the first day was dedicated to exploring recent developments in international law regarding the business and human rights discussion, especially, the Guiding Principles developed by the UN Special Representative on business and human rights, John Ruggie, whose researcher Rachel Davis presented at the seminar. The afternoon opened space for discussion on public policies and risk evaluation in the energy sector, the use of the OECD Guidelines for multinational enterprises (revised in 2011) for mediating conflicts around contested energy projects, and on the role of financial actors such as pension funds.

The morning of the second day presented two additional themes; first, the experiences of the ILO on green employment, social dialogue and other worker initiatives in the areas of CSR and energy policies, and second, the possibility of designing a general and localized compensation law for municipalities affected by economic activities.

The panelists were of outstanding expertise, and provided knowledge and input that had not been presented previously in Chile. The discussions showed interest and preoccupation with the issues exposed, suggesting that the panels were perceived as both relevant and timely.

The organizer of the conference, Dr. Judith Schönsteiner, summarized the key elements of the discussion highlighting that 2010 and 2011 had been important years with respect to the synergy between different international business and human rights initiatives. Thus, the ISO 26000 standard on corporate social responsibility was adopted in November 2010, after a consultation process that had brought together business, states, academics, consultants and partly, civil society, in countries all around the globe. March 2011 saw the publication of the Guidelines on business and human rights, elaborated by the Special Representative of the United Nations, John Ruggie, as one of the major results of his six-year long efforts. The document was endorsed by the Human Rights Council in June 2011, just a couple of days after the adoption of the revised OECD Guidelines for multi-national enterprises at the end of May 2011, that include new human rights and due diligence chapters, and substantive revisions to both content and procedures of the guidelines. All three documents are importantly based on the "protect, respect, and remedy" framework that John Ruggie had presented

in 2008, and refined in 2010. This moment of synergy was one of the reasons why one of the EU-Chile Dialogues with Civil Society was dedicated to the topic. The similar content of the three documents will allow, in the years to come, cross-cutting activities, and mutual enhancement of the different mechanisms.

The seminar showed that the concept of risk could be a unifying tool in the assessment of human rights impact; however, the technical risk evaluation, which is exclusively based on measurement of probabilities and the monetary value of damage, does not seem to be adequate for accounting for the social and human rights risks, especially the perceived risks in these areas. Studies by scientists as well as social scientists are needed to make the different approaches compatible, and allow for a common language that would permit building bridges between the technical and social evaluation of a project.

Several panelists accounted for the new strategies and alliances that were building in Europe and globally for the enhancement of human rights. In that sense, financial actors, especially large investors such as pension funds, and the different branches of the World Bank, or regional credit agencies, began looking at the human rights performance of projects and companies in which they were investing money. Furthermore, there are incipient and little explored alliances between corporate or business actors of different sectors, and communities, as well as a possibly greater role of consumers in Chile.

A human rights perspective allows, most importantly, prioritizing social demands and the business response to them, setting a base line below which projects should not go ahead. In that sense, future discussions should address how human rights performance can be a common ground for project assessment by states, business, and communities, and thus a starting point for the negotiations on responsible investment.

Finally, it seems necessary that the role of the state in the business and human rights context be re-evaluated in the Chilean context, especially with respect to legislation, regional distribution of impact and benefits, and participation. This is especially pertinent as the State has not yet demonstrated interest in engaging more broadly in a discussion on business and human rights, despite voting in favour of Ruggie's Guiding Principles in the Human Rights Council in June. The difficulty for governmental actors to engage with the topic of business and human rights showed in the fact that several representatives attended the conference, but did not accede to intervene in the panels. This role was left to the National Contact Point, who seems to be the only official voice the government wished to have heard in the conference. In that sense, it might be commendable to engage in bilateral discussions with governmental actors to raise awareness of Professor Ruggie's business and human rights framework now generally accepted by UN member states, and recognized by the European Union in its recent Resolution on Corporate Social Responsibility.

