INTERNATIONAL WORKSHOP ON OECD GUIDELINES FOR RESPONSIBLE BUSINESS CONDUCT:
Building Multilateral Cooperation
with the OECD NCP Brazil

EXTENDED REPORT

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Introduction

The Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (*Guidelines*) is the most comprehensive transnational and voluntary instrument of Corporate Social Responsibility (CSR) for Multinational Enterprises (MNE). The National Contact Point (NCP), whose establishment is a commitment made by adherent governments, is an improved tool to give support to the dissemination and implementation of the Guidelines. In this regard, the functioning of the NCP is unique because it includes a grievance and mediation mechanism.

As part of the effort to promoting the Guidelines, the NCPs in Brazil, Norway and the UK worked together to organize the *'International Workshop on the Guidelines for Responsible Business Conduct: building multilateral cooperation with the NCP Brazil'*. Broadly, the discussions aimed at both increasing the understanding of the participants about the Guidelines and the work of the NCPs, and offering an opportunity for sharing international experiences resulting from the adoption of the OECD Guidelines.

The workshop also intended to make participants aware of the CSR practices of the Brazilian business community, highlighting the specific characteristics that must be taken into account in the implementation of the Guidelines. In this sense, the NCP Brazil recognized the need for extensive work in increasing awareness about the Guidelines principles over several business sectors, some of which are largely unacquainted with them.

In this context, the seminar had the ambition to develop a long-term and productive cooperative network between the NCP Brazil and the different areas of CSR in the country. Ideally, such cooperation would become a channel for multilateral communication, involving different levels of the Brazilian government, civil society, academia and private sector. Bringing together representatives of all these sectors – who may act as multipliers in their environment – is of great value to the dissemination and implementation of the OECD Guidelines.

This Extended Report is organized into the following sections, which complements the Executive Summary[1] report, also available at the website of the OECD NCP Brazil.

The first section, **Workshop Notes**, presents detailed notes made by the workshop rapporteur, summarizing ideas expressed by each speaker, topics raised in the sessions for questions and answers and final remarks at the concluding session.

The second part, **Conclusion**, presents a content analysis of topic ideas and issues expressed during the workshop at the light of a multi-actor or shared social responsibility approach for multilateral cooperation with the OECD Guidelines for MNEs and the work of OECD NCPs. Then, some recommendable policy actions are proposed by the rapporteur, based on these reflections and workshop content analysis.

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[1] ASHLEY, P.A., BANGSTAD, M., CHOPRA, D., GUIMARAES, M. and ALBRES, H. Executive Summary of the I International Workshop on OECD Guidelines for Responsible Business Conduct: Bullding Multilateral Cooperation with the OECD NCP Brazil. Brasilia, Oslo and London: OECD NCP Brazil, OECD NCP Norway and OECD NCP UK, 2013. Licensed under a Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Unported License. Available at http://www.fazenda.gov.br/pcn

The **Appendix 1, 2 and 3** sections presents the workshop agenda, the list of participants by stakeholder segment and the slides presentations, including those slides and speech notes translated into English and their original Portuguese versions.

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OPENING SESSION:
HUMAN RIGHTS IN BRAZIL AND THE
OECD GUIDELINES

Victoria Balthar - International Advisory Office, Brazilian National Human Rights Secretariat

1. Corporate responsibility or corporate social responsibility? Globalization requires concerns on the impacts of business activities on human rights, which requires modes of conducts and a change of paradigm on growth that is really sustainable. CSR requires a broader approach to human rights. The OECD guidelines update in 2011 has this broader perspective, as, e.g., non moral harassment, right to a decent work, to democratic participation, among others.

> In the Brazilian context, human rights are a transversal agenda to several government bodies and public policies. There has been a growing dissemination of human rights in Brazil by means of a comprehensive set of government national policies. But, yet, the popular connotation of human rights generally associates the rights of prisoners as the main human rights issue.

2. However, the State, society and business can act not in accordance to human rights. An example is corruption. It is not a matter only of the State, but also of business and society. Our society reflects in conduct of business and government. So, advancements in society and business are a requirement for a compromise of combating corruption as part of risk-based due diligence for human rights.

3. MNE working according to Brazilian laws are expected to also follow them abroad, as OECD guidelines promotes. UN Guiding Principles (UNGP) on Human Rights clarifies that there are three pillars: the State duty to protect, the business duty to respect and judiciary and non-judiciary mechanisms fulfilling the duty to remedy. CSR means an active role on advancing conduct considering the law, but also going further.

4. Common global agenda of CSR is expanding and strengthening with web based communities based, including education, reduction of inequality and income distribution. A durable development requires reduction of addressing inequalities

5. Some extracts of the Chapter 4 of Human Rights of the OECD guidelines were read by Ms. Balthar. Usually, companies consider human rights concerning labor relations. But other human rights, as several forms of harassment, corruption, environmental damage and others are much less considered in CSR policies.

6. Ms. Balthar mentioned the organizational structure of different secretaries in Brazilian government related to issues on human rights, as the one on gender issues and another on racial issues. Ms. Balthar considered recommendable to add them to work in cooperation with OECD NCP Brazil. Government bodies working with human rights issues could contribute to OECD NCP Brazil function in awareness raising among business strategies and practices.

7. In labor relations, five themes of Human Rights issues have been considered as priority in Brazilian Government in relation to CSR policies: equity in gender, race, eradication of slavery-like labor, inclusion of people with special needs and the elderly. Ms. Balthar mentioned some public policy initiatives related to CSR in labor relations: the SDH has been working with the Ministry of Tourism for a permanent campaign combating child and teenager labor and exploitation in tourism; in a partnership with the Ministry of Labour and Employment and ILO on combating slavery-like working conditions; people with special needs are included as a continuous theme in public and private policies in Brazil, e.g. for targets on job offers and placement; National Funds on issues of Human Rights, like the one for Children and Teenagers, other for Elderly, are examples of another strategic action of SDH in relation to CSR by means of incentivizing donations from companies.

SESSION 1: OECD GUIDELINES FOR MNEs: OVERVIEW, CASES AND MEDIATION - MODERATOR: MARCOS GUIMARÃES (OECD NCP BRAZIL)

Danish Chopra (OECD NCP UK): OECD Guidelines and the role of the NCPs

8. Mr. Chopra´s speech was supported by slides (see in the Appendix of this report).

9. Mr. Chopra initially presented an overview of the OECD Guidelines. Then, he presented the updated version from 2011, analyzing main changes in four areas. Human Rights: with more detailed recommendations on human rights and the extent to which multinationals should apply due diligence in their supply chain. Timescales: with indicative timeframes for handling complaints. Clarity: with clearer guidance for NCPs on issuing public statements at the end of the complaint process. Legal: with guidance on how NCPs should approach situations where there are non-prejudicial parallel legal proceedings at the same time as the complaint under the Guidelines.

10. Established in 2000, the OECD NCP UK so far has considered 28 complaints, with 8 cases where parties reached an agreement. A major restructuring in 2008 created a steering group, independent and composed by external voluntary professionals that oversee the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises. If someone considers that the NCP, in coming to a final decision, has not followed the correct procedure or failed to treat with appropriate fairness, the part(s) may request a review.

11. Mr. Chopra presented a complex and long case of complaint raised by the European Centre for Constitutional and Human Rights (ECCHR) in relation to Cargill Cotton Limited (in Uzbekistan). The role of mediation of the NCP has contributed to further actions agreed between the parts and now they mutually work on preventing child and forced labor.

12. The Future: Surveys to check the awareness on and adoption of the OECD Guidelines – The NCP UK launched two short surveys on the OECD Guidelines for

Since the OECD NCP UK started in 2000 for improved quality and effective procedures of the NCP:

Lessons learnt: the need for clarity in expectations from parts on what the NCP can handle; the need for sharing information to avoid placing the NCP in untenable conditions; the contribution of professional mediators; the relevance of doing a follow up on NCP´s recommendations; and the contribution of a steering board which is very robust as to review if the NCP can handle the cases.

Challenges: leveling the playing field, once there are currently 44 NCPs and there is a need to have international consistency in the way NCP operate in investigating a complaint; and outreach, by means of working with other countries, in particular the BRIC nations to encourage them to adhere to the Guidelines.

MNEs. Surveyed FTSE 100 companies; 12 UK-based business organisations; 32 UK-based NGOs; and 27 UK-based trades unions. Outreach - The UK NCP will now be focusing on outreach in particular the BRIC nations to encourage them to adhere to the Guidelines. Consistency - Promoting a level playing field in the adoption of the OECD Guidelines - there shouldn't be a discrepancy in the way the Guidelines are implemented across the OECD. Spreading Best practice – The UK NCP has been working with Japan, Colombia, Norway and the Netherlands.

Mari Bangstad (OECD NCP Norway): Dialogue and mediation in the Norwegian NCP

Follows Ms. Bangstad speech notes. She presented a film on the role and process of a NCP, specifically on practices of the OECD NCP Norway, which can be publicly accessed at its website www.responsiblebusiness.no.

Dialogue and mediation in the Norwegian NCP

13. The Norwegian NCP was made more independent of the government in 2011. The reform took place after a government report to the parliament on corporate social responsibility, followed by a broad consultation with trade unions, civil society and business. The Norwegian NCP now consists of an expert panel with four members appointed by the Government and recommended by trade unions, civil society and business. The NCP also has a secretariat belonging administratively to the Ministry of Foreign Affairs (MFA). The secretariat prepares cases and does information work for the NCP, and report on administrative issues to the MFA.

14. I will mainly present how we deal with cases, and explain why dialogue and mediation is our preferred outcome.

15. On my way here, I was reminded why 44 governments have decided they need a national contact point for responsible business conduct. In a survey presented at the World Economic Forum, PWC asked 1300 company executives from all over the world what they feared the most. The answer was social unrest in the countries where they operate.

16. If one country has proven the value of social dialogue to build democracy, stability and attract foreign investments for the past decades, it must you be yours. What Lula did, and what Rousseff is now building upon, is truly impressive. Norway also has a strong tradition for social dialogue and policies to ensure fair distribution of wealth. Nevertheless, social unrest is on the rise in regions that affect our policies and economies.

17. Social dialogue can take place on many levels in the society, and the OECD Guidelines are a tool to enhance dialogue and trust between companies and local communities. For example, the Norwegian NCP has received cases related to how indigenous peoples are affected by Norwegian companies' activities in the

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We want to learn and improve:

Transparency is key to achieve trust. The parties need clear information about procedures and practice.

Maintain impartiality is crucial. Parties need to trust that they will be treated equitably.

Offer mediation without costs for the parties. To use an NCP member as mediator can be a challenge if dialogue fails and we have to issue a final statement.

Offer capacity building. We are required by the Norwegian Administration Act to give adequate guidance to both parties, and especially the weaker party.

Follow-up. We learnt that follow-up should be agreed by the parties during mediation, and in a more specific manner.

Philippines, Chile, Canada and Sweden. In many of our cases, there has been an element of misunderstanding or lack of communication that has reduced local communities' or NGOs trust in that the company acts responsibly.

18. The alternative to dialogue and mediation in NCPs is to issue a report where the NCP determines whether the OECD Guidelines have been breached or not. If dialogue and mediation is the carrot, a determination is the stick that helps bring the parties to the table. Through dialogue and mediation the parties can gain control over the outcome of the process instead of leaving the NCP to decide. After we issued a strong statement against a nickel project in the Philippines,[2] all companies have opted for dialogue or mediation.

19. Bangstad briefly presented two cases, one where dialogue was rejected by the company and which was concluded by a final statement from the NCP (Future in Our Hands vs Intex ASA), and one where the parties reached a joint statement after mediation conducted by the NCP (Friends of the Earth Norway and ForUM vs Cermaq ASA).When I started working with the Norwegian NCP two years ago, we inherited two cases the former NCP had not been able to conclude. The Intex case concerned a nickel project in the Philippines. Embassy reports confirmed opposition against the project amongst some local communities. At one point, opposition amounted to hunger strikes. The NCP contracted an independent social anthropologist to do a field report and shared the report with the parties. The company declined dialogue with the new NCP. Our examination of the case ended with a strong statement. The main criticism against the company was a failure to conduct adequate stakeholder engagement. The company had consulted indigenous peoples in the mining area, but failed to consult all indigenous peoples and communities affected by the project including by transport routes and other infrastructure. They had not informed good enough about environmental consequences of their project.

20. The Cermaq case concerned a Norwegian state-owned company's policies to respect indigenous peoples' rights, worker's rights and environmental impact assessment in aquaculture in Chile and Canada. Dialogue was not easy. The allegations were strong, and the company contested that they had in any way violated the OECD Guidelines. It was after several years of quarrelling in the media and after almost two years of handling the case in the NCP that it was solved by mediation. The case was solved by mediation thanks to the willingness of the parties to talk face to face and collaborate on reaching a joint statement acceptable to both parties. Before mediation the NCP assessed which topics in the complaint that were well grounded enough to be included in the discussions. Some issues were left out of the dialogue. The parties agreed on principles for sustainable aquaculture. They all committed to base future contact on mutual trust and clarification of facts. The Cermaq joint statement is available in the back of the room. The company admitted to have been part of unsustainable practices in the past, and the parties agreed on a joint statement about sustainable fish farming in the future. Not all issues were solved, but the dialogue continues without the NCP and there has been no litigation. Along the course of the complaint, the company became a member of the UN Global Compact

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[2]http://www.regjeringen.no/upload/UD/Vedlegg/csr/Kontaktpunktet/fivh_asa111130.pdf

and of Transparency International and they also started publishing sustainability reports in accordance with the Global Reporting Initiative framework.

21. What did we learn?

22. **Transparency is key to achieve trust.** The parties need clear information about procedures and practice. This is why we publish our procedures and even minutes from NCP meetings on our website, as well as relevant documents from all cases, such as assessments on whether to accept the case, mediated agreements and final statements.

23. **Maintain impartiality.** Parties need to trust that they will be treated equitably. One of our expert members is in the Cermaq board. He did not take part in the case, a decision that helped enhance the complainants' trust in the new NCP. Currently Head of the Secretariat does not take part in another case because her husband works for the company involved. These impartiality decisions are available on our website.

24. **Offer mediation without costs for the parties.** Some NCPs, such as UK, use external mediators. The Cermaq case was mediated by Head of the Norwegian NCP. To use an NCP member as mediator can be a challenge if dialogue fails and we have to issue a final statement. In a new case, we have hired a former Supreme Court Judge.

25. **Offer capacity building.** An issue often raised by local communities and NGOs is that they do not have the capacity to take part in a dialogue against multinational enterprises and they cannot afford to hire a lawyer or a consultant, like most companies do. We are required by the Norwegian Administration Act to give adequate guidance to both parties, and especially the weaker party. In the Cermaq case, we hired a researcher, in an on-going case, a lawyer has this role.

26. **Communication is key.** We performed a survey in 2011 amongst 600 Norwegian companies and found that 1 out of 10 companies knew about the Guidelines. In a similar survey in 2012, 6 out of 10 companies had this knowledge. Despite this improvement, we know that more communication is needed to increase knowledge of the Guidelines and the NCPs. Dialogue and mediation may have the potential to lead to increased respect for human rights and better stakeholder dialogue, but that will not happen if companies, communities or NGOs do not know of this possibility. That is why workshops like this are so important. I am very much looking forward to the rest of the panel discussions and learn about the Brazilian context.

Messias Melo (OECD NCP Brazil, from the Ministry of Labor and Employment): Mediation of labor relations in Brazil

27. Mr. Melo presentation was supported by his own speech notes in Portuguese, which were translated into English by the rapporteur. Both language versions are available at Appendix 3 of this extended report. Next follows workshop notes made by the rapporteur.

