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## SUMARI

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## INTRODUCTION

## A key issue for the ICIP

**Antoni Pigrau / Maria Prandi**

Antoni Pigrau is the Director of the ICIP's Business, Conflict and Human Rights program  
/ Maria Prandi is Founder of Business and Human Rights

The 20th century witnessed a rise and fall in the State's role as the main actor in the International arena. Throughout the century, the state increased its role as the unifying element that helped explain the world and the relations within it. In 1920, only 42 states were members of the League of Nations while nowadays there are 195 members -representing 99% of the world population- in its successor, the United Nations<sup>1</sup>. For many decades, the debates about international politics and power would inevitably gravitate around the role of the states in conflicts or geopolitics. Everything was interpreted with the state as the centrepiece; the states were very nearly the only actors in international relations.

The late 20<sup>th</sup> century and the early 21<sup>st</sup> century saw the arrival of another paradigm in international relations, with states progressively losing their prominence. There are now intergovernmental or international institutions (like the United Nations, the International Monetary Fund, the European Union...) but there are also private actors who are gaining ground in the various spheres of power, questioning the present status quo of state-centrism. In 2016 we found a good example with the company with the highest income in the world: Walmart. This American behemoth had a higher GDP than Belgium, the 24<sup>th</sup> largest economy in the world. And what had traditionally been exclusive to the states, like the protection -and the violation- of Human Rights, also became an issue to be dealt with by other actors like these giant corporations.

ICIP has always been interested in this evolution and in the role of business in matters of conflict and peace. Within the frame of the program "Conflicts Armats, Dret i

Justícia” (Armed Conflict, Law and Justice), this interest has been shown in different ways. The most obvious one is the process leading to the creation of an international research network centred on the role of business in armed conflict and the violation of human rights: BCHR. Back in October 2011, ICIP held a first conference in Barcelona, dedicated to analysing the role and responsibilities of business in situations of conflict, considering that it was a factor that was gaining increasing importance in the agenda. The conference was centred on the role of business in three focus points: the international weapons trade; companies providing military or security services; and the private companies –be they national or international- who do business in conflict zones, with a particular focus on the exploitation and the illegal trade in natural resources.

**“ The creation of the international BCHR network  
proves the interest ICIP has in the interaction  
between business and human rights ”**

Two years after that, in January 2013, the second conference was held in Barcelona. The participants showed a great interest in the creation of a network focused in three great themes and their connections: business, conflicts and human rights. Their main contribution would be to link and strengthen the knowledge brought to the table by academic circles and NGOs.

The third conference was held in November 2014 in London, with Amnesty International’s support. The foundational charter of the network was presented and debated then, along with the creation of a web page, a monthly bulletin and the possibility of online registration into the network.

The fourth conference took place in Geneva in November 2015, with the support of the Geneva centre for Democratic Control of the Armed Forces (DCAF). This edition formalized the foundation of the International Network on Business, Conflict and Human Rights as a space looking to strengthen the communication between the

researchers who work in these fields in a variety of disciplines and between these investigators and civil society organizations. The main activities that the web wants to develop are: a) hold an annual conference; b) to share information and research results, promoting the interchange of information among the members of the network and the public in general; c) to promote joint investigations among members and/or collaborate with other organizations; and d) undertake other activities like the organization of conferences, events, courses, workshops and publications.

And finally, November 2016 saw the fifth of our conferences take place in Geneva again, with the DCAF's renewed support. We established four open work groups. One focused on private military and security companies; another on land rights and social conflict; one on business and peace building; and another on the weapons trade. Now the network has 159 people from 29 countries and belonging to 129 different institutions, and it has the potential to become a very fruitful space for debate and knowledge about a series of problems that are becoming an important element in the configuration of present-day conflicts.

### **“ BCHR has the potential to become a very fruitful space of debate and knowledge ”**

Another example of the ICIP's compromise with the study of the role of business is this very magazine that now, for the fourth time, deals with matters related to the business world. In 2011 it was the issue dedicated to “Private military and security companies”; in 2012 it was “Business and conflicts”; and in 2013, the issue dedicated to “Conflicts over resources”. In the edition we now present we are focusing on the relationship between business and Human Rights. In the first article, Nomonde Nyembe and Khuraisha Patel deal with the process of creating a binding treaty to regulate the business activities in this context. Claire Methven O'Brien then evaluates the National Plans on Business and Human Rights approved by ten countries, while the next two articles present opposing images: Richard Karmel focuses on the opportunity that human rights bring to business while Rafael Maldonado bring us the threatening scenario human rights



defenders are facing in Guatemala, when they oppose the great mining projects that have the support of the country's government. The last article is dedicated to a more local subject, with Michela Albarello analysing the "Catalan method" towards a centre of study and evaluation of the impact of Catalan businesses investing abroad.

The issue also includes an interview with Shawna Bader-Blau, the executive director of Solidarity Centre, an international NGO dedicated to improving work conditions around the world, and particularly in developing countries. In the "Recommendations" section we have also included some sources that give further background on the relations between business and the protection and/or violation of Human Rights.

And finally, the issue is completed with two opinion articles in the "Platform" section. One is by Jordi Palou-Loverdos, commemorating the 20 years of the murder of Catalan missionaries in Rwanda and the other is by Virginia Mazuela, going through the history of the International Peace Brigades NGO, winner of the 2016 ICIP Peace Builders prize for its support of Human Rights.

1. There are 10 states that do not have international recognition and 39 dependent territories

Photography : General Assembly BCHR Network, 2016 (Geneva)

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## Pursuing a binding treaty

**Khuraisha Patel and Nomonde Nyembe**

Centre for Applied Legal Studies, University of the Witwatersrand, South Africa

International human rights law treaties have traditionally charged states with the responsibility to respect, protect, and fulfil the rights of its citizens, emphasizing the importance of accountability for true human rights compliance. However, the process of globalization has enabled corporate entities to flourish and concomitantly increase their adverse human rights impact. These alterations in global actors and the impact of their work on human rights stand in contrast to existing state-centered obligations, resulting in both normative and governance gaps in the human rights arena that raise the question whether corporate entities should be similarly charged with the protection and fulfilment of human rights.

In this article, the authors first trace recent attempts by the international community to bridge normative and governance gaps in business and human rights interactions, pausing to focus specifically on the establishment of the Open-ended Inter-Governmental Working Group on Transnational Corporations and other business enterprises with respect to human rights (IGWG) for purposes of developing a binding treaty on business and human rights. Secondly, the authors posit what the form of IGWG as well as the jurisprudential and normative substance of the treaty should entail.

In response to growing concerns of the impact of the corporate entities on human rights, in 2008, the United Nations Human Rights Council's (UNHRC) appointed the Special Representative of the UN Secretary General on the issue of human rights and transnational corporations and other business enterprises (SRSG) to investigate the dynamics and effects of this relationship<sup>1</sup>. The SRSG proposed the now prominent 'Protect, Respect and Remedy' framework on business and human rights which entrusts states with the duty to protect against human rights abuses by third parties, including businesses and imposes a responsibility on corporations to respect human

rights.

## **“ The ineffectiveness of soft-law instruments motivated calls for a binding treaty on business and human rights ”**

Both state and business actors are required to make available effective access to remedies for persons affected by the conduct of both role-players. In 2011, the three-pronged framework was translated into the Guiding Principles on Business and Human Rights (UNGPs) which were approved by the UNHRC. The UNGPs aimed at providing a global standard for preventing and addressing adverse impacts of human rights linked to business activity. In recent years states have been encouraged to realize these principles through the adoption of country-specific National Action Plans<sup>2</sup>. Importantly, the above-mentioned instruments all foreground the negative obligation on transnational corporations to only respect human rights standards and have been criticized as ineffective in holding multinational enterprises responsible for human rights violations committed by them or for their benefit<sup>3</sup>.

The ineffectiveness of soft-law instruments motivated calls for a binding treaty on business and human rights and resulted in UNHRC's adoption of Resolution 26/9 in 2014 which established IGWG. In terms of its mandate, IGWG must elaborate on an international legally binding instrument that will regulate, in international human rights law, the activities of transnational corporations and other business enterprises. The first two sessions of IGWG during 2015 and 2016 constructed deliberation between states, NGOs, academics, business representatives and affected community representatives on the content and nature of the proposed treaty. The evident responsiveness of the UN to human rights concerns through the initiation of the treaty process is laudable, but to ensure that the binding treaty does not become another weapon in the inadequate arsenal against corporate impunity, it is necessary that firstly the composition of IGWG and its discussions are representative and secondly, that the substantive provisions of the treaty be grounded in a sound philosophical and



normative basis.