Conference materials, workshop with civil society and breakfast with business representatives



Breakfast

To allow for a private space for business representatives to discuss the Ruggie Guidelines with one of the document's drafters, a breakfast was convened on 13 October 2011, attended by about 25 participants and chaired by Nicola Ardito, Chargé d'affaires of the EU Delegation to Chile. They took advantage of asking questions to and discussing with Ms. Rachel Davis, the former advisor of the Special Representative, currently Managing Director of Shift, a non-profit-organization dedicated at supporting governments and business entities in the implementation of the 2011 Guidelines. Providing for this private space

seemed necessary after several companies declined an invitation to expose their human rights and CSR policies in a panel during the conference. Only one business representative agreed to present (Marcelo Tokman, Vestas). It should be noted that Chilean society is deeply divided about the impact of large investment projects. Until now, it has not been possible to convene the whole spectrum of actors in a single event. In that sense, working towards mutual understanding and meaningful dialogue among the different positions is one of the challenges Chile faces. It is hoped that the European experience and the encouragement and support by the European Union, European governments, business and civil society actors in the future will contribute to bridging this divide.

Working papers



A series of working papers were published with the conference materials, available in print in Spanish, and in English in electronic format (pendrive of the EU on human rights, material added). They address human rights impact evaluation in the Chilean energy sector, possible contributions of the experiences of social dialogue in the ILO to the business and human rights discussion, as well as reforms to the Chilean legislation on citizen participation in law-making in the energy sector.

Community guide and workshop

The organizer of the conference, together with a specialist in community work, prepared didactic material on the use of human rights in the dialogue between communities and enterprises, addressed to civil society and social movements. The guide which was launched during the conference, aims at improving community capacity for human rights dialogue with companies, an area in which Chilean expertise is even scarcer than with respect to the use of judicial remedies in favour of human rights protection.

In that sense, the guide fills a gap in accessibility of information, which is usually available in English rather than Spanish. The guide is thought to be consulted with communities, especially indigenous, workers, women and migrants, with view to an amplified 2nd edition that would address the specific perspectives and needs of several vulnerable groups.

After the plenaries of the conference, the guide was explained in a workshop for Chilean civil society, offered by the University Diego Portales and the Fédération Internationale des Droits de l'Homme (FIDH). The participants committed to explaining and disseminating the material in their networks. In that sense, about 120 copies of the material were distributed for local workshops that would replicate the Santiago workshop.

The workshop also addressed the technique of community based Human Rights Impact Assessment, a tool that had been sporadically used in Chile before, but seldom applied systematically. FIDH distributed material to that respect and announced the upcoming publication of the tool in Spanish. The workshop finalized with group work applying the tools presented to situations of specific concern for the participants, allowing networking between previously unrelated civil society actors.

All materials are available [here](#).

Prospects for future activities

The dialogue on human rights in the context of corporate social responsibility is incipient at most in the Chilean society. Actors are just beginning to discuss among their peers, and dialogue between different interests around the respect of human rights in the context of economic activities is a medium and long-term aim that requires broad support by international agencies. It is worthwhile

mentioning in that context that the Office of the UN High Commissioner for Human Rights, during a visit of the Adjunct High Commissioner on 18 October 2011, addressed the issue of business and human rights as relevant for the human rights discussion in Chile.

Finally, the EU-Latin America Summit to be held in Santiago in 2012, as well as the recently approved communication of the European Commission on the CSR policy 2011-2014, in the framework of Enterprise 2020, show the relevance of continuing the dialogue between the actors in the EU, Chile, and Latin America on the social responsibilities and contributions of business. The communication explicitly refers to professor Ruggie's Guiding Principles on business and human rights, thus recognizing the importance of the human rights concept for the CSR discussion in the member states of the European Union and the countries that enter into economic relationships with them. The most immediate aim for the Chilean discussion seems to be bringing all relevant actors around one table to seek implementation strategies for the human rights obligations of the Chilean state regarding business activities, the UN Guiding Principles, and the documents that reflect the standards therein recognized: the ISO 26000 standard, and the OECD Guidelines for Multinational Enterprises.



List of panelists

José Aylwin Oyarzún

Lawyer specialized in human rights and indigenous peoples, Magister at the University of British Columbia, Canada. He was Director of the *Instituto de Estudios Indígenas* at the University de la Frontera (UFRO) from 1994 to 1997. Since 2004, he has been Co-Director of *Observatorio de Derechos de los Pueblos Indígenas* (today called *Observatorio Ciudadano*), NGO documenting, promoting and defending human rights. He is also teaching on Law and Indigenous Peoples at the University Austral de Chile.