28. Mr. Melo started his speech explaining the experience of mediation in labor relations in Brazil.

29. Mediation by the Ministry of Labour and Employment is an alternative to arbitrage and conciliation, once nowadays the Ministry has to adopt an impartial and not enforceable role. Mediation contributes to develop an active social dialogue between employers and employees. On the other hand, differently from the OECD NCPs, the final statement from the Ministry of Labour and Employment has 'public faith' [fé pública] and it can be used to support lawsuits.

30. In Brazil, labor legislation of CLT (established since 1943) requires collective negotiation between trade unions and the employers association. For the judiciary power intervention to occur in labor conflicts, it first requires a previous negotiation process to have occurred between the parts. Brazil has ratified international conventions that are to be incorporated in Brazilian legal frameworks and, also, in procedures of the Ministry of Labour and Employment.

> Mr. Melo clarified the cultural context in labour relations in Brazil.
>
> There is a prevalence of a legally-based work contract which cannot be modified in negotiations. Some societal segments understand that this is too rigid system. However, the mainstream mindset is that there is a core level of labour rights defined by law, based on the assumption of labour as the weakest part in the relation.
>
> In collective negotiations in labour relations in Brazil, the main approach tends to be that of local negotiation instead of national negotiations, differently from other countries' approach. As a result, there are heterogeneous negotiation results in different localities in Brazil in the same

31. Mr. Melo explained on required skills and number of mediators in occasions when mediation is accepted by parts to be offered by the Ministry of Labour and Employment.

32. A case was presented by Mr. Melo on a recently announced dismissal of thousands of employees by General Motors, in Sao Paulo State. The conflict negotiation took a different approach, a national instead of a local negotiation, with mediation by the Ministry of Labour and Employment. The reason for a national negotiation was based on a public policy established previously by the Brazilian national government for this specific industrial sector involving tax reduction and innovation in technology with lower environmental impact.

33. Trade union representation in companies is something still rare in Brazil, but there have been some initiatives in the infrastructure industry to adopt it, based on a national policy of public investment in infrastructure agreed among the industrial representatives, trade unions and government.

34. There is not a tradition in Brazil of companies offering transparency in the process of establishing the terms for the negotiation, as, for example, to include the participation of trade unions in the context and process where dismissal of job places.

Questions and Answers

One key aspect I understand is the independency for an impartial role of members of the NCP, and if they have a special mandate limited in time.

Another aspect is that the ideal is to have companies advancing the dialogue, but what happen if companies refuse advancing the agenda?

Jorge Abrahão – Instituto Ethos

About changes or influences in investment decisions abroad in countries that adhere to the OECD guidelines.

Clovis Scherer – DIEESE

Danish Chopra answers: *We are completely independent, we are all civil servants. We are not experts in a particular area. What makes us independent is that we have a steering board, allowing that a company which complaints on NCP procedure to require positioning from the steering board. Companies are always willing to talk in UK. Also, NGOs influence in favour of mediation process to occur, influencing it as to bring clarity to the process, monitoring somehow the work of NCP and after final statement.*

Mari Bangstad answers: *About being independent, there are different NCP models but all NCP have some civil servants in it. In Norway, we have an independent multi stakeholder expert panel supported by the Secretariat of the NCP that belongs administratively to the Ministry of Foreign Affairs. One alternative is to have a multistakeholder board.If companies refuse dialogue, the Norwegian NCP issues a final statement.*

Danish Chopra answers: *We promote a lot the OECD guidelines to many investors, intergovernmental training and in participation on the steering board. Our international outreach work also promotes the OECD guidelines abroad in a number of countries.*

Mari Bangstad answers: *There is extensive collaboration of the NCP Norway with government units, business associations, investors, trade companies and NGOs. As for international outreach, we concentrate on exchanging knowledge among NCPs and on sector specific events relevant for Norwegian business to increase awareness of the opportunities and challenges in responsible business conduct and of the role of the Guidelines and the NCPs.*

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SESSION 2 – OECD GUIDELINES FOR MNEs: THE VIEW OF BUSINESS COMMUNITY - MODERATOR: RENATO CAPANEMA (OECD NCP BRAZIL, FROM THE OFFICE OF THE COMPTROLLER GENERAL)

Winand Quaedvlieg (BIAC – Business and Industry Advisory Committee to the OECD and VNO-NCD, Netherlands) - The 2011 OECD Guidelines for Multinational Enterprises

Mr. Quaedvlieg's speech was supported by slides (see at Appendix).

35. Brazil is a giant economic power waking up. OECD guidelines 10 years ago were mostly represented by major economies. Nowadays, the global economy has changed to a wider number of representatives in the OECD guidelines.

36. Two important points: investment climate in international level is to be balanced by responsible business behavior; and the OECD Guidelines are not only to not to be seen as a burden, but as a protection against unrealistic expectations and its promotion of a level playing field not only to members, but outreach to non-OECD members.

37. The guidelines do not offer a specific definition of MNE. Not applicable only to large companies, not applicable to every SME, but to those that are established in several countries.

38. The question is how far should this responsibility go in the supply chain? First tier, second tier or further? The principle to be considered is that you are responsible for your own behavior and more demanding when more involvement with supplier. Four degrees of responsible conduct: do not cause; do not substantially contribute; seek to avert that partners infringe (this is an aspect I still do not know it clearly what it means); and encourage suppliers to apply.

39. Another key concept of the OECD guidelines is due diligence in identifying, preventing, reducing and accounting for impact risks.

> The OECD Guidelines for MNE are not a legal instrument, but a CSR instrument. From that perspective, **they are not binding for MNE** and, so, not expected to be implemented, but adopted in a voluntary manner. But, on the other hand, **the OECD Guidelines are binding for governments**, which are those who should look at it, once they have signed a compromise to adhere to the OECD guidelines.
>
> There is a lot of flexibility to make it easier for business to engage into the OECD guidelines.
>
> The **European Commission is going through a wide debate on CSR,** in which NGOs and other segments are requiring further steps towards the adoption of binding schemes for responsible

40. A new chapter on human rights, a very important, which is fully consistent with the UNGP for Human Rights. The UNGP does not have a remedy institution for infringement to human rights.

41. When there is contradiction with national laws, first level is to obey the local laws and, then, to go towards further advancements where possible to adhere to the OECD guidelines.

42. A wrong approach from NGOs is when they present a complaint in other to further influence their own publicity in potential specific interests. In this situation, NCP should filter it out.

43. As business, on how to apply them, the OECD guidelines are a benchmark with room to interpretation, there is no legal obligation. Usually, the legal department is very reluctant to apply, what is not the case with CSR departments in companies. NCP procedures and OECD guidelines are all part of a broader picture. In Dutch situation, we do not want legislation, is business decision to adopt it. Dutch companies are globally innovating in CSR initiatives.

Anne-Lene Midseim (Norsk Hydro, Norway) - Applying the OECD Guidelines: Lessons learnt at Norsk Hydro

44. Ms. Midseim first presented her condolences to Brazilian people and authorities to the terrible fire accident in Rio Grande do Sul occurred on the day before of the workshop. She then mentioned it was an honor to be at the workshop.

45. Ms. Midseim focused her presentation on the challenges to adopt the OECD guidelines.

46. First, Ms. Midseim presented an overview of the company, which, in Brazil, it has been operating for more than 40 years. In 2009, we acquired Vale´s aluminum assets. Ms. Midseim mentioned number of assets, employees and sums of taxes as a result of its operations in Brazil.

47. Ms. Midseim mentioned what the previous speaker said that "you should not have adverse effects". The fact that we the company operates in mining, is it possible to mitigate it and how to go about it?

48. Companies have the responsibility of being economically viable. Business can contribute to development by employing people, contributing to economic development, paying taxes.

49. Ms. Midseim shared information on a case in India which was very difficult for the company, demonstrating the complexity of business in different operating conditions globally (even with occurrence of kidnapping employees). The company, at the end of the case, even had to pull out the project. This was a real wake up for the company and started a clearer policy and strategy to CSR in the company´s operations globally. Nowadays CSR is becoming embedded in our culture.

50. Some reflections Ms. Midseim made on Brazil, concerning acquisition of assets, in which the company had to count on local partners with specific negotiations

Ms. Midseim clarified that the company's understanding on CSR goes on what is beyond legal compliance. However, not easy, once **CSR concept is in a constant change and some aspects are part of the legal system in some countries**.

"In regions where you do not have local communities well organized and with access to public services, **they come to the company with demands that should be dealt with by local government authorities**. It is a dilemma for us."

"We have a long way to go to audit. What I would like to do is to visit yearly the suppliers, but we need to have partners cooperating in doing it, once we have **more than 20 thousands suppliers**.

Where do we go from here, we have employed the Danish Institute of Human Rights to **research on risks and gaps in our policies and strategies in business planning and processes**."

We are facing a market of financial downturn, but CSR is a matter of how we operate business. The company's culture has reached an increasing **awareness on human rights and skills on dealing with it in our company**."

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concerning policies and practices for bringing local development to communities. Trade unions have cooperated in negotiation, including representatives on the administration board.   However, company's lawyers became worried about maintaining a local dialogue, to which the legal and CSR departments presented different views."

52.51. What the company has been doing since it had taken all these assets is engagement and communication plan with stakeholders and local communities, assuming that the each local context is so incredibly different from the others.   We do believe on transparency and social dialogue.   We contribute to the EITI – Extractive Industries Transparency Initiative.

53.52. And on the supply chain issue, Ms. Midseim mentioned a visit to Colombia and dialogue with suppliers.   The company try to have a strategic focus on the supply chain in relation to the OECD Guidelines, concentrating on suppliers in more risky countries, for example on corruption aspects.

Questions and Answers

Could you elaborate more on capacity building of local communities?

Levi Nietvelt – Embassy of the Netherlands in Brazil

Anne-Lene Midseim answers: *There are lots of possibilities, but one of them is to build capacity of potential local suppliers to compete with large companies. We also have to evaluate our procurement policies as to offer opportunities for local partners. We have sponsored a project which is aiming to train public officials in monitoring deforestation with the use of technology. These were two examples.*

How further is possible to have representatives of stakeholders in management boards of companies?

Luiz Fernando Bessa – UNB

Anne-Lene Midseim answers: *It is defined by law in Norway that Trade Unions are to be represented in boards. The other representative is elected by shareholders in an Annual General Meetings to voice concerns on business policy. In Brazil, it is matter to be posted to Brazilian authorities to define that.*

Winand Quaedvlieg answers: *In Dutch situation, there is no legal requirement to have representatives of labour on board, differently from Germany and Norway, but we have a well developed approach to social dialogue, as for example in the Social and Economic Council in the Netherlands.*

I shall just make comments to previous questions and answers in relation to the Brazilian context. There are experiences in Brazil, as Vale and Banco do Brasil, Petrobras, where trade unions are represented in boards, going beyond the legal requirements. In Pará, you find lower level of educational policies, but you have the majority of local communities originally from indigenous people and companies have historically not respected their cultural contexts and traditions. Our country has a wide variety of contexts in different parts of the country which demands a more adequate approach to consider.

Rita Pinheiro – Ministry of Labour and Employment

SESSION 3 – EXPERIENCE OF NCP STAKEHOLDERS: TRADE UNIONS, CSOS AND ACADEMY - MODERATOR: DANISH CHOPRA (OECD NCP UK)

Jorge Abrahão (Ethos Institute, Brazil) - The Ethos Institute and its contribution in the field of CSR and sustainability in Brazil

54.53. Mr. Abrahão started his speech on the challenging work of engaging business in the sustainable development agenda. How do we deal with production and consumption in the earth system? How to eradicate poverty and reduce inequality?

55.54. The Ethos has a twofold mission: to promote sustainable management system; and to contribute to societal development. Ethos started in 1998, has been working with partners from different segment, and developing tools to build capacity on sustainable management system, like the Ethos Indicators serving as a diagnostic and planning tool to CSR strategies and practices. It has about 1400 business associates. Ethos works with business, but not for business.

> We are a country in which the State economy is strong in Brazil, including shares in **State companies which would also be candidates for OECD Guidelines.**
>
> Regardless of budget at the NCP, the engagement of the OECD NCP Brazil with stakeholders could speed up processes in support of its mission.
>
> Ethos Institute has its own Indicators which are consistent with several aspects of the OECD Guidelines, serving as a tool that contributes to diagnosis and planning CSR strategy.

56.55. In 2008, Ethos Institute started a Platform for a New Economy which is Inclusive, Green and Responsible, with an ethic, social and environmental view to business. "What we have been working with in Ethos is planning in advance the themes for further development on the CSR agenda. In Human Rights, we have provoked business to engage in elaboration on dealing with human rights, especially gender and racial issues. We start usually by means of a survey demonstrating data collected on specific issues. Then we start discussions with companies on how to reach targets in a specific timeframe."

57.56. "In a different aspect, as environment, we work not on research, but on compromises, collecting best practices to be documented and turned available publicly to business by means of the Platform for a New Economy. A best practice, with all its limits for advancements, can contribute to public policies when it shows the compromise of a group of companies in environmental policies in CO_2 emissions. We also have different groups that are focusing other themes in CSR. Another aspect is the pillar of Integrity in the way we behave, which we consider as a frame to our agenda, including anti-bribery positive agenda, as is the case of Pro-Ética Database of companies, in partnership with the National General Comptroller.

We have more than 100 companies that have applied to the Pro-Ética Database and we have 14 members nowadays".

58.57. An additional remark is the challenge of creating a favorable environment for business contributing to sustainable cities and how cities can create an attractive opportunity for business aligned with sustainable management. Also the agenda for a sustainable nation, as natural resources are advantages of Brazil and how the national development agenda in public policies can contribute to a sustainable approach at a national level.

59.58. "If the NCP wishes to use the Ethos Indicators, they could contribute to diagnostic of advancements of companies towards the OECD Guidelines. We are not 'the leadership', but one of the leaderships in CSR in Brazil; we are opened to create collaboration with the NCP".

Antônio de Lisboa Amancio Vale (CUT - Unified Workers' Central, Brazil) - Trade unions in Brazil and the OECD Guidelines and NCP: A perspective from CUT Brazil

60.59. Mr. Lisboa positioned labor conditions as not restricted to wages, but also advancements on quality of labor conditions.

61.60. "In all arenas where the interests of workers are affected, we always want to participate and, so, we are very much keen to collaborate. CUT is now an invited member of the TUAC at OECD, which is an opportunity for advancements and debates on labor aspects".

62.61. Since 2002, CUT has presented 12 complaints at the NCP Brazil, the majority related to companies from the financial sector.

63.62. Two sorts of results: some are still undergoing and others even if the complaint did not go further in a mediation process, but just the fact of presenting a complaint at the NCP has brought a change in reaction from companies in relation to labor conditions. The publicity of a complaint started a process of change even internationally, by means of NGOs contributing to raising global awareness at MNEs. There is a case of a Dutch company, its CEO started to adopt a clear personal leadership publicly in an election campaign manifestation, influencing the image of the company. A complaint was made to the NCP that it not went further, but it contributed to a change of the CEO behavior.

There is a need for further development on knowledge to be built in trade unions on OECD Guidelines as a condition to make social dialogue a reality.

How further the OECD Guidelines are being adopted is an issue for further research and information.

There is a need for a political investment for the OECD NCP Brazil to operate as an effective arena for social dialogue.

64.63. Mr. Lisboa mentioned there is the need for building capacity of trade unions on the OECD Guidelines, once surprisingly the majority of them were not yet aware in detail of the OECD Guidelines.

65.64. "We wish that the OECD NCP Brazil has an effective existence, not only in terms of financial and human resources, but conditions to act in independent way as to fulfill its mission".

Luiz Fernando Macedo Bessa (Federal University of Brasilia, Brazil) - Corporate social responsibility in Brazil: A historical perspective and reflections on cooperation with the OECD Guidelines and the NCP Brazil

Prof. Bessa's speech was supported by slides presentation, which is available in Appendix 3, both in the original Portuguese language and in an English version translated by the rapporteur.