**“ The treaty should be founded on three interwoven approaches: a gendered, egalitarian and race conscious approach ”**

To speak to the first point, in addition to contributors ranging from a number of disciplines, it is essential that IGWG itself along with the nature of and participants in its discussions are diversified in terms of gender, race, geographic representation and membership in various minority groups and affected communities<sup>4</sup>. The rights of individuals and communities with the above identities are generally at the forefront of the impact of business activities. Therefore, the inclusion of their voices will imbue the treaty-making process with greater legitimacy. Integrating varied perspectives further contributes to the birth of a comprehensive treaty; through the lived experiences of participants, drafters are alerted to the true nature and extent of normative and governance gaps faced by people and can therefore develop adequate and effective remedial mechanisms.

In relation to the substance of the treaty, submissions to IGWG have evidenced the need for the treaty to be acutely conscious of the disproportionate gendered impact of business operations and the heightened consequences for global south, low income countries and countries in situations of conflict. To this end, it is recommended that the treaty be founded on three interwoven approaches, namely, a gendered, egalitarian and race conscious approach. A gendered approach can impose proactive obligations on corporate entities to address prevalent issues such as wage gaps, lack job of security as well as violence and discrimination against women and gender identity and sexual minorities. Further, this approach allows links to be drawn between large scale displacement of women from vital points of livelihood and the feminization of poverty.

The use of an egalitarian and racial conscious approach can be used to deconstruct the racialized nature of economic and human resource exploitation, in many instances,

global north corporate entities and their related economies are based in and built on the natural and human resource exploitation of less developed host countries. Inadequate national institutions, weak rule of law and bids to retain investment by the host state coupled with the uncertainty over national regulation with extra-territorial effect by states of the investing company have often enabled corporations to exploit host states and remain unaccountable for their human rights impact. These three approaches advance an intersectional stance to business and human rights and recognize that human rights impacts may vary depending on the multitude of identities possessed by an affected person.

**“ Positive obligations to protect, remedy and fulfil human rights should be imposed on corporate entities where they either directly or indirectly violate human rights ”**

Finally, a further threefold recommendation is made as to the content of the substantive provisions of the treaty in order to encapsulate the above approaches<sup>5</sup>. First, in light of the indivisibility and interrelatedness of human rights, the treaty should guarantee the protection of *all* human rights over the protection of the rights of investors. Secondly, an accountability and remediation mechanism that is accessible, equitable, effective, predictable and transparent is crucial for a substantive change from the *status quo* in corporate accountability. Lastly, positive obligations to protect, remedy and fulfil human rights should be imposed on corporate entities where they either directly or indirectly violate human rights or regress from the realisation of these rights.

The move towards a binding treaty on business and human rights is a welcomed step towards effective corporate responsibility. To take full advantage of the reach of the proposed instrument, it is essential that IGWG pursues an inclusive and intersectional approach to deliberations surrounding the drafting of the treaty.

1. Earlier attempts to regulate businesses adverse impact on human rights include the: ILO Tripartite Declaration, Sullivan Principles and UN Sub-commission drafts Norms on the Responsibilities of Transnational Corporations.
2. Editor's note: see "National Action Plans" article by Claire Methven published in this e-magazine
3. S Robinson 'International Obligations, state responsibility and judicial review under the OECD Guidelines for Multinational Enterprises Regime' 30(78) (2014) *Utrecht Journal of International and European Law* 68, 73.
4. N Nyembe 'Progress and Challenges to the process of the binding treaty' (2016), presentation: 5<sup>th</sup> Annual Forum on Business and Human Rights, Geneva.
5. Nyembe, n 3 above.

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## National Action Plans

**Claire Methven O'Brien**

Danish Institute for Human Rights

Despite some notable recent efforts to put political distance between them, the USA and Germany still have much in common. One is that, in December 2016, both countries launched their first national action plans (NAPs) on business and human rights, making them respectively the twelfth and thirteenth countries worldwide to do so since the first NAP was published in 2013. States that have already released such plans include the United Kingdom, the Netherlands, Denmark, Norway and Sweden, Italy, Colombia and Switzerland. According to the UN, the development of NAPs by governments in twenty other countries around the world – in Africa, Asia, Latin America, as well as Europe – is currently underway<sup>1</sup>. This wave of activity follows upon calls on states to develop NAPs by a number of bodies, including the UN Human Rights Council (2014), Council of Europe (2014) and European Union (2011).

All published national action plans take a point of departure in the UN Guiding Principles on Business and Human Rights (UNGPs), along with other standards comprising a business and human rights dimension, such as the OECD Guidelines on Multinational Enterprises, and state obligations arising under international human rights conventions. In each case, the NAP affirms the government's commitment to the three norms, respectively, that states have a duty to protect against business-related human rights abuses; that corporations must respect human rights; and that accessible and effective remedies should be available to victims. Each NAP then attempts, more or less systematically, to give an account of the laws, policies or institutional measures that are either already in place at the national level, or which are planned, to give effect to these human rights and business commitments.

**“ The boom in national implementation activity,  
even if far from universal, might still be thought  
a success ”**

Beyond this common core, NAPs vary considerably. For instance, in terms of which UNGPs they select to address within the area of “Pillar I”, the state duty to protect against business-related abuses, most NAPs touch in some way on the topic of public procurement (UNGP 6), whereas few discuss privatisation of public services (UNGP 5). Naturally, NAPs also differ in terms of their thematic priorities, influenced by local contexts. Italy’s NAP, for example, addresses irregular working arrangements and exploitation in the agricultural sector, whereas Colombia’s examines challenges specific to a post-conflict transitional environment.

Another important axis of variation between countries’ approaches to NAPs relates to the processes by which governments arrive at “the finished product”. In some cases (for example, Chile, Germany and Scotland) they have commissioned independent bodies to undertake baseline studies that examine, systematically and from a position of neutrality, the degree to which a country’s laws and policies are in line with the UNGPs. In others, workshops or interviews have been conducted with selected stakeholders from business and civil society and experts to gather information and solicit their insights (Norway, Netherlands, UK and Ireland). Others again have formally requested inputs from pre-existing multi-stakeholder bodies with relevant mandates. The French government, for instance, has sought recommendations from the French Platform on CSR. In addition, a number of governments have established inter-departmental steering committees as a way of securing inputs and promoting institutional investment in the NAP across government and beyond whichever ministry has been tasked to lead the NAP process.

Just a few short years after the emergence of the UNGPs, such a boom in national implementation activity, even if far from universal, might still be thought a success, both for the “protect, respect, remedy” framework and for the NAP as a new human

rights governance modality. After all, human rights treaties such as the International Convention on Civil and Political Rights and International Convention on Economic, Social and Cultural Rights took ten years to secure sufficient ratifications even to enter into force. Meaningful efforts by states to monitor and report on their implementation efforts under these instruments, moreover, in many cases lagged far behind.

**“ NAPs processes can establish a free-ranging and dynamic multi-stakeholder dialogue as a form of accountability ”**

One of the chief virtues, then, of the UNGPs and NAPs, may be that they lower the “barriers to entry” on business and human rights: they permit governments to embark on integrating the UNGPs into relevant laws, policies and programmes unencumbered by any expectation that all aspects should be met in advance. Another is that NAPs processes can establish a free-ranging and dynamic multi-stakeholder dialogue as a form of accountability, and as a catalyst for implementation, from the outset, whereas in the context of more formalised human rights oversight processes, even limited involvement of civil society actors took years, sometimes decades, to evolve.

Yet, on another view, the inherent flexibility of the NAPs approach is also a weakness. So far, few NAPs have provoked legislative commitments: on corporate human rights due diligence, for instance – the central plank of the UNGPs’ – most prefer to promote awareness-raising, tools and capacity building for business, than to institute new legal obligations for companies. Indeed, some NAPs appear to avoid promising new initiatives at all, preferring instead to reflect on past actions that can be linked ex post facto to the UNGPs than to formulating a proactive implementation agenda. Equally, substantial engagement with some important topics, such as enhancing access to legal remedies for victims, has tended to be omitted almost entirely.

