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The role of CSR policies focused on local
content actions in host Countries faced with
governance gaps and mining operations

Luis Bustos

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Dedication

To God Almighty for His faithfulness,
and because He has the whole map
And
To Carolina, Marina, Alonso, Andrés and
all my family for their care and support

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LIST OF ABBREVIATIONS

CDN	Canadian Dollars
CSR	Corporate Social Responsibility
EITI	Extractive Industry Transparency Initiative
GMI	Global Mining Initiative
GRI	Global Reporting Initiative
ICMM	International Council on Mining & Metals
IFC	International Finance Corporation
IMF	International Monetary Fund
IPIECA ¹	The Global oil and gas industry association for environmental and social issues.
ISO	International Organization for Standardization
NGOS	Non-Governmental Organisations
PWYP	Publish What You Pay
SAI	Social Accountability International
SEAT	Socio-Economic Assessment Toolbox
SEBRAE	Serviço Brasileiro de Apoio às Micro e Pequenas Empresas
SMES	Small and medium enterprises
TOT	Terms of Trade
UN	United Nations
UNGC	United Nations Empowerment of Women
UNGC	United Nations Global Compact
USD	United States Dollar

1 “When IPIECA was set up in 1974 the acronym stood for the International Petroleum Industry Environmental Conservation Association. In 2002, recognising that this no longer accurately reflected the breadth and scope of the association’s work, IPIECA stopped using the full title. The association is now known as IPIECA, the global oil and gas industry association for environmental and social issues.” Taken from IPIECA Web Page, About us[on line] Retrieved March 02, 2013, Available at: <http://www.ipieca.org/about-us>

WEP	Women’s Empowerment Principles
WTO	World trade Organization

ABSTRACT

The idea that a private enterprise has a social function and some obligations to all stakeholders is not something that has always existed. Concepts like sustainable development and shared value appeared only after a long process of trial and error. Understanding the origins of the theory of corporate social responsibility and its evolution will allow us to be ever closer to solving the mystery of what should be the role of private capital in society. It will also help us determine its importance when facing significant challenges due to government absence or weakness in certain territories. This dissertation explores local content policies, one of the evolutions that corporate social responsibility has had as a response to social requirements. This study will endeavour to analyse the type of local content policies that should be implemented during the exploitation of natural resources, more specifically of mineral resources. This will be a challenge given the complexity of the mining industry and the potential impact of the exploitation activities on the nearby communities.

The research will highlight the difficulties, advantages and disadvantages that arise during the implementation of local content policy. The alignment of corporate and government interests, as well as doing business for a common and coordinated purpose, are shown as possible solutions to the

adverse effects of the general exploitation of mineral and natural resources. Other options presented that could offer a solution to government gaps and the unsatisfied needs of the communities include commitment on developing local capacities, supporting the private initiative and investing with the purpose of replicating the benefits produced by the mines.

INTRODUCTION TO THE STUDY

The main objective of the policies of a government is the general welfare of its citizens. A country's fortune of having natural resources may well be a tool that supports the ability of the government to contribute to the well-being of its citizens. However, the development of these natural resources, in some cases, could hinder the country's goals and, at the same time, make its citizens question their legitimacy. In this context, the quality of the institutions plays an important role in defending the general interests of the individual advantages pursued by elites or the conjectural holders of political power.¹

As the links between the exploitation of natural resources and the social and economic development of a country are not straightforward,² there are several factors on which the private sector can intervene. Under the above, private capital investors could have the opportunity to decide if their actions should be directed only to stimulate their interests or, alternatively, decide to intervene in defence of resource exploitation, but under the auspice of promoting sustainable

1 PAUL STEVENS, EVELYN DIETSCHÉ. Resource curse: An analysis of causes, experiences and possible ways forward. *Energy Policy*, 2008, vol. 36, n.º 1, p. 56-65.

2 EVELYN DIETSCHÉ. A very brief Learners' Guide to the "Resource Curse", Scotland: Centre for Energy, Petroleum and Mineral Law and Policy, University of Dundee, 2013.

development.³ The theory of Corporate Social Responsibility (CSR) is presented as a catalyst for private sector activity. The company's social actions are, in turn, a reaction to several social transformations. These, in turn, respond to the historical moment and the citizen's needs for each period on a specific country or region.⁴

As an outcome of the challenges imposed to business activities by the 21st Century, which entails new social demands, CSR seeks an answer towards satisfying social needs. CSR provides the answers and tools where, within, local content policies are found. For example, local content policies can create more interaction between the business activities and certain government objectives such as job creation, economic growth and human capital training. In any case, there are several questions related to the implementation of local content measures in areas where governance gaps exist due to insignificant presence or total absence of state institutions.

On the other hand, there is opposition to greater involvement of private capital in the dissemination of local content policies manifesting that the decision to implement such actions affects free market activity, creating instability and negative impacts on the companies by not allowing them to develop their role in society as supporters of national economies. As a result of the above, it will be necessary to analyse how local content policies require collective and coordinated actions involving the Government, business and civil society to ensure a correct implementation and success. For this

3 According to the World Bank organization the sustainable development consists in *"build shared prosperity for today's population and to continue to meet the needs of future generations"* the development should be inclusive, carefully planned and efficient with resource.

4 SIMON ZADEK. The logic of collaborative governance. Kennedy School of Government, Harvard University, MA, 2005.

scenario, this research will attempt to find the advantages and / or disadvantages that local content policies may offer to the Governments, business and civil society. It is intended to find if the actions aimed at delivering value added by applying such policies, offer a formula to hold, support or even potentially replace the government activity. As a final point, some examples of local content policies implemented by companies will be presented to show how the theory of local content policies is applied in practice.

CHAPTER ONE: DEFINITIONS, EVOLUTION AND FUNCTION OF CORPORATE SOCIAL RESPONSIBILITY THEORY

“Corporate responsibility can therefore be understood as no more or less than the domains within and process by which business renegotiates and realigns its basis of accountability.”⁵

1.1 INTRODUCTION

Corporate Social Responsibility (CSR) is a theory, phenomenon and practice that has been present in the business environment for many years. Sometimes, it becomes an intangible issue: everyone knows of its existence but at the same time its scope and forms of implementation are unknown. This chapter seeks to introduce the concept of CSR through a historical analysis that will present the evolution of the understanding of this concept, which has affected the relation between extractive companies and the communities. Extractive companies develop their operations on site, on the understanding that they have responsibilities related to their contribution to social development. This has led to the creation of a link between CSR, local content actions and community development policies.

5 See ZADEK, *supra* note 6.

The aim of these discussions is to highlight ‘why’ companies have this type of responsibilities and if these so-called local content actions deserve to be given ‘special attention’ as corporate behaviours that help fill ‘governance gaps’ and generate welfare at the local level. However, this structure will not exclude the possibility that the benefits obtained from resource extraction are used to contribute to the social development of other communities different from the local communities and the entire country.

1.2 EVOLUTION OF THE CORPORATE SOCIAL RESPONSIBILITY

If we look at the past, commencing at the period of ancient Babylon, there were some vestiges of CSR. The Babylonians located special responsibility on the man who built a house in deficient condition and as a result collapsed injuring some person. In this case the specific builder of the structure must pay for this mistake with his life; this was what they called the law of an eye for an eye. But, besides that, there was an understanding of the existence of a liability of the constructor towards those affected by the mentioned activity.⁶

However, it is only in 1930, in the book “The Modern Corporation and Private Property”, written by ADOLF BERLE and GARDINER MEANS’s, that a more conceptual structure of CSR appears, bringing examples of the clashes between ownership, control and corporation governance.⁷ It is important

6 MARINA NEHME, CLAUDIA KOON GHEE WEE. Tracing the historical development of CSR and corporate social reporting. JAMES COOK UL Rev., 2008, vol. 15, p. 130-157. [on line] Retrieved July 25, 2013, Available at: http://heinonline.org/HOL/Page?handle=hein.journals/jamcook15&div=9&g_sent=1&collection=journals

7 The problem between control and ownership, means that the shareholders may be in a disperse state and as a consequence it is difficult to found an

to recognize that the decision of a company to be a socially responsible initiates at the corporate governance processes.⁸ Furthermore, the Great Depression during 1929-1939 opened a space to point out that companies have a much more significant social role than simply producing profits. Another historic event that contributed the raising of awareness by the entrepreneurs was the beginning of the Cold War in 1945 which created a new consciousness for businessmen, suggested as a more active role in the promotion and establishment of the capitalist model by a sense of patriotism.⁹

During the Post-Cold War period several complaints have emerged against the bad implementation of global social policies by the States. This pressured companies to engage in social programs and actions helping to settle these difficulties. An important landmark that highlighted the shift in consciousness in the world of business is Fortune Magazine with the introduction to the concept of “*social consciousness*” in 1946. It presented the idea that the responsibility of companies and its directors did not rely only with the shareholders, but were extended to all the stakeholders. At the mentioned survey, it was identified that nearly

agreement that leads to grant more importance to social objectives into the corporate governance.

- 8 DOUGLAS M. BRANSON. Corporate Governance Reform and the New CSR. U. Pitt. L. Rev., 2000, vol. 62, p. 605 - 609. [on line] Retrieved July 25, 2013, Available at: <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/upitt62&div=32&id=&page>
- 9 See NEHME, WEE, *supra* note 8, at 130-157, See also LAWRENCE GOODWYN. The populist moment: A short history of the agrarian revolt in America. Oxford University Press, 1978. [on line] Retrieved July 25, 2013, Available at: <http://books.google.es/books?hl=es&lr=&id=Hrs4QazI2qoC&oi=fnd&pg=PA1&dq=Lawrence+Goodwyn,+A+Short+Histoty+of+the+Agrarian+Revolt+in+America.&ots=pM2q3X2bGS&sig=e-EfsDDsljvBBMYVom6SFnyQuqM#v=onepage&q=LAWRENCE%20Goodwyn%2C%20A%20Short%20Histoty%20of%20the%20Agrarian%20Revolt%20in%20America.&f=false>

93% of businessmen agreed to recognize this type of social responsibility.¹⁰

Also during this time, there was a strong influence of the Keynesian Economic Model in which State intervention and public spending was encouraged to stimulate the economy and prevent a recession. This model also had a secondary objective, which was focused on an increase interest over the behaviour of private capital related to environmental and social issues. The reason for this interest was related to the large portion of the public budget that was directed to stimulate the economy through private-owned entities that are big beneficiaries of these types of policies.¹¹

Parallel to these events, there were several academic and ideological movements that spread the theory of CSR and, likewise, have influenced their graduate students to see the CSR policies as a tool that will solve the social demands associated with the improvement on living standards of the people, improving the labour rights and optimize environmental protection.¹² Additionally, there was a remarkable contribution given by HOWARD BOWEN who defined the CSR as “the obligation of businessmen to persuade politicians to take actions and guidelines that are desirable targets and values for the society.” BOWEN also affirmed that social responsibility is not just an unobtainable and theoretical idea, but rather it is a fact that should lead the future of the business world.¹³

10 See NEHME, WEE, *supra* note 8, at 130-157, *See also* GOODWYN, *supra* note 11.

11 See BRANSON, *supra* note 10, at 605 - 609.

12 See NEHME, WEE, *supra* note 8, at 130-157

13 ARCHIE B. CARROLL. CSR evolution of a definitional construct. *Business & society*, 1999, vol. 38, n.º 3, p. 270-271.[on line] Retrieved July 20, 2013, Available at: http://www.academia.edu/419517/Corporate_Social_Responsibility_Evolution_of_a_Definitional_Construct

In 1970, there was an exponential growth of multinational companies that took refuge in the arrival of the first outbreaks of globalization. This rapid growth gathered the attention of various actors of civil society organized as pressure groups such as environmental groups, human rights groups, labour groups, non-governmental organizations (NGOs) and students groups which demanded State action to regulate corporate behaviour that can influence the general public favourably. The mentioned groups also rejected the so-called super capitalism and advocated for a more democratic model of capitalism where equity, dignity and sustainability have the same importance than the accumulation of riches and business profitability.¹⁴ Even though, during the 60's some corporations began to create reports referring to social work and the social investment, during the 70's most of the companies voluntarily chose to be part of the CSR social reports. At the beginning they used these reports as a component of the communication mechanisms and with the goal of being part of the group of good corporate citizens.¹⁵

Throughout the 80's, there was a change on the global economic model. In fact, the Keynesian welfare ideas were replaced by the neoliberal design. In that way, the implementation of social policies by private entities was less popular and, at the same time, this neoliberal model gave the companies the power to increase their profits without giving greater importance to the impacts their activities caused to other stakeholders. The mentioned scenario was complemented by the progressive fall of the socialist governments and the growth of the effects of globalization that

14 See BRANSON, *supra* note 10, at 605 – 609, See Also NEHME, WEE, *supra* note 8, at 130-157.

15 See NEHME, WEE, *supra* note 8, at 130-157.

at the end originated an opposition to any topic related to the development of CSR policies.¹⁶ During this period, the position defended by MILTON FRIEDMAN that “there is one and only one social responsibility of business-to use its resources and engage in activities designed to increase its profits,” was integrated to the corporate actions.¹⁷ As a consequence, during this decade the methods of presenting CSR’s ideas were labelled in a different way and they were adapted to theories such as the corporate citizenship and the business and ethics movement. In this way the 80’s was not a totally lost decade for the CSR’s theory.