66.65. Prof. Bessa presented a short historical development of the concept of CSR in his inception and debate in the early XX till the recent trend in which CSR has been receiving a growing interest from universities. He continues his presentation with a brief history of CSR in Brazil, including the advancements in labels, indicators, awards, events and publications. The concept of CSR has further been embodied by companies in Brazil in response to market expectations.

67.66. Universities have been working further and further on building knowledge, but mostly concentrating capacity building, studies and publications in the area of Administration and Accountancy.

68.67. The focus of published papers on CSR in Brazil are most generally concerned on the (mis)understanding of the concept and its adoption of companies in their business strategies.

69.68. Prof. Bessa proposes a wider agenda of CSR which includes sustainability in contexts involving multilateral arrangements among business, government and society.

70.69. CSR becomes a challenge for the State in regard to public policies as to create a favorable environment for further progress on responsible business conduct which may contribute to sustainable development.

A further step in the international research agenda could be on factors related to governance and processes for the adoption of the OECD Guidelines in different contexts.

There could be research collaboration through international funding schemes in partnerships among different countries' research funding agencies.

It is important that the Academy is inserted in a multidisciplinary approach to education, training and research activities in the area of social responsibility, strengthening ties with the OECD NCP Brazil and contributing to its qualification and effective societal innovation towards CSR.

71.70. The empirical experience of the OECD NCP Brazil can be an important partnership with the Academy for building comprehensive knowledge on power relations between different actors and partnerships for the implementation of human rights policies, elimination of child labor, the improvement of working conditions, overtime control and freedom of association of workers.

Questions and Answers

When a MNE invests in Brazil, it still encounters a divided society with low human development indicators in several areas. How do you see the question on what is the responsibility of the State and what is the responsibility of business in relation to this national agenda, as was a previous case mentioned by the Norwegian company in the Pará State, in the North Region of Brazil. Shared social responsibility is a challenging concept for the National Policy on Solid Waste, how the Ethos Institute sees the issue of on what is the role of the State and Business on that specific policy?

Ana Carla de Almeida – Ministry of Environment, Brazil

Luiz Fernando Bessa answers: It would be *better if public policies address this discussion in open debates with society and business.*

Jorge Abrahão answers: *The issue on what the roles of the State and Business are is a huge theme for debate, which I cannot see a clear answer nowadays. Transparency and Integrity contribute to establish clarity of their roles.*

On the issue of programmed technology obsolescence in goods offered in the markets, has it been an issue among complaints registered by NGOs at the NCP UK and Netherlands?

Officer from the Ministry of Science, Technology and Innovation

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Danish Chopra and Anne-Lene Midseim answer: It would be *better if public policies address this discussion in open debates with society and business.*

FINAL REMARKS SESSION - MODERATOR: FERNANDO PIMENTEL (DEPUTY SECRETARY OF INTERNATIONAL AFFAIRS, MINISTRY OF FINANCE)

Comments by the Workshop Rapporteur

Prof. Ashley explained the methods for writing the workshop notes and preparing the contents and the structure of the workshop report as to clarify the procedures to the audience. Some initial comments on the content analysis made on the main topics discussed were presented for sharing with the moderators and the plenary, subject to further review and amendment.

Then, she presented some recent theoretical developments concerning CSR trends towards:

a) Shared social responsibilities, instead of only approaching social responsibility at the organizational or personal sphere;

b) Harmonization of concepts and languages among the major international frameworks for CSR (especially after the publication, in November 2010, of the ISO 26000 as standard guidance on social responsibility principles, themes, issues and model of governance that embraces stakeholder engagement and social dialogue;

c) The UN Guiding Principles on Human Rights clarifying the State duty to protect human rights and, thus, requiring a clear institutional arrangement of legal frameworks and public policies for bringing comprehensive programs among government bodies as to promote awareness raising and market reward for responsible business, society and market conduct, in this case specifically in respect to human rights;

d) The multi-actor, territorial and multilevel perspective to social responsibility and development cooperation policies which contributes to process, methods, goals and results of sustainable development (see Ashley, 2011 and 2012)

Prof. Patricia A Ashley, INTSR (UFF)

Comments by Moderators

Certainly I learnt a lot of CSR context in Brazil. We´ve talked about mediation, views from businesses, a stimulating discussion from NGOs, government, academic and business agents.

There is a universal challenge: The first is better procedures, simple way of looking at behavior and address those issues by NCPs. The second is better communication, people want to know more about the OECD guidelines, the NCPs and its contribution to further responsible business conduct.

A lot of food for thought in the event. I am grateful to the Norwegian NCP, Brazilian NCP, all the Brazilian speakers. We wanted to know about Brazil context on CSR in relation to the OECD guidelines and NCP and we managed to do that.

The question to me really is what happens next? I look forward to Patricia´s report – it will be discussed at OECD and we will be pushing forward to report and highlights the issues in Paris.

The area of CSR is one that has been evolving. Let´s learn from one another. Spreading best practices and I have no doubt that events like this will be the future. Once again, it has been a pleasure for me.

Danish Chopra – OECD NCP UK

I would like to recall some topics raised and focus on them. The NCP Brazil is now going through a restructuring involving other government bodies in its organisation.

It is yet a challenge to raise awareness on OECD Guidelines and the NCP Brazil among government.

Each country can establish the NCP as it better fits. I understand the proposals here raised to have a wider participation from non-government bodies. It is possible in the NCP Brazil to have ad-hoc participation of external experts that are not members of the NCP in specific areas for NCP role. Impartiality is an obligation of all NCP to be pursued, but there can be raised some specific cases where impartial positioning is not feasible and, then, specific procedures could be adopted to count on external independent expert mediators.

According to the Access to Information Law, we also have to protect information that is to be kept secret to protect interests.

The NCP Brazil has been participating in many events when we can, either abroad and in Brazil. We can continue to have a dialogue through partners as to establish channels for cooperation and awareness raising.

Marcos Guimarães – OECD NCP Brazil

Comments by the Plenary

I have been following the history of the NCP Brazil since its start, when DIEESE was involved into a multilateral research program, funded by trade unions and NGOs, on CSR of MNE in Brazil. CUT has pursued a continuous effort to support the effective role of the NCP. Last week, in a meeting with other trade unions and business leaders, I could testimony the wide lack of knowledge from them on the OECD Guidelines. Once the NCP is under restructuring, I would recommend a Tri-Partite Advisory Council to propose actions for an effective implementation of the OECD Guidelines in the specific context of Brazil. Especially also to reinforce the importance of ministries responsible for issues included in the OECD Guidelines as to provide resources to support the NCP structuring and operation. Brazil is one of the major receivers of foreign investment?

Clovis Scherer – DIEESE

Marcos Guimarães answers: It does not seem effective to increase the size of number of Ministries participating in the NCP in the new structure which has been already discussed and approved as it is being formally published in the following weeks. What I understand is fundamental is to bring and integrate the parts for the support of society for the wide adoption of the OECD Guidelines in Brazil.

About what Clovis Scherer, from DIEESE. Mentioned on a possible advisory board, I would the need to include research institutions in the advisory board as to support knowledge building for the NCP. Also, I would propose to keep in mind a next round of meeting.

Prof. Eliseu V. Machado Jr – UFG

I am in charge of directing the unit of Community Relations and, also, on the role of President of the Vale Foundation. We are at hand to participate in future events like this one.

Isis Pagy – Vale do Rio Doce S.A

I have three questions:

1) What is the cost involved in the process of mediation?

2) What country´s PCN is responsible for mediation: the one where the main office of the MNE is established or the one where the infringement of the OECD Guidelines occurs?

3) Do the PCNs receive complaints also related to government or only related to MNEs?

Liesel Mack Filgueiras – Vale do Rio Doce S.A.

Marcos Guimarães answers: The cost varies, depending on how the mediation process is implemented. In the case of Brazil, our NCP is totally funded by government. The cost is part of budgets of the activities run by the government bodies. The NCP can receive complaints both of MNE established abroad and operating in Brazil or of Brazilian MNE operating abroad.

Danish Chopra answers: Till now we had 109 mediated cases, which are expensive and we count with independent voluntary mediators. We are based in government; we are funded by international development fund. We are independent, no interference from government or other parties.

Mari Bangstad answers: There are different ways of mediation at the NCP Norway: An expert member of the NCP that could handle the mediation process in a case; or, as in another case, we contracted a former Supreme Court Judge after a public tender. We are funded by the Ministry of Foreign Affairs and the NCP members are all externals from government on the basis of recommendations from society. The Norwegian NCP has received a complaint related to government policies, but this complaint was rejected.

Winand Quaedvlieg answers: There are two elements that have been raised (transparency and integrity) but there is one behind, which is trust, what takes time. It is very important this difference between the legal approach and CSR approach. That is the case of USA and I learnt that is an issue in Brazil. In Netherlands, government has subsidized NGOs to raise issues to bring complaints to the NCP. Not the companies are subsidized. Companies are sometimes subject to frivolous campaigns of NGOs just to make noise. Now we have reached the point of starting to propose complaints of business against NGOs.

NCP Norway   NCP Brazil   NCP UK

Conclusion

This concluding section of the report initially presents a content analysis of the main topics discussed during the workshop. Then, it presents a discussion on a current global trend towards a strategic alignment between the concepts of corporate social responsibility and sustainable development policies and goals, contributing to generate and qualify methods and practices of responsible business conduct. At the end, based on these two previous sections, a multi-actor framework is proposed with recommendable policy actions for multilateral cooperation with the OECD Guidelines and the activities of the OECD NCPs.

THE MAIN AREAS OF DISCUSSION

The following main areas summarize the discussions during the workshop.

> **Main Areas of Discussion during the Workshop**
>
> 1. The transparency and effectiveness of the NCPs´ procedures and declarations
> 2. The experience and learning curves of the NCPs in different institutional, operational and cultural contexts
> 3. The inclusion of a Human Rights Chapter in the 2011 OECD Guidelines
> 4. The complexity of the risk-based due diligence in global supply chains by MNEs

The transparency and effectiveness of NCPs' procedures and declarations

The audience showed a big interest in the theme and raised many questions related to the clarification of procedures, role, governance and structure of the NCP Brazil and others abroad, as well as their effectiveness, limits and opportunities for achieving better standards through mediation and disclosure of statements. Additionally, the plenary raised issues about the differences of procedures and capabilities among the NCPs, with particular interest in the mediation process.

The experience and learning curves of the NCPs in different institutional, operational and cultural contexts

The variety of stages in experience and learning curves of NCPs in relation to different national contexts can offer both challenges and opportunities for peer learning and multilateral cooperation. International exchange of knowledge, staff secondment and studies of specific stances were considered as qualifiers to enhance NCP procedures.

The inclusion of a human rights chapter in the 2011 OECD Guidelines

Following the UN Guiding Principles, human rights implies in a 'protect, respect and remedy' framework with duties for the States, business and judiciary and non-judiciary remediation bodies. NCPs can contribute in the remedy duty by means of non-judiciary procedures. However, further dissemination and capacity building are challenges for the implementation of the Guidelines in a global and national level. Cultural backgrounds

on human rights conduct, institutional capacity of the States and risk-based due diligence were identified as obstacles to be surmounted – and also points that could benefit from peer learning and/or multilateral cooperation.

The complexity of risk-based due diligence in global supply chains by MNEs

The risk-based due diligence (political, social and environmental) in global supply chains was seen as a huge task for a company operating with thousands of suppliers, because it depends on specific contexts, particularly on culture and information. Thus, it is a complex global challenge for social responsibility to be faced not only by NCPs and MNEs, but also by States, investors, credit agencies, buyers, suppliers and society.

LINKING CORPORATE SOCIAL RESPONSIBILITY, SUSTAINABLE DEVELOPMENT AND RESPONSIBLE BUSINESS CONDUCT

We are facing a growing transitional phase in the state of the art of the concept and tools of corporate social responsibility (CSR)[3] as to align them with international and national policies, process and goals of sustainable development (SD). The consistency and coherence between guidance and tools of CSR and SD shall contribute to generate and qualify methods and practices of responsible business conduct and bring a better strategic alignment in the institutional and operational field of MNEs worldwide. In this perspective, a scenario for responsible business conduct shall, hopefully, become a standard and common one, fundamentally based on quality of business principles, processes, products and relations with society, environment and governments.

However, towards that scenario, we are challenged in our conceptions on CSR initiatives, policies and practices. On the one hand, looking from the past to the present, CSR seen as exceptional or unusual business cases, driven only by the innovative initiatives or voluntary will of business leaders and entrepreneurs, regardless of facing or disputing with unethical suppliers, competitors and buyers, as well as with fragile States or societies where its international business operations are done.

On the other hand, looking from present to the future, economies and cultures much more coherent with CSR and SD, in which responsible business conduct represents a common and most economically viable investors´ choice, once it is embedded in a coherent global institutional field offering socially responsible investment, finance, education, training, tax policies, consumption, public procurement, and so on[4].

In summary, what I mean and propose is that responsible business conduct requires coherently aligned economies and cultures of CSR and SD embedded in national and

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[3] See recent global tools and treaties, as the ISO 26000 Guidance on Social Responsibility, the European Union 2011 policy on Social Responsibility, the 2011 OECD Guidelines to Responsible Business Conduct of MNE; the UN Principles for Responsible Investment; the 2011 UN Guiding Principles on Human Rights, and others.

[4] ASHLEY, P.A and CROWTHER, D. (ed.) (2012). *Territories of social responsibility: opening the research and policy agenda,* Gower Corporate Social Responsibility Series. Farnham, England: Ashgate.

international institutional fields that not only promotes CSR and SD but, also, does not hinder further business civic innovation towards SD and ethical ideals that goes beyond current cultural standards in societies.

The above scenario can be applied to illustrate the global diversity of national institutional and operational contexts where OECD NCPs are faced with, when in their public official role of promoting the adoption of the OECD Guidelines. Some OECD NCPs have long standing practice and successful experience, reaching a wide public legitimacy in their function and role in a more aligned institutional field in which they can operate with. Thus, they are able to share, with other OECD NCPs, their effective contribution towards the promotion of OECD Guidelines.

Other OECD NCPs are in their incipient national or international legitimation stage, set in States, economies and societies facing developing or emerging situation. In these last cases, OECD NCPs are better candidates for national and international institutional support for improving and disclosing their activities and procedures, enlarging their scope on demand for multilateral cooperation aiming a wide promotion of OECD Guidelines.

In summary, my proposition is that OECD Guidelines and OECD NCPs are not a task for heroes, well intentioned and competent managers, staff or leaders only. Indeed, what I understand is that OECD Guidelines and OECD NCPs are to be leveraged by a well coordinated multi-actor social responsibility and sustainable development approach to multilateral cooperation with specific coherent policy actions from different and complementary institutional domains.

The careful case by case analytical work of OECD NCPs defines an artisanal operational field with its own value for delivering a careful guidance and mediation service on OECD Guidelines towards responsible business conduct. Nevertheless, a massive operational field remains unreachable by the artisanal working process of OECD NCPs, which involves the decisions taken in thousands of companies yet mostly guided by market values of productivity and short term financial results, which drive international trade, investment and finance.

In this sense, multilateral cooperation with OECD Guidelines and NCPs can take either a more focused or narrow scope in contributing to the efficiency and effectiveness of the artisanal process of NCPs on promoting the OECD Guidelines and conducting mediation. Or, in a more complementary and coordinated institutional network approach, multilateral cooperation with the OECD Guidelines and NCPs can embrace a broader scope taking a multi-actor or shared social responsibility approach, which implies in designing complementary policy actions in different and complementary institutional domains. Next section presents a framework aiming to guide alternative scopes for the design of multilateral cooperation with OECD Guidelines and NCPs.

RECOMMENDATIONS FOR MULTILATERAL COOPERATION WITH THE OECD GUIDELINES AND NCPS FROM A SHARED OR MULTI-ACTOR APPROACH TO SOCIAL RESPONSIBILITY

The driving questions for this section aiming at building recommendations to the workshop participants, OECD and NCPs are: What are the possibilities for multilateral cooperation on the OECD Guidelines for MNEs? And how the role of the NCPs could be further developed through multilateral cooperation and knowledge exchange at global and national levels?