Edmundo Claro

Civil industrial engineer, specialization mechanics, Pontifical Catholic University of Chile (PUC). Ph.D Department of Land Economy, University of Cambridge, United Kingdom. MSc Department of Geography, King 's College London, University of London, United Kingdom. He has a solid professional experience, especially in the National Commission of Environment (*Comisión Nacional de Medio Ambiente*, Conama), as economic analyst, coordinator of economic affairs and then as economic advisor. Today he is the Research and Development Manager of Pétreos Quilín Ltda. and Project Director of RIDES, research centre for projects on energy, climate change and environment. He also taught in Chile and other countries in South America.

Rachel Davis

Managing Director of Shift, an independent nonprofit center on business and human rights practice, chaired by Professor John Ruggie, the former Special Representative of the UN Secretary-General for Business and Human Rights. Rachel served as legal advisor to Professor Ruggie during his UN Mandate and was a Research Fellow in the CSR Initiative at Harvard Kennedy School. She has significant experience in the legal branches of the Australian Federal Government and the United Nations, and particular expertise in international human rights and humanitarian law. Rachel is a graduate of Harvard Law School and the University of New South Wales, Sydney, Australia.

Linda Deelen

Specialist in Small Enterprise and Local Economic Development, ILO Office Chile. She studied tropical agronomy and business management in The Netherlands and worked in various countries in Africa, Asia and Europe before joining the ILO in 1998. Her areas of specialization are small enterprise, microfinance and local economic development. She carried out technical cooperation projects mainly in Africa and Asia and has various publications about access of small and medium size companies to financial services.

Alicia Díaz Nilo

Bachelors in Social Work from the Universidad de Chile. Magister in Habitat and Urban Development from the Universidad de Chile. Studies in gender and social policies. National Officer of Regional Program for Social Dialogue in Latin America. ILO, responsible of strengthening the process of social dialogue in Chile and in Latin America, gathering experience in democratic processes within a wide variety of social sectors (government, trade unions, stakeholders, businesses and companies, international agencies, communities, municipalities, NGOs and private sector organizations).

Margarita Ducci Budge



Architect, Postgraduate studies at the University of Rome. She worked for the company Ford in Spain for 6 years and was Director of National Service for Tourism of Chile (Servicio Nacional de Turismo de Chile). When LAN Chile was privatized, she assumed as vice-president of Communications of the company. Later, she was designated General Manager of international agency Carlson Wagonlit Travel. Since 2005, she has served as Vice Chancellor of Communications at the University Andrés Bello, as Dean of Program of Liberal Arts and since June 2009 as Dean of the Faculty of Communications. Similarly, she has been the Executive Secretary of Global Compact Chile since 2007 and has specialized in issues related to corporate social responsibility. In this context, she promotes this organization and calls upon private companies to adhere to the 10 principles of the Global Compact.

Mary Dowell-Jones

Research fellow at the University of Nottingham, UK, focusing on international financial markets and human rights law, in particular socio-economic rights. Her current work focuses on financial market stability, systemic risk and financial crises, and how these affect enjoyment of socio-economic rights. She has been working on an Australian Research Council-funded project on 'financing human rights' with Professor David Kinley at the University of Sydney, and has previously worked in investment banking in London and South Africa. Her publications include: 'Minding the Gap: Global Finance and Human Rights', Ethics & International Affairs, 2011 (with David Kinley) and 'Contextualizing the International Covenant on Economic, Social and Cultural Rights: Assessing the Economic Deficit', Martinus Nijhoff Publishers, 2004).

Richard Fernández Chávez

Aymara, belonging to the Aymara community of Socoroma, in the province of Parinacota in the North of Chile. An indigenous leader with long experience, he was the President of the Association of Indigenous Students of the University of Tarapaca, Mallku counselor of the National Council Aymara Mallku-Tálla of the region Arica-Parinacota. Currently, he is the General Coordinator of the Aymara Coordination for the Defense of Natural Resources of the region Arica-Parinacota.

Marcelo García

Lawyer, specialized in international relations. He is the National Contact Point of Chile for the OECD Guidelines for Multinational Enterprises. Previously he served as Director of Division OECD 2007-2010 and Representative to the OECD, París, 2000-2006. He has been in charge to carry out negotiations for the up-date of the OECD Guidelines in 2010-2011.