It is important to highlight that during this period the constitutional principles created an approximation to corporate law, which led to real life decisions associated with the protection of minorities and stakeholders.¹⁸ At this time, there was a mixture of concepts. Authors such as ARCHIE B. CARROLL suggested that there are some philanthropic and ethical obligations which should be satisfied by the firms only after the creation of profits. EDWIN M. EPSTEIN placed elements of ethics and CSR in a single package that he called “corporate social policy process”. As a result of this misinformation and overlapping of concepts, extractive industry companies did not implement a practical and simple CSR policy into their activities.¹⁹

Thru the 90’s the neoliberal model was reaffirmed with liberalization and more market-opening measures seeking for a full global integration. This trend continued until 2008

16 See NEHME, WEE, *supra* note 8, at 130-157.

17 *Ibid.*

18 See BRANSON, *supra* note 10, at 605 – 609, See also NEHME, WEE, *supra* note 8, at 130-157.

19 See CARROLL, *supra* note 15, at 270-271, See Also NEHME, WEE, *supra* note 8, at 130-157.

when the global share market crisis happened, demonstrating that the growth of the economies was not enough to solve the social problems and assemble the needs of the different stakeholders. As an aggravator of the situation several cases of extreme irresponsibility were incurred by companies like Enron and Lehman Brothers.²⁰ Despite the scenario of the 90's and at the beginning of the 21st Century, other facts such as the growing interest in climate change, the drafting of product safety policies and the development of the internet tools that work as global witness, contributed to the re-definition of the concept of CSR.²¹

One important literature contribution that was followed by several corporations in the modelling of their CSR policies during the 90's, was the use of 'the Carroll pyramid.' It constructed different categories in ascending order, putting economy as the base and on top of it other levels denominated legal, ethical and at the very top of the figure, the philanthropic segment.

It was a model that, according to Carroll, does not need to be followed step by step by the organizations, but rather creates a commitment for them that can be resumed in a line: "*the CSR firm should strive to make a profit, obey the law, be ethical, and be a good corporate citizen*".²² Within this context, corporate reports became a common practice among companies, which were looking to earn a good public image. In the same way, it was the time for the proliferation of industry and economic sector specialized guidelines. Additionally, it is important to note that the human rights in business

20 LUIS BUSTOS. Can business interests coexist with Corporate Social Responsibility interests in the actions of a company? University of Dundee CEPMLP. 2013. Unpublished. See Also NEHME, WEE, *supra* note 8, at 130-157

21 *Ibid*

22 See CARROLL, *supra* note 15, at 270-271

movement driven by the United Nations (UN) began to be increasingly relevant and impacted the way of understanding the protection of human rights by the private sector.²³

FIGURE 1: THE CARROLL PYRAMID



Source: Carroll (1991, p.42)²⁴

1.3 DEFINING CSR

After presenting several facts and elements that have contributed to the evolution of the CSR concept, it is important to mention some definitions. According to the World Business Council for Sustainable Development CSR is *"the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large."* This definition is accepted and used in several World Bank Group documents.²⁵ For the European Commis-

²³ See NEHME, WEE, *supra* note 8, at 130-157

²⁴ ARCHIE B. CARROLL. The pyramid of corporate social responsibility: toward the moral management of organizational stakeholders. *Business horizons*, 1991, vol. 34, n.º 4, p. 39-48.

²⁵ World Business Council for Sustainable Development, web page, Corporate

sion, CSR is *“the responsibility of enterprises for their impacts on society.”* It also states: *“to fully meet their social responsibility, enterprises should have in place a process to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders.”*²⁶

Corporate Social responsibility can also be understood as *“a process by which business roles in societies are renegotiated and realigned.”*²⁷ This definition does not depend on a set of voluntary and statutory issues or functions implemented one way or another by a company. As it was explained before through various historic events in this section, CSR is very sensitive to social changes and the concept responds to society demands and expectations. Within this context a corporation is not responsible any more with the compliance of a large number of principles, guidelines, and codes of conduct. On the contrary, what should be measured is whether the company internalized the social expectations in its business environment and practices.²⁸

1.4 THE DICHOTOMY BETWEEN PROFITS AND SOCIAL GOALS

Before moving to the description of the 21st century trends in CSR, it is important to indicate at this point, that it is pos-

Social Responsibility (CSR) .[on line] Retrieved December 27, 2013, Available at: <http://www.wbcsd.org/work-program/business-role/previous-work/corporate-social-responsibility.aspx>

26 European Commission. A renewed EU strategy 2011-14 for Corporate Social Responsibility. 2011 .[on line] Retrieved December 27, 2013, Available at: http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm

27 See ZADEK, *supra* note 6.

28 *Ibid*

sible to distinguish three trends associated to the CSR theory as follows:

a. *The Sceptics trend*: This position can be summarized in the following simple sentence: “Businesses do not have social responsibilities; only people do”.²⁹ In this sense, CSR is considered as an alien inside the business world. This position is aligned with the statement previously made by FRIEDMAN that defends a conventional way of understanding the CSR movement, very consistent with the traditional methods of disposal, manufacturing and extraction that cannot find a common point among the industry development and the protection of social and environmental goals.³⁰ In other words, the businesses chooses a production decision that generates marginal costs. The issue, from this standpoint, is that the social and environmental impacts are not normally recognized as marginal costs; their point of view is that free competition of companies cause better results instead of the State intervention in the economy.³¹

This position is not an anecdote. In 2004, when the Tsunami disaster hit Asia, the Australian Shareholders Association expressed its disagreement with the various companies that promised to deliver contributions to the countries and the people affected. More specifically there was a pronouncement made by STEPHEN MATTHEWS, a representative of this interest: “firms should not generally give without expecting something in return... in most circumstances, donations should

29 HENRY MILLER. “Businesses don’t have social responsibilities; People do,” Miami Herald, July 26 (2004).

30 WILLIAM McDONOUGH, MICHAEL BRAUNGART. “Cradle to Cradle: Remaking the Way We Make Things”, New York: North Point Press 1st ed. (2002)

31 *Ibid*, See Also, ELIZABETH REDMAN. “Understanding the CSR Continuum”. LBJ Journal of Public Affairs vol. 18, 2005.

*only be made in situations that are likely to benefit the company through greater market exposure".*³²

b. *The balancing trend:* This category belongs to individual positions, who consider that the financial, social and environmental interests are at the same level of importance for the company objectives and actions. It is characterized by its opposition to neoliberal classic ideas and bases its vision on moral and ethical aspects, supported by the argument that the social position and the power acquired by firms are assimilated to historical structures like the feudal lords, the nobility, the army or the Catholic Church.³³ According to this trend, CSR policies should be compulsorily implemented in each business and its obligations should be integrated into the legal system to give them binding status.³⁴ JOHN PARKINSON clarify this posture when he explains that companies should take voluntarily accepted sacrifices, which will create extra expenses but at the same time will be rewarded with benefits such as good reputation among consumers and good society image which will differ from the simple pursuit of profit maximization.³⁵

c. *The Strategist trend:* This position states that CSR policies are a necessity and a strategic way to increase profits and improve business efficiency. It is understood as a way to motivate companies to be more socially responsible in order to gain benefits such as greater access to

32 THERESE WILSON. Pursuit of Profit at All Costs, *The. Alternative LJ*, 2005, vol. 30. 278 – 279. *See also* ABC Online Shareholders group opposes tsunami donations', 7 January (2005). [on line] Retrieved July 28, 2013, Available at:<http://www.abc.net.au/news/2005-01-07/shareholders-group-opposes-tsunami-donations/614682>

33 JEFFREY BONE. Legal Perspective on Corporate Responsibility: Contractarian or Communitarian Thought. *Can. JL & Jurisprudence*, 2011, vol. 24, p. 277 - 279.

34 *Ibid*

35 *See* WILSON, *supra* note 34.

capital, decreased of future risks, decreased of production inefficiencies, greater innovation and increased of sales.³⁶ Corporate Social Responsibility is described as a new attitude of companies related to topics such as social engagement, labour and environmental policies with the aim of attracting new customers yet, at the same time, feeding a relevant and intangible capital for an enterprise called reputation.³⁷

In a few words, the company's license to operate depends on the different stakeholders' perception regarding its activities. Moreover, enterprises with a bad reputation record will face criticism and stakeholder's opposition that may lead to continuous defence of the firm's activities before society, the State and international institutions.³⁸

Before continuing, it is important to indicate that there have been several classifications and levels related to CSR policies linked to its continuous evolution. Some of these are not mentioned in this section, mainly because they are not part of the central topic of this paper and, on the other hand, some of them are already integrated into the categories presented above. This means that, because of the dynamics of social needs and requirements, these lines of thought could potentially return and regain importance, as it has occasionally happened with philanthropic CSR movements.

36 See REDMAN, *supra* note 33. See Also McDONOUGH, *supra* note 32.

37 *Ibid*

38 SARAH ROBERTS, JUSTIN KEEBLE, DAVID BROWN. The business case for corporate citizenship. Arthur D. Little, Ltd., Cambridge, UK, 2002, vol. 8. [on line] Retrieved July 20, 2013, Available at: <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/caljp24&div=16&id=&page>

1.5 CONSIDERATIONS FOR THE 21ST CENTURY ACCORDING TO CSR

With the advent of the 21st century, once again the CSR theory was influenced and adapted itself according to new initiatives. In that way, there is an open space of greater acceptance by governments and the private sector.³⁹ Given the foregoing, new movements appeared or were reaffirmed, for example the United Nations initiative of business and human rights, new industry standards, management systems, guidelines, principles, reporting initiatives and local content policies allied with the corporate actions and decisions. Subsequently, there will be a reference to the mentioned efforts.

1.5.1 United Nations initiative of business and human rights

There has been a movement which advocated for the protection of human rights into the business world that has created a career at the international context led by Professor JOHN RUGGIE, Special Representative of the United Nations for these issues. The main contribution related to this movement is reminding the private business world that they have a duty to respect, protect and fulfil human rights taking in to account that these are not obligations only relegated to the States.⁴⁰

39 BRYAN HERRIGAN. 21st Century CSR Trends-An Emerging Comparative Body of Law and Regulation on Corporate Responsibility, Governance, and Sustainability. Governance, and Sustainability, 2008. [on line] Retrieved July 20, 2013, Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1087133

40 For a detailed analysis see: JOHN GERARD RUGGIE, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", which were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Special Representative an-

Furthermore, the mentioned mandate is extended to multinational companies, which should respect human rights in their investment practices. This is mainly based on the idea that a mismanaged investment has the potential to create a negative impact in the host country's citizens' enjoyment of human rights. It is important to, prior to the commencement of business, adopt mechanisms for the protection and preservation of such rights.⁴¹

Equally important is to emphasize that the advance line of this theory establishes that the companies have a responsibility beyond the simple respect of the human rights, up to the point of monitoring the business activities carried out by its contractors. Following this line, authors like PREM SIKKA state that every organ of society, including legal persons, companies participating in the market or even cyberspace companies should undertake a safe and effective recogni-

nexed the Guiding Principles to his final report to the Human Rights Council (A/HRC/17/31) which also includes an introduction to the Guiding Principles and an overview of the process that led to their development. The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011. [on line] Retrieved July 20, 2013, Available at: <http://www.businesshumanrights.org/UNGuidingPrinciplesPortal/TextUNGuidingPrinciples> See also, JERNEJ LETNAR CERNIC. Corporate human rights obligations under stabilization clauses. *German Law Journal*, 2010, vol. 11, n.º 2, p. 212-213. [on line] Retrieved July 20, 2013, Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1557051

- 41 HOWARD LAWRENCE MANN; JOHN RUGGIE. *International Investment Agreements, Business, and Human Rights: Key Issues and Opportunities*. Winnipeg, MB,, Canada: International Institute for Sustainable Development, 2008. p. 38. [on line] Retrieved July 20, 2013, Available at: http://www.iisd.org/pdf/2008/ii_a_business_human_rights.pdf See also PREM SIKKA. Accounting for human rights: The challenge of globalization and foreign investment agreements. *Critical Perspectives on Accounting*, 2011, vol. 22, n.º 8, p. 812. [on line] Retrieved July 20, 2013, Available at: <http://www.sciencedirect.com/science/article/pii/S1045235411001055>

tion, promotion, observance, defence and protection regarding human rights.⁴²

It is undeniable that the economic model applied by most of the developing countries, as a way to achieve progress, creates an empowering position to the corporations because of their investments, which leads to conflicts related to the enjoyment of human rights. As an example, it is possible to mention the environmental and labour rights negotiated in the stabilization contracts that, at the end, affect the State's sovereignty.⁴³

In this sense, the goal of the United Nations' initiative on business and human rights is that, regardless of the economic model implemented by the States, the companies should support and follow the three pillars based on JOHN RUGGIE's recommendations, unanimously welcomed by the UN Human Rights Council, of protection, respect and fulfilment. In short, these pillars can be explained as the duties to:

Protect: The State has the duty to protect human rights from abuses by third parties (including business to ensure that business activities do not infringe on human rights).

Respect and fulfil: The responsibility of business to respect human rights and keep them thereafter in all their activities independently from the corporate interests or investment decisions.

42 See SIKKA, *supra* note 43, at 812.

43 GLOBAL WITNESS, "Heavy Mittal?: A State Within a State: the Inequitable Mineral Development Agreement Between the Government of Liberia and Mittal Steel Holdings NV.", 2006. [on line] Retrieved July 20, 2013, Available at: <http://www.globalwitness.org/library/heavy-mittal> See also, CHRISTIAN AID. "Death and taxes: The true toll of tax dodging." London. May. 2008.[on line] Retrieved July 20, 2013, Available at: <http://www.christianaid.org.uk/images/death-andtaxes.pdf>

Remedies: To obtain a greater access to effective remedies for those where human rights are harmed.⁴⁴

1.5.1.1 The governance gaps

The concept of governance gaps plays an essential role at the process of involving companies and private interests at the defence of human rights. This term explains the situations where the States are unable to achieve their governance objectives, specifically those proposed by JOHN RUGGIE, for example, they are unable to implement and realize the human rights protection inside their borders. This is the reason for some transnational companies, as representatives of the private capital, to take advantage of having greater power towards contributing to the compliance of the State's goals on the protection of human rights.⁴⁵

This so-called corporate power is accompanied by responsibilities. Thus, private capital should be responsible for the rights that may be affected when a State is unable or not interested in the protection of those scenarios under domestic law and, hence, there is an importance of delineating a corporate liability below international law that shelters such cases.⁴⁶

In these manner private initiatives, especially transnational corporations, have the same obligations of the States

44 RAE LINDSAY, et al. Human rights responsibilities in the oil and gas sector: applying the UN Guiding Principles. *The Journal of World Energy Law & Business*, 2013, vol. 6, n.º 1, p. 2-66. See Also DAVID WEISSBRODT, MURIA KRUGER. Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights. *American Journal of International Law*, 2003, vol. 97, p. 901 - 922.