For the above questions, the recommendations took into consideration the purpose and the main areas of discussion during the workshop in light of an emerging scenario for CSR, which is opening paths for a shared or multi-actor social responsibility among State, business and society towards sustainable development. Thus, in order to contribute in the collective design of possibilities for multilateral cooperation with the OECD NCPs, especially the case of the OECD NCP Brazil, I propose to conceive the OECD NCPs into a broader multi-actor institutional framework with their specific and complementary institutional roles in the adoption of the OECD Guidelines

In a wider scope of multi-actor social responsibility approach, multilateral cooperation with OECD Guidelines and NCPs would not only be restricted to supporting the classical NCP 'end of the pipe' correction role of dealing with allegations or complaints about noncompliance of MNEs on OECD Guidelines and mediating dialogues among conflicting parts or the NCP´s 'education and communication' prevention role of promoting the dissemination of the OECD Guidelines. Multilateral cooperation with OECD Guidelines and OECD NCPs in a multi-actor social responsibility approach would also contribute in leveraging the adoption of OECD Guidelines and activities of NCPs, by means of creating and implementing multi-actor policies, strategies and processes in research, education, investment, financing, taxation, subsidies, consumption, procurement, cultures and technologies, as to create a coherent institutional field towards economies and cultures of social responsibility and sustainable development.

More specifically, as an example, taking a broader multi-actor social responsibility framework and combining it with the UN Protect, Respect and Remedy framework to Guiding Principles on Human Rights, the chapter of the OECD Guidelines on human rights implies **not only the business duty to respect them**, but also **the State duty to protect human rights**, by means of public policies, **as well as the State duty to respect human rights in companies where the State invests, finances or contract them as suppliers**.

Also, still quoting the Protect, Respect and Remedy Framework of the UN Guiding Principles on Human Rights, adopted in a chapter of the 2011 OECD, the duty to non-judiciary and judiciary means of remediation is also applicable to the States, traditionally through the Judiciary Spheres. Somehow, the OECD NCP partially contributes to the remedy aspect, as a non-judiciary one, through a previous stage of mediation, by means of receiving and dealing with complaints against multinational enterprises, bringing together the parts on the theme of the allegation. Importantly to

note that OECD NCPs cannot arbitrate or negotiate, but mediate and facilitate dialogue. When the NCP accepts the complaint but does not achieve a successful mediation outcome between the parts, the final public declaration of the NCP cannot be used at trials in the Judiciary Spheres. Thus, in a single case dealt with by an OECD NCP, the scope of effectiveness of its final declaration aiming to promote responsible business conduct, at the most, can be by means of exposing the conflict publicly or indicating that a better dialogue or negotiation between the parts is valuable for all onwards.

As a conclusion in this workshop report, I propose the following *Open, Systemic and Coherent Institutional Field* framework (OSCIF framework), conceived in a wider or broader multi-actor or shared social responsibility approach to the OECD Guidelines and NCPs. The goal of the OSCIF framework is to serve as a mapping tool for strategic scopes in multilateral cooperation in mapping and designing possible complementary policy actions, from different stakeholders in their specific institutional domains, towards leveraging the adoption of the OECD Guidelines and activities of the of OECD NCPs.. The OSCIF framework is organized into complementary institutional domains (Diagram 1) and some respective possible policy actions which can be further developed by each institutional domain, which are listed, as an illustration, by 13 policy actions (Table 1). The institutional domains and their respective list of possible policy actions are collated with the four main topic of discussion during the workshop, as shown in Table 2, showing their specific contribution to issues of concern raised by the participants of the workshop.

In the Diagram 1 of the OSCIF framework, each triangle is an institutional domain, corresponding to a group of actors or stakeholders with joint or similar institutional roles. The institutional domain of the OECD Guidelines acts as the top vertex of the OSCIF framework, bringing a sense of complementary roles to all actors, followed by the OECD NCPs next to it as a replication and amplifier of the OECD Guidelines.

As primary stakeholders in the activities of the NCPs, positioned close to the OECD NCP, are, on one side, the States and Governments and, on the other side, the Multinational Enterprises (MNE). Expanding the strategic scope on multilateral cooperation, close to the States and Governments, with a similar and complementary public function, there is the institutional role of Civil Society Organizations and, beside them and close to the MNE, there is the institutional role of Trade Unions.

The above mentioned are the closest institutional domains in multilateral cooperation with the OECD NCPs' classical role of receiving and dealing with allegations of non-compliance of MNE with the OECD Guidelines and acting through mediation and declarations. However and furthermore, if we take a wider strategic scope to multilateral cooperation with the OECD Guidelines and OECD NCPs, from the multi-actor or shared social responsibility perspective, responsible business conduct would also require CSR and SD to be valued in cultures and economies, not only as ethical ideals envisioned by business leaders or entrepreneurs but also alive in pragmatic daily innovative decisions and responsible conduct by economic and social players in the domains of investment, finance, consumption, education, research, and business lobbying and development through its associations and federations, and so on.

Thus, the OSCIF framework also includes the institutional domains for the role of Investors and Financial Institutions, the role of Research and Education Institutions and the role of Business Associations and Federations.

Following the above wider strategic scope presented in the OSCIF framework, which includes the additional roles of Investors and Financial Institutions, of Research and Education Institutions and of Business Associations and Federations, it also allows additional possibilities of multilateral cooperation in combining and integrating further policy actions to the role of the States and Governments, the Multinational Enterprises, the Civil Society Organisations, the Trade Unions and the OECD NCPs.
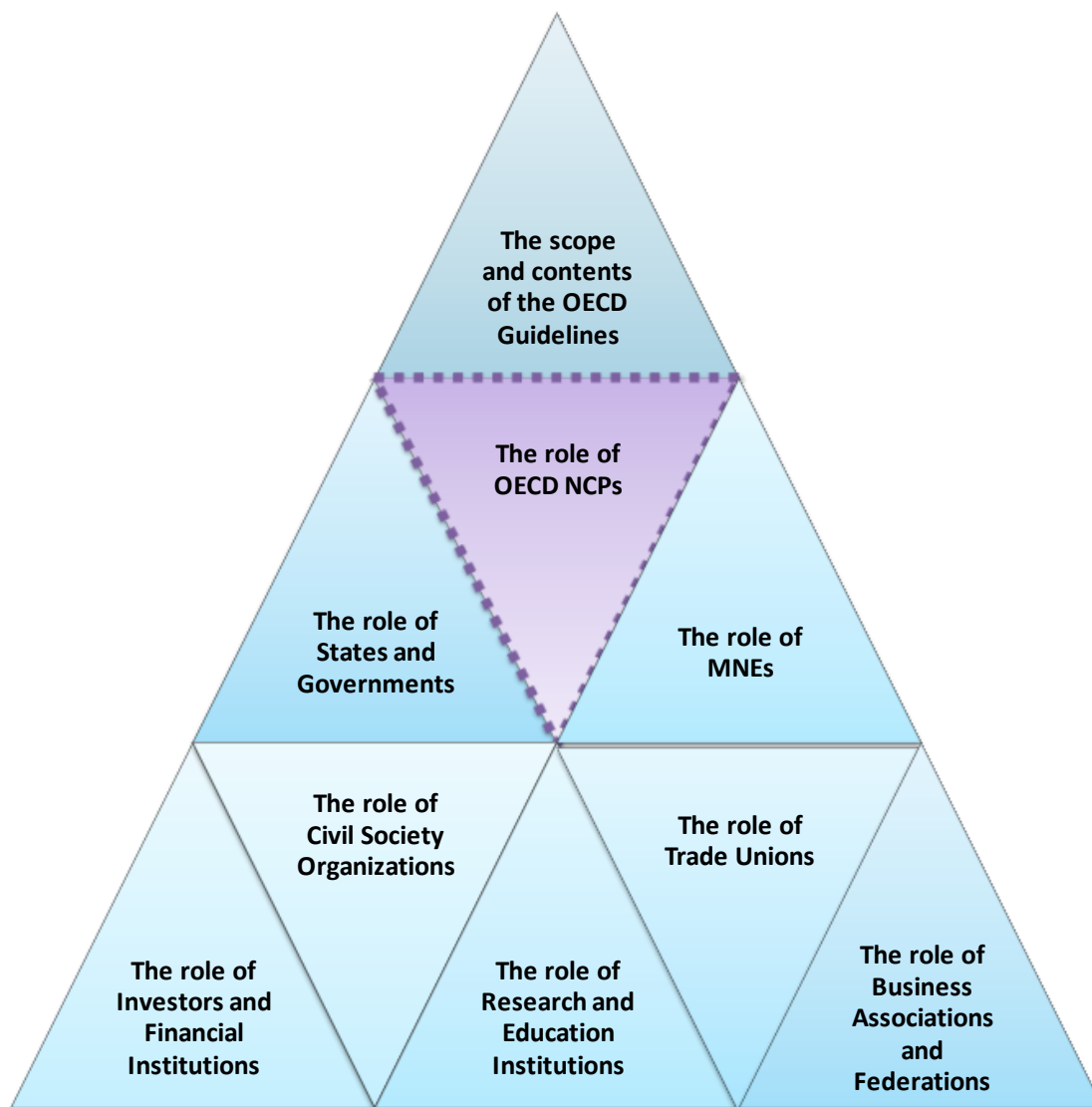
DIAGRAM 1– OPEN, SYSTEMIC AND COHERENT INSTITUTIONAL FIELD FRAMEWORK
(OSCIF FRAMEWORK) FOR STRATEGIC SCOPES ON MULTILATERAL COOPERATION
WITH THE OECD GUIDELINES AND NCPS

As to illustrate possibilities of recommendable policy actions to strategic scopes for narrower and wider multilateral cooperation with OECD Guidelines and OECD NCPs, Table I presents a preliminary list of them which are related to each institutional domain of the OSCIF framework. Then, Table 2, in a shape of a matrix, summarizes the correlation of these recommendable policy actions and their respective institutional domains collated to the four main topics of discussion during the workshop.

TABLE 1 - OSCIF FRAMEWORK: DETAILED LIST OF 13 RECOMMENDABLE POLICY ACTIONS, FROM A MULTI-ACTOR OR SHARED SOCIAL RESPONSIBILITY APPROACH

Institutional Domains	Recommendable Policy actions
The scope and contents of the OECD Guidelines	1. To consider, in the next update of the Guidelines, a revalidation of the harmonization of its contents with internationally recognized frameworks on CSR and sustainable development goals adopted by the States, European Union and United Nation bodies; 2. To consider the critical contemporary social responsibility aspects related to corporate governance and accountability in contemporary management models and the need to further promote a wider global culture of social dialogue, accountability and responsiveness of companies to local contexts and cultures, by means of stakeholder engagement and corporate governance and transparency, the OECD to establish a chapter on guidelines of stakeholder approach and accountability in models of corporate governance, closing gaps or improving better alignment between the Guidelines for Responsible Business Conduct and OECD Principles of Corporate Governance. As such, the OECD to consider **a chapter on Corporate Governance in the Guidelines for Responsible Business Conduct,** with specific guidelines for MNE and the States;
The role of OECD NCPs	3. To consider a wider range of possible functions and institutional capacity to the OECD NCPs in their goal of implementing the Guidelines. That means **expanding NCP roles beyond a classical reception and mediation of complaints,** but also including the active promotion of the OECD Guidelines, directly or through multilateral cooperation, including but not limited to regular surveys, business monitoring, public debates and selected investigations related to the adoption of the Guidelines. Thus, the OECD to design and implement an international system of cooperation among NCPs, including **better opportunities for funding, capacity building, international exchange of staff and knowledge among different cultural and operational contexts of NCPs**. Additionally, adopting multilateral cooperation with CSOs, business associations, government bodies, research and education institutions and trade unions in complementary activities in pursuing a wider range of functions to the NCPs system, both nationally and internationally cooperation; 4. To consider explicitly **the contribution of the Guidelines towards the United Nations Sustainable Development Goals**, expected to be applied from 2015 onwards. As such, to verify the best fit and dialogue of the Guidelines and NCPs in relation to OECD committees and working groups;

The role of States and Governments	5. To explicitly consider **the duty of the States to protect human rights, environment and all other aspects and themes of the Guidelines.** From that perspective, the OECD to design guidelines for the States to pursue policy coherence of current legal frameworks, programs and actions related to the development of institutional fields which contribute to the adoption of the Guidelines; 6. To consider the need for further **awareness raising and capacity building in government bodies** in relation to the Guidelines and potentially complementary public policies, the OECD to recommend the establishment of a sort of a multi-stakeholder forum by each national State to support and complement the goals of the NCPs and the adoption of the Guidelines;
The role of MNEs	7. To consider the **complexity raised on the adoption of the duty to respect human rights in the global supply chains**, the OECD to promote dissemination of innovations in management systems and frameworks for risk-based due diligence as well as capacity building to implement them in companies and its partners, with the support of large scale multilateral cooperation per industry sector and business associations towards ethical competition based on higher standards for human rights.
The role of Civil Society Organizations	8. To consider the sum and integration of **complementary activities and projects of local, national and international CSOs** related to cultures and economies of social responsibility and sustainable development, by means of knowledge cooperation networks and communities, taking due consideration for diversity in languages and cultures as well diverse means for communication among them and with society at large[5].
The role of Trade Unions	9. To consider the need for awareness raising and cooperation with the NCPs and the States for the adoption of the Guidelines by companies, **the OECD to promote the development of funding schemes for supporting or adherent countries to establish programs for capacity building of trade unions on the Guidelines for MNEs;**
The role of Investors and Financial Institutions	10. To consider **the adoption of the Guidelines for Responsible Business Conduct of MNE in policies for investment and project finance**, including special funds and credit programs to business innovation in developing suppliers and qualifying buyers and market demand for responsible business conduct.

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[5] A good example is the recently launched portal in seven languages for Business and Human Rights at the Business & Human Rights Resource Centre, including the Portuguese language. See at http://www.business-humanrights.org

The role of Research and Education Institutions	11. To consider the need for better procedures and effective mediation process, as well as wider adoption of the Guidelines by companies, **the OECD to promote multilateral international and national funding schemes and networks for Research and Education Institutions in their institutional role of developing knowledge, innovation and capacity in society** in partnership with and on demand from the OECD NCPs, States, Trade Unions, MNEs, Investors, Financial Institutions, Business Associations and Federations and Civil Society Organisations.
The role of Business Associations and Federations	12. To consider the promotion of the Guidelines in programs for building **capacity among its own business associates and partners**, possibly in partnership with Research and Education Institutions and OECD NCPs. 13. To consider lobbying to **further alignment of public policies and legal frameworks** as to contribute to the national and international development of economic opportunities and cultures of social responsibility and sustainable development, as in taxation, investment, financing, education, technology and market demand and supply.