If such deficiencies give cause for concern, do they warrant abandoning the UNGPs, and NAPs, altogether? With the apparent prospect of a business and human rights treaty on

the horizon, some may be tempted to draw that conclusion.

By contrast, however, here it is suggested that such an assessment is premature. Albeit their impact has not been optimal, NAPs have already delivered significant results, as measured against the typical historical trajectories of state human rights implementation efforts under binding instruments already alluded to above.

**“ Albeit their impact has not been optimal, NAPs have already delivered significant results, as measured against the typical historical trajectories of state human rights implementation efforts ”**

Rather, then, NAPs' current shortcomings call for a redoubling of pressure to demand their strengthening, in countries where they have already been developed, as well as early and strategic interventions to define, in advance, minimum acceptable parameters for their process and content, in countries yet to initiate a NAP project.

The possibility of establishing a human rights and business peer dialogue or peer review mechanism, amongst states, but actively involving stakeholders, at regional or international level, is also one deserving of further consideration. Deliberative and transnational governance studies indicate that, by promoting the sharing and evaluation of information amongst States, for instance, on the basis of a common framework, benchmarks, or indicators, and by harnessing reputational and competitive dynamics, such processes have potential to promote convergence in national practices where consensus on the need for legal obligations, or what their content should be, is lacking, or where universally-applicable solutions to complex problems are hard to find.

Interestingly, the Council of Europe has, through a Recommendation adopted in 2016, which calls for the sharing of information by states on NAPs, provided a window of opportunity for the launching of just such a process in the European setting<sup>2</sup>. In a



regional political context where human rights are increasingly often embattled, and opportunities to pioneer new approaches and engage new actors in the support of human rights seem to come few and far between, this opportunity is one which would profitably be seized.

1. For further information see [here](#)

2. For further information see [here](#)

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# Business investment in human rights is worthwhile

**Richard Karmel**

Global Head of Business and Human Rights, Mazars LLP

Whenever, ‘human rights’ is mentioned to people in business, the initial reaction is usually “what has that got to do with me?” Some six years after the United Nations Guiding Principles on Business and Human Rights (UNGPs) were unanimously passed by the United Nations Human Rights Council, most businesses have not addressed how their activities could cause, contribute or be linked to human rights violations. States have been slow in promoting the UNGPs, let alone legislating or regulating in this area. It is really only thanks to the EU that there is any movement in this area; the EU has required all 28 states to issue national action plans (NAP) that promote the uptake of the UNGPs within business. Ironically, given the Brexit decision, it was the UK which was first to publish its NAP and has even had time to produce a second version before many EU states have even published their first. However, the NAPs aren’t the panacea to provoke radical reform in business. At best, as they are without sanction, they are only increasing the awareness of how business has a role to play in preventing harm to vulnerable people around the world.

The UNGPs clearly set out companies’ requirements to respect human rights and even provide guidance on the ‘due diligence’ process by which they should do this. The UNGP Reporting Framework<sup>1</sup> (an initiative of Mazars and Shift, launched in February 2015), in the words of Professor John Ruggie, the author of the UNGPs, “helps companies operationalise the UNGPs.”

## **Regulation and legislation**

Expecting business to implement ‘overnight’ fully blown effective frameworks and processes to demonstrate respect for human rights is unrealistic. However, it is

reasonable is to expect all business to recognise that their activities and those of their suppliers can, and do have, the potential to harm people. This process of recognition is potentially the barrier that is preventing more companies from setting out on this journey. Either companies don't believe that their activities can harm people or if they do, they don't think it material to the business. Both are flawed views.

**“ Expecting business to implement ‘overnight’  
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unrealistic ”**

Whenever there is a new regulation or voluntary guidance, business will inevitably see this as a cost and ‘red-tape’ and to be avoided if at all possible. What is different with corporate respect for human rights is that it is not only an internal cost for external benefit, but an internal cost for internal benefit. The challenge is convincing companies that they will actually see improvement in their profitability and value as a result of implementation.

During 2016, some regulation and legislation was either enacted or has been signposted that it is coming within several countries in Europe and the EU itself:

- In the UK, the Modern Slavery Act requires all companies over £36m of turnover to make a statement setting out the steps that they are taking to eradicate slavery and human trafficking from their own organisation and their supply chain.
- In France, the largest public companies are being required to publish a “plan de vigilance” which includes reporting on how companies respect human rights in their own organisation and their supply chain. Failure to do so could result in a fine up to €10 million.
- In Switzerland there are calls for law change<sup>2</sup> to require business to undertake mandatory human rights due diligence.

· In 2017, the EU Non-Financial Reporting Directive will require all public companies of 500 employees to publicly report how the organisation's development, performance, position and impact of its activity respects human rights.

Whilst soft law, through the UNGPs, started the conversation in 2011, a catalyst for wider uptake has been the above-mentioned harder law.

**“ The challenge is convincing companies that they will actually see improvement in their profitability and value as a result of UNGPs’ implementation ”**

### **Opportunities for greater profitability**

However, it would be a mistake for companies to see this as a compliance issue. If they do, then it is unlikely that the people at whom the guidance and laws are aimed, let alone the business itself will see much benefit. On the other hand, if organisations see it as an opportunity for enhancing the culture of the business, for engaging with its wider stakeholder group and for providing greater respect to its employees, then companies will see profitable benefits from several different areas:

**1. Engagement with employees.** Where companies understand the needs of their employees and provide them with decent working conditions (free of harassment, discrimination, fair wages) then it is likely that employees become more productive and are unlikely to leave. In a study by the Center for America Progress, the cost of losing an employee can cost anywhere from 16% of their salary for hourly, unsalaried employees, to 213% of the salary for a highly trained position.<sup>3</sup>

**2. Engagement with suppliers.** Ever since the Nike incident of 1996 where Tariq, the 12 year old child, was seen sewing Nike footballs for a supplier of Nike, many of the world's largest companies have published their supplier codes of conduct stating that, amongst other things, they expect their suppliers to treat their workers fairly and not

abuse their human rights. However, many of these codes of conduct have been shown to be just words with little monitoring of effectiveness behind them.

At the end of 2015 in Indonesia, I met with the Asian head of procurement of a global garment manufacturing company which had been actively addressing human rights issues in their supply chain. His comments were unequivocal. Having started to implement the UNGP Reporting Framework, which required greater engagement and understanding of their suppliers' limitations and expectations, there had been a reduction in the number of supply chain issues and an increase in the quality of their garments leading to fewer returns which in turn led to increased profitability. Whilst it was difficult to correlate or prove this improved performance directly, it wasn't unreasonable to think that the principle of greater engagement and understanding had led to the improved performance.

**“ If companies provide their employees with decent working conditions it is likely for them to become more productive ”**

**3. Engagement with investors.** Some years ago, Goldman Sachs created a large proprietary database of financial and non-financial data which it uses as part of its GS Sustain initiative. The firm reviewed 80 global companies over a two year period and found that those companies which reported on their ESG (Environment, Social and Governance) practices outperformed the MSCI World Index by 18% over a two year period. As Bob Eccles and Michael Krzus note in their book *One Report*, whilst Goldman Sachs commented that they “found no correlation between any of our ESG metrics and share price performance”, the conclusion was that ESG performance “is a good overall proxy for the management quality of companies relative to their peers.”

Furthermore, a Harvard Business Review [article](#) published in October 2016 stated as follows:

*Mounting evidence shows that sustainable companies deliver significant positive financial performance, and investors are beginning to value them more highly. Arabesque and University of Oxford reviewed the academic literature on sustainability and corporate performance and found that 90% of 200 studies analyzed conclude that good ESG standards lower the cost of capital; 88% show that good ESG practices result in better operational performance; and 80% show that stock price performance is positively correlated with good sustainability practices.*

**4. Engagement with customers** – According to business theory, the key question for companies is how to obtain and retain a customer. Once companies have a customer they need to strive to make that customer experience as exceptional as possible and that often means making that experience as personal as possible. In the past, I doubt whether respect for human rights has been high up on the agenda when addressing the customer experience. However, in these times of ever increasing transparency, corporate integrity, ethical behaviour (including human rights performance) and culture will filter through to the perception of the experience enjoyed by the customer. Companies which are seen to be causing or contributing to human rights violations and whose behaviours in addressing these issues are seen to be below par will put that customer at risk. Given the ever increasing reporting requirements and the wide use of social media, more and more customers are going to be taking such issues into account when making their purchasing decisions whether consciously or unconsciously.