45 See WEISSBRODT; KRUGER, *supra* note 46, at 901.

46 JOHN GERARD RUGGIE. Business and human rights: the evolving international agenda. *American Journal of International Law*, 2007, p. 819-840.

in regards to this sphere of influence concerning the protection of human rights. The difference will be that States' obligations in this regard will be primary while the companies will be subsidiaries of the State action. In other words, when there is a governance gap related to human rights it must be supplemented by companies as responsible social actors.⁴⁷

There is strong criticism on the implementation of corporate responsibility for the protection of the human rights systems because corporations are not democratic institutions that have as primary objective the defence of the public interest. Also, companies have their own private agenda. Additionally, there is something more problematic than the foregoing, which is the transfer of responsibility because it determines reduction of State action's discretionary space for the defence of the human rights. Finally, it is necessary to review the use of the words "spheres of influence" because this term does not have a clear legal meaning and does not allow tracing a delineated boundary between State obligations and enterprises duties that leads to endless disputes in the Courts between States and firms, which further contributes to the vulnerability of the citizens leading to possible human rights infractions.⁴⁸

It is imperative to highlight that due to a remarkable interaction between the theory of resource curse and the governance gaps position, the exploitation of natural resources can bring to a country many positive and negative effects that depend on the creation of planned scenarios where the economic forces, the government and the society work in

47 See Ruggie, *supra* note 48, at 819-840.

48 PHILIP ALSTON. The 'not-a-cat' syndrome: can the international human rights regime accommodate non-state actors?. *Non-state actors and human rights*, 2005, vol. 3, n.º 3.

coordination with a common welfare goal.⁴⁹ The intention is that, in a globalized context where State action is limited by a global regulation, private interests appear over weak governance areas to support the defence of human rights and mitigate the negative impacts of the resources exploitation.

1.5.2 Guidelines and Principles

As soft law instruments there are several guidelines and principles, which are worth mentioning since they have been expanded, and their function is to assist companies in structuring and maintaining CSR policies:

– *Global Reporting Initiative (GRI):*

Initiated in 1997, published in 2000 and re-launched in 2006, it was created with the objective of developing indicators applicable to all enterprises in sectors related to social, economic and environmental specialties. It looks at providing a framework for sustainable development reports and evaluating performance and report guidelines.⁵⁰

– *Voluntary Principles on Security and Human Rights:*

Existing since 2000, it provides a guide to resource companies for maintaining safety and security at their operations while respecting human rights.⁵¹

49 JOHN GERARD RUGGIE. Reconstituting the global public domain—issues, actors, and practices. *European journal of international relations*, 2004, vol. 10, n.º 4, p. 499-531. (P32) See also ANDRÉS MEJÍA ACOSTA. The Impact and Effectiveness of Accountability and Transparency Initiatives: The Governance of Natural Resources. *Development Policy Review*, 2013, vol. 31, n.º s1, p. s89-s105.

50 Global Reporting initiative, web page.[on line] Retrieved December 27, 2013, Available at: <https://www.globalreporting.org/Pages/default.aspx>

51 Voluntary Principles on Security and Human Rights, web page.[on line] Re-

– *United Nations norms on the responsibilities of transnational companies and other business enterprises with regards to human rights:*

Adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights in 2003, it is an incentive for the implementation of corporate responsibilities for the promotion and protection of human rights.⁵²

– *Akwe-Kon Guidelines:*

Based on the Convention on Biological Diversity of 1992, they promote open and participatory environmental and social impact assessments. It is also point for guidance for the conducting of assessments related to proposed developments on sacred sites and lands traditionally occupied indigenous and local communities.⁵³

– *Equator Principles:*

Created in 2003 and revised in 2006 - 2012. This is a set of voluntary guidelines created by the International Finance Corporation (IFC) to deal with the social and environmental issues that arise in financing projects. The financing will be provided only to the projects that are structured in a responsible social and environmental manner.⁵⁴

trieved December 27, 2013, Available at: <http://www.voluntaryprinciples.org/>

52 United Nations Norms on the responsibilities of Transnational Companies and other business enterprises with regard to Human Rights.[on line] Retrieved December 27, 2013, Available at: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En)

53 *Akwe-Kon Guidelines*,web page.[on line] Retrieved December 27, 2013, Available at: <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

54 *Equator Principles* ,web page.[on line] Retrieved December 27, 2013, Available at: <http://www.equator-principles.com/>

– *International Finance Corporation Performance Standards on Social and Environmental Sustainability* (2006):

In force since 2006, and reviewed in 2011,⁵⁵ the IFC's gathers eight performance standards that include several topics of good practice for sustainability and risk mitigation. Each new project financed by IFC must comply with these standards and be linked to topics such as social and environmental assessment, management systems, labour and working conditions, pollution prevention, community health, safety and security, land acquisition and involuntary resettlement, biodiversity conservation and sustainable natural resource management, indigenous peoples, and cultural heritage.⁵⁶

– *The Women's Empowerment Principles*:

Directed at the business community, the Women's Empowerment Principles (WEP), is a collaboration between the United Nations Entity for Gender Equality, the Empowerment of Women (UN Women) and the United Nations Global Compact (UNGC). It is adapted from a previous document called Calvert Women's Principles of 2004 and launched in 2010. Consists of seven steps to guide business on how to empower, advance and invest in women worldwide.⁵⁷

55 The new IFC standards include new topics as: the categorization of financial intermediaries' projects according to risk, protection of migrant workers, disclosure of extractive project contracts, transparency of greenhouse gas emissions and the responsibility of companies to respect human rights.

56 International Finance Corporation Performance Standards on Social and Environmental Sustainability, web page.[on line] Retrieved December 27, 2013, Available at: <http://www.ifc.org/>

57 The Women's Empowerment Principles, web page.[on line] Retrieved December 27, 2013, Available at: <http://www.wepprinciples.org>

– *International Council on Mining & Metals – (ICMM), 2002*

The Global Mining Initiative (GMI) put together many of the mining companies in order to develop how to achieve the goal of following sustainable patterns of economic development. As a result, the Toronto Declaration was created which ratified the commitment of the industry to work in a socially and environmentally progressive manner. Later the GMI ceased to exist and the ICMM adopted the mentioned declaration looking forward to implementing its goals and principles.⁵⁸

1.5.3 Reporting initiatives

– *Kimberley Process Certification Scheme.*

Launched in 2002, it is an effort developed by governments, industry and civil society representatives to avoid the schemes related to the flow of conflict diamonds. It imposes conditions to participants with the objective of creating a legitimate trade that guard consumers against acquiring a conflict product. The process structure has several internal controls to grant a Kimberley Process Certificate.⁵⁹

– *Extractive Industry Transparency Initiative (EITI)*

It is an initiative with the aim of reporting the revenues by the firms to strengthen the transparency and accountability in businesses between governments and multinational resource companies. It creates a set of principles followed by the firms that contribute to sustainable development and

58 International Council on Mining & Metals – ICMM, web page.[on line] Retrieved December 27, 2013, Available at: www.icmm.com.

59 Kimberley Process, web page.[on line] Retrieved December 27, 2013, Available at: www.kimberleyprocess.com

poverty reduction. The Source Book is a document which summarizes the criteria and principles from the EITI.⁶⁰

– *Publish What You Pay (PWYP)*

Publish What You Pay started with a reunion of 300 NGOs worldwide that claimed for the disclosure of the payments made by oil, gas and mining companies to all States for the extraction of natural resources. This movement also requests the governments of resource-rich developing country to publish detailed information of their revenues.⁶¹

– *UN Global Compact (UNGC)*

Launched in 2000 by Kofi Annan, the goal of this initiative is to provide a learning experience in the implementation of the 10 UNGC principles that cover various CSR issues which fosters the company's participation in good practices policies.⁶²

1.5.4 Industry standards and management systems

– *International Workplace Standard SA 8000*

It was created in 1997 by the Social Accountability International (SAI). It is based on the management system ISO 9000 and its goal is to improve the environment in workplaces and communities through the promotion of volun-

60 Extractive Industry Transparency Initiative (EITI) [on line] Retrieved December 27, 2013, Available at: <http://eiti.org/>

61 Publish What You Pay (PWYP), web page.[on line] Retrieved December 27, 2013, Available at: <http://www.publishwhatyoupay.org/>

62 UN Global Compact (UNGC), web page.[on line] Retrieved December 27, 2013, Available at: <http://www.unglobalcompact.org/>

tary standards based in a system of verification and public reporting.⁶³

– *ISO 26000:2010*.

Created by the International Organization for Standardization in 2010, the ISO 2600 is focused on the topic of social responsibility. It works as a guideline or standard on the way businesses and organizations operate in a socially responsible manner, adding ethical and transparency topics that will contribute to welfare of society. It cannot be certified and it is just a guideline to create company actions.⁶⁴

– *AA1000 Assurance Standard (2008)*.

It is the third version of a rigorous standard that aims at valuing the organization's accountability by providing a framework for sustainability that adapts to the firm's structures. The first version was launched in 1999 and it is not a certification standard that provides a pass or fail yet offers findings, conclusions and recommendations for improvement to the companies.⁶⁵

– *Product Labelling*.

Labelling is a practice created to guarantee that consumers have full access to the product's composition, content, particular aspects, origins, health consequences, self-use, as well as giving to the customers an opportunity to take a

63 Social Accountability International (SAI), web page[on line] Retrieved December 27, 2013, Available at: <http://www.sa-intl.org/>

64 International Organization for Standardization (ISO), web page [on line] Retrieved December 27, 2013, Available at: <http://www.iso.org/iso/home/standards/iso26000.htm>

65 AccountAbility, web page [on line] Retrieved December 27, 2013, Available at: <http://www.accountability.org/>

real choice. In some cases, this information is mandatory as per governmental health, environmental or security regulations.⁶⁶

– *Corporate Social Reporting.*

This refers to the communication process of organizations specifically related to the social and environmental effects that their activities produce. It can be directed to particular interest groups and provides to the society the opportunity to get closer to the firm and understand the relation between the firm's activities and impacts that they produce.⁶⁷

1.5.5 Brief reference to the local content policies

The last theory which is important to highlight regarding CSR considerations for the past years is the local content theory. It promotes policies and actions in order to offer a solution for the negative economic and social effects presented by the extractive industry operation in host countries.⁶⁸

Within this theory it is possible to obtain long-term socio-economic developments by providing benefits. Meanwhile it stimulates the economic activities of local communities and also fosters the creation of new business for local suppliers, all under the operation of long scale extractive projects.

66 U.S. Food and Drug Administration, web page [on line] Retrieved December 27, 2013, Available at: <http://www.fda.gov/>

67 AYESHA DIAS / Presentation: University of Dundee, Centre for Energy, Petroleum and Mineral Law and Policy. Class Corporate Social Responsibility (CSR) and International Business Transactions Dundee, June 2013.

68 AYODELE ASEKOMEH / Presentation: University of Dundee, Centre for Energy, Petroleum and Mineral Law and Policy. (EI) Source Book , 5.5 Local Content [on line] Retrieved December 15, 2013 Available at: http://www.eisourcebook.org/932_55LocalContent.html

A complete partnership structure between governments, development agencies and firms should support this operation in order to create these programs.⁶⁹

It is important to mention that the local content actions and programs will need for its success a combination of efforts coming from local governments, national governments, civil society and the community. The next chapter will focus on the negative impacts of extractive industries operation over host countries, and its relation to the State actions and governance gaps.

69 ANA MARIA ESTEVES, MARY-ANNE BARCLAY. Enhancing the benefits of local content: integrating social and economic impact assessment into procurement strategies. *Impact Assessment and Project Appraisal*, 2011, vol. 29, n.º 3, p. 205-215.

CHAPTER TWO: THE SOCIAL CONFLICTS AND LOCAL ECONOMIC IMPACTS PRESENTED BY THE OPERATION OF EXTRACTIVE INDUSTRIES

“Natural resource abundance increases the likelihood that countries will experience negative economic, political and social outcomes”⁷⁰

2.1 INTRODUCTION

Before 1980 the situation of a country with abundant natural resources was positive. Only a minority of authors of the literature studied showed some disadvantages on this situation. (SINGER and PREBISCH 1950). Nowadays this notion has turned and pointed out that the abundance of resources, mainly minerals and oil, increases the possibilities of developing adverse impacts on the political, social and economic fields. These are manifested in low levels of democracy, civil wars and poor economic performances. This theory has been accepted and supported by financial institutions, academics and NGOs.⁷¹

70 ANDREW ROSSER. The political economy of the resource curse: A literature survey. Brighton, UK: Institute of Development Studies, 2006.