TABLE 2 - OUTLINE FOR 13 RECOMMENDABLE POLICY ACTIONS TO MULTILATERAL COOPERATION ON THE OECD GUIDELINES AND NCP'S ACTIVITIES, FROM A MULTI-ACTOR OR SHARED SOCIAL RESPONSIBILITY APPROACH

RECOMMENDABLE POLICY ACTIONS	MAIN AREAS OF DISCUSSIONS DURING THE WORKSHOP				Institutional Domains
	The transparency and effectiveness of NCP's procedures and declarations	The experience and learning curves of the OECD NCPs in different institutional, operational and cultural contexts	The inclusion of a human rights chapter in the 2011 OECD Guidelines update	The complexity of risk-based due diligence in global supply chains by MNEs	
1) To revalidate the harmonization of the Guidelines with updated international treaties and guidance on social responsibility and sustainable development goals.	X			X	The scope and contents of the OECD Guidelines
2) To promote a global culture of social dialogue and responsiveness of companies to local contexts and cultures, introducing a specific chapter on guidelines for corporate governance	X			X	

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3) To consider a wider range of possible functions and institutional capacity to the OECD NCPs in their goal of promoting the Guidelines	X	X			The role of OECD NCPs
4) To consider CSR and sustainable development in organizing the best fit and dialogue of the Guidelines and NCPs to OECD committees and working groups	X	X	X	X	
5) To explicitly consider the duty of the States to protect human rights, environment and all other aspects of the Guidelines			X	X	The role of States and Governments
6) To consider further awareness raising and capacity building in government bodies in relation to the Guidelines and potentially complementary coherent public policies	X		X	X	
7) To consider the complexity raised by the adoption of the duty to respect human rights in the supply chain, by means of promoting the dissemination of innovations and capacity building in management systems and frameworks for risk-based due diligence			X	X	The role of MNEs
8) To consider the relevance of complementary activities and projects of CSOs at the local, national and international levels in promoting the Guidelines and appropriate cultures and economies of social responsibility and sustainable development	X	X			The role of Civil Society Organizations

9) To consider the need for awareness raising and capacity building of Trade Unions for the promotion of dissemination and implementation of the Guidelines by companies	X	X			The role of Trade Unions
10) To consider the implementation of the Guidelines in policies for investment and project finance, including special funds and credit programs to business innovation in developing suppliers and qualifying buyers and markets for responsible business conduct				X	The role of Investors and Financial Institutions
11) To promote funding schemes and networks for cooperation of Research and Education Institutions in developing knowledge and capacity building in OECD NCPs, States, Trade Unions, MNEs, Investors, Financial Institutions, Business Associations and Federations and Civil Society Organizations	X	X	X	X	The role of Research and Education Institutions
12) To consider the promotion of the Guidelines in programs for building capacity among its own business associates and partners, possibly in partnership with Research and Education Institutions and OECD NCPs			X	X	The role of Business Associations and Federations
13) To consider lobbying to further alignment and coherence of policies and legal frameworks to promote economies and cultures for the implementation of the Guidelines			X	X	

The OSCIF framework opens up a broader range of possibilities to multilateral cooperation with the adoption process of the OECD Guidelines and in support to the work of the OECD NCPs. It conceives not only the traditional OECD NCP´s role at the 'end of the pipe' of business conduct, by mediating dialogue among conflicting parts by means of receiving and dealing with allegations of non-compliance with the OECD Guidelines (not to mention its voluntary purpose) or the more preventive 'education or communication' role of the OECD NCPs. Additionally and complementing these roles of the OECD NCPs, the OSCIF framework conceives multilateral cooperation towards a wider institutional promotion of the OECD Guidelines and stronger legitimacy to the activities of the OECD NCPs.

NCP Norway   NCP Brazil   NCP UK

Appendix 1: Workshop Agenda

WORKSHOP AGENDA

8.30   Arrivals and Registration
9.00   Welcome – Brazil / UK / Norway NCPs (15')

9.15   Opening Session - Human Rights in Brazil and the OECD Guidelines (30')
    Victoria Balthar, Secretariat for Human Rights, Brazil

9.45   Panel 1 – OECD Guidelines for MNEs: Overview, Cases and Mediation
    Chair: Marcos Guimarães, Brazilian NCP
    Danish Chopra (UK NCP) - Presentation of the Guidelines and Role of the NCPs (20')
    Mari Bangstad (Norwegian NCP) – Successful cases dealt by the NCPs (20')
    Messias Melo (Secretary of Labour Relations, Brazilian NCP) – Labor relations mediation in Brazil (20')
    Q&A (20')

11.05 Tea/ Coffee Break (15')

11.20 Panel 2 – OECD Guidelines for MNEs: a view from the business community
    Chair: Renato Capanema, Office of the Comptroller General (CGU)
    Winand Quaedvlieg, Chair of the BIAC Committee on International Investment and Multinational Enterprises, Deputy Director International Economic Affairs VNO-NCW (Netherlands) (20')
    Anne-Lene Midseim, Norsk Hydro (Norway) (20')
    Q&A (30')

12.30 Lunch – Restaurante Miró, Brasil 21 Convention Suíte

14.30 Panel 3 – Experience of the NCPs' stakeholders: trade unions, NGOs and academia
Chair: Danish Chopra, UK NCP
    Jorge Abrahão, Chair of Ethos Institute (Brazil) (TBC) (20')
    Antônio de Lisboa Amancio Vale, Deputy Chair of Unified Workers' Central – CUT Brazil (TBC) (20')
    Prof. Luis Fernando Bessa, Professor – Universidade de Brasília (Brazil) (20')
    Q&A (20')

15:50 Panel 4 – Summary of the Workshop to the OECD
Chair: Fernando Pimentel , SAIN/MF
    Patricia Ashley, workshop rapporteur, Professor – UFF (Brazil) (20')
    Comments by the chairs (20')
    Comments by the plenary (20')
    Final comments from the rapporteur (10')

17:00 Closing remarks
Fernando Pimentel, Deputy Secretary for International Affairs, MoF

NCP Norway   NCP Brazil   NCP UK

Appendix 2: List of Participants

Brazilian Government

BCB - Central Bank of Brazil
Carla Tito Fernandes – Analyst

CGU - Office of the Comptroller General
Renato Capanema – Coordinator General, Unit for Promotion of Ethics, Transparency and Integrity

ESAF - Higher Education School on Finance Administration / Ministry of Finance
Breno da Costa Barros – Engineer

MCTI - Ministry of Science, Technology and Innovation
Bárbara Sant'Anna – General Coordinator, International Cooperation
Renata Vieira – Analyst, Science and Technology

MJ - Ministry of Justice
Ana Cândida Muniz Cipriano – Coordinator, Legal Advisor, National Secretary of the Consumer

MMA - Ministry of Environment
Ana Carla de Almeida – Coordinator of A3P

MPOG - Ministry of Planning, Budget and Administration
Emilio Chernavsky – Technical Adviser, Economic Office

MF/RF - Ministry of Finance/ Secretariat of the Federal Revenue
Flávio Antônio Gonçalves Martins Araújo – General Coordinator, International Relations

MF/SAIN - Ministry of Finance/ Secretariat for International Affairs
Fernando Pimentel – Assistant Secretary for International Affairs

MTE - Ministry of Labor and Employment
Manoel Messias Melo – Secretary of Labor Relations
Julianna Passos – Adviser, Secretariat of Labor Relations
Rita Pinheiro – Adviser, Secretariat of Labor Relations

SDH/PR - Secretariat for Human Rights of the Presidency of the Federative Republic of Brazil
Victoria Balthar – Adviser, International Affairs

Business Community

Banco do Brasil S.A.
Clodoaldo Antonio Fialho – Manager, Sustainable Development Unit
Mário Praça Neto – Senior Adviser, Sustainable Development Unit
Maurício Messias – Executive Manager, Sustainable Development Unit

Banco Santander
Thalice de Castro Alvares Rubião – Adviser, Vice-Presidency of Corporate Affairs

Itaú Unibanco S.A.
Luciana Medeiros – Governmental and Institutional Relations

Norsk Hydro
Anne-Lene Midseim – Head of Staff

Vale S.A.
Isis Pagy – Director, Department of Community Relations
Liesel Mack Filgueiras – General Manager, Human Rights and Social Policies

Business Associations and Federations

BIAC - Business and Industry Advisory Committee; and VNO-NCW - Confederation of Netherlands Industry and Employers (Netherlands)
Winand Quaedvlieg – Chair, **Committee on International Investment and Multinational Enterprises/BIAC;** Deputy Director International Economic Affairs, **VNO-NCW.**

CNA - Agriculture and Livestock Confederation of Brazil
Maria Helena Gomes – Adviser, International Affairs

CNC - National Commerce Confederation for Goods, Services and Tourism
Antônio Lisboa – Adviser, Trade Union Relations

CNCOOP - National Confederation of Cooperatives
Júnia Dal Secchi – Manager, Trade Union Relations

CNF - National Confederation of Financial Institutions
Anna Carolina Nogueira – Adviser, Institutional Relations
Pedro Henrique Pessanha Rocha – Adviser, Institutional Relations

CNI - National Confederation of Industry
Rossana Salsano – Analyst, Labor Relations and Associative Development

CNTUR - National Confederation of Tourism
Danilo Piva Junior – Adviser, Trade Union Relations

FEBRABAN - Brazilian Federation of Banks
Marilena Moraes Barbosa Funari – Adviser, Legal and Labor Affairs

Trade Unions

CUT - Unified Workers' Central
Antônio de Lisboa Amâncio Vale – Executive Director

UGT - General Union of Workers
Neila Tatiane N. D. Costa – Executive Director

Civil Society Organizations

Amnesty International Brazil
Maurício Santoro – Adviser, Human Rights

DIEESE - Inter-union Department of Statistics and Socio-economic Studies
Clovis Scherer – Supervisor, Regional Office in Brasilia; Representative at the GRI

Ethos Institute
Jorge Abrahão – President

Education Institutions

UFF - Universidade Federal Fluminense
Patrícia Almeida Ashley – Professor, Social Responsibility, Governance and Sustainable Development

UFG - Universidade Federal de Goiás
Eliseu Vieira Machado Junior – Professor, Social Communication

UNB – Universidade de Brasília
Luiz Fernando Macedo Bessa – Professor, Department of Administration
Patrícia Guarnier – Professor, Department of Administration

Embassies

British Embassy
Philip Everest – Third Secretary

Embassy of Norway
Sissel Hodene Steen – Deputy Head of Mission
Kjell Erik Brekke – First Secretary

Embassy of the Netherlands
Levi Nietvelt – Adviser, Department of Consular Affairs

OECD NCPS

NCP Brazil
Marcos Guimarães – Coordinator
Hevellyn Albres – Deputy Coordinator

NCP Norway
Mari Bangstad – Adviser

NCP UK
Danish Chopra – Chairman

NCP Norway   NCP Brazil   NCP United Kingdom   l Kingdom

Appendix 3: Speech Notes and Presentations[6]

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[6] All slides presented are published at the INTSR for public access and were also distributed to participants by the OECD NCP Brazil by email in February 2013.

What are the Guidelines

- ❑ **1976** – Adopted as part of OECD Declaration on International Investment and Multinational Enterprises
- ❑ **Recommendations** – Providing voluntary principles & standards for responsible business conduct for multinational corporations operating in or from countries adhering to the Declaration. The Guidelines are voluntary.
- ❑ **Behaviour** – Government-backed recommendations for responsible business conduct in existence today
- ❑ **Applicable worldwide** – Based on universally shared values, principles, and norms. Consistent with applicable laws and internationally recognised standards
- ❑ **Revised** – Five times, most recently in 2011
- ❑ **Significant** – convergence with other Corporate Social Responsibility instruments

Purpose of the Guidelines

Guidelines aim to ensure that Multinational Enterprises operations:

❑ Are in harmony with **government policies**

❑ Strengthen the basis of **mutual confidence** with the societies in which they operate

❑ Help improve the **foreign investment** climate

❑ Enhance contribution to **sustainable development**

- ❑ Concepts and Principles
- ❑ General Policies
- ❑ Disclosure
- ❑ Human Rights – New
- ❑ Employment and Industrial Relations
- ❑ Environment
- ❑ Combating Bribery, Bribe Solicitation and Extortion
- ❑ Consumer Interests
- ❑ Science and Technology
- ❑ Competition
- ❑ Taxation

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Adherents

44 Adhering Governments

- ❑ 34 OECD members
- ❑ 10 non-OECD members
- ❑ Representative of all regions of the world
- ❑ Account for 85% of foreign direct investment

Governments must set up a National Contact Point (NCP) with the tasks of:

- ❑ Implementing a complaint mechanism
- ❑ Raising awareness of the Guidelines with businesses, trade unions and NGOs

In May 2011 the main changes included the introduction of:

❑ **Human Rights** – More detailed recommendations on human rights and the extent to which multinationals should apply due diligence in their supply chain.

❑ **Timescales** – Indicative timeframes for handling complaints.

❑ **Clarity** – Clearer guidance for NCPs on issuing public statements at the end of the complaint process.

❑ **Legal** – Guidance on how NCPs should approach situations where there are non-prejudicial parallel legal proceedings at the same time as the complaint under the Guidelines.

UK NCP - Background

❑ **UK NCP** was created in 2000 – Crosscutting Government – It sits with BIS and is funded by DFID. So far the UK NCP has considered **28 complaints.**

❑ **2008** the UK NCP underwent a major restructuring, following a public consultation. Two significant changes were introduced in light of the findings from the consultation:

Establishment of a Steering Board to monitor the operation of the UK NCP, composed of representatives of relevant government departments as well as external members (representing UK businesses, trades unions and NGOs).

Introduction of clear timeframes and the use of professional mediators in the complaint process.

Complaint from the European Centre for Constitutional and Human Rights (ECCHR) against Cargill Cotton Limited (in Uzbekistan) – 2011

- ❑ ECCHR, wrote to the UK NCP raising a number of concerns which the ECCHR considered constitute a Specific Instance under the Guidelines in respect of the UK registered company Cargill Cotton Limited (Cargill) in relation to Uzbekistan. The ECCHR alleged that, by buying cotton, allegedly produced through the systematic use of child and forced labour in Uzbekistan, Cargill had breached the Guidelines.

- ❑ Cargill denied these allegations – The UK NCP offered, and both parties accepted mediation. They both agreed a mutually acceptable solution to the complaint through conciliation. The main points of the agreement are:

- ❑ *Cargill does not condone the use of abusive, enforced or illegal labour wherever this may occur. It recognises that there have been serious allegations about the systematic use of forced child labour in Uzbekistan and would wish such allegations to be investigated by an appropriate independent international organisation. ECCHR believes that businesses have a responsibility to take active steps to prevent such practices as forced child labour in the supply chain".*

- ❑ ECCHR and Cargill will inform each other and exchange views on a regular basis

For more information on this case visit:

www.bis.gov.uk/assets/biscore/business-sectors/docs/f/11-1075-final-statement-ncp-ecchr-cargill-cotton.pdf

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Ongoing	Rejected at Initial Assessment stage	Found no breach of the Guidelines	Found one or more breaches of the Guidelines	Parties reached an agreement
3	3	8	6	8

All our cases are published on the BIS website

Department for Business Innovation & Skills

DFID Department for International Development

- ❑ **Clarity** - Ensuring that all parties are clear on what to expect at each step of the process.

- ❑ **Sharing information** - With both parties avoids placing the NCP in untenable situations.

- ❑ **Mediators** – Use in the conciliation stage of the complaint.

- ❑ **Follow up** - process by the NCP on the implementation of the NCP's recommendations

- ❑ **Steering Board** - Robust

- ❑ **Raising awareness** - Of the OECD Guidelines

OECD

❑ **Levelling the playing field** - There is a perceived difference between how each individual NCP operates. We need to have international consistency into how an NCP investigates a complaint.

❑ **Outreach** – It is important to work with large economies like the BRIC nations otherwise OECD-based companies will continue to be a disadvantage in respect of the potentially differing corporate standards expected from companies based in non-adhering countries.

❑ **Surveys** – We launched two short surveys on the OECD Guidelines for MNEs. Surveyed FTSE 100 companies ; 12 UK-based business organisations; 32 UK-based NGOs; and 27 UK-based trades unions.

❑ **Outreach** – The UK NCP will now be focusing on outreach in particular the BRIC nations to encourage them to adhere to the Guidelines.

❑ **Consistency** – Promoting a level playing field in the implementation of the OECD Guidelines – there shouldn't be a discrepancy in the way the Guidelines are implemented across the OECD.

❑ **Spreading Best practice** – We have been working with Japan, Colombia, Norway and the Netherlands.