### **The evidence is compelling**

For companies to demonstrate how they are respecting human rights in their own organisations and their supply chains, the direction of travel is only one way. With increasing regulation most public companies in the EU (including the UK!) are going to have to report on human rights issues. Over time, it will just become part of the social licence for being in business. This equally applies to the many companies who are part of the enormous supply chains of multi-national companies. The sooner that companies embrace their moral responsibilities to protect those who are at risk from their activities rather than ignore them, the sooner they will see the many benefits and help preserve their future for the longer term.

1. For further information see [here](#)
2. For further information see [here](#)
3. For further information see [here](#)

Richard Karmel is responsible for Mazars' award winning business and human rights reporting line in the UK. Along with his team, Richard has devised an approach to help protect the reputation of organisations whilst ensuring they align their activities with the United Nations Guiding Principles. Currently, Richard is a key member of the project team for the Reporting and Assurance Framework Initiative which has designed a government and United Nations recommended [Reporting Framework](#) that is a guide for companies on what good reporting of their human rights performance looks like. In September 2016, the team published their consultation draft on the related Assurance Guidance to act as a guide for both internal and external assurance providers. In 2014, this Initiative was officially supported by the United Nations Working Group on Business and Human Rights.

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# Corporations and human rights violations in Guatemala

**Pedro Rafael Maldonado Flores**

Guatemala Center of Legal, Environmental and Social Action (CALAS)

In Guatemala, human rights defenders who protect the territory, the environment, the waterways and other natural resources live under constant harassment from the State and the corporations who want to impose mining projects on the territory. Businesses and traditional sectors consider this struggle to defend water and other natural resources an “opposition to growth”, while the government unofficially defines those opposed to their plans as “enemies of the State”. We find an example of this in the districts of Santa Rosa and Jalapa (in north-eastern Guatemala), where the mining project “El Escobal” was imposed. There were at least 125 human rights defenders illegally criminalised by the Guatemalan National Civil Police officers. A similar situation took place in the pacific resistance in La Puya, in the Guatemalan towns of San José del Golfo and San Pedro Ayampuc, the scenario of the “Progreso VII Derivada” project. The government unfairly criminalized at least ten human rights activists.

Since the chemical mining of metals commenced, the majority of the population has shown their opposition to this activity in the national territory. A conflict that remains in the public mind is the one that took place in Los Encuentros, in the Sololá district, in the Guatemalan plateau. The roots of the conflict are found in the transfer of a ‘cylinder’ of the Montana Exploradora corporation; a move that led to the death of one of the community members who stood in the way of the company’s heavy machinery. Subsequent industrial projects that have been authorised or reactivated have also provoked strong reactions from the citizenship. Activists who protest have been criminalized by the government and by transnational corporations for defending the territory, the environment, water and other natural resources.

But these criminalization processes have not had the desired effect –bringing an end to the social protest and a weakening of the community. This is the reason why the companies and the police have proceeded to physically attack the members of the various communities resisting the mining activity. The most significant examples of repression against pacific resistance have taken place in the “Progreso VII Derivada” and “El Escobal” projects.

**“ The alliance between security forces and companies implies a serious violation of human rights and a criminal behaviour ”**

In all these scenarios the community activists have warned of an alliance between security forces and the company. This implies a serious violation of human rights and a criminal behaviour by the state’s security actors and by the managers and workers of the companies.

In the criminal proceedings currently investigated by the prosecuting authorities of Guatemala there serious wrongs committed by national and transnational companies have been exposed. The sectors where there are more concerns are the palm oil and the mining industries. In the past year, seven managers and legal representatives have been implicated in judicial proceedings for corruption, attacks against human rights activists, and environmental crimes ranging from water pollution (by hydrometallurgical companies), the illegal use of non-renewable resources or the attempted murder of community activists opposed to mining projects<sup>1</sup>. To the previous cases we have to add the more than fifty legal complaints against the sugar and palm oil industries for altering the course of rivers in the country’s Pacific coast.

The Guatemalan legal system allows victims to participate in criminal proceedings; an option that is also available for human rights organisations. But the economic might of the companies involved allows them to stretch the legal procedures and use this strategy to avoid facing justice. All of this has led CALAS (Guatemala Center of Legal,

Environmental and Social Action) to participate in the cases that are now active in the justice system, be it representing the community leaders, the human right activists who have been the victims of the corporations or by positioning itself as one of the plaintiffs, hence guaranteeing access to justice and that the crimes committed will not go unpunished. Another option open to CALAS is participating institutionally in the judicial procedures as a victim of environmental crimes, implicating the prosecuting authorities in criminal investigation.

**“ In the past year, seven managers and legal representatives have been implicated in judicial proceedings for corruption, attacks against human rights activists, and environmental crimes ”**

To date, the most significant judicial proceedings against corporations are the following:

These cases have brought about substantial advances in the country's justice system, although they have also highlighted the development of malicious litigation processes on behalf of businesses, weakening the justice system when it comes to guaranteeing the appearance in court of the higher echelons of the company hierarchy. The most glaring examples of this can be seen in square 1 and 5 of the table above: they have both escaped the course of justice or fled from the country to avoid their arrest by the criminal authorities.

To sum it all up, we can say that there is a certain improvement in the Guatemalan justice system, insofar as searching, sanctioning and punishing corporations' criminal behaviour and human rights violations is concerned. But we must also state that these improvements must be strengthened by applying the legislation on human rights and company law that are applicable in this field.

1. In 2015 the manager of Minera San Rafael (a national division of the Canadian company Tahoe Resources Inc) underwent a criminal trial and was sent to preventive prison for the alleged industrial pollution of the Escobal, an affluent of the Los Esclavos River, the main water supply for the communities in the Santa Rosa district. Two years later, in 2013, Alberto Rotondo, the security manager of the same mining company was arrested in the Aurora Airport of Guatemala City when he was trying to flee from justice, after he ordered the firing of shots against community leaders who were opposed to the imposition of the mining project of the afore mentioned company.

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IN DEPTH

## The Catalan Approach

**Michela Albarello**

President of the Taula Catalana per la Pau i els Drets Humans a Colòmbia

Although it may not seem like it, the concern of democratic institutions, civil society organizations and citizens at large for the violation of rights by major economic powers is long-standing. Chilean president Salvador Allende, in his last speech before the United Nations General Assembly, in December 1972, clairvoyantly warned of the possible dire consequences of a worldwide concentration of power, and therefore of wealth, and denounced that this situation would be very pernicious for humanity<sup>1</sup>.

To begin with, in December 2013 the Parliament of Catalonia approved a motion urging the Government to create a working group under the Development Cooperation Council to “develop a plan aimed at raising awareness among Catalan business enterprises operating abroad in places where there are Catalan international cooperation projects.” This working group was created in April 2014 and since then it has been meeting regularly, with proposals that aim to ensure efficiency and coherence among different policies, with the participation of the different sectors involved.

Furthermore, on 4 December 2014, Law 16/2014 of external action and relations with the European Union was approved. This law promotes the defense of peace, human rights and sustainable human development, and “ensures the consistency between actions to promote the economic internationalization of Catalonia and the guiding principles of the United Nations regarding companies and human rights, always safeguarding human rights in any action that takes place.”

**“ The Parliament and Government of Catalonia  
have shown the will to ensure that human rights  
are respected by all Catalan actors operating  
beyond their own borders ”**

In addition, the work carried out by the Taula Catalana Coordinating Group for Peace and Human Rights in Colombia, a platform of Catalan civil society organizations that was created in 2002, is worth mentioning. For over two years this organization has been involved in an intensive campaign to denounce the severe social and environmental impacts of the implementation of port megaprojects in the Colombian city of Buenaventura. Buenaventura is a port city on Colombia's Pacific coast that exceeds all the rates of violence and human rights violations in the country. Sensitive to the demands of the communities affected by these projects, the Taula group decided to conduct a study on the effects and consequences of the investment by the Catalan company Grup TCB, majority shareholder of the container terminal at the port of Buenaventura, TCBuen.