71 *Ibid*

The relevance of studying some details of this theory in this research is to be able to identify gaps and inconsistencies in government actions in a scenario of exploitation of natural resources. Also it is important to highlight that the resource curse theory can have two main approximations: the economic, which was the first one that emerged, and the socio-political, which came later. However, one way or another, there are some points that only can be explained as a multi-dimensional phenomenon.⁷²

2.2 BRIEF BACKGROUND ON THE ECONOMIC APPROACH OF THE RESOURCE CURSE THEORY

The exploitation of natural resources by a country and the revenue generated from these industries can be a curse.⁷³ Yet, from the theoretical side, these resources should be an asset that contribute as a form of capital that originates profits instead of a problem. Also, the resources can support the country's total capital stock fostering the sustainable development and, additionally, exporting natural resources strengthens the possibility of importing capital goods not produced in the country.⁷⁴

Sustainable development plays a major role in the resource curse and the local content theory. According to the

72 See ROSSER, *supra* note 72.

73 GUILLERMO PERRY / Presentation: Universidad de Los Andes, David Rockefeller Center for Latin American Studies. International Seminar: Minería en Latinoamérica: Retos y Oportunidades/ Conference: Recursos naturales y desarrollo: ¿bendición o maldición? Bogotá, Mayo 2013 [on line] Retrieved December 15, 2013 Available at: http://economia.uniandes.edu.co/Facultad/eventos_y_noticias/eventos/2013/Realizados_por_la_Facultad/Mineria_en_Latinoamerica See also: GUILLERMO PERRY, MAURICIO OLIVERA. El impacto del petróleo y la minería en el desarrollo regional y local en Colombia. Documento de trabajo de Fedesarrollo, 2009, n.º 51, p. 2009-06.

74 See DIETSCH, *supra* note 4.

World Bank, organization consists in “*building shared prosperity for today’s population and to continue to meet the needs of future generations.*” The development should be inclusive, carefully planned and efficient with resources.⁷⁵

There are a series of economics phenomena associated with the reliance of natural resource exports that leads a country to be immerge in a resource curse situation. The first one is the “Dutch Disease”, explained as a set of negative macroeconomic effects produced by an increase in resource-funded spending. This strong increases in expenses can boost domestic prices affecting the nominal exchange rate and, as a result, increases the real exchange rate.⁷⁶

Furthermore, the transition of labour and capital into the production of non-trade goods implies a loss at the competitiveness of the non-resource economy. As a consequence of the deceleration of the productivity growth, symptoms of Dutch disease appear. Some examples of countries affected by this disease are Nigeria and Equatorial Guinea, in relation to their former agriculture exports.⁷⁷

Secondly, the high incomes in commodity prices are impossible to anticipate by the States (see Figure 2). Prices fluctuate according to several factors. In that sense the extreme volatility of resource revenues can lead to waste, boom and bust cycles, and an excessive borrowing in order to maintain budget expenses. In other words, high instability is created due to the volatility of the prices of some commodities. According to Prebisch, they generate declin-

75 The World Bank web page, Sustainable Development.[on line] Retrieved December 22, 2013, Available at: <http://www.worldbank.org/en/topic/sustainabledevelopment/overview>

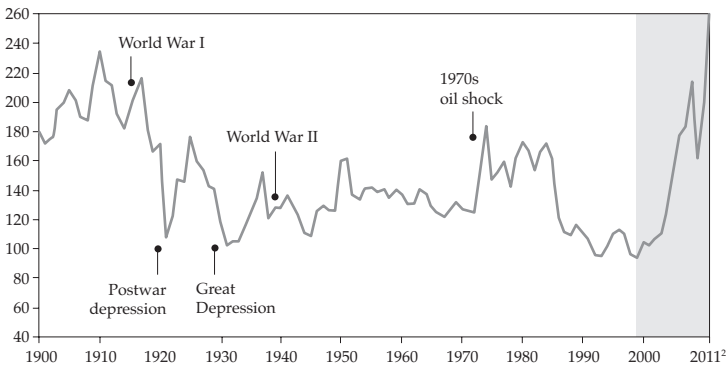
76 TERESA DABÁN, JEAN-LUC HÉLIS. A Public Financial Management Framework for Resource-Producing Countries. International. Monetary Fund, 2009 p.8.

77 *Ibid*, See also: PERRY; OLIVERA, *supra* note 75, at 2009-06.

ing Terms of Trade (TOT). Some countries followed this path during the eighties and borrowed very heavily to finance public consumption. Some examples are Mexico, Nigeria and Angola.⁷⁸

FIGURE 2: COMMODITY PRICE INDEX

MGI Commodity Price Index (years 1999-2001 = 100)¹



1. See the methodology appendix for details of the MGI Commodity Price Index.

2. 2011 prices are based on average of the first eighth months of 2011.

Source: Grilli and Yang; Stephan Pfaffenweller; World Bank; International Monetary Fund (IMF); Organization for Economic Cooperation and Development (OECD); UN Food Agriculture Organization (FAO); UN Comtrade; McKinsey analysis.

Third, there is the effect produced by the fact that resource revenues are exhaustible and temporary. In other words, it is a sale of an existing asset rather than an addition to income. As a consequence, if some resource revenues are not saved or allocated into the acquisition or production of a different product and create capital for the next generations, at some point there will be an absence that will lead to negative economic consequences.⁷⁹ Another effect is the overvaluations created by the high amounts of new revenues in foreign

78 See PERRY; OLIVERA, *supra* note 75, at 2009-06., See PERRY, *supra* note 75.

79 See DABÁN, HÉLIS, *supra* note 78, at 8.

currencies that produce adverse effects on the industry and, therefore, a disadvantageous concentration of the production and export of natural resources.⁸⁰

The last theory deals with how the confidence in the resources could transform resource-producing countries into reinter states.⁸¹ This theory states that if a country receives large amounts of revenues coming from the outside world on a regular basis, it will create fissures in accountability, representation and political competition. Generally the governments of resource-producing countries pay more attention to distribution and intervention functions than to regulation, supervision, taxation, and management of the economy.⁸²

2.2.1 The Reinter States

It is possible to define the reinter States as those ones that live largely off unearned income. They are resourced with little organizational or political effort related to the State apparatus and, especially, they reduce their actions in relation with their domestic populations.⁸³ The reinter States usually adopt inefficient redistribution mechanisms that do not satisfy the population expectations, and apply a small share of the revenues obtained by the resources exploitation. Also, there is the common scenario for wasteful investment

80 See PERRY, *supra* note 75, See also: PERRY; OLIVERA, *supra* note 75, at 2009-06.

81 MICK MOORE. Revenues, state formation, and the quality of governance in developing countries. *International Political Science Review*, 2004, vol. 25, n.º 3, p. 297-319.

82 See DABÁN, HÉLIS, *supra* note 78, at 8.

83 See MOORE, *supra* note 83, at 297-319.

projects, low-quality spending programs, and overstaffed civil services.⁸⁴

Another situation that contributes to unbalance the economic stability of a reinter State is the 'point-source resources' that appears when resource exploitation have the characteristics of large scale, capital intensive and export oriented projects. Because this type of exploitation has a limited backward and forward linkages with the domestic economy it likewise adds negative an environmental and social aspect that mainly impacts the local level.⁸⁵

Furthermore, the reinter States do not have an interest in promoting wealth creation to tax or be accountable to the taxpayer contributors who, at the same time, do not feel obligated to keep the accountability of their government. Generally these kinds of States have no incentives to maintain good relationships with the international lenders. The main problem in loosing international financing is that the financial and mercantile elites of the country or regions gain a substantial influence over fiscal issues.⁸⁶ Additionally, some resource-producing regions understand that they have a particular right over the resources wealth and feel threatened if other regions receive benefits.⁸⁷

2.3 BRIEF BACKGROUND ON THE SOCIAL AND POLITICAL APPROACH OF THE RESOURCE CURSE THEORY

To finish this section I want to mention the socio-political approximation that is also part of the resource curse theory or

84 See DABÁN, HÉLIS, *supra* note 78, at 10.

85 See DIETSCHÉ, *supra* note 3.

86 See MOORE, *supra* note 83, at 311.

87 See DABÁN, HÉLIS, *supra* note 78, at 12.

debate. The availability of resource rents in some countries creates socio-political difficulties that will be mentioned in the next sections.

In a rent-seeking scenario it is common to have some tensions between the personal interests of policy makers and those of the public at large. In other words, the political and economic elites are more susceptible to satisfy their private gains by resource rents. The effects of this type of actions are: non sustainable economic activities, incomplete political decisions and in general social conflicts that limit the sustainable development.⁸⁸ Usually the institutions constructed under distributional battles among ruling elites, State, business and societal interest groups that chase their own benefits suffer from inconsistencies and gaps in satisfying the needs of the general population.

Another consequence of the resource revenues is the promotion an increase of internal security spending by the regime at the power. With the aim to control the opposition, this kind of actions boosts the possibilities of a conflict situation.⁸⁹ The main idea of this argumentation consists in blaming the natural resources wealth on being a tool that consolidates some regimes in power. As a consequence, the opposition groups must seek power through different apparatus opposed to constitutional mechanisms, which at the end can lead to a war. Usually the winner of this dispute consolidates power through dictatorial regimes.⁹⁰

At the same time, some historic-structuralist scholars suggest that the main problem related to the natural resources wealth is that it affects social and cultural changes

88 See DIETSCHÉ, *supra* note 4.

89 See DABÁN, HÉLIS, *supra* note 78, at 8.

90 See ROSSER, *supra* note 72.

that empower the democratization, like the education levels and the occupational specialization. Andrew Rosser named this effect the “failed modernization” that generates frustration.⁹¹

2.4 BRIEF BACKGROUND TO THE POSSIBLE SOLUTIONS TO THE RESOURCE CURSE

Starting with specific cases where some countries have been able to avoid the effects of the resource curse, scholars have proposed measures to avoid or mitigate the potential negative effects on the countries of a bonanza in natural resources.

There are decisions that the countries should take in order to avoid the negative impacts of a resource bonanza. The first option is to take advantage of the short conjuncture and begin to modify or create the institutions during the exploitation (action). The second option is to decide to leave the resources in the ground until certain structural preconditions can be achieved (inaction)⁹². Both options should be used keeping in mind that good policy measures and institutions support democratic practices and could be a ‘cure’.

Under this context the good institutions are used as a tool to control the negative and self-interested behaviour from political and power holder elites.⁹³ There is a problem defining good institutions, because there are different types and several indicators to measure its effectiveness. Also the institutional design is not the same from country to country and it is difficult to adapt the model from one place to

91 See ROSSER, *supra* note 72.

92 See DIETSCH, *supra* note 4.

93 See STEVENS, DIETSCH, *supra* note 3, at 56-65.

another. The only point about this aspect that is clear is that transforming or creating institutions is a long process that takes time.⁹⁴

Also, convincing the domestic policy makers to switch their practices has been a complicated struggle. In that way external interventions have been seen as a solution to improve resource revenue, transparency and accountability. Several CSR initiatives appeared, such as the EITI and the PWYP.⁹⁵ In the same way, the coordination between the different scales of power can be an important job that is possible through other CSR initiatives that offers an experience in organizational aspects among business, communities and states.

Some CSR initiatives that support this structure are the ICMM, the UNGC and, primarily, the local content policies which will be discussed in more detail in the next chapter. It is important to find a formula that works from the local level to solve the problems suffered at regional level, even more when the social and political disputes linked to extractives industries projects commonly strike harder at local and regional points in the countries.⁹⁶

The solutions to solve the resource curse problem vary depending from the field of expertise. Some authors like USUI, MIKESELL, SARRAF and JIWANJI focused on the economic aspects and saw macroeconomic policies as a solution. Examples of these solutions include the accumulation of budget surpluses, the avoidance of large foreign and domestic debts, the pursuit of a competitive exchange rate and infla-

94 See DIETSCHÉ, *supra* note 4.

95 *Ibid*

96 See DIETSCHÉ, *supra* note 4.

tion control.⁹⁷ Other authors like KARL, ASCHER, PEARCE and AUTY claimed that the states should develop the required ability to manage the different problems caused by economics difficulties for political and social changes that involve 'social capacity and political consensus'.⁹⁸

A third group defends a simple solution, where resource abundant countries should take the option of privatizing the natural resource sector. According to ROSS this would solve the rent utilization problems.⁹⁹ A fourth group, composed of authors EIFERT, SALA-I-MARTIN and SUBRAMANIAN, ask for the distribution of all natural resource revenues, or a substantial proportion of them, directly to citizens. The above would create positive effects, protect the incomes from exaggerated state expenses over the booms and construct a strong taxation system to capture the new revenues acquired by the citizens.¹⁰⁰

Finally there is a group conformed by ROSS, BANNON, COLLIER, SHAXSON, and BALLENTINE that recommended various actions that could be taken at international levels, like the international control of commodity prices through international agreements, the creation of new strategies coping the Kimberley Process for other products and also through the International Monetary Fund (IMF) and the World Bank, the creation of incentives for the good use of revenues and the sustainable development at the extractive industries.

What is clear from making a review of the literature related to the resource curse is that *"there is not a simple direct connection between natural resource exploitation and sustain-*

97 See ROSSER, *supra* note 72.

98 *Ibid*

99 See ROSSER, *supra* note 72.

100 *Ibid*

able development."¹⁰¹ Different factors, such as the volume and values of the exports, the amount of revenues and the size of the sector, are insufficient indicators to measure the contributions that the extractive industry or a single project creates over the different countries.¹⁰²

The good or bad quality of fiscal and monetary institutions, the State absence (governance gaps) or presence and a solid and coherent sectoral policy are crucial in the effects of the curse or blessing. There are countries that have taken advantage of the best opportunity provided by the development of natural resources and market prices, and others which have not been able to take this occasion as an advantage.¹⁰³

The real main challenge for international extractive industry companies is to help the modernization of the state and the strengthening of their institutions, participating at the supporting of policies and creating development initiatives in order to gain in terms of scrutiny. But beyond this, is to create solutions that should be integrated into the business operations of the extractive firms to actually deliver sustainable solutions to medium and long term.