Vicente Andrés Granado

Trade unionist of the service sector in Castilla-León, Spain. During ten years, he was the General Secretary of the Service Sector in Comisiones Obreras, and currently, he works as its Secretary of Trade Union Action and Institutional Policy of the Unification of Trade Unions. He also is the interlocutor of *Comisiones Obreras* before the government of the region Castilla León.

Gonzalo Gutiérrez

Associate Professor, Departamento de Física, Facultad de Ciencias, Universidad de Chile. PhD in Physics, P. Universidad Católica de Chile (1997). Post-doctoral Fellow, Uppsala University (1998-2000). President, Directive Board, Chilean Nuclear Energy Commission, 2009-2010. Advises the ILO on issues of energy and work.

Gabriel Méndez

Lawyer graduated from the University of Chile and MBA of the University Alberto Hurtado. He developed a professional career in the public sector, especially in the energy and health sectors. Between 2008 and 2010, he was an official of the Ministry of Energy and coordinated the institutional reform of the energy sector. Currently, he is a consultant for companies in the areas of public administration and sustainable development. Associate of Sustentank, where he is director of public affairs.

Etiel Moraga Contreras

He was student of the former *Universidad del Estado*, today USACH, and at the same time he was working in Rancagua in the Division *El teniente* of CODELCO Chile until September 11th, 1973, when he was expelled and exonerated by the military regime. From 1974 to the mid-80s, he lived in Cuba and Nicaragua. Then he returned to Chile to participate in political activities in the context of the resistance against the dictatorship. In August 1990, he was reintegrated to CODELCO and in December 1994 he was elected trade union leader. He had responsibilities to work with the basis of members of the trade union, in the Federation of Copper Workers (FTC) and in 1998-2000 he held the National Presidency of CUT (*Central Unica de Trabajadores*). Until now, he is the member of the National Directory of the CUT.

Geneviève Paul

Geneviève Paul was born in Montreal, (Québec) Canada. She holds a Bachelor's degree in International Relations and International Law from the Université du Québec in Montréal and an L.LM in International Human Rights Law from the University of Essex in the United Kingdom. In 2009, Geneviève joined the international secretariat of the International Federation for Human Rights (FIDH), based in Paris. As part of her work as a programme officer with the Globalization desk, she works on issues related to corporate accountability, trade, socially responsible investment and economic, social and cultural rights. Prior to her involvement with FIDH, Geneviève worked in the area of human rights education with the International Centre for Human Rights and Democratic Development (Rights & Democracy) in Canada.

Louise Rouse

Director of Engagement at FairPensions leads on engagement with investors and listed companies. Prior to joining FairPensions she worked as a finance lawyer in Ireland. Louise served a two year term as an elected member of the Council of the Law Society of Ireland and was a member of the CCBE (Association of European Bar Associations) committee on corporate social responsibility. FairPensions is a registered charity that promotes responsible investment practices and more active share ownership by investors. FairPensions believes that responsible investment helps to safeguard investments as well as securing environmental and social benefits. In recent years, FairPensions' work has included shareholder resolutions at BP and Shell and investor focused campaigns on frontier oil projects in partnership with organizations such as Greenpeace UK and WWF-UK.

Petra Isabel Schlagenhauf

Lawyer since 1989 in Berlin, Germany, specialized in administrative and constitutional law and in cases of human rights violations. Collaborates with the European Centre for Constitutional and Human Rights, Berlin. She teaches at the University of Magdeburg / Stendal (Fachhochschule) and since 1990, at the University of Economy and Law of Berlin (Fachhochschule). Certified translator for Spanish. President of the Directory of the charity Research and Documentation Centre Chile-Latin America (FDCL e.V.), Berlin. Member of the Coalition against Impunity, Argentina.



Judith Schönsteiner

Assistant Professor of international law at the Diego Portales University in Santiago de Chile, she has a doctorate (PhD in Law) awarded in 2011 by the University of Essex, and an LL.M. in International Human Rights Law (2006) from the same university (United Kingdom). M.A. in Political Science (2003), University Johannes Gutenberg of Mainz, Germany. She is a researcher of the Human Rights Center at the Diego Portales University, and coordinator of its business and human rights area. Her publications focus on access to justice in business and human rights cases, and on CSR and human rights. Associate of the Essex Business and Human Rights Project.