The results of this study, *“Setge a les comunitats. Els impactes d'una empresa catalana, Grup TCB, a Buenaventura, Colòmbia”* (“Communities under siege: The impact of a Catalan corporation, Grup TCB, in Buenaventura, Colombia”)<sup>2</sup>, was presented to the Parliament of Catalonia on 26 June 2015. A delegation of representatives of the church, of the political world and of the affected communities of Buenaventura appeared before parliamentary groups that are part of the Commission for External Affairs and Cooperation, Institutional Relations and Transparency. In the hearing they explained that the city's plans for economic and urban development were creating situations of violence with the direct or indirect involvement of Catalan corporations. As a result, all the parliamentary groups expressed their commitment to monitor the situation.

Following up on this commitment, in late April 2016, a Catalan delegation made up of representatives of civil society organizations and institutions visited Buenaventura. Among other objectives, the delegation had also been invited to attend the public

hearing “Victims of development and an unconstitutional state of affairs,” organized by the Human Rights Commission of the Senate of the Republic of Colombia and various social organizations in Buenaventura. The trip also sought to find ways to generate direct links of cooperation and solidarity between Buenaventura and Catalonia, specifically Barcelona, given the importance of the “Barcelona brand” in this city on the Pacific coast. At the same time, “a Catalan (working) group on business and human rights,” composed of representatives of the organizations for global justice Taula and Lafede.cat, was formed with the aim of moving ahead with concrete proposals to counter the effects of the most deplorable actions of Catalan multinationals abroad.

This group testified a second time before the Catalan Parliament in June in order to define binding mechanisms of control and supervision for Catalan corporations, with the participation of civil society, in terms of human, social, economic, labor and environmental rights.

**“ The Catalan group on business and human rights is working with concrete proposals to counter the effects of the most deplorable actions of Catalan multinationals abroad ”**

A progress report on resolution A/HRC/RES/26/9 (“Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights”), promoted by Ecuador, Russia, India and South Africa, among others, and adopted by the United Nations Human Rights Council in 2014, was also presented on this day. In this regard the search for mechanisms that can fill the legal vacuum that allows for the impunity of transnationals is a common priority.

In addition, in late October, representatives of the Catalan working group attended the second session of the Intergovernmental Working Group of the Human Rights Council of the United Nations in Geneva (a group that, as was mentioned before, is working to



achieve the creation of a treaty that is binding for transnational corporations regarding human rights) and the alternative summit that took place at the same time. In this international context similar proposals were discussed, such as a Swiss legislative initiative that could end up proposing a referendum on this issue and a French legislative bill. The significant level of maturity of the Catalan initiative was also highlighted.

Finally, as a result of the session in June and subsequent meetings with all the parliamentary groups in Catalonia, on 4 November 2016, the Commission of Foreign Affairs and Cooperation of the Parliament of Catalonia unanimously approved the proposal to create an “Impact Assessment Center of Catalan Business Enterprises Abroad.” This assessment center will have binding instruments to ensure compliance with Human Rights legislation and include the participation of Catalan civil society, the Government and Parliament, and it will be operational within eight months. Nearly two of those eight months have already gone by. Less time is left to make the political commitment of ensuring the priority of human, labor and environmental rights over corporate profits and power a reality.

1. Daniel Uribe Terán: La pieza faltante del rompecabeza; en “América Latina en movimiento”, Alai, núm. 520, desembre 2016, any 40, 2na època, pàg. 13

2. The authors are María Jesús Pinto, Tomás Gisbert and Xavier Sulé

Photography : Xavier Sulé. Port of Buenaventura, Colombia

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RECOMANEM

## Materials and resources recommended by the ICIP

### Report

#### *The Great Palm Oil Scandal*

Amnesty International recently released the report [“The Great Palm Oil Scandal: Labor Abuses Behind Big Brand Names”](#) that documents a wide range of violations of labor rights and other human rights abuses being committed in palm plantations in Indonesia: forced labor, child labor, salaries below the minimum wage, up to 12-hour workdays, unsafe working conditions, violations of the right to health care and gender discrimination.

Indonesia is the largest producer of palm oil in the world and Wilmar, the company that dominates the market, controls over 43% of the global palm oil trade. It should be noted that nearly half of the most common consumer products contain palm oil or other palm ingredients: cosmetics, packaging, detergents, biofuels, as well as frozen foods such as ice cream, chocolate, margarine, processed cereals, etc.

Amnesty International’s investigation has focused on Wilmar’s own plantations and extraction plants and their suppliers, tracking up to nine global companies that buy Indonesian palm oil from Wilmar and fill our supermarkets with various consumer products.

An interesting point is that the report does not only focus on the responsibilities of the Indonesian companies; it also emphasizes the responsibility of the Indonesian government for not performing adequate controls or enforcing its labor laws. And it highlights the responsibility of these nine companies for not applying adequate due

diligence with regard to human rights when purchasing palm oil from Wilmar. Amnesty International also denounces that the RSPO certificate – which in theory should ensure that palm oil is produced sustainably and without exploitation – follows processes that are “profoundly deficient” and cannot be considered a guarantee.

## **Website**

### ***Business and Human Rights Resource Centre***

Anyone wanting to delve into the relationships between business and human rights should begin by visiting the [Business and Human Rights Resource Centre](#). To get an idea of the volume of information contained on the website, it should be noted that there are at least nine subject categories: from business organizations to current legislation, business policies related to human rights, and positive developments. The website provides action plans approved by different countries, current draft legislation, commented articles, links to other centers that deal with the same subject matter, videos, news... in short, a volume of encyclopedic information.

But the website is not only an excellent collection of thematically classified information; it also features analysis tools that are very useful, such as:

- A map of legal cases, which includes court cases of corporate human rights violations with detailed up-to-date information.
- A record of the United Kingdom’s Law of Modern Slavery, which requires companies to produce a statement that includes activities that are likely to generate human rights violations. The Business and Human Rights Centre has a collection of all the statements produced. Currently there are nearly 1,400 companies included on the website.
- The *Business Action* section, which presents different ways in which companies can assume their responsibilities in matters of human rights in a positive way.

A powerful website that is available in nine language versions – even more than the United Nations website.

**Website*****Due Process of Law Foundation (DPLF)***

DPLF is a non-governmental organization founded in 1996 by Professor Thomas Buergenthal. After the work he did with the Truth Commission for El Salvador, he was convinced that human rights would only be guaranteed in the Americas with strong and independent judicial bodies. So he decided to create DPLF to promote the rule of law and human rights in Latin America, through applied research, advocacy and the dissemination of ideas.

DPLF divides its activities into five programs: Judicial Independence; Human Rights and Extractive Industries; Transitional Justice; Inter-American System; and Mexico.

It has a bilingual website in English and Spanish, which features all its activities and publications. The dissemination of ideas is apparent from the large number of activities it is involved in. Regarding publications, the search engine, which allows you to filter results by year, country or topic, is very useful. This usefulness becomes even more apparent if you consider the wide range available: research, reports, the Aportes DPLF magazine, etc. And, due to its innovative appearance, we must also highlight the infographics section. With their dual nature, as instruments of education and advocacy, DPLF infographics are excellent tools due to their online dissemination possibilities, the diversity of issues they address (international missions, profiles of judicial officeholders, etc.), and the rigor and amount of information they include.

The advocacy aspect is completed with the aforementioned published reports, but especially with the blog, which is very up to date thanks to the multiple monthly entries published. There is a great diversity of authors who are always specialists in the issues they analyze; Carlos Martín Beristain, Katya Salazar and Leonor Arteaga, among others, are worth mentioning.

**Film*****The True Cost***

On 24 April 2013, in Dhaka, the capital of Bangladesh, an eight-story factory building collapsed, killing at least 1,127 workers and seriously injuring 2,437 others. This is the

worst industrial accident in recent history and it brought to light a problem that the West would prefer to ignore: the working conditions of the people who manufacture the goods that we massively consume in developed countries. Unfortunately, the accident did not mark a definitive turning point for people in rich countries to realize to what extent our excesses, our culture of living as if the planet's resources were infinite, have real and direct costs on a significant part of the world's population.