101 See DIETSCH, *supra* note 4.

102 *Ibid*

103 JUAN F VARGAS / Presentation: Universidad de Los Andes, David Rockefeller Center for Latin American Studies. International Seminar: Minería en Latinoamérica: Retos y Oportunidades / Conference: Comentarios, Minería Criminalidad y conflicto Bogotá, Mayo 2013 [on line] Retrieved December 12, 2013 email: juan.vargas@urosario.edu.co Available at: http://economia.uniandes.edu.co/Facultad/eventos_y_noticias/eventos/2013/Realizados_por_la_Facultad/Mineria_en_Latinoamerica

CHAPTER THREE: THE APPROACH OF THE LOCAL CONTENT INITIATIVES

“Because the injustices that call for redress are the product of the mediated actions of many, and thus because they can only be rectified through collective action”¹⁰⁴

3.1 INTRODUCTION

As previously mentioned in chapter one, there is a growing interest within the international community to support the implementation of local content policies in activities developed by extraction companies. These actions are seen as a way to protect local development while obtaining profit in the goals set by the company. The successful implementation of these policies and actions of local content depends on the joint action and levels of coordination between the private sector, community and host governments, with a common goal of development.

Like any policy, this theory has opposing views, so one part of the literature considers that private interest differs from the objectives of government organization and the responsibility of companies cannot go to the actions proposed

104 IRIS MARION YOUNG. Responsibility and global labor justice. *Journal of Political Philosophy*, 2004, vol. 12, n.º 4, p. 365-388.

by this theory. It notes as well that the imposition of such policies atrophy free market activity, creating instability and negative impacts for both the company and the host government and its inhabitants. Both positions are reflected in this chapter.

3.2 WHAT ARE THE ACTIONS OR POLICIES OF LOCAL CONTENT?

Defining local content is not as simple as it seems. There are several points of view and definitely there is no a complete uniformity in the criteria. For this reason several approaches will be presented below.

Authors like NEFF suggest that local content activities are “*value added activities taking place within a resource producing country.*”¹⁰⁵ According to WARNER, another definition implies that activities of local content are actions that add value to the national economy through goods and services acting as multiplier effects.¹⁰⁶ It can also be defined as foreign companies actions aimed to create products in the host country as parts, materials, spare parts, etc., keeping the characteristic of products not imported.¹⁰⁷

On the other hand there are the definitions created by the same countries, such as Nigeria. They define local content following their particular objectives: “*The quantum of composite value added to or created in Nigeria through utilization of Nigerian resources and services in the petroleum industry resulting in the development of indigenous capability without compromising quality, health, safety and environmental standards.*”¹⁰⁸

105 See ASEKOMEH, *supra* note 70.

106 *Ibid*

107 See ASEKOMEH, *supra* note 70.

108 Menas Associates. Local content online website, Menas webpage [on line] Retrieved July 25, 2013, Available at:<http://www.menas.co.uk/home.aspx>

Other countries like Oman uses the term “in-country value.” In each country the definition will vary by the contributions conceived by each legislator.¹⁰⁹

Citing Warner again, “when it comes to defining the actions or policies of local content it is best not to use specific words but rather is better to describe what actions are those that want to take,”.¹¹⁰ The order of ideas refers to the definition created by the Global Oil and Gas Industry Association for Environmental and Social Issues (IPIECA), in 2011, which states that:

“Local content is the added value brought to a host nation (and regional and local areas in that country) through the activities of the oil and gas industry. This may be measured (by project, affiliate, and/or country aggregate) and undertaken through:

- *Workforce development:*
- *Employment of local workforce; and*
- *Training of local workforce.*
- *Investments in supplier development:*
- *Developing supplies and services locally; and*
- *Procuring supplies and services locally.”*¹¹¹

Finally, most importantly is to have clear that the purpose of these policies is to have a positive impact on local economies and the industrial development of the host country.¹¹²

109 SEYED PEDRAM MIREFTEKHARI. Local Content Strategy, solution for successful global oil and gas projects in emerging economies. (Student paper). Norwegian University of Science and Technology, Department of Industrial Economics and Technology Management, Institutt for produksjons- og kvalitetsteknikk, 2013. [on line] Retrieved January 29, 2014, Available at: <http://www.diva-portal.org/smash/record.jsf?pid=diva2:644230>

110 MICHAEL WARNER. Local Content in Procurement: Creating Local Jobs and Competitive Domestic Industries in Supply Chains. Greenleaf Pub., 2011.

111 Ipieca web page, Local content strategy: a guidance document for the oil and gas industry.[on line] Retrieved December 22, 2013, Available at: <http://www.ipieca.org/publication/local-content-strategy-guidance-document-oil-and-gas-industry>

112 See MIREFTEKHARI, *supra* note 111, at 43.

It is also a necessary and common target for such actions to have a joint agenda between the Government and private capital aligning some minimums which have, as its main elements, the local use of resources, goods and services produced in the host country.

3.2.1 The strategy of local content

The strategy of local content policies, as mentioned above, has three actors: (i) the Government as director of economic and sectorial policies of the host country, (ii) firms as representatives of private capital with economic objectives and social security influenced by the theory of Corporate Social Responsibility (CSR), and (iii) civil society has exclusive control and can support the policies implemented.

3.2.2 The host Government

The host Government, through enacting laws, aimed at regulating the extractive companies to channel their actions towards the goal of acquiring locally produced goods and services, preferably for their operation.¹¹³ More specifically, the mechanisms used by the Governments for the implementation of local content policies are, among others:¹¹⁴

- Contractual requirements that favour the use of local goods and services or impose educational training of local human factor obligations.

- Regulation and fees that differentiates, favouring the local industry, and other protectionist measures.

113 The Source Book project web page, 5.5 Local Content .[on line] Retrieved December 15, 2013, Available at:http://www.eisourcebook.org/932_55LocalContent.html

114 See MIREFTEKHARI, *supra* note 111, at 43.

- Regulations aimed at promoting the transfer of technology from international companies to local businesses.
- Mandatory parameters to include in the agenda of multinational corporations local content parallel to the criteria of exploration, development, licensing and contracts on natural resources.
- Incentives for foreign companies reinvesting their profits in the host country.
- Higher incentives for foreign companies reinvesting their profits in the of infrastructure and education fields.
- Local ownership requirements for companies.
- Direct intervention in the natural resources sector through government owned enterprises.

However, these regulations cannot only stay in the laws in which just these conditions and regulatory restrictions are imposed, but must also accompany the process of monitoring and reviewing the beneficiaries of these policies. Specifically ensuring that the efforts of these regulations are being used by the inhabitants of the territories that are intended to be developed, also monitoring competitiveness especially when policies are aimed at favouring the use of local goods and services.

Indeed there are successful processes in the implementation of these policies, as is the classic case of Norwegian North Sea development. Most recently the policies adopted by Trinidad and Tobago with the use of gas, Brazil with Petrobras and Malaysia with Petronas. In all these instances they had strong presence of local content policies, accompanied by relevant business operations, aimed at technology transfer for the development of the local industry.¹¹⁵

115 MARK C. THURBER, DAVID R. HULTS, PATRICK R.P. HELLER. Exporting the “Norwe-

In applying such policies one must not forget that the type of institutions and political structure in a country may affect the implementation of the measures, since the current legislator must define for his own environment the meaning of local content.¹¹⁶ Consequently, depending on the idiosyncrasies and the interests of the legislature, each country defines the scope of what will be, for that specific country, the term local content. Usually there is a previous definition based on commercial or tax law, so it can be understood as local companies registered nationally. Regardless of the levels of actual participation by the inhabitants of the territory in which companies seek to promote these policies and the real contribution that these made to local content. Ideally, to implement such policies, the people and companies that actually are involved in manufacturing activities, companies that have a real stake participation of inhabitants of the region, business predominantly addressed by nationals and that actually are creating jobs for local citizens should be preferred.¹¹⁷

It is not easy to structure a coherent policy that does not allow leakage points that end up benefiting others that are not part of the group or region for which local content policy is aimed at by the Government. A formula to solve this problem is to refer to the criteria and standards established by IFC. They define the term local in order to point the way for foreign companies to recognize which are the appropriate

gian Model": The effect of administrative design on oil sector performance. *Energy Policy* 2011, vol. 39, n.º 9, p. 5366-5378.

116 See ASEKOMEH, *supra* note 70, See Also PETE NOLAN, MARK THURBER. On the State's Choice of Oil Company: Risk Management and the Frontier of the Petroleum Industry. PESD Stanford, December 2010.

117 The Source Book project web page, 5.5 Local Content.[on line] Retrieved December 15, 2013, Available at:http://www.eisourcebook.org/932_55LocalContent.html

subjects or organizations to hire correctly and truly benefit the inhabitants of the areas of influence, covered with corporate policies of local procurement.

The criteria used are geography, ownership, size of companies or organizations and specific underrepresented groups. Each of these criteria is developed on the basis of an IFC document¹¹⁸ and adapted by a legislator who must design a policy to ensure that the benefits of regulation implemented reach their intended recipients.

Each of these criteria are briefly explained as follows:

– *Geography*: Beyond simply going to the political and territorial distribution of the country. Designed by department, governments, regions, municipalities, etc. It is advisable to take into account the level of development of the region in which you wish to promote, have clarity in economic activities developed there, the existence of business organizations, occupation related data, capabilities and employment of its inhabitants.

– *Local Ownership*: This is not a direct policy towards all businesses and organizations based in the region. It is important for the legislature to create criteria that differentiate if the ownership and control of companies and organizations is in the hands of people belonging to areas that are intended to benefit or if, instead of being more legally based in the area, all or most of their property belongs and benefit people and organizations outside the territorial space to develop.

118 International Finance Corporation (IFC) web page, A guide to getting started in local procurement .[on line] Retrieved December 27, 2013, Available at: http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_guidetogettingstartedinlocalprocurement_wci_1319579447675

For policies relating to sale and delivery of local goods and services, it is important to identify in advance if, for the level of development of the area, the only way for organizations and beneficiary companies providing the service or delivering the goods, is partnering with external organizations to integrate the supply chain. In these cases, priority will be given to organizations and companies that have control and ownership by individuals belonging to the areas of influence, over which in order to provide service relies in societies with external agents in the development areas.

– *Size of the organizations or companies:* There are no objections to large organizations outside the influence areas taking advantage of the benefits provided, but small and medium organizations and enterprises will have priority over property businesses and organizations already established.

– *Specific underrepresented groups:* With this differentiation criteria it is proposed that the legislature grants the advantages to historically unrepresented groups and minorities, for example indigenous, afro communities and women. These groups certainly vary from country to country.

Depending on the good work done by the legislator the expectations and ambitions established by the people and communities of the regions will be clearly demarcated.

Finally, in addition to correctly defining the scope to be given to the local content policy there are certain criteria and actions which must accompany these measures to effectively produce the desired results within regions which are intended to benefit.

With reference to the criteria set up by Klueh in 2007, addressed to a policy of using local goods and services, I think that, parallel, the following provisions should be taken into account to ensure the effectiveness of any of the local

content policy which grant advantages from the investment performed in areas intended to be promoted:¹¹⁹

Accountability: It requires the creation or assignment of functions to an independent government entity, responsible for following up the local content policy applied and to ensure that the opportunity to participate is followed in the programs created for residents of the zones developed.

Adequate metric/definition: It requires continuous monitoring of developments in employment, of the value added gains that have been obtained thanks to the implemented policy, as well as of the costs and impacts that the projects have had on the local community. All this in order to be able to assess the evolution of local content policies within the project life.

Efficiency considerations: The goals and objectives of the local content policy should always take into account human training and the provision of goods and services. There is a limit marked by technical considerations that will not allow the outset to feed the local human talent and businesses in the area, so it is required to progressively implement such policies without affecting the projects.

Information dissemination: Specially aimed at local businesses. It is recommended to have a record of competent and qualified local suppliers, which includes the partnerships and alliances that are created in order to benefit from the advantages that provide local content policies to producers of goods and services in the area.

Acknowledgement of spin-off benefits: This case involves tracking the “spillover effect” of the extractive industries

119 ULRICH H. KLUHE et al. *Inter-Sectoral Linkages and Local Content in Extractive Industries and Beyond--The Case of Sao Tome and Principe*. International Monetary Fund, 2007.

with local content policies regarding other sectors of the economy, such as transport, entertainment or agribusiness.

3.2.3 The companies

The role of business within the policies of local content is as important as the role developed by the Government. However, actions to develop the same can be unwrapped in response to a legal obligation assigned by law or as voluntary actions. Under this assumption, if a foreign company has operations in a country or region, which does not consider within their regulation local content policies, the same companies have the option to act as promoters of such policies within their programs favouring the development of local industry and its inhabitants.

3.2.3.1 Theoretical support to the actions of local content business

As mentioned in chapter one, a few years ago this type of voluntary actions for local development was understood as futile or, at the most, as a philanthropic or ethical act towards people who were affected by the operations of the companies. It was through new movements of thought that proposed the rethinking of the capitalist system and of the legitimacy and contribution of business to society that this new type of company policies and roles have evolved.