Alfredo Seguel

Founder and coordinator of the Colectivo Informativo Mapuexpress and editor of the newspaper Mapuexpress. Co-coordinator of the Working Group on Collective Rights (Grupo de Trabajo por los Derechos Colectivos). He was facilitator of the Roundtable on Collective Rights, dealing with land conflicts related to the energy and extractive industries, and participated in the initiative Senen Soi in Peru addressing similar issues, between 2008 and 2009.

Marcelo Tokman

Economist of the Pontifical Catholic University of Chile, and PhD in economy of the University of California at Berkeley. Former Minister of Energy. Head of Government Relations of Vestas in Latin America and the Caribbean. He taught in the Institute of Economy and in the Magister of Economy of the Pontifical Catholic University, public finance in the Magister of Public Administration of the University Adolfo Ibáñez and economy of health in the MBA of the University Andrés Bello. He also worked as a researcher at the University Diego Portales. He published several academic articles, among others, in the Centro de Estudios Públicos (CEP), the *Revista de Economía Chilena* of the Central Bank and in the Journal of Budgeting of the OECD.

Pablo Valenzuela

Lawyer graduated from the Pontifical Catholic University of Chile and Master of Environmental Law of the University of Nottingham, United Kingdom. He has five years of professional experience, mainly in the housing charity "Un Techo para Chile". He organized and advised projects on social housing, access to justice and social competences. In 2011, he joined the team of Casa de la Paz as director of the area Public Policy and Citizenship.

María Elena van Yurick

As a family counselor, she has more than 36 years of experience in designing and applying methods and tools to develop local systems of collaboration to strengthen child protection in families and communities as well as processes of team work for public and private institutions, community organizations and citizens in order to achieve common results of well-being of families and communities. She worked as technical adviser for international institutions and foundations, including Foundation Kellogg, Foundation Annie E. Casey, Foundation Edna McConnell Clark, World Bank, International Initiative for Children, Adolescents and Families, UNICEF-Chile and the Sub-regional Office for the Southern Cone of the ILO. Her experience in Chile includes the design and implementation of projects and studies for *Subsecretaría de Desarrollo Regional*, *FOSIS*, *Ministerio del Trabajo*, *Ministerio del Interior*, *SENAME*, *Secretaría General de Gobierno*, and Municipalities in the regions of Bío Bío, Araucanía, Valparaíso, Magallanes, and Metropolitana.



Joseph Wilde-Ramsing

Senior Researcher at the Amsterdam-based Centre for Research on Multinational Corporations (SOMO) and Coordinator of the OECD Watch network. Since 2005, he leads SOMO's research and policy advocacy on Energy and Public Services and coordinates SOMO's broader research into supply chains. Mr Wilde-Ramsing holds a Master of Political Science with specialization in energy policy and renewable energy and is currently pursuing a doctoral degree from the Centre for Clean Technology and Management at the University of Twente Enschede in the Netherlands. Mr Wilde-Ramsing has been involved in extensive engagement with policy makers, corporate managers, and NGO and trade union representatives on energy and corporate accountability issues, as well as playing a role in multi-stakeholder initiatives/processes on energy and corporate accountability. As Coordinator of the OECD Watch network, Mr. Wilde-Ramsing has extensive experience with the OECD Guidelines' Specific Instance dispute resolute mechanism.

Jorge Zanelli Iglesias

He works at the Centre of Scientific Studies (CECs, Valdivia) in theoretical physics. Graduated in physics from the University of Chile, in 1977, and has a PhD from the State University of New York (1982). He is professor at the Universities of Chile, Santiago and Concepción, visiting researcher in numerous research centers and foreign universities. He was Counselor of the Chilean Commission of Nuclear Energy (1997-2010), and Consulting Counselor in Nuclear Energy of the Ministry of Energy (2008-2010); he is member of the Working Group on Energy of the Inter-American Dialogue in Washington, D.C., and President of the Working Group on Nuclear Electricity (Zanelli Commission). He was scholar of the Fulbright Commission, the Andes Foundation and the J.S. Guggenheim Fellowship.