This is the thesis on which the documentary film *The True Cost* is based, focusing on the world of fashion and the working conditions of garment workers. The film depicts the huge contrast between the glamorous world of haute couture and the working conditions endured by the workers who produce these garments. The film certainly suffers from an excess of determinism and what seems like a world that is almost impossible to change. But, considering the horrendous accident that happened four years ago and the lack of awareness raised among the well-to-do people of the world, perhaps it is excessively voluntaristic to expect a change in behavior in Western habits.

From a technical standpoint, the photography and the music accompany and give strength to the message of the film. Another good decision concerns the film's distribution: the documentary is accessible on major video platforms for the modest price of a full day's labor of one of the protagonists of the film.

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TRIBUNA

## Europe and Africa: Wars and Peace that Affect Us

**Jordi Palou-Loverdos**

Lawyer and mediator in conflict resolution

There are life choices that transform the ordinary into the extraordinary. To distinguish what is essential from what is instrumental, to listen to and feel the tears of others as one's own (whether they are shed here or 6,000 kilometers away), to choose to care for people here and there... is to live and honor life completely. Twenty years ago, a group of people who had put caring for people at the center of their lives and their profession decided to go to Rwanda and the Democratic Republic of Congo to serve the suffering, just as today there are people who do the same thing with their neighbors, with vulnerable people in neighborhoods of cities and towns or like those who decide to sacrifice everything in Syria, the waters of the Mediterranean, Afghanistan, Iraq, Palestine, Israel, Colombia, Congo or Rwanda. Two decades ago, Flors Sirera (Catalan daughter, sister and nurse), Manuel Madrazo (father of two daughters, and a doctor from Andalusia), and Luis Valtueña (son, brother and journalist from Madrid), working with the NGO Médecins du Monde, decided to devote the last two months of 1996 and the first months of 1997 to people in extreme situations in Central Africa. We remember their lives and the lives they gave, not only their violent deaths twenty years ago in Rwanda (on 18 January 1997, long after the three months of genocidal madness in 1994). Because their lives make sense for everyone... while only they know the meaning of their deaths and how they have affected other lives.

They were not the first; nor will they be the last. Millions of people – yes, millions – all thirsting for equity, justice, peace and fulfillment were living their lives, which were violently taken away, or they were deprived of their homes, their life choices or their

family and friends. Seemingly distant people: Rwandans, Congolese, Burundians, Canadians, Italians, Britons, Belgians... and also seemingly close, like the missionaries Joaquim Vallmajó (26 April 1994, Rwanda), Servando Mayor, Julio Rodríguez, Miguel Ángel Isla and Fernando de la Fuente (31 October 1996, DR Congo) or Isidro Uzcudún (10 June 2010, Rwanda). Aid workers and missionaries killed because they were inconvenient witnesses to the crimes of the victors (the Rwandan Patriotic Front) in Rwanda and Congo.

**“ Flors Sirera, Manuel Madrazo and Luis Valtueña  
went to Rwanda and Congo to serve the suffering;  
we remember their lives and their violent deaths**

”

What is the situation in Rwanda or the Democratic Republic of Congo now? Are they at war? At peace? Living in democracy? Although a complex analysis of both countries would exceed these lines, what we can say is that they live in a situation of intense direct, structural and cultural violence in all their dimensions, in the sense suggested by Galtung or Lederach. Although the international community highlights the economic progress of these countries, with growth rates that we would like to have in our own, the presidents of both countries, Paul Kagame and Joseph Kabila respectively, were key players in successive wars and want to hold on to power and to their privileges as long as they can.

Despite their alleged involvement in crimes against humanity, genocide, war crimes, torture, forced disappearances and systematic repression, Kagame and Kabila are untouchable in their presidential status; they therefore want to retain it as long as possible while the people they supposedly serve die, in every respect. With different words and in different contexts both claim to know the will of their people, and express their readiness to bend to their will and stand again for election. Here is a simple example to illustrate the contrast between the “saviors” and “their” peoples. In the previous presidential elections in Rwanda, in 2010, the incumbent president, Kagame,

was re-elected with 93 percent of the vote; in 2003 he “obtained” 94 percent of the vote. These are the headlines we receive in the West. A few words of admonishment from the UN, Amnesty International and Human Rights Watch after the elections and... that’s it (amid the scandalous complicity of several states in the international community and Western multinationals with disgraceful geostrategic and geo-economic interests in Central Africa).

We overlook many things: for example, Victoire Ingabire, a brave woman (like Flors), a Rwandan mother and wife living in Holland who decides to return to her country in January 2010 to stand in the presidential elections in Rwanda. Upon arrival at the airport, she clamors for democracy, calls for a change of president without resorting to the army or to violence (as had happened in the country until then), demands that all those responsible for crimes be brought to justice, advocates recognition of all victims (not only the officially recognized ones, the Tutsis), and advocates dialogue to overcome war and repression (taking the conclusions of the Inter-Rwandan Dialogue to Rwanda. In the following months the Kagame regime does not allow her to register her party, then arrests, tortures and sentences her to seven years in prison for rebellion. When she appeals her sentence, the Superior Court doubles it to fifteen years. Since then, like many others, she is a political prisoner. And she is lucky to be alive; many others aren’t. She has appealed her sentence to the African Court of Human Rights and the Kagame regime tried unsuccessfully to withdraw from the international court.

Although it is not a good omen that this court has accepted an organization close to the Kagame regime as an *amicus curiae*, but not, however, international organizations, including African, Catalan and Spanish ones, there is still hope that the possible violation of Victoire’s human rights will be analyzed with rigor and impartiality in the trial scheduled for 17 March<sup>1</sup>. Meanwhile the Rwandan president has managed to modify the Constitution to be able to stand again this year for a third reelection and continue as president until 2024.



**“ Millions of people with a thirst for equity,  
justice and peace were living their lives, which  
were violently taken away ”**

Despite obvious differences, all of this reminds me of episodes we went through during the civil war and dictatorship in this country. In October 1990 Kagame and his men invade Rwanda from Uganda and initiate a war to seize (lost) power. They do not completely succeed and the war degenerates into genocide. After 100 days of multidirectional murderous madness, he takes power by force in July 1994, initiating a harsh repression in his country (in addition to two wars in neighboring DR Congo, which continue to produce thousands of refugees in Africa and Europe), recasting himself as a democrat in the international community while remaining a systematically repressive dictator. This year he will probably be reelected president with almost 100 percent of the vote. I have the impression that individuals and peoples have less need for liberators of the fatherland, populists and providers of material freedom (in the form of visionary leaders and/or leaders of multinational corporations) and more of a need for citizens who are at the service of individuals and peoples.

The International Criminal Tribunal for Rwanda, which was set up to investigate the most serious crimes committed in this country (only in 1994), has investigated only one part of the conflict and has not wanted to investigate the death of the missionary Vallmajó, or those of Hutu and Tutsi bishops and religious workers, or Hutu and Twa victims. It has only condemned some twenty Hutu leaders of the Habyarimana regime against which Kagame fought. This court cannot investigate the death of Flors and her companions in 1997 or the rest of the Spanish, Rwandan and Congolese victims. The International Criminal Court cannot do so either since it is only competent to investigate crimes committed after 2002.

**“ We have less need for liberators of the  
fatherland, populists and suppliers of material  
freedom and more of citizens at the service of  
individuals and peoples ”**

That is why the relatives of Flors Sirera and the Catalan, Spanish and Rwandan victims, together with prominent public institutions (including the town councils of Figueres, Manresa, Navata and Seville) and national and international NGOs, filed a judicial action according to the principle of universal justice. After years of investigation with protected witnesses, the judge issued international arrest warrants for forty members of Rwanda's political-military leadership, beginning with Kagame. From then on there were numerous international impacts<sup>2</sup>, which tried to be neutralized. The last one, the arrest – at the request of a Spanish judge – of General Karake Karenzi in London, who managed to avoid the extradition trial thanks to the maneuvers and political interference of the British prosecution and of Karake's lawyer, Cherie Blair (wife of former prime minister Tony Blair and “free” advisor to Kagame). Furthermore the Spanish government wanted to suppress universal justice, forcing victims to appeal in amparo before the Constitutional Court.

We continue today to focus our attention on Flors, Manuel, Luis, Victoire and all those who, regardless of their position of responsibility, decide to serve individuals and peoples and work for the realization of human rights in more equitable, harmonious and peaceful societies.