In 2011, MICHAEL E. PORTER and MARK R. KRAMER proposed to the business community the concept of creating shared value, which in short means that companies should not only seek to create economic value for them but at the same time they must create value for society by meeting its needs. Somehow what is proposed is a reconciliation between society and the economic model implemented through actions

that identify and expand the connection between the social and economic progress.¹²⁰

This theory intendeds to change the simple concept of profits with the concept of shared value. It recognizes that the social needs define markets and that the damages, along with society weaknesses, creates costs for businesses in the end as loss of power, accidents, compensation or expenses of training workers or moving skilled labour from other latitudes. In the end, economic value is created by creating social value.¹²¹

According to this theory, the way to create this so-called shared value is through *"reconceiving products and markets, redefining productivity in the value chain, and building supportive industry clusters at the company's locations."*¹²² Improving the value in the social area opens up opportunities in the economic area.¹²³

I cannot dwell too much on this theory during this work, since it is not the focus of the same, but it is important to note that this theory redefines the role of the entrepreneur, which simply gave resources sustained in philanthropic or moral areas. The new social entrepreneur should dedicate time to finding cost effective solutions to social problems and needs.¹²⁴

It is also recognized that this theory initially rose away from the theory of CSR and it demonstrates how individual companies can solve social needs. On this point, I think that the concept of creating shared value is part of the evolution

120 MICHAEL E. PORTER, ; MARK R. KRAMER. Creating shared value. *Harvard business review*, 2011, vol. 89, n.º 1/2, p. 62-77.

121 *Ibid*

122 See PORTER; KRAMER, *supra* note 122, at 62-77.

123 *Ibid*

124 See PORTER; KRAMER, *supra* note 122, at 62-77.

of CSR and supports local content policies. Similarly, I believe that the theory of shared value will require the support of actions and classical functions of CSR, which will have an important role when the theory becomes effective and the entrepreneurs, in pursuit of their goals, encounter problems on the creation and expansion of new business opportunities, such as: changes in patterns of land use, institutional modifications, migration and demographic modifications and concentration of economic activities depending of the company.

3.2.3.2 Local business content actions

Companies in this scheme can adapt their supply chains to trends that increase local hiring of both skilled workers and common workers, while trying to obtain material goods and services from businesses located within the communities territory and close to the place where the operation is being performed. This can be especially effective when done through partnerships of local consultants, technical schools, social organizations and government institutions.¹²⁵

The pressure on costs in a globalized world increases. Therefore it is not uncommon that companies are always looking for opportunities and this is how the actions of local content are seen as an opportunity to optimize their supply chains and use local media, not requiring them to incur in higher costs. Now the theory of local content offers solutions

125 DAVE PRESCOTT. Mining: Partnerships for Development Using resource endowments to foster sustainable development Mapping in-country partnerships 2010. ICMM International Finance Corporation (IFC) web page, [on line] Retrieved December 10, 2013, Available at: <http://www.icmm.com/document/783> See also HOLLY WYSE, SOKOL SHYLLA. The role of the extractive sector in expanding economic opportunity. *Harvard University: Economic Opportunity Series*, 2007.

to these problems and provides further alternatives to win licenses to operate and meet the demands and expectations of the countries where they are operating.¹²⁶ The objective of this type of policies implemented by the company is to develop the local economy and who better than extractive industries, especially the mining industry, which through its unique features can intervene in long and sophisticated supply chains for its operation.¹²⁷

Local business content actions finally consist in the development of coalitions or collective actions in which the company participates to develop skills and can express these capabilities in several actions which are mentioned below.¹²⁸

*Indirect creation of employment:*¹²⁹

Perhaps the creation of direct jobs by mining is limited, but the potential for indirect jobs through the supply chain or parallel initiatives which influence the development, is very large.

*Creation of linkages for the development of companies:*¹³⁰

The example that most of the literature uses is the Chilean case, which developed several clusters by means of mining, primarily building skills among the supplier base, this type of actions are supported by international organizations such

126 BETH JENKINS, et al. Business linkages: lessons, opportunities, and challenges. IFC. At: *International Business Leaders Forum, and the Kennedy School of Government, Harvard University, Boston*. 2007.

127 PRESCOTT, *supra* note 127, See also HOLLY WYSE, SOKOL SHTYLLA. The role of the extractive sector in expanding economic opportunity. *Harvard University: Economic Opportunity Series*, 2007.

128 See PRESCOTT, *supra* note 127.

129 *Ibid.*

130 See PRESCOTT, *supra* note 127.

as the IFC or private partners interested in industrial process that create transference of business skills.

A comparative table of potential benefits that could be obtained after the implementation of linkages for large, medium and small businesses, as well as for communities, is provided in the book “Business linkages: lessons, opportunities, and challenges” published by IFC and the Kennedy School of Government at Harvard University in 2007:

FIGURE 3: POTENTIAL BENEFITS OF BUSINESS LINKAGES FOR LARGE FIRMS, LOCAL BUSINESS COMMUNITIES, AND SMALL-MEDIUM ENTERPRISES

SMALL-MEDIUM ENTERPRISES	LOCAL COMMUNITIES	LARGE FIRMS
<ul style="list-style-type: none">– Increased employment and wealth creation by local firms– Acceleration of knowledge transfer and technology upgrading– Enhanced skills, standards and capacity– Access to new domestic and/or foreign markets– Attraction of additional foreign direct investment in “cluster” effects– More diversified client and market structures– More stable relationships to buyer or producer organizations– Risk-sharing through joint funding and/or operations– Facilitation of access to finance– Opportunities to innovate, upgrade and increase competitiveness	<ul style="list-style-type: none">– Stimulation of economic activity and enhanced local economic development– Increased employment and production– Long-term increase in local or regional competitiveness– Added local purchasing power– Access to more affordable, reliable, or better quality products and services– Increased participation of large-scale companies in local business and community development– Balance of payment benefits when products are exported and/or substituted for imports– Development of local business service providers catering to SMEs	<ul style="list-style-type: none">– Reduced procurement, production and distribution costs– Improved productivity– Increased opportunities for corporate responsibility combined with profitability– Enhanced reputation and local license to operate– Improved integration in new overseas markets– Increased ability to reach consumers at the base of the economic pyramid– Proactively deal with downsizing– Reduction of foreign exchange needs through import substitution– Increase in flexibility in making design and production changes due to proximity of local suppliers– Reduced environmental impacts from long-distance shipping– Compliance with government local content requirements

Source: Beth Jenkins, et al¹³¹.

HIRSCHMAN, who was the forerunner of the theory of linkages for the post-war period, states that a successful economy is

131 See JENKINS, *supra* note 128, at 6.

inevitably incremental, and from this point he built a number of categories related to linkages.¹³² Similarly, he proposed three main types of links which come from the commodities sector. These are:¹³³

- The tax linkages, which are represented in corporate taxes, royalties, and income taxes from employees.
- The linkages of consumption, which is the demand for the production of other sectors derived from earned income in the commodity sector.
- The linkages in the production, which may occur forward as transformation products and backward as inputs created to be used in the production of goods.

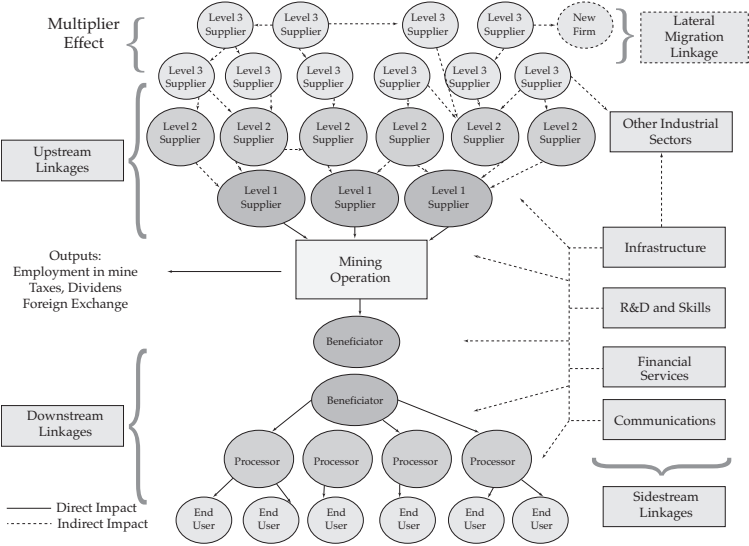
These categories have grown up with the literature and currently, within the mining extractive sector, there are different types of categories such as upstream linkages, downstream linkages and side stream linkages. These depend on the location in chain, whether you are recognized and if you will assume roles of suppliers, beneficiaries or external services that are not directly dependent on the mining operation.

For clarity it is important to identify each of these graphically:

132 RAPHAEL KAPLINSKY, MIKE MORRIS, DAVE KAPLAN. *A Conceptual Overview to Understand Commodities, Linkages and Industrial Development in Africa*. 2011.

133 *Ibid.*

FIGURE 4: LINKAGES DIAGRAM



Lisa Sachs¹³⁴

*Matching private efforts with government commitment:*¹³⁵

It is the private effort aligned with the government’s commitments as their development objectives in the long term, which must and preferably be equal and have consistency between local, regional and national levels (from this consistency depends success in the implementation of actions). Government support is very important because the investment of public resources aimed at building capacities

134 LISA SACHS / Presentation: Universidad externado de Colombia, Vale Columbia center for sustainable international investment. International Seminar: IX Jornadas Internacionales en Derecho Minero-Energetico / Conference: Challenges and Opportunities for Leveraging Extractive Industry Investments for Sustainable Investment Bogotá, October 17, 2013 email:lisa.Sachs@law.columbia.edu.

135 See PRESCOTT, *supra* note 127.

within local suppliers is imperative in order for a real multiplier exercise to exist. For example, Chile and Trinidad and Tobago were successful since they met the above mentioned support in the medium and long terms. For more effectiveness governmental policies from non-transient governments is required. We have to understand that local content policies are spaces and tools within the general policies of human capital development in countries where resource extraction operations are found.

*Support for installation and creation of technical training schools.*¹³⁶

Because usually mining occurs in remote sites, it is complex to identify local partners to support the mining activities of the companies, which is why these training schools have an important role in the development of cultivating human capital and future partners to join. There are examples of this training in tasks like polishing diamonds, silver work, and the support and maintenance of heavy machinery.

Training people should not only be directed to feed the payroll of the mining companies, but rather should supply the labor market in the region which in the medium and long term will allow to find small companies with skills and knowledge with which they can hire and associate looking at reducing costs by appending them to value chains.¹³⁷

There are multiple tasks in which it is possible to train local people as agriculture, manufacturing, information services and telecommunications, technology, distribution and retail sales, etc.¹³⁸

136 See PRESCOTT, *supra* note 127.

137 See JENKINS, *supra* note 128, at 6.

138 See JENKINS, *supra* note 128, at 6.

Prioritization in implementing programs to ethnic minorities and groups historically forgotten:

It is important to integrate minority groups into productive chains to improve their standard of living; a successful example has been presented in South Africa with the afro descent population. A direct benefit that can be obtained from integration with such communities is to obtain important local knowledge for the operation or to consider new business.¹³⁹

3.2.4 The Civil Society

Civil society, which includes NGOs and communities, also has a role in the theory of local content, other than simply being passive beneficiaries of policies and actions taken by the private sector and the Government.

Civil society must demand accountability to national and local governments, in relation to the profits from the exploitation of natural resources, strengthening the transparency of the process and likewise shall assist with the development of local capacities.¹⁴⁰

From another point of view, some go further and see civil society to exert a more active role: organizing local businesses, providing services and moderating disputes.¹⁴¹

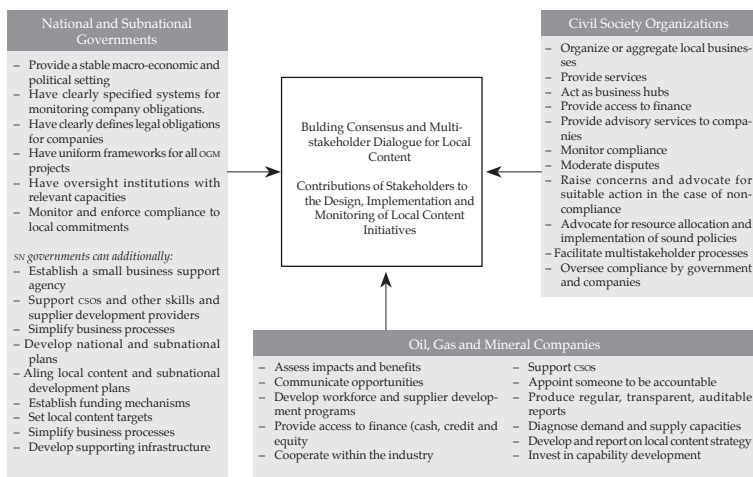
To conclude, below is a chart where the different roles played by the Government, the mining companies and civil society within the local content policies can be clearly seen:

139 See JENKINS, *supra* note 128, at 6.

140 See PRESCOTT, *supra* note 127.

141 See SACHS, *supra* note 136.

FIGURE 5: CONSENSUS AND MULTI-STAKEHOLDER DIALOGUE FOR LOCAL CONTENT



Source: LISA SACHS.¹⁴²

3.3 PROBLEMS AND UNBIASED REVIEWS TO THE IMPLEMENTATION OF LOCAL CONTENT POLICIES

This section of the document aims at highlighting some positions that consider company intervention policies in local development, as well as the investment that they can voluntarily perform on these issues, which are solutions that solve social and development conflicts.

The local content policy and the structure of international trade:

According to the position advocated by the facilitation of international trade, the limitations imposed by the Government to companies on projects in which they should invest and on the intensity and the way in which this contribution

142 See SACHS, *supra* note 136.

must be made may conflict with the principles of free trade, which are defended in the field of international law by organizations such as the World Trade Organization (WTO). Therefore, it is important to note how government regulations affect local content agreed on free trade agreements, like its obligations as host country for foreign investment.¹⁴³

Indeed these free trade agreements assign a treatment to the company, which prohibits the imposition of certain restrictions such as: those derived from imposition of the use of certain local products, ordering the application of local manufacturing, obligations to technology transfer, meeting local demands with produce and compel the presence of shareholding companies with a local representation.¹⁴⁴

The philosophy of using this type of action is to defend free markets and businesses, limiting government intervention in an environment of globalization and integration of countries, in order to impact on the growth of economies and generate welfare of the governments and their inhabitants.