2011 OECD Guidelines:
http://www.oecd.org/dataoecd/43/29/48004323.pdf

UK NCP General Information Website:
www.bis.gov.uk/nationalcontactpoint

UK NCP Cases are published at:
www.bis.gov.uk/nationalcontactpoint/cases

Business and Industry Advisory Committee to the OECD (BIAC):
http://www.biac.org/

Trade Union Advisory Committee to the OECD (TUAC):
http://www.tuac.org/en/public/index.phtml

OECD Watch: http://oecdwatch.org/

The Team

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Thank You

Any Questions ?

OECD NCP BRAZIL AND MINISTRY OF LABOUR AND EMPLOYMENT – MESSIAS MELO

The Public Mediation of Collective Labor Conflicts (English version) [7]

Script of the Portuguese Speech of Messias Melo

1) What is the mediation done by the Ministry of Labor and Employment?

The public labor mediation activity in Brazil is a mode of composition of conflicts that distinguishes conciliation and arbitration, in common with these only the presence of an impartial third party mediating the conflict.

The mediator has far more impartial role than that of the conciliator or arbitrator. The mediator role varies from slight to neutral positioning. The mediator aims only to facilitate communication, understanding the conflict and ultimately to reestablish social relations.

The result of the mediation is not binding on the parties, unlike what happens in arbitration. That's because that is not necessarily concerned with an agreement, but, before that, with dialogue and negotiation ruled on mutual respect and openness to proposals.

In this sense, this mediation is not imposed, but suggested, and aims to facilitate the negotiation process, without the imposition of any remedy or penalty.

Importantly, despite the non-binding character of this kind of mediation, the minutes resulting from this process is established as a public document of faith, as it is done by public officials within the Ministry of Labor and Employment.

2) The origin of public mediation of collective labor conflicts

It may be noted, as regulatory frameworks in the establishment of labor mediation in Brazil, the following principles derived from legal regulations:

- The mandatory collective negotiation, prioritized by the Consolidation of Labor Laws, May 1, 1943 - CLT;

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[7] Originally written in Portuguese and translated into English version by the rapporteur. See the Portuguese version following this English version pages.

- The role of trade unions in defense of collective rights and interests, with their obligatory participation in collective labor negotiations, determined by the Constitution of 1988 - CF/88;

- The establishment of conditioning the receipt of trial requests based on proof of previous attempted negotiated solution, adopted by Normative Superior Labor Court - TST, currently revoked.

Internationally two ILO conventions ratified by Brazil provide the incentive to collective negotiation, tripartism and promotion of voluntary negotiation mechanisms; they are Conventions 154 and 98, respectively.

In the administrative sphere of the Ministry of Labor and Employment (MTE), it is seen that MTb Ordinance No. 3122 of 05/07/88 (MTb which amended Ordinance No. 3097 of 17/05/88) regulated the procedure of public mediation, Subsequent Decree No. 1572 of 28 July 1995 gave the MTE the task of conducting the mediation labor.

3) Development and systematization

The initial considerations to present here, based on the regulations and policies of the MTE performance of public mediator are:

I) The scope of these mediations is the equidistant position between capital and labor, always taking for granted the guarantee of workers' rights;

II) The mediation is not a necessary step in the Brazilian judiciary legal rite. And it is this trait that sets as alternative means of composition of conflicts. But not for that reason it ceases to be a protagonist as a form of democratization of labor relations;

III) Mediation seeks a balance in the systems under which the MTE balances: employment and wages, labor relations and labor inspection;

IV) When provoked by particular, the State must provide the service.

The aforementioned Decree 3.122/88 brought the figure of the Round Table, which is the business meeting conducted by MTE designed to settle conflicts of rights and labor interests. According to this norm, mediation can be conducted by any civil servant in the MTE, and must be brought under the aegis of voluntariness, although it can be officiated in case of strikes. With regard to the legitimacy of the parties, the above mentioned norm combined with the Law 9784/99, which regulates the administrative process within the Federal Public Administration, allows the proposition of Roundtables by trade unions, companies and workers.

So, when doing the analysis of the characteristics of the Roundtables, nothing seems to reveal the existence of problems that prevent their full effectiveness.

The already mentioned Decree No. 1.572/95, regulating collective labor mediation, provides for the role of private mediators to be registered as so by the MTE. Although its purpose of promoting more registered private mediators, this mechanism is not frequently used by social actors, mostly due to the Brazilian custom of state intervention.

4) The policy of mediation of the MTE

Initially, it is important to remark that in Brazil, with regard to labor issues, there is the prevalence of legislated on negotiated. This strand is consolidated on the argument that there must be, in Labor Law, a hard core inalienable in human's behalf, as a way of maintaining social values of labor. Note that, at the heart of this whole issue is the Principle of Rule More Beneficial for Laborers.

In its actions, the MTE opts for a policy choice of discouragement to the mediation of individual conflicts, not for reasons of legal competence or prediction rules, but by criteria of convenience, motivated by a tendency to collectivism of his actions as a condition of improved administrative efficiency.

By trade unions and companies, there is a predominance in the search for local mediations at the expense of national negotiations. This often happens because we are a country of continental proportions and labor realities are peculiar and distinct, depending on the region.

The labor mediation conducted by MTE is extensive and longstanding. Recently, in respect of the initiatives of mediation at the Secretariat of Labor Relations, it can be mentioned a recent mediation occured within the OECD NCP on December 14, 2012, which had, as parts, representatives of a particular company and its respective trade union, whose negotiation procedures are underway, since procedures for a new negotiation were booked. Moreover, there are other cases of the NCP currently being analyzed by the MTE.

It can also be listed, in parallel to the actions of the MTE in the NCP, recent mediations between General Motors and the Union of Metalworkers of São José dos Campos / SP; other in the banking and financial sector; and in the aviation sector. As well as the thousands of mediations that take place in the Regional Labor and Employment Units of the MTE in the country.

As an example of the success of these decentralized mediations, there is the case of the Regional Labor and Employment Unit of Rondônia, which in mid March 2011 held a round of talks ahead of a strike to occur in the conflict occurred in the construction of Jirau Hydroelectric Power Plan in Porto Velho - RO. Negotiations took place between representatives of the company Camargo Correia and Trade Union of Construction Workers in the state of Rondônia - STICCERO. This cycle of mediation led to the continuation of this important hydroelectric plant, in addition to meeting the claims of the workers and the cycle of negotiations and dialogue, which continued until today, since the construction work is still in progress.

Finally, important to emphasize the participation of MTE in Permanent Negotiation Tables imposed by the General Secretariat of the Presidency, as the National Table on Working Conditions in Construction, the National Commission for Improving the Condition of Sugarcane and the recent installation of National Table Department of Tourism and Hospitality.

We observe, therefore, that the "roundtable" of the MTE fulfill a task of major importance to support social actors, honoring the negotiation as the preferred route for conflict resolution and strengthening the permanent social dialogue. The results of this policy can be noticed by the expanding number of negotiated regulatory instruments: conventions and collective agreements.

Furthermore, in the case of collective bargaining agreements, it can be highlight the excellence of the MEDIADOR Information System[8], which is available on the MTE website and is responsible for depositing and validating any collective valid instrument applicable in the country.

ORIGINAL NOTES (in Portuguese): A MEDIAÇÃO PÚBLICA DE CONFLITOS COLETIVOS DE TRABALHO

1) NO QUE CONSISTE A MEDIAÇÃO PRATICADA PELO MTE

A atividade mediadora trabalhista pública no Brasil é uma modalidade de composição de conflitos que se distingue da conciliação e da arbitragem, tendo em comum com estas apenas a presença de um terceiro imparcial mediando o conflito. O mediador possui postura bem mais imparcial que o conciliador ou o árbitro, seu papel varia de tênue a neutro. Busca apenas facilitar a comunicação, a compreensão do conflito e, essencialmente, reestabelecer as relações sociais. O resultado da mediação não vincula as partes, ao contrário do que ocorre na arbitragem. Isso porque aquela não visa necessariamente um acordo, mas antes disso um diálogo e uma negociação pautada no respeito mútuo e na abertura para propostas. Nesse sentido, essa mediação não é imposta, mas sugerida, e visa facilitar o processo de negociação, sem imposição de qualquer solução ou penalidade.

Importante destacar que, não obstante o caráter não vinculatório desta espécie de mediação, a ata resultante desse processo se estabelece como um documento de fé pública, visto ser realizado por agentes públicos, no âmbito do Ministério do Trabalho e Emprego.

2)A ORIGEM DA MEDIAÇÃO PÚBLICA DE CONLITOS COLETIVOS DE TRABALHO

Pode-se destacar, como **marcos regulatórios** da instauração da mediação trabalhista no Brasil, os seguintes princípios decorrentes de normativos legais:

- O caráter obrigatório da negociação coletiva, priorizado pela Consolidação das Leis Trabalhistas, de 1° de maio de 1943 - CLT;

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[8] The MEDIADOR Information System of the MTE can be accessible at http://www3.mte.gov.br/sistemas/mediador/

- A função dos sindicatos na defesa dos direitos e interesses coletivos, com a obrigatoriedade da participação destes nas negociações coletivas de trabalho, determinado pela Constituição Federal de 1988 – CF/88;

- O condicionamento do recebimento de instauração do pedido de dissídio à prova do exaurimento da tentativa de solução negociada, adotado por meio da Instrução Normativa do Tribunal Superior do Trabalho – TST, atualmente revogada.

No âmbito internacional duas convenções da OIT ratificadas pelo Brasil estabelecem o incentivo à negociação coletiva, tripartidarismo e a promoção dos mecanismos de negociação voluntária, são elas as Convenções 154 e 98, respectivamente.

Na **esfera administrativa** do Ministério do Trabalho e Emprego, vê-se que a Portaria MTb nº 3122, de 5/7/88 (que alterou a Portaria MTb nº 3097, de 17/5/88) regulamentou o procedimento de mediação pública e, posteriormente o Decreto nº 1.572, de 28 de julho de 1995 deu ao MTE a incumbência de condução da mediação trabalhista.

3) DESENVOLVIMENTO E SISTEMATIZAÇÃO

As **considerações iniciais** a se fazer, tendo por base os normativos e políticas do MTE no desempenho da função pública mediadora são:

I) O escopo dessas mediações é a postura eqüidistante entre capital e trabalho, sempre tendo como pressuposto a garantia dos direitos do trabalhador;

II) A mediação não é uma etapa necessária do rito processual brasileiro. E é esse traço que a estabelece como meio alternativo de composição de conflitos. Mas não por isso deixa de ser protagonista como forma de democratização das relações do trabalho;

III) Sua atuação busca um ponto de equilíbrio nos sistemas sob os quais se equilibra o MTE: emprego e salário, relações de trabalho e inspeção do trabalho;

IV) Quando provocado pelo particular, o Estado deve oferecer o serviço.

A supracitada Portaria 3.122/88 trouxe a figura da Mesa Redonda, que é a reunião administrativa levada a cabo pelo MTE destinada a dirimir conflitos de direitos e interesses trabalhistas.

Segundo essa norma a mediação pode ser conduzida por qualquer servidor do MTE, e deve ser levada sob a égide da voluntariedade, embora disponha sob a iniciativa de ofício nos casos de greve. No que se refere à legitimidade das partes, sua leitura cominada com a da Lei 9784/99, que regula o processo administrativo no âmbito da Administração Pública Federal, possibilita a propositura das mesas pelos sindicatos, empresas e trabalhador.

Assim, ao se fazer a análise das características das Mesas Redondas, nada parece revelar a existência de problemas que obstaculizem sua plena eficácia.

Já o mencionado Decreto nº 1.572/95, ao regulamentar a mediação coletiva trabalhista, dispõe sobre a figura do <u>mediador particular</u> cadastrado pelo MTE. Apesar do dispositivo, esse mecanismo não costuma ser utilizado pelos atores sociais, muito disto devido ao costume brasileiro de intervenção estatal

4) A POLÍTICA DE MEDIAÇÃO DO MTE

Inicialmente, frise-se que no Brasil, no que se refere às questões trabalhistas, há a prevalência do **legislado sobre o negociado.** Tal vertente se consolida sobre o argumento de que deve haver, no Direito do Trabalho, um núcleo duro irrenunciável em prol do homem, como forma de manutenção dos valores sociais do trabalho. Observe-se que, no cerne de toda essa questão está o Princípio da Norma Mais Benéfica ao Trabalhador.

Nas suas ações, o MTE faz uma **opção política** de desestímulo às mediações de conflitos individuais, não por razões de competência legal ou previsão normativa, mas por critérios de conveniência, motivado por uma **tendência de coletivismo** de suas ações como condição de uma melhor eficácia administrativa.

Por parte dos sindicatos e empresas, **há um predomínio na busca por mediações locais** em prejuízo das negociações nacionais. Isso muitas vezes se dá por sermos um país de proporções continentais e com realidades trabalhistas peculiares e distintas, a depender da região.

A mediação trabalhista levada a cabo pelo MTE é vasta e de longa data. Recentemente, no que se refere a ações de mediação da SRT, pode-se citar a **mediação ocorrida** no âmbito do **PCN, em 14 de dezembro de 2012**, que teve como partes os representantes de determinado empresa e de respectivo sindicato de trabalhadores, e cujos procedimentos de negociação estão em andamento, posto que houve marcação de nova negociação. Ademais, há outros casos do PCN sendo atualmente analisados pelo MTE.

Enumere-se ainda, paralelamente às ações deste órgão no PCN, as **recentes mediações** entre a **General Motors e o Sindicato de Metalúrgicos de São José dos Campos/SP, do setor financeiro e bancários e do setor aéreo.** Bem como as milhares de mediações que ocorrem nas Superintendências Regionais do Trabalho e unidades descentralizadas existentes no país.

Como exemplo do sucesso dessas mediações descentralizadas há o caso da Superintendência Regional do Trabalho e Emprego de Rondônia, que em meados março de 2011 realizou um ciclo de negociações frente a ocorrência de uma greve no conflito ocorrido na construção da **Usina de Jirau, em Porto Velho -** RO. A negociação ocorreu entre os representantes da empresa Camargo Correia e o Sindicato dos Trabalhadores na Construção Civil no Estado de Rondônia – STICCERO. Esse ciclo de mediações possibilitou a continuação de tão importante obra, paralelamente ao atendimento às reinvindicações dos trabalhadores e ao ciclo que negociações e diálogo, que se perpetua até hoje, posto que a obra ainda está em andamento.

Por fim, importante destacar a participação do MTE em **Mesas de Negociação Permanente** instituídas pela Secretaria Geral da Presidência da República, como a Mesa Nacional sobre Condições de Trabalho na **Construção Civil**, **Comissão** Nacional para Aperfeiçoar as Condições da **Cana de Açúcar** e a recente instalação da Mesa Nacional do Setor de **Turismo e Hotelaria**.

Observa-se, portanto, que as "mesas-redondas" do MTE desempenham um trabalho de maior **importância** para o auxílio dos atores sociais, prestigiando a **negociação como via preferencial** de solução de conflitos fortalecendo o **diálogo permanente**. Os **resultados** dessa atuação são notados pela expansão do número de instrumentos normativos: convenções e acordos coletivos.

Inclusive, no que se refere aos acordos e convenções coletivas, há de se destacar a excelência do **sistema MEDIADOR**: sistema disponível no site do MTE que é responsável pelo depósito e validade de todo e qualquer instrumento coletivo vigente no país.

5) CONCLUSÃO

Para concluir, no que se refere propriamente as mediações específicas realizadas pelo MTE no PCN há restaram as seguintes impressões:

Entre as diretrizes no PCN que nos parecem como modelos a serem estudados e possivelmente implementados na legislação brasileira, há de se destacar a orientação da OCDE para o fornecimento de informações aos trabalhadores que lhes permitam ter uma idéia correta e adequada sobre as atividades e resultados da empresa nos processos de negociação. Trata-se de mecanismo não previsto no ordenamento brasileiro, mas que nos parece essencial para que se proceda uma negociação justa e razoável.