1. Victoire Ingabire, already as a political prisoner, was one of the nominees for the European Parliament's Sakharov Prize for Freedom of Thought, and is, for the third consecutive year, a candidate for the Catalonia International Prize granted by the Generalitat of Catalonia. She has also been a candidate for the ICIP Peace in Progress Award 2016.

2. For more information on the cause of justice and its impact, see [here](#)

Photography : UN Photo/Isaac Billy

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TRIBUNA

## PBI: making visible the “intrahistory” of the people fighting for peace

**Virginia Mazuela Coll**

Brigadista, PBI Colombia and PBI Spain

PBI has been creating spaces for peace for the last 35 years, accompanying human rights defenders who are threatened due to the nature of their work. At present, there are PBI international volunteers in Colombia, Guatemala, Honduras, Mexico, Indonesia, Nepal and Kenya. This fieldwork has been supported by the 14 national PBI groups whose main task has been to build a support and assistance net that springs into action when the accompanied people receive threats or harassment. This mechanism promotes action from diplomats, government members and other key actors, leading them to put pressure on the alleged authors of human rights violations or local institutions that can help put an end to abuse.

These cracks for peace opened by human rights defenders in their own countries are initially small, but they are deepened with international actors and attention. PBI accompanies the history -without capital H, what Miguel de Unamuno defined as the ‘intrahistory’-, the history of those in the margins struggling to change History -with capital H-.

The headlines of the Colombian Peace Agreements have had President Santos and FARC Commander Timochenko’s name on them. However, those that will make the agreements possible are the people that have for decades aligned themselves with a non-violent solution, risking their life every day. This is particularly true of human rights defenders and peasant communities, who want to live without conflict, proposing imaginative alternatives that will ensure the protection of the community and a respect for life (their own, as well as those of future generations and of the environment in

which they are living). They are the people who have humanized the conflict, reminding us that we must demand respect for human rights even in times of war; and that civilians should be kept safe from these scenarios. All the while bearing in mind that in Colombia 8 out of every 10 victims of the ongoing conflict are civilians. The names of the Negotiators, the Commanders-in-chief and the Presidents are written in full and in capital letters; victims, displaced people *et al* are written in non-capital letters, without their full names, and generally hidden behind numbers.

**“ The Negotiators, the Commanders-in-chief and the Presidents are written in full and in capital letters; victims, displaced people... they have to make do with non-capital letters and generally hidden behind numbers ”**

In PBI we want to put the focus on those who give a voice to these collectives; and that pages, books and volumes of those that are documenting aggressions become read in relevant institutions, gaining a relevance that is important for the victims' loved ones; bringing reason where it is lacking, hope to the communities and encouragement to the younger generations. This is why every *brigadista* -and they number more than a thousand- that has been a part of the PBI in these 35 years is a loaded with many life stories of the intrahistory. These people are not normally featured in the media and, when they do, their story is often distorted. The PBI volunteers do know their story well and they feel it is their duty to speak up, to make it known. This is the case of the reports of the experiences and struggles of Hilma, Luis Eduardo, Enrique, Ramiro, Brígida... all names of the intrahistory.

Every *brigadista* has a clear understanding of the word “resilience”: our creators of intrahistory bring meaning to this concept every day, transforming death into life, both in dignity and learning. This is what happened on February 21<sup>st</sup> 2005, with the murder and dismemberment of Luis Eduardo and five other people, three of them children. A

few weeks after this massacre, the history of violence against the Peace Community in San José de Apartadó was reproduced in the four corners of the world, with the involvement of civil organisations, MPs, ministers of foreign affairs, the United Nations... On the other hand, Álvaro Uribe's lies about the massacre, when he declared that it had been caused by internal vendettas within the guerrillas, embarrassed the diplomatic agents present in Colombia, who were well aware of the truth, partly thanks to the intense dialogues held with the PBI. In the end, the members of the military who were guilty of the crime were judged in 2013 and given an exemplary sentence (twenty years of imprisonment) that went some way into explaining the inner workings of the army, in cahoots with the State and the paramilitaries. The massacre was carried out in a joint operation by the 'Tolová Block of Heroes' [*Bloque Héroes de Tolová*] of the 'United Autodefense of Colombia' [*Autodefensas Unidas de Colombia (AUC)*] and the troops of the 'Army's XVII Brigade' [*Brigada XVII del Ejército*].

**“ Every *brigadista* has a clear understanding of the word “resilience”: our creators of intrahistory bring meaning to this concept every day, transforming death into life, both in dignity and learning ”**

Withstanding numerous attacks, PBI has been next to the Peace Community since 1999, despite numerous attacks. The question hanging on all those years of is: what level of protection can PBI provide if the assassinations continue? The 2005 massacre was a turning point, and although attacks continued, they were never as vicious. Non-interference in domestic affairs is a basic PBI principle and, in this case, it was our primary criteria. Despite the doubts that arose on whether or not we should remain or depart, we decided to continue by their side in the path they had chosen. This allowed the community to widen the space for peace while the worst attacks were being made, partly thanks to PBI's permanent presence and the hard work in making a difference. It was the moment to demand respect, investigations and justice to the XVII Brigade, the

Home Secretary and the prosecuting authorities... Not only in Colombia, but also in North America and the European Union.

The *brigadistas* who stood by the peasant community of San José, day and night, never had any doubts on the pertinence of being there. I will never forget the look of terror on a five-year old girl when she saw us loading our backpacks to get ready for the relay. She looked towards the hill that surrounded the village from where the army watched over the community and said, "Please don't leave, they are still here". Or will I forget how the community leader hid behind the *brigadista* when the paramilitaries held up our car with the intention of robbing the money earned in the sale of cocoa. But I also have engraved in my memory the faces of satisfaction of the Internal Counsel when we stated that we had managed to get influential members of the US Congress to give the Colombian Government a wake-up call on their position on the massacre. And this resilience continues to overcome obstacles with the planning of a macro-delegation that will attend the 20th anniversary of the community, which will be celebrated in San Josecito and will be attended, once again, by three councillors of my city.

**“ PBI aims to magnify each of these heroic and creative acts that promote the dignity of the human being: the exemplary behaviour of the unknown people we accompany ”**

As has been mentioned, PBI has not only been present in 'San José'; it was in fact born in Central America in the 1980s. It saddens us to say that the projects there have had to be reopened due to the ongoing human rights crisis that this region is suffering. There might be changes in landscapes, languages, skin colours, governing parties and political systems, but these factors do not alter the intrahistory of a country seeped in political violence. Human behaviour –in its glory and its misery- repeats itself. Our cinema and our literature are plagued with similar examples, depicting the same situations in different times and different wars. Any *brigadista* can talk of heroes like the teacher incarnated by Fernando Fernán Gómez in *La lengua de las mariposas*, or of

families like the ones who stoned him when the political tide changed, hoping to save their own lives. We find similar behaviours in Irène Némirovsky's *Suite Française*, even though it takes place in France during the Second World War. She draws a detailed picture of the different shades of fear during war and persecution. The best and worst aspects of human nature are always on display in moments of extreme violence, and we can see these behaviours repeated around the world. Even though there is nothing new there, PBI still aims to put the spotlight on each and every one of these heroic and creative acts that promote the dignity of the human being; the exemplary behaviours of the unknown people we accompany, in order to make them precisely that: examples. Examples that help in making peace and human rights possible.

The *brigadistas* could give you the personal name of each of these people who are there resisting. People with whom they lived, sometimes admired and with whom they have even established a personal bond, after sharing hours, days and weeks.

Today I proudly see how PBI continues to set its focus in the most significant causes in each country and each moment, making it possible for the local people to work their land. The local people who are fighting for what is theirs: their land, their water, their crops, their clean air; their people.

Photography: PBI Colombia

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## INTERVIEW

## Interview with Shawna Bader-Blau, executive director of the Solidarity Center

Eugènia Riera

International Catalan Institute for Peace

*Shawna Bader-Blau, executive director of the Solidarity Center*

*Solidarity Center is the largest U.S.-based global worker rights organization. It is present in over 60 countries, where it fights labor exploitation and discrimination, and works to safeguard decent, stable and safe working conditions. In this interview we speak with its executive director, activist Shawna Bader-Blau, on the progress made and the challenges that remain regarding corporate respect for human rights.*

**Child labor, gender, race or ethnic discrimination, and precarious work conditions are all different forms of human rights abuses. Which are your main areas of concern?**

We strive to help workers all over the world, acting on the belief that it is really the agency of people and their ability to come together and organize to make change that will bring about fairer economies. And we look specifically at a fundamental principle: that the main human rights of workers in the workplace include freedom of association, the right to form a trade union and bargain collectively with their employers, to improve their jobs and their workplaces.