Based on this philosophy, we can say that not only the WTO but also other international organizations represent a limitation to the application of local content policies. Because their vision is to favour the freedom of the company in its business decisions, many of them relate to the areas of influence of extractive projects.¹⁴⁵

Critical to the existence of a curse caused by extractive companies:

Another resistance to CSR local content policy by the governments is that, within the scope of these measures,

143 See ASEKOMEH, *supra* note 70.

144 See MIREFTEKHARI, *supra* note 111, at 43.

145 FRANCISCO VELOSO. Local Content Requirements and Industrial Development Economic Analysis and Cost Modeling of the Automotive Supply Chain. 2001. Tesis Doctoral. Massachusetts Institute of Technology.

the profitability factor or industry profits, without which it cannot achieve the objectives of sustainable development, is not being considered simply because corporate shareholders may lose interest and decide not to make the investment.¹⁴⁶

Poor governance and lack of skills are patterns that make inefficient local social investment, no matter how many efforts makes private initiative. Stakeholders in some host countries have so much power that government institutions are dominated in the definition of policies, including economic measures for resource exploitation of productive investment. The true causes of the resource curse are not resources as such nor multinational, but the elites pursuing their own interests, hogging resources and not allowing local development.¹⁴⁷

Many external pressures and incentives in a country are directed to support local investment by mining companies. The determinant factor for a successful policy would be the consistency of the government's interests to maximize the welfare of its people in the long run.¹⁴⁸ In theory there should be a series of trade-offs between the gain of the shareholders of the mining companies and the human welfare by contributing to the social and economic infrastructure. All this supported by wealth and mineral exploitation.¹⁴⁹

In conclusion, it is not consistent to create burdens on business without first organizing the institutions which will regulate the exploitation of resources. This is why this line of thought believes that the resource curse is attributable to

146 M. GUERRA. Community relations in mineral development projects. The CEPMLP Internet Journal, 2002, vol. 11, n.º 1, p. 31.

147 PHILLIP CROWSON. Adding public value: The limits of corporate responsibility. Resources Policy, 2009, vol. 34, n.º 3, p. 105-111.

148 *Ibid*

149 GUERRA, *supra* note 148, at 60.

perverse public management models and not mainly, the exploitation of resources by multinationals.

Implications for capital investment in local content:

No form of financial structure and investment ensures the social licenses to develop projects to extractive companies. Even corporate policies aimed at developing skills and improving employment opportunities are not sufficient, even though they often leave the purposes of the project, and are economically inefficient.¹⁵⁰

In terms of business, it is also true that it is not clear whether this investment will only take place during the period of economic growth and then stop when market prices fall, as this type of local social spending is not necessary in the short-term within the costs for the operation of the mining company.¹⁵¹

Similarly, CSR policies focused on local content, cannot represent the real needs of the communities. Even the total focus on local content policies can be dangerous since it diverts attention from social and political problems to which more importance should be given. When the governance of countries has flaws and inconsistencies, locals dump their expectations on companies, which have operations in territories where there is little or no government presence. In countries like Nigeria a quasi-government by Shell almost survived.¹⁵²

Local investment often only creates an apparent government of tranquillity, which will continuously be altered

150 CROWSON, *supra* note 149, at 105-111.

151 *Ibid*

152 JEDRZEJ GEORGE FRYNAS. The false developmental promise of corporate social responsibility: Evidence from multinational oil companies. *International affairs*, 2005, vol. 81, n.º 3, p. 581-598.

when market conditions improve for minerals. Communities will never be satisfied and will continue to return increasingly to seek benefits of the projects. Another tricky point is that firms react to pressure from NGOs and the media, without realizing whether the information provided by these sources has any real support.¹⁵³

Furthermore, it is important to analyse whether the expenditure incurred on certain regions, which is intended to benefit the general public, may also benefit actual and potential competitors for the company. This, in turn, raises questions about the form, the amount and location of investment by a mining company.¹⁵⁴

However, the simple local content projects promoted by private initiatives could be unsuitable for the interests of local development, to the extent that they are unable to overcome the micro view and does not give a real boost to the macro economic and social problems of countries.¹⁵⁵

The boundaries of the enterprises to achieve positive local investment projects may be supported by the fact that private initiative has its own agenda, which seeks competitive advantages that allow them to influence policy decisions so that impartiality is contaminated in such ideas and are diverted to programs that benefit certain groups or elites in power, without representing the overall benefit.¹⁵⁶

Another problem stems from the lack of experience of companies in the implementation of local development programs, which may result in stock of the companies to be engaged in creating solutions in the short term for groups

153 CROWSON, *supra* note 149, at 105-111.

154 *Ibid.*

155 FRYNAS, *supra* note 154, at 581-598.

156 *Ibid.*

that threaten operations, instead of establishing long-term programs that benefit the entire community.¹⁵⁷

Additionally, local content policies are often used to improve public relations and, in extreme cases, it is possible to deliver and manage information without actually developing the projects on display. Similarly, sometimes these companies use no such policies, yet workers feel happy with their jobs and do not worry about the impact that the company can generate on the local community. This is a form of demonstrating to employees, by founding schools and delivering food, that the company is a force for development while maintaining high moral. In these cases the psychological needs of employees may differ from the real needs required by the local community.¹⁵⁸ Warning about this is that it is normal for companies to see the legal imposition of local content policies by Governments as a factor that increases the risk item in its equation for deciding whether to have a presence in a new country.¹⁵⁹

On the darker side of private development, there is also some opposition, which prefers to stay in the philanthropic and charitable level rather than play a role in local development at long-term and macro level. The explanation is that the existing governance gaps allow additional benefits for elites and companies, which lose influence power if the country's development is greater. It is also true that it is unpopular for politicians that companies get linked to strengthening issues of governance and institutions.¹⁶⁰

157 FRYNAS, *supra* note 154, at 581-598.

158 *Ibid*

159 See ASEKOMEH, *supra* note 70.

160 FRYNAS, *supra* note 154, at 581-598.

For everything explained above, there are some incompatibilities presented between local objectives and corporate goals, in that sense recurring only to technical programs or to a current elite of local people is not a proper solution since it is also important to consider the direct contact with people at the community. Likewise there is another mistake in just leaving all the social weight to single government regulation. Both of these practices create adverse outcomes.¹⁶¹

As a final point, keep in mind that in many cases due to the size of projects to exploit natural resources it is not enough to be supplied locally to satisfy the demand for goods and services. Likewise, the goal of business is to compete effectively in the global market under an environment where they are not dependent on local suppliers of goods and services, as they were many years ago.¹⁶² For that reason, to have success in local content programs it is important to create long run processes implemented with high consistency.

161 FRYNAS, *supra* note 154, at 581-598.

162 CROWSON, *supra* note 149, at 105-111.

CHAPTER FOUR: PRACTICAL EXAMPLES/CASE-STUDIES FOR THE IMPLEMENTATION OF CSR POLICIES RELATED WITH LOCAL CONTENT IN MINING OPERATIONS

Sustainable development is the one “that meets the needs of the present without compromising the ability of future generations to meet their own needs”¹⁶³

4.1 INTRODUCTION

In this chapter some examples of mining companies and projects, which have implemented policies for the development of local content in host countries, will be presented. Similarly, some salient points within the scope of local content policies applied by multinationals will be briefly highlighted. The idea is not to cover all the programs focused on the communities of each company, since it would leave the context of this research, but to present an idea of the main policies of local content that they offer. The sources for the development of this chapter are taken from documents and websites submitted by companies and other institutions, mainly taken as sources were the reports figures

163 Our common Future, Report of the World Commission on Environment and Development, World Commission on Environment and Development, 1987. Published as Annex to General Assembly document A/42/427, Development and International Co-operation: Environment August 2, 1987.

and information delivered to the public by these business organizations.

4.2 RIO TINTO

This multinational mining company with presence in 40 countries, is a world leader in the mining and processing of minerals, employing more than 60,000 people worldwide. The mineral exploited include aluminium, copper, diamonds, coal, iron ore, uranium, gold and industrial minerals such as borates, titanium dioxide and salt.¹⁶⁴

4.2.1 Summary of Rio Tinto strategy in terms of investment in local content

On its website Rio Tinto says its sustainable development strategy is built on four pillars; social, economic, environmental and governance. Within the social item the relations with community are established.¹⁶⁵

Its strategy is based on understanding how people are interested in these projects, both those who influence decisions as those who are affected by them. It is noteworthy that their programs are developed by universities leaders, NGOs and industrial suppliers.¹⁶⁶

164 Rio Tinto web page, Why human rights matter. A resource guide for integrating human rights into Communities and Social Performance work at Rio Tinto [on line] Retrieved March 01, 2013, Available at: http://www.riotinto.com/documents/ReportsPublications/Rio_Tinto_human_rights_guide_-_English_version.pdf

165 Rio Tinto web page, Our sustainable development strategy [on line] Retrieved March 01, 2013, Available at: http://www.riotinto.com/sustainabledevelopment2012/strategy/our_sustainable_development_strategy.html

166 *Ibid*

On its website Rio Tinto makes a literal reference and recognition to leadership that can acquire the extractive industries and governments, stating that “*through proactive leadership and by building relationships with all our stakeholders, we can turn this area of challenge and complexity into a source of competitive advantage.*”¹⁶⁷ Later on, they mention the development of people and economies of the host countries, as a significant part in obtaining their goals.¹⁶⁸

The concept of *shared value* is part of this strategy. There it is indicated that the achievements delivered to shareholders grant the opportunity of sharing their profits with the communities and the Governments, trying that they are generalized and durable.¹⁶⁹

Good relationships with local communities are seen as crucial and necessary in the proper development of actions of the company, reason by which Rio Tinto develops an approach to communities based in studying first the needs, impacts and potential of communities, then building relationships and partnerships with government agencies, communities, academia, non-governmental organizations, to finally develop programs with communities.¹⁷⁰

Programs with communities should build skills and knowledge in the community to stay in the long term, avoiding dependence on the presence of the company in the region.¹⁷¹

167 See Rio Tinto web page, *supra* note 167.

168 *Ibid*

169 Rio Tinto web page, Group strategy [on line] Retrieved March 01, 2013, Available at: http://www.riotinto.com/annualreport2012/overview/group_strategy.html

170 Rio Tinto web page, Communities [on line] Retrieved March 01, 2013, Available at: <http://www.riotinto.com/sustainabledevelopment2012/social/communities.html>

171 See Rio Tinto web page, *supra* note 172.

On its website, Rio Tinto state that the socio economic programs are focused on the following sectors: education (24.8), Business and development (12.4), culture (10.4), health (9.7), environment (9.6), recreation (7.8), transport (5.3), agriculture (2.5), HIV/ aids (1.3), housing (0.6), other (15.7).¹⁷²

Rio Tinto claims that a code of conduct applies in all its actions to all employees within their operations and collects values of transparency and integrity about its relationship with Governments, communities and other companies. The code was created in 2009 and is entitled "*The way we work - Our comprehensive code of business conduct*".¹⁷³

4.2.2 Example: Rio Tinto/ The Diavik diamond mine

Involved: Diavik Diamonds Mines Inc. (Rio Tinto), Government of the Northwest Territories of Canada, indigenous communities groups, local training centers and technical schools.¹⁷⁴

Location: The mine is located in the north western Canadian territory, on an island called East Island, in Lac de Gras. It has a dimension of 60 kilometres and is 220 kilometres from the Arctic Circle. The mineral extracted is diamonds by a combined open pit operation with underground operations.¹⁷⁵

172 Rio Tinto web page, *supra* note 172.

173 Rio Tinto web page, *The way we work, Our global code of business conduct* December 2009 [on line] Retrieved March 01, 2013, Available at: http://www.riotinto.com/documents/The_way_we_work.pdf

174 See PRESCOTT, *supra* note 127.

175 Rio Tinto Diamonds web page, *The Diavik diamond mine* [on line] Retrieved March 03, 2013, Available at: http://www.riotintodiamonds.com/ENG/ourmines/diavik_diamond_mine.asp

Focus of the project: In this project, training, employment and business opportunities are provided to the residents of adjacent territories to the mine and some to not so close territories. This support was formalized through a socio-economic monitoring agreement established in 1999 which involved five aboriginal groups. Every year large amounts of money aimed at creating employment programs and local business development are provided. By 2012, according to figures released by the company, 508 locals, of whom 238 were Aboriginal people, were employed.¹⁷⁶

The focus of the project is not only investment, but to create lasting business relationships with the communities that inhabit the environment and develop a database on business capabilities, local contractors and suppliers, in order to adapt needs to the capabilities of local businesses.¹⁷⁷

Consultations and community work has gone hand in hand with this activity. The meetings are usually developed, not only at the beginning of the process, and have the purpose of making the communities feel involved, represented and that their comments actually are part of the decision process.¹⁷⁸

In concrete figures the mine contributes: \$5 million (CDN) to local communities. Since 2000 it has generated 7,000 jobs and is very important to note that spending on business and local initiatives has been \$4.1 billion (CDN) of this last

176 Rio Tinto Diamonds web page, Diavik diamond mine 2012, sustainable development report [on line] Retrieved March 03, 2013, Available at: http://www.riotintodiamonds.com/documents/2012_Sustainable_Development_Report_DIAVIK.pdf

177 See PRESCOTT, *supra* note 127.

178 *Ibid*

figure \$2.2 billion (CDN) has been spent on local aboriginal businesses and their joint venture companies.¹⁷⁹

Results:

By 2010, the ICMM forwarded a study on “Partnerships for Development”, which included this project. In this regard the study states that regional commitments had been met, having 67% of its workforce with local people and 38% of aboriginal people. Usually this aboriginal labor is not qualified, but through partnerships with educational institutions on professional development programs and government initiatives, attempt was made to improve this status.¹⁸⁰

Similarly, the local Aboriginal business spending has been met but these funds have been delivered under development and leadership programs, where local participants see Rio Tinto as a leader and mentor within the business and initiatives.¹⁸¹

4.3 ANGLO AMERICAN

In this case we have another major multinational mining company, specialized in the following minerals: iron ore and manganese, metallurgical coal and thermal coal, base metals and minerals based - copper, nickel, niobium and phosphates, platinum and diamonds. It has approximately 100,000 direct employees and operates in 18 countries.