Há de se destacar, por outro lado, o grande passo dado pelo Brasil no que se refere à Diretriz que estabelece a necessidade de que se proceda um aviso com prazo razoável aos trabalhadores, quando da ocorrência de mudanças de operações ou encerramento das entidades: foi a promulgação da Lei 12.506/2011, que regulamenta o instituto da proporcionalidade do aviso prévio e consolida esse importante direito trabalhista.

Essencialmente essas Diretrizes vêm ao encontro da política do MTE de implementação de mudança de comportamento social na busca por um processo negocial em detrimento do litigioso. Busca-se um novo direito, balisado por normas internacionais e nacionais de direitos humanos e de justiça social.

The 2011 OECD Guidelines for Multinational Enterprises

- Most comprehensive international CSR instrument

- International reference document

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What do the Guidelines mean by multinational enterprise?

- No definition

- Usually established in several countries and coordinating their operations

- Not only large enterprises

- Not applicable to every SME

5

Flexibility

- Another key concept

- E.g. due diligence

- E.g. encourage business partners

- E.g. relation with infringing partner

- E.g. numerous suppliers

- E.g. large MNE and SME-MNE

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Contradiction national law – OECD Guidelines

- First duty: comply with applicable law

- No precedence Guidelines

- Comply with the Guidelines without contravening the law

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I Workshop Internacional sobre as Diretrizes da OCDE para uma Conduta Empresarial Responsável: : Construindo uma Cooperação Multilateral com o PCN Brasil

RESPONSABILIDADE SOCIAL CORPORATIVA

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[9] Originally presented in Portuguese by Prof Bessa.   See English translation by the Workshop Rapporteur at the end of these slides, listed in text format.

Responsabilidade Social Empresarial ou Corporativa

- ## O que é ?

- ## Como a academia tem trabalhado o tema.

- ## Propostas

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Responsabilidade Social Empresarial

- A Responsabilidade Social Corporativa vem despertando interesse cada vez maior tendo em vista da conscientização generalizada de que as empresas tem o poder de influenciar tanto na causa quanto na resolução dos problemas sociais e ambientais.

- No âmbito das organizações, denomina-se a Responsabilidade Social Corporativa o conjunto de conceitos e práticas que visam a entender o papel que cabe a cada empresa na execução de ações de natureza social e de preservação ambiental .

- Apesar do crescente interesse que a Responsabilidade Social Corporativa tem tido desde os anos 90, algumas práticas datam de quase um século.

3

Responsabilidade Social Empresarial

- A questão da responsabilidade corporativa é citada em 1919 no julgamento pela justiça americana da indústria FORD:

"Em 1916, argumentando a realização de objetivos sociais, Henry Ford decidiu não distribuir parte dos dividendos aos acionistas e investiu na capacidade de produção, no aumento de salários e no fundo de reserva, dada a expectativa de redução dos preços dos carros. Um grupo de acionistas contestou essa decisão. A Suprema Corte de Michigan decidiu a favor dos acionistas, alegando que corporações existem para o benefício de seus acionistas e que os diretores precisam garantir o lucro, não podendo usá-lo para outros fins" (Toldo, 2002)

*Em 1953, o caso A P. Smith Manufacturnig Company versus seus acionistas, levou a Justiça Americana a estabelecer **a lei da filantropia corporativa**, determinando que uma corporação poderia promover o desenvolvimento social.*

- O foco da Responsabilidade Social Corporativa nessa fase é o da **filantropia tradicional**, a prática de doações constante das empresas de maior porte para campanhas sociais.

4

Responsabilidade Social Empresarial
Contexto

- Até os anos 70/80 – a visão predominante era que as ações sociais deveriam ser exercidas exclusivamente pelo Estado, enquanto que as empresas deveriam perseguir a maximização dos lucros, a geração de empregos e o pagamento de impostos ao governo.

- Essa visão está na afirmação de Milton Friedman , Premio Nobel de Economia em 1970:

... *"A responsabilidade social das empresas mostra uma concepção errada do caráter da natureza da economia livre. Em tal economia só há responsabilidade social do capital – usar seus recursos e dedicar-se a atividades para aumentar seus lucros.*

- *As empresas devem produzir com eficiência bens e serviços e deixar a solução das questões sociais para os órgãos governamentais competentes"* (Friedman, 1970)

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Responsabilidade Social Empresarial
Contexto

Num contexto de crise mundial dos anos 70

- crise do petróleo;
- preocupação com o esgotamento dos recursos naturais;
- aprofundamento da recessão econômica;
- avanço da economia asiática no mercado internacional.

Vem à tona:

- novas formas de pensar a organização do trabalho (esgotamento do modelo fordista),
- discurso neo-liberal globalizante
- crise do Estado (modelo Keynesiano de intervenção (Welfare State)

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Responsabilidade Social Empresarial e Sustentabilidade - Contexto

- Esse contexto de alteração do processo produtivo propiciado pela evolução tecnológica e a crise econômica e ambiental contribuiram para a ampliação da discussão do conceito de responsabilidade social empresarial.

- A noção de **"sustentabilidade"**, que se popularizou e se consolidou após a Rio/92, tornou-se um importante valor e desafio para a sociedade:

"A busca pelo equilíbrio das dimensões econômica, social e ambiental nos empreendimentos humanos e na elaboração, implementação e avaliação de políticas de desenvolvimento"

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Responsabilidade Social Empresarial e Sustentabilidade- Contexto

- As propostas construídas sob a lógica desse novo paradigma, partem da premissa de que cada setor da sociedade deve ter o seu espaço para cooperar nas soluções dos problemas socioambientais. (Agenda 21, Rio/92)

- De acordo com Sachs(1993), para transformar em práticas a concepção de **sustentabilidade** é necessário a parceria da sociedade no sentido mais completo: **sociedade civil organizada, Governos - autoridades públicas de todos os níveis, o "mundo das empresas".**

- Exige-se das empresas uma postura que explique sua preocupação com questões socioambientais (responsabilidade socioambiental) e com a ética. A sociedade cobra das empresas uma atuação responsável e o consumidor tem consciência da efetividade de seus direitos.

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Responsabilidade Socioambiental Empresarial

- Com a aceleração das mudanças e o agravamento dos problemas sociais, a questão da filantropia e do exercício da responsabilidade social ganhou novos contornos e dimensões.

- Tornou-se um problema não mais do Estado, dos governos locais, mas um desafio vencido pela ação do Estado, juntamente com as empresas e a sociedade civil (MACHADO; LAGE, 2002).

Responsabilidade Socioambiental Empresarial

- Uma interpretação para o conceito de Responsabilidade Socioambiental Empresarial e que engloba múltiplas demandas e dimensões foi lançada no Congresso Empresarial Mundial para o Desenvolvimento Sustentável, em 1998:

"Responsabilidade socioambiental corporativa é o comprometimento permanente dos empresários de adotar um comportamento ético e contribuir para o desenvolvimento econômico, melhorando simultaneamente a qualidade de vida de seus empregados e de suas famílias, da comunidade local e da sociedade como um todo".

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Responsabilidade Socioambiental- Contexto

Nas Empresas a responsabilidade socioambiental operacionaliza-se através do chamado **triple bottom-line**, a ideia de que uma organização é sustentável :

Aquela que, além de gerar resultados econômicos – financeiros, também deve engajar-se em ações sociais e zelar pelo meio ambiente.

(Hart;Milstein,2004)

Responsabilidade Social Empresarial

- No cenário atual, impera a concepção de que a responsabilidade empresarial está muito além de manter o lucro de seus acionistas e dirigentes. Ela passou a ser responsável pelo desenvolvimento da sociedade onde está inserida, adotando ações que influenciem o bem – estar comum.

- Há uma razoável concordância em afirmar-se que empresas responsáveis são:

  - as que vão além de suas obrigações legais, no tratamento justo e considerado de seus funcionários;
  - as que têm na relação transparente e ética com os stakeholders;
  - as que minimizam os danos e impactos ambientais provocados;
  - as que apoiam as comunidades locais e;
  - as que promovem os direitos humanos;

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Responsabilidade Social Empresarial

- Ou seja, a RSC consiste numa forma de atuação que pode ser descrita como promotora do interesse público, mas que não é única e exclusivamente imposta, ou regulada, pelo Estado.

- Em um mundo em que a realidade de mercado muda com velocidade cada vez maior, a empresa precisa saber exatamente qual é a sua missão, e a busca de um sentido ético para sua existência deve voltar-se tanto às relações de mercado quanto as relações além mercado. (Ashley et al, 2005).

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Responsabilidade Socioambiental - Contexto

- De acordo com Elkington (2001), os principais desafios para as empresas incorporarem esse papel são:

  1. Estratégias de **inovação** e para enfrentar a competitividade do mercado, em um mundo globalizado.

  2. Incluir princípios e **valores éticos e morais**, pois em geral, a lei não fornece orientação para a maioria das questões de interesse da ética corporativa .

  3. **Transparência** nas informações relativas ao funcionamento das empresas.

  4. Tecnologia do **ciclo de vida do produto**- desde a utilização de matérias primas , processos opreacionais de fabriacação, até a fase de reciclagem ou descarte do produto.

  5. Novas **parcerias**, tanto para praticar a transparencia das informações quanto para para alcançar melhor desempenho no ciclo de vida do produto.

  6. Planejamento de mais **longo prazo**

Responsabilidade Social Empresarial no Brasil

- No Brasil, as primeiras discussões sobre o tema responsabilidade socioambiental empresarial remontam aos meados da década de 1960.

- O protagonismo foi da **Associação de Dirigentes Cristãos de Empresas (ADCE)** fundada em São Paulo, e que tinha como objetivo estudar as atividades econômicas e sociais do meio empresarial a partir de ensinamentos cristãos.

- A dinâmica da responsabilidade socioambiental passou a ser pauta de diversos seminários, congressos e palestras e originou no país, um movimento mais consistente, na busca de uma ampliação da consciência do empresariado em relação a suas responsabilidades sociais (ASHLEY, 2005).

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Responsabilidade Social Empresarial no Brasil

- Em 1982 a Câmara Americana do Comércio de São Paulo lança o prêmio Eco de Cidadania Empresarial.

- Em 1992 o Banco Banespa divulga um relatório com todas as suas sociais.

- Em 1993, o sociólogo Herbert de Souza , o Betinho, lança a Campanha Nacional da Ação da Cidadania contra a Fome, a Miséria e pela Vida, com o apoio do PNBE - Pensamento Nacional das Bases Empresariais, constituindo o marco da aproximação dos empresários com as ações sociais.

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Responsabilidade Social Empresarial no Brasil

- Em 1997, o Instituto Brasileiro de Análises Sociais e Econômicas **(IBASE)**, em conjunto com Betinho, lançou um modelo de Balanço Social e em parceria com a Gazeta Mercantil, criou um selo do **Balanço Social,** estimulando as empresas a divulgarem seus resultados na participação social.

- Em 1998, foi criado o Instituto Ethos de Empresas e Responsabilidade Social, com o objetivo de **disseminar a prática da responsabilidade social,** por meio de publicações, experiências, programas e eventos para os interessados na temática.

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Responsabilidade Social Empresarial no Brasil

- Para conquistar um diferencial e obter a credibilidade e aceitação da sociedade e das diversas partes interessadas dentro do universo empresarial, além de novas práticas e da publicação anual dos balanços e relatórios sociais e ambientais as corporações têm buscado certificações , selos , standards internacionais na área social.

- Dentre outros alguns exemplos significativos no Brasil:
  - Selo Empresa Amiga da Criança, conferido pela Fundação Abrinq
  - Selo Empresa-Cidadã, premiação da Câmara Municipal da cidade de São Paulo
  - Selo Balanço Social IBASE/Betinho do Instituto Brasileiro de Análise Sociais e Econômicas .

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Responsabilidade Social Corporativa no Brasil e a Academia

- Um dos primeiros trabalhos acadêmicos sobre RSC desenvolvidos no Brasil foi em 1984: uma dissertação de mestrado do Departamento de Contabilidade da Universidade de São Paulo (USP) (Cavalcante, 2005).

- Desde então, as Universidades brasileiras tem, cada vez mais, se envolvido com o tema por meio de Projetos de Pesquisa, de Ensino e de Extensão:
  - quase todos os cursos de administração e áreas afim tem oferecido disciplinas nessa temática;
  - o numero de trabalhos acadêmicos publicados em revistas científicas especializadas, bem como apresentados em Congressos Nacionais e Internacionais, tem sido crescente e vem atraindo acadêmicos e profissionais.

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Responsabilidade Social Corporativa no Brasil e a Academia

- Dentre os tipos de estudos realizados sobre o tema e os principais resultados obtidos na literatura acadêmica brasileira :

  - Preocupação na busca pelo entendimento e da aplicação do conceito de responsabilidade social: o enfoque não é no caráter filantrópico, mas sim, como parte da estratégia da organização, a fim de obter ganhos em relação à imagem e como obter vantagem competitiva

- Dentre alguns artigos pesquisados e seus respectivos resultados:

  - O modelo conceitual traz inovações estratégicas para uma nova cultura de consumo e produção no sentido do desenvolvimento e sociedade sustentáveis

  - As ações de RSC podem impactar na imagem da organização, mas sem uma ação direta da mesma. As impressões sobre a empresa quanto a sua consciência social, seriam formadas espontaneamente, de forma não-calculada.

  - Nota-se que as empresas vêm ampliando e sistematizando as ações sociais e ambientais, ressaltando que as iniciativas ainda se limitam as suas próprias empresas, constatando-se baixo caráter associativo neste sentido

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Responsabilidade Social Corporativa no Brasil e a Academia – Propostas

- Nota-se que a grande parte das pesquisas em RSC estão centradas em analisar as relações entre Responsabilidade Social e lucratividade, envolvendo a performance das empresas, ainda muito centradas no campo da Administração e das Ciências Contábeis.

- O alcance do mercado para a virtude permanece limitado. É necessário avançar em pesquisas que tratem dos processos de governança, isto é, das relações entre Governo, Organizações Não Governamentais e as empresas na implementação das políticas públicas, com um olhar mais multidisciplinar (Ciência Política, Relações Internacionais, etc)

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Responsabilidade Social Corporativa no Brasil e a Academia- Propostas

- A experiência da atuação do Ponto de Contato Nacional-PCN para as diretrizes da OCDE pode ser uma importante oportunidade para cooperação com a Academia para poder pensar as relações entre os diversos atores e as parcerias para a implementação de políticas de direitos humanos, erradicação do trabalho infantil;a melhoria das condições de trabalho;o controle das horas extras; e a liberdade de associação dos trabalhadores, entre outros temas.

- É importante que a Academia esteja inserida de forma multidisciplinar na educação, treinamento e desenvolvimento de pesquisas na área de Responsabilidade Social, fortalecendo os laços com o Ponto de Contato Nacional e o Forum de Responsabilidade Social de Políticas Públicas.

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I International Workshop on the OECD Guidelines for Responsible Business Conduct :
Building a Multilateral Cooperation with the NCP Brazil

Corporate Social Responsibility

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Slide 1)   Business or Corporate Social Responsibility
- What is it?
- How the academy has worked with this theme
- Proposals

Slide 2)   Corporate Social Responsibility
- Corporate Social Responsibility has been attracting increasing interest in view of the widespread awareness that companies have the power to influence both the cause and the resolution of social and environmental problems.
- Within organizations, Corporate Social Responsibility is a set of concepts and practices that aim to deal with the role of each company in the execution of its business operations in relation to social impacts and environmental preservation.
- Despite the growing interest in Corporate Social Responsibility has had since the 90s, some practices date back almost a century ago.