**Solidarity Centre works all over the world. In which regions have you confirmed more cases of corporate abuse?**

We work in all the regions of the world, in 60 countries globally, and in fact we have noticed that the global economy for workers is more similar than different. In fact, we

see that 60% of all workers worldwide are employed in a way that we call precarious: people have temporary contracts, uncertain jobs. And in some parts of the world, Africa or South Asia, that number goes up to 80%. And most of the time, workers in those kinds of jobs are not afforded the right of freedom of association and the right to collectively bargain. They are excluded from these rights by law. What we see around the world is a really extreme and massive disenfranchisement of working people from the fundamental human right to come together and advocate better wages and working conditions. And that really makes people extremely vulnerable globally to abuse and exploitation. If you look at the number of international migrant workers worldwide, 150 million people crossed borders last year to find work in another country. The majority of these workers, when they enter another country to work –especially low-wage workers– are denied the right to form and join a union. And what happens is that they end up trapped in these types of jobs that are low wage, where they cannot improve their wages and working conditions, and this basically results in labor migration contributing to an increase in the exploitation of workers around the world rather than what it should be, which is greater opportunity for individual workers to improve their livelihoods and support their families by traveling abroad to work. That’s really what it should be.

**“ You don’t leave your human rights in one country when you cross into another. You don’t check your human rights at a border; you keep them with you ”**

We believe that the way we can help workers achieve that goal of improving their livelihoods through labor migration is by helping them achieve their human rights. You don’t leave your human rights in one country when you across into another. You don’t check your human rights at a border; you keep them with you.

**In 2011 the UN Human Rights Council approved the Guiding Principles on Business and Human Rights (UNGPs). Do you think this legal framework is enough to guarantee compliance with human rights?**

We sincerely think that the UNGPs are a really great framework and a good start. There are many international instruments that deal with human rights for workers around the world. The problem with all of them is that they don't have specific guarantees; they are not enforced. So what we need to see in a framework like the UN Guiding Principles or any other legal framework is that, at a country level and at the level of the global economy, corporations and governments are specifically held accountable for implementing these principles. And too often that is not what happens. Usually what we see are companies in the private sector making a claim that they are going to implement human rights, but only on a voluntary basis; that this will be at their own choosing. Where and when? And the problem with that is that 20 years of a voluntary compliance initiative by companies around the world to implement workers' human rights has led to no substantive improvements in the human rights of workers; just look at the Rana Plaza disaster in Bangladesh. Companies there had made claims that those factories were adequate and safe, yet more than 1,100 workers died that day because it wasn't true.

**How could an international binding treaty on business and human rights be effective?**

Any international binding treaty on human rights is an important step forward but the question is: What states are going to make the commitment to implement those treaties and hold themselves and businesses specifically accountable for them?

**Regarding the Rana Plaza disaster in Bangladesh, to what extent have labor and safety conditions of workers improved four years later?**

Immediately after that disaster, which killed more than 1,100 factory workers, we saw some improvements for workers to exercise their rights because, globally, the outrage was so incredible and, locally, Bangladeshi workers were very smart and aggressive at organizing for their rights locally and they demanded that global brands in the industry as well as their governments be held accountable for safety standards in their country. And we did see some improvements at the beginning where many thousands of workers were able to form and join trade unions, and began bargaining with employers. We also saw global brands getting together with trade unions to negotiate very groundbreaking

advances in corporate accountability and improvement of buildings and construction across Bangladesh.

**“ Usually what we see are companies making a claim that they are going to implement human rights, but only on a voluntary basis. Where and when? ”**

What is happening now, however, is that, as workers have demanded these improvements, corporations, companies, factories and the government have been recently unleashing a very deliberate and troubling escalation of efforts to limit their rights. We have seen the government denying more and more registrations of new unions, and, as recently as December, 1,600 workers who had no union were fired after they tried to ask for better wages and working conditions, then walked off to demand an improvement in their wages. And these people, who make 68 to 100-and-something dollars a month, were fired for speaking out and demanding better conditions. And more than that, the government has been backing the behavior of the private company by assisting in the arrest and detention of many of them. We have 24 union leaders who have been arrested and put in jail. So when you are talking about business and human rights, where is the accountability of the behavior of that government and those companies with those workers? The imbalance is huge.

So without a real binding global commitment of governments and employers to be held accountable for human rights abuses, we fear that this is the behavior that will be encouraged rather than discouraged.

**Regarding international relations, do you think power has more to do with governments or corporations?**

I think we've seen an increasing concentration of wealth and greater inequality within states and between states in the last several decades and that has resulted in a

concentration of power that is both economic and political in many countries. More and more the difference between the power of corporations and the power of governments is hard to discern: what is more powerful, corporations or the government? Sometimes corporations are even more powerful than governments. They have more wealth and they have, let's say, more of an impact on how the economy is run. And we really feel that rising inequality and a greater concentration of wealth are very detrimental, not only to human rights but to human dignity, progress and democracy worldwide. And for us the answer really has to be to expand the human rights of workers, to be able to join together, stand up, speak out for dignity, bargain for better wages and working conditions and improve communities through collective power.

**Do you think the new US government of Donald Trump will have an impact on workers' rights?**

Governments have the power to improve the lives of workers, to ensure they have a safe and non- abusive job in the supply chain. We also believe, as an American organization, that it should be a matter of principle for our government and for all of us that goods not be produced by bonded or child labor and that anyone who works across the world should be able to work in conditions of safety and dignity. We advocate this vision and we will do it with any government.

**“ The challenge for everyone in the human rights community is to stand together to fight to create more decent work opportunities, better livelihoods and more human dignity and freedom ”**

**What is your opinion of the UK Modern Slavery Act?**

It is a good first step but it lacks penalties for companies with slavery in their supply chains and it does not address goods produced by their subsidiaries or destined

somewhere other than the UK. And the companies that ignore reporting requirements will be breaking the law, but without very much risk or consequences.

**You have been working as an advocate and activist for human rights for 17 years. What are the main challenges in the business and human rights interaction these days?**

The main challenges globally are the rise of governments around the world that are increasingly cracking down on human rights. There is a global resurgence of authoritarianism and a crackdown on the public sphere happening around the world. And that is a huge challenge when this is happening at the same time we have seen the greatest expansion of the rights of businesses and investors to operate globally in modern human history. When those two things come together, it makes it extremely hard for workers and citizens to come together to stand up and improve their livelihoods and expand democracy. So the challenge right now is for all of us and the human rights community to stand together – NGOs, human right defenders, trade unions, etc. – to oppose the global closing of the public sphere and fight to create more decent work opportunities, better livelihoods and more human dignity and freedom.

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## News, activities and publications about the ICIP

ICIP

International Catalan Institute for Peace

### Seminar: “Business and Human Rights: Comparing Experiences”

ICIP and the Directorate-General for Cooperation of the Generalitat of Catalonia have organized the international seminar “Business and Human Rights: Comparing Experiences. A View Focusing on the Extraterritorial Perspective”, which will take place at the Parliament of Catalonia on 16-17 February.

Public awareness has increased greatly in recent years about the need for companies to develop their business activities with full respect for human rights and the environment. Many international institutions and forums highlight this issue, such as the 2016 Forum on Business and Human Rights, held recently in Geneva, the renewed EU strategy 2011-2014 for Corporate Social Responsibility, or the March 2016 resolution of the Committee of Ministers of the Council of Europe. The seminar is aimed at all sectors involved: companies, trade unions and organizations defending human rights and the environment, as well as actors from the administration and the academic world linked to this field of activity.

### Last publications

- *El antigolpe. Manual para la respuesta noviolenta a un golpe de estado*, by Gonzalo Arias. Published by ICIP and Líniazero (in Spanish, available also in pdf and ePub).

– Entender la noviolencia: contornos y contextos, Maia Carter Hallward and Julie M. Norman (ed). Published by ICIP and Bellaterra Edicions (in Spanish).

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