179 See Rio Tinto Diamonds web page, *supra* note 178.

180 See PRESCOTT, *supra* note 127.

181 *Ibid.*

4.3.1 Summary of Anglo American strategy in terms of investment in local content

Anglo American supports their work with local communities through an administration tool called the Socio-Economic Assessment Toolbox (SEAT) linking multiple actions such as:

- To profile the Anglo American operation and the host community,
- To engage with stakeholders,
- To assess it and prioritize impacts and issues
- To improve social performance management - how we not interact with our stakeholders,
- To deliver enhanced socio-economic benefits to host communities,
- To develop a social management plan,
- To prepare SEAT report and feedback to stakeholders.

The big advantage is that this SEAT policy promotes communities through continuous reporting to communities on the activity developed.¹⁸²

Beyond the SEAT strategy, there is a line of development based on socio economic growth that goes far beyond the simple local investment, there are two lines working in this area which are the enterprise development and local procurement.¹⁸³ The enterprise development is not limited to simple loans, but instead, they are given financial and tech-

182 Anglo American web page, About us [on line] Retrieved March 05, 2013, Available at: <http://www.angloamerican.com/about/ataglace.aspx> See Also Anglo American web page, Where we operate [on line] Retrieved March 05, 2013, Available at: <http://www.angloamerican.com/about/operate.aspx>

183 Anglo American web page, Sustainable development/Social [on line] Retrieved March 05, 2013, Available at: <http://www.angloamerican.com/development/social.aspx>

nical support for the implementation and support of small and medium enterprises (SMES), which creates innovation and development.¹⁸⁴

Moreover, the local procurement policy seeks to create links between the operation and the demand for goods and services created by the mining activities. They work with NGOs, communities and the Government to strengthen the efficiency, productivity and quality of suppliers.¹⁸⁵ Anglo American also includes within their activities the concept of sustainable development and has a code of conduct to have good practices in their performances.¹⁸⁶

4.3.2 Example: Anglo American Chile/ Program Emerge

Involved: Anglo American Chile, Fondo Esperanza (NGO), Business School of the Universidad Adolfo Ibáñez.¹⁸⁷

Location: All communities close to operations of Anglo American Chile, which are: Antofagasta, Sierra Gorda, Chañaral, Diego de Almagro, Caldera, Copiapó, Nogales, La Calera, La Cruz, Quillota, Hijuelas, Llay Llay, Catemu,

184 Anglo American web page, Social investment [on line] Retrieved March 05, 2013, Available at:<http://www.angloamerican.com/development/social/socio-economic-development/social-investment.aspx>

185 Anglo American web page, Local procurement [on line] Retrieved March 05, 2013, Available at:<http://www.angloamerican.com/development/social/socio-economic-development/local-procurement.aspx>

186 Anglo American web page, Our approach/ Strategy [on line] Retrieved March 05, 2013, Available at:<http://www.angloamerican.com/about/approach/strategy.aspx>

187 Anglo American web page, Media/News/2013 "25 emprendedores se gradúan del Programa Emerge"[on line] Retrieved March 05, 2013, Available at: http://anglo-american-chile.production.investis.com/media/news/2013/25-emprendedores-se-graduan-del-programa-emerge.aspx?sc_lang=es-ES

Panquehue, Los Andes, San Felipe, Til Til, Colina and Lo Barnechea.¹⁸⁸

Focus of the project: The program aims at promoting entrepreneurship among community residents, not only at the beginning, but during the development of their business ideas. The objective is to reduce poverty and increase household income, contributing to employment generation. The program is a replica of that developed by Anglo American in South Africa in the '80s.¹⁸⁹

This program operates through three levels. In the first level the person is trained through workshops offered in partnership with a technical foundation. Once the applicant has completed training and achieved sales requirements, he or she goes to level two.¹⁹⁰ In level two, training continues, professional advice is offered in the business plan and follow-up to finally grant funding through a soft loan approved by a committee. It will be followed up for 12 months after the credit is granted.¹⁹¹

The last level takes business information and potential risks are covered under the expert advice of representatives of Anglo American and a partnership with the Faculty of Economics and Business of the University of Chile, which awards a diploma on Business Development. Parallel to this the business consultants ask for the creation of a business

188 Anglo American Chile web page, Programa Emerge [on line] Retrieved March 02, 2013, Available at: http://anglo-american-chile.production.investis.com/sustainable-development/social/emerge-programme.aspx?sc_lang=es-ES#MainForm

189 See Anglo American Chile web page, Programa Emerge, *supra* note 190.

190 *Ibid*

191 See Anglo American Chile web page, Programa Emerge, *supra* note 190.

plan and finally, if approved, a committee will approve a second financing through a second soft loan.¹⁹²

Results: Taking as a source the ICMM study about *Partnerships for Development*, it was stated that in 2009, from 400 people who showed up to the program, 69 projects were endorsed. Likewise it was qualified as a successful program and with a long term vocation. Similarly it is mentioned that these business development programs are very important for the company and have a great ability to be replicated in other regions.

4.4 VALE

Operating in 30 countries, the company owns businesses in infrastructure, energy, steel, fertilizer, but their specialty is the mining exploitation where is dedicated to the exploration and exploitation of minerals like iron ore, nickel, coal, fertilizers, copper, manganese and ferroalloys. It is also considered one of the leading companies in the mining business worldwide.

4.4.1 Summary of Vale strategy in terms of investment in local content

Vale includes, like the other two companies, the concept of sustainable development, and defines it as “capturing the numerous opportunities for growth that exist while recognizing the planet physical limits”¹⁹³. Within their policy are

192 See Anglo American Chile web page, Programa Emerge, *supra* note 190.

193 Vale web page, Sustainable Development [on line] Retrieved March 01, 2013, Available at: <http://www.vale.com/en/aboutvale/sustainability/pages/default.aspx>

included four pillars identified as: people, communities, government, and value chains.¹⁹⁴

Making an approach to local content, Vale points out that it had endeavoured to align the needs of the company with the social needs of communities, to identify these points they indicate that they should invest in identifying community problems, for a second phase will contribute to improving the living conditions of the inhabitants.¹⁹⁵

There are two instruments used by the company, which I want to highlight. One is partnerships with local institutions of education from basic to professional level, and the other one is the generation of employment, but with a view to generate own resources by communities between credit and business initiatives.¹⁹⁶

4.4.2 Example: Vale/ Inove Program

Involved: Vale has developed this strategy in areas where it has operations, but mainly the development has been advanced in Brazil. Since this policy, it has worked closely with SEBRAE (Brazilian Service of Support to Micro and Small Enterprises), which until 1990 was a government institution, and currently works as a divided government entity, non-profit, and receives contributions of the great Brazilian companies according to its size.¹⁹⁷

194 Vale web page, About Vale [on line] Retrieved March 01, 2013, Available at: <http://www.vale.com/EN/aboutvale/Pages/default.aspx>

195 Vale web page, Vale Sustainability Report 2012 [on line] Retrieved March 02, 2013, Available at: <http://www.vale.com/EN/aboutvale/sustainability/links/LinksDownloadsDocuments/2012-sustainability-report.pdf>

196 *Ibid*

197 Vale web page, Partnership between Vale and Sebrae promotes micro and small enterprises [on line] Retrieved March 01, 2013, Available at: <http://www.vale.com/brasil/EN/aboutvale/news/Pages/parceria-entre-vale->

Location: It is designed for all small and medium companies who wish to be part of supply chain within the Vale operation.¹⁹⁸

Focus of the project: The Inove Vale project aims at linking the network of small and medium business suppliers. The idea is to encourage these entrepreneurs to support in parallel to the economic development of areas where the multinational has operations. The program is based on offering lines of credit at low interest rates and train people interested in participating equally in the program which allows them to acquire products and services at low cost for development initiatives.¹⁹⁹

Results: Vale manifests in its 2012 sustainability report, as results to have supported more than 500 companies in their business visions and also on its website announcing that by 2013, there were 1,000 small businesses integrated to their supply chains.²⁰⁰

e-sebrae.aspx See also Serviço Brasileiro de Apoio às Micro e Pequenas Empresas (Sebrae) web page, O que é o Sebrae? [on line] Retrieved March 01, 2013, Available at: <http://www.sebrae.com.br/customizado/sebrae/institucional/quem-somos/sebrae-um-agente-de-desenvolvimento>

198 See Vale web page, Partnership between Vale and Sebrae promotes micro and small enterprises, *supra* note 199.

199 *Ibid* See Also Vale web page, Inove/Supplier Development/Business Incentives [on line] Retrieved March 01, 2013, Available at: <http://www.vale.com/brasil/EN/suppliers/become-supplier/brazil/apoio-fornecedores/parcerias-descontos/Pages/default.aspx>

200 See Vale web page, Partnership between Vale and Sebrae promotes micro and small enterprises, *supra* note 199. See Also Vale web page, Vale Sustainability Report 2012 [on line] Retrieved March 02, 2013, Available at: <http://www.vale.com/EN/aboutvale/sustainability/links/LinksDownloadsDocuments/2012-sustainability-report.pdf>

CHAPTER FIVE: CONCLUSIONS AND MAJOR FINDINGS

This dissertation begins by asking if the local content policy, as one of many tools of the corporate social responsibility, offers an alternative to solve the so-called governance gaps. The governance gaps that may already exist due to the little government management over some territories, become notorious as the industry of exploitation of natural resources has a presence in a country, and given this situation emerges a scenario where government action can distribute wealth, create welfare, strengthen management and institutionalism and gain legitimacy or otherwise not distribute wealth, represent interests of elites, not strengthen their institutions, lose legitimacy, not meet needs and increase social gaps.

The study states that local content policies are an evolution of the many tools that have worked as CSR policies and responding to constant renegotiation and realignment process between society and business interests.²⁰¹ It is found in the study that the contribution of the concept of shared value proposed by PORTER and MARK KRAMER is crucial to the theory of local content, in the sense that companies should not only seek to create economic value for them, but at the same time must create value for society by meeting their needs.

201 See ZADEK, *supra* note 6.

The actions proposed by the theory of the shared value are not limited to philanthropy or ethical, what is been looked is to improve the value in the social area by opening economic opportunities, generating reconciliation between society and the economics model applied.²⁰² The politics of social content feed from the approaches and objectives of the shared value theory, but it is only in an environment of collective actions or coalitions, where the company works hand in hand with Government and civil society with aligned objectives favouring social needs and offering options to business objectives, where such actions will be successful and will meet its objectives.

Following the above, the local content policy, might offer a response to social needs, and therefore do apply as a tool that works to fill government gaps that will have varying success depending on the quality of the relationship for the collective action between Government, civil society and business.

Giving an explanation to the above exposed, it should be noted that in reviewing the literature on this subject revealed that necessarily the success of these policies depends on the levels of coordination between State, business and civil society, actors which play an important and necessary role, if given case any of these not participate or get misaligned in its collective effort, the objectives raised will be affected.

In the goal of creating a positive impact on local economies is not easy to overcome the myth of the resource curse. It is complex, requires commitment and a joint effort. It further requires policies to be applied in the medium and long term. Time also is a crucial factor along with the support

202 See PORTER; KRAMER, *supra* note 122, at 62-77.

of government for these policies. What is described above becomes more imperative when resource exploitation projects extend over time, such as mining, where ties with the country for a long period of time are created.

The direct and indirect job creation, the linkages to the productive chains, formation and support aimed at small and medium enterprises, training of human capital and focus on forgotten minorities are an integral part of this type of local content actions, which should be settled after a single target.

Within the development of the document, reviews found in the literature referred to the implementation of such policies, according to which the freedoms of business become affected and restricting the integration of the company to the international trade and management capacity on costs in its operations. Besides, the incompatibility between the objectives of society, private capital and the State is highlighted and, because of this, the many difficulties encountered in aligning policies in the long term.

The information provided by some companies was also explored, looking for some practical cases where local content precepts are applied and it was identified that companies, apparently, have a real interested in creating programs based on the development of the local content theory. In these examples, long and medium term programs are found that, according to information provided by companies to the general public, are successful in providing solutions to the needs of communities, welfare objectives of the countries and business interests.

Local content policies are an option that are part of a long list of efforts of the CSR theory to meet social demands born in part of the unfulfilment of needs. However, what makes a difference is that they provide a space where clashes between the objectives of economic development and social

welfare can become aligned behind common goals through collective action

As the road between the exploitation of natural resources and development is not direct²⁰³, there will always be an important role and some new theory that seeks to appease or solve created social problems. However local content policies apparently offer a way to provide welfare while pursuing private capital own objectives.

Finally, I consider that local content policies do offer a solution to the governance gaps of different host countries where the exploitation of natural resources is carried out. However, the effectiveness and the achievement of objectives will depend on the participation, coordination and consistency that between the performances of the three actors involved in implementing such policies, civil society, State and private enterprises. This does not mean that such policies exist in which only one of the actors has decided to implement them. The absence of any of the three directly affects the effectiveness of the measures taken and their impact on society.

203 See DIETSCHÉ, *supra* note 4.

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