Slide 3)   Corporate Social Responsibility
- The issue of corporate responsibility is cited in 1919 by American justice in a trial related to FORD industry:
- "In 1916, arguing the achievement of social goals, Henry Ford decided not to distribute part of dividends to shareholders and invested in production capacity, increase in wages and in the reserve fund, given the expectation of lower prices of cars. A group of shareholders challenged that decision. The Michigan Supreme Court ruled in favor of shareholders, alleging that corporations exist for the benefit of its shareholders and directors need to ensure a profit and can not use it for other purposes "(Toldo, 2002)
- In 1953, the case A P. Smith Manufacturing Company versus its shareholders, led the U.S. Court to establish the law of corporate philanthropy, determining that a corporation could promote social development.
- The focus of Corporate Social Responsibility at that stage was of traditional philanthropy, the practice of constant donations of larger companies for social campaigns.

Slide 4)   Corporate Social Responsibility Context
- Until 70/80 - the prevailing view was that social actions should be exercised exclusively by the State, while companies should pursue the maximization of profits, creating jobs and paying taxes to the government.
- That vision was in a statement of Milton Friedman, Nobel Prize for Economics in 1970:
- ... "A corporate social responsibility shows a misconception of the character of the nature of a free economy. In this economy there's only social responsibility of capital - to use its resources and engage in activities to increase your profits.
- Companies must produce goods and services efficiently and let the solution of social issues for government agencies "(Friedman, 1970)

Slide 5)   Corporate Social Responsibility Context
- In a context of global crisis of the 70s
    - oil crisis;
    - concern about the depletion of natural resources;
    - deepening economic recession;
    - advancement of Asian economy in the international market.
- Come to the fore:
    - new ways of thinking about the organization of work (exhaustion of Fordist model)
    - neo-liberal globalization discourse
    - State crisis of the Keynesian model of intervention (welfare state)

Slide 6)   Corporate Social Responsibility and Sustainability - Context
- This context of change in the production process brought about by technological developments and the economic and environmental crisis contributed to the expansion of the debate on the concept of corporate social responsibility.
- The notion of "sustainability", which became popular and consolidated after Rio/92, became an important value and challenge for society:
    - "The search for the balance of economic, environmental and social in human entrepreneurship and in the design, implementation and evaluation of development policies"

Slide 7)   Corporate Social Responsibility and Sustainability - Context
- The proposals built on the logic of this new paradigm are based on the premise that every sector of society should have their space to cooperate in the solution of environmental problems. (Agenda 21, Rio/92)
- According to Sachs (1993), to transform the design into practices of sustainability partnership of society is required in its fullest sense: civil society organizations, governments, public authorities at all levels, the "business world".
- It requires an attitude of companies to explain their concern with environmental issues (environmental responsibility) and ethics. Society demands responsible conduct from companies and the consumer becomes more aware of the effectiveness of their rights.

Slide 8)   Corporate Social Responsibility

- With the acceleration of change and increased social problems, the issue of philanthropy and social responsibility practices gained new dimensions and contours.
- It became a problem no only to the State, local governments, but a challenge to be met by the State action, together with business and civil society (MACHADO; LAGE, 2002).

Slide 9)   Corporate Social Responsibility
- An interpretation on the concept of Corporate Social Responsibility that demands and encompasses multiple dimensions was launched in World Business Congress for Sustainable Development in 1998:
- "Corporate social and environmental responsibility is the continuing commitment of employers to adopt ethical behavior and contribute to economic development while improving the quality of life of its employees and their families, the local community and society as a whole."

Slide 10)   Context-Environmental Responsibility
- In companies, social and environmental responsibility is made operational through the so-called triple bottom-line, the idea that an organization is sustainable:
- A company which, besides generating economic-financial results, also engages in social activities and cares for the environment *[the diagram shows a triangle with three aspects of the triple bottom line: economic development, social responsibility and environmental management as determinants of business sustainability]* (Hart and Milstein, 2004)

Slide 11)   Corporate Social Responsibility
- In the current scenario, the prevailing notion is that corporate responsibility is far beyond keeping the profit of its shareholders and directors. Business is considered nowadays also responsible for the development of the society where it operates by taking actions that influence the common well-being.
- There is a reasonable common agreement in saying that responsible companies are those that:
  - go beyond their legal obligations, adopting a fair and respectful treatment of its employees;
  - act with transparent and ethical relationship with stakeholders;
  - have been minimizing damage and environmental impacts;
  - have been supporting local communities and;
  - have been promoting human rights.

Slide 12)   Corporate Social Responsibility
- In other words, CSR is a way of business conduct that can be described as a promoter of public interest, but that is not solely imposed or regulated by the state.
- In a world where the reality of markets changes with increasing speed, a company needs to know exactly what its mission is and the pursuit of an ethical meaning to its existence must be related both to market and non-market relations. (Ashley et al, 2005).

Slide 13)   Context-Environmental Responsibility
- According to Elkington (2001), the main challenges for companies to incorporate this role are:

- o Strategies to address innovation and market competitiveness in a globalized world;
- o The inclusion of principles, ethical and moral values, because in general, the law does not provide guidance for most matters of interest to corporate ethics;
- o Transparency of information concerning the operation of companies;
- o Product lifecycle technology, from the use of raw materials, through production and operational processes to the stage of recycling or disposal of the product.
- o New partnerships, both for practice and for transparency of information to achieve better performance in the lifecycle of the product.
- o Planning in a longer term

Slide 14)   Corporate Social Responsibility in Brazil
- o In Brazil, the first discussions on the topic of corporate social and environmental responsibility go back to the mid-1960s.
- o The leadership has been from the Association of Christian Business Leaders (ADCE) founded in São Paulo, whose mission has been to study the economic and social activities of business based on Christian principles.
- o The dynamics of social and environmental responsibility has become the agenda of various seminars, conferences and lectures and has originated, in the country, a society movement more consistent in the pursuit of a greater awareness of the business in relation to its social responsibilities (ASHLEY, 2005).

Slide 15)   Corporate Social Responsibility in Brazil
- In 1982, the American Chamber of Commerce in São Paulo launched the Eco Award for Corporate Citizenship.
- In 1992 the Banespa Bank publishes a report with all its social *[actions]*.
- In 1993, sociologist Herbert de Souza, Betinho, Launched a National Campaign for Citizenship Action against Hunger and Poverty and for Life, with support from the PNBE – Pensamento Nacional das Bases Empresariais [*National Thinking of Business Sector]*, constituting the national framework of the approximation of business to social actions.

Slide 16)   Corporate Social Responsibility in Brazil
- In 1997, the Brazilian Institute of Social and Economic Analyses (IBASE), jointly with Betinho, launched a model of Business Social Reporting and, in partnership with the Gazeta Mercantil, created a label of Balanço Social *[Business Social Reporting]*, encouraging companies to disclose their results in their social involvement engagement.
- In 1998, it was created the Ethos Institute for Corporate Responsibility, aiming to spread the practice of social responsibility through publications, experiences, programs and events for those interested in the subject.

Slide 17)   Corporate Social Responsibility in Brazil
- To gain a differential credibility and acceptance of the company by its various stakeholders within the business world, beyond new practices and the publication of annual accounts and social and environmental reports, corporations have sought certifications, labels and international standards in the theme of corporate social responsibility.
- Among other significant examples in Brazil:
  - o The label of Child Friendly Company, awarded by Abrinq

       o   The label of Company Citizenship Award of the City Council of São Paulo

       o   The label Balanço Social *[Business Social Reporting]* of IBASE / Betinho

Slide 18)   Corporate Social Responsibility in Brazil and the Academy

- One of the first academic papers on CSR was developed in Brazil in 1984: a dissertation in the Department of Accounting at the University of São Paulo (USP) (Cavalcante, 2005).
- Since then, the Brazilian universities have, increasingly, been involved with the issue through projects of Research, Education and Outreach services:
  - almost all management courses and related areas have been offering course units in the subject;
  - the number of academic papers, published in specialized scientific journals and presented at national and international congresses, has been growing and has attracted scholars and professionals.

Slide 19)   Corporate Social Responsibility in Brazil and the Academy

- Among the types of studies conducted on the topic and their main results obtained in the Brazilian academic literature:
  - Concern with the search for understanding and applying the concept of social responsibility: the focus is not on philanthropic approaches, but those that are part of the organization's strategy *[in business processes],* in order to gain benefits in relation to image and on how to gain competitive advantage.
- Among some papers surveyed and their results:
  - The conceptual model for strategic innovation brings a new culture of consumption and production towards sustainable development and society
  - The practices of RSC may impact the organization's image, but not in a direct way. The company public image, as a society conscience, would be formed spontaneously, in a non-calculated way.
  - It is noted that companies are expanding and systematizing social and environmental actions, but observing that the initiatives are still limited to their own companies arena, confirming low associative approach to other actors.

Slide 20)   Corporate Social Responsibility in Brazil and the Academy - Proposals

- It is noted that most of the research on CSR is focused on analyzing the relationship between social responsibility and profitability, involving the performance of companies and still very focused on the knowledge field of management science and accounting.
- The market scope for virtue remains limited. It is necessary to advance in research dealing with the processes of governance, ie the relationship between government, non governamental organizations and companies in the implementation of public policies, with a more multidisciplinary (e.g., Political Science, International Relations and others)

Slide 21)   Corporate Social Responsibility in Brazil and the Academy - Proposals

- The experience of the National Contact Point for the Guidelines can bring an important opportunity for cooperation with the Academy in thinking power relations among different actors and in developing the partnerships for the implementation of human rights policies; the elimination of child labor; the improvement of working conditions; the overtime control and freedom of association of workers *[and other themes]*

- It is important that the Academy is inserted, in a multidisciplinary approach, in education, training and research activities in the area of social responsibility, strengthening ties with the National Contact Point and the Governmental Forum on Social Responsibility.

Topics

- Method for making notes for the workshop report
- Notes and recommendations per session
- The rapporteur overview on CSR vis a vis sustainable development

Method for making notes for the workshop report

Content analysis

- Content analysis of themes and issues raised:
  - Database on perspectives and comments following a thematic categorization raised in sessions and debates per stakeholder category of participants
  - Conceptual analysis oriented to propose recommendations for building multilateral cooperation with OECD NCP Brazil

Structure of Workshop Report

- Following the workshop agenda, structured by sessions, including questions and answers
- A synthesis session for themes and issues raised contributing to recommendations for building multilateral cooperation with OECD NCP Brazil
- Appendix:
  - Presentations and notes from speakers
  - List of participants

Notes and recommendations per workshop session

Opening Session – Human Rights in Brazil and the OECD Guidelines

- Human Rights are a transversal theme to all variety of government policies
- Human Rights issues are dealt in Brazilian government by complementary bodies, not restricted to the HR Secretariat
  - Recommendation: In respect to government policies related to the OECD Guidelines chapter on human rights issues, to map and promote collaboration of the NCP Brazil with the range of specific government bodies and policies

Session 1 – OECD Guidelines for MNE: Overview, cases and mediation

- 2011 brought a new chapter in the OECD Guidelines specifically to deal with Human Rights, in accordance to the UNGP on Human Rights. How to implement it is a current challenge for business in terms of the capacity building to be fulfilled.
- NCPs act in a variety of forms, some of them including advisory board, others working as independent bodies.
  - Recommendation: Further collaboration among NCP for building knowledge network to support effective opperation according to specific contexts

Session 2 – OECD Guidelines for MNE: The vision of business community

- The challenge of supply chains in companies with thousands of suppliers as to make it feasible to build local capacity and, also, monitor progress towards OECD Guidelines.
- The non legal compliance implies not in implementation but adoption of the OECD Guidelines, with flexibility and stages according to specific contexts of business operations.
  - Recommendation: further global awareness raising and capacity building among companies, nations and stakeholders
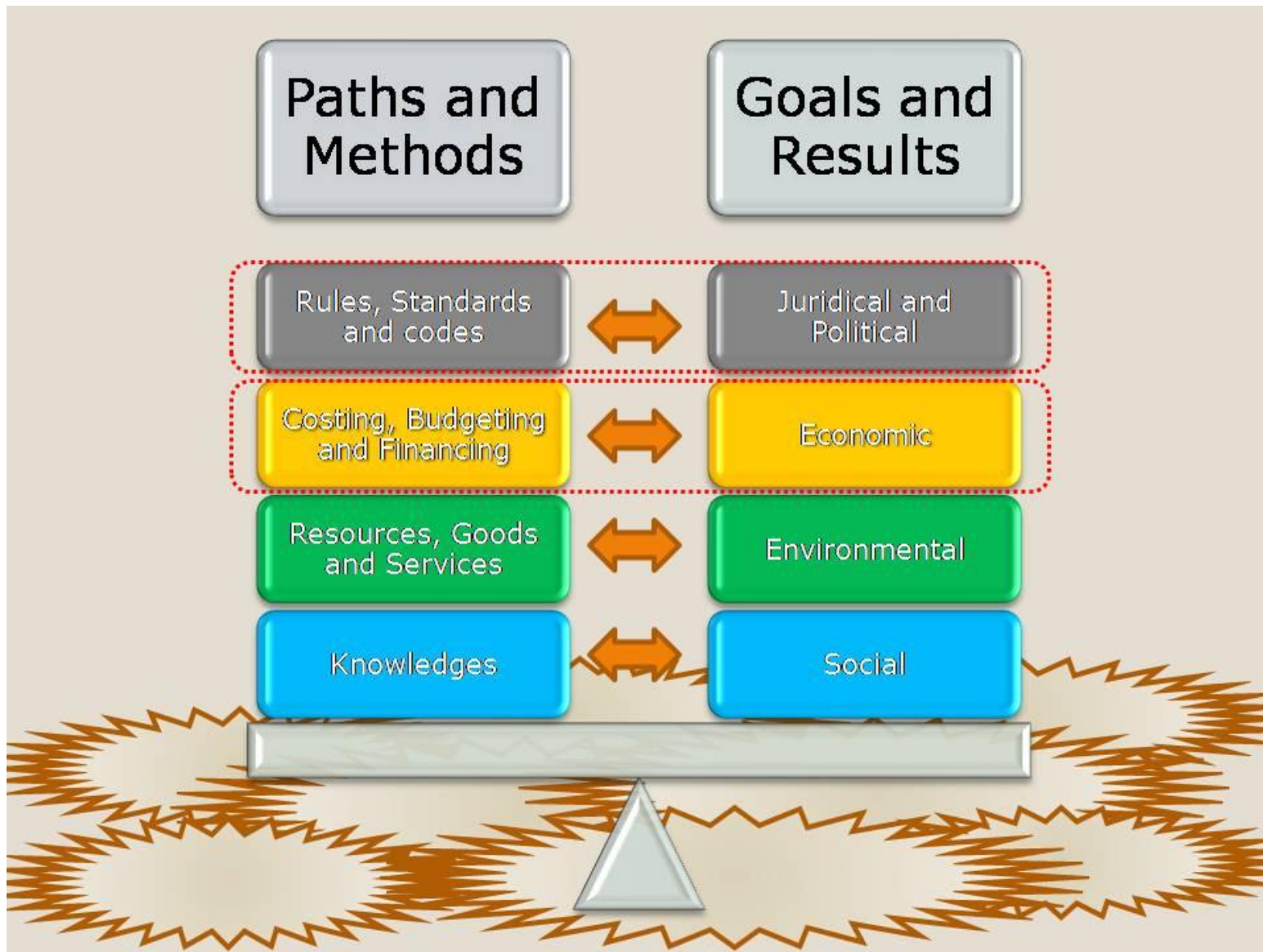
Session 3 – Experience of NCP Stakeholders: Trade Unions, NGOs and Academy

- A historical unbalanced model of development in relation to boundaries on the public and private interests, demanding an important and critical discussion of a public agenda on the role of State as well as business, with not yet a clear answer in the context of Brazil.
- A gap of knowledge on how further guidelines on CSR are effectively being applied, which is desirable to pursue
- CSR in research and educational agenda in academia is still limited to the area of Administration and Accountancy

The rapporteur view on CSR vis a vis sustainable development

Expansion in the number of cases of responsible business conduct cannot be solely based on the will of business leaders

Responsible business conduct requires responsible conduct of society, States, government and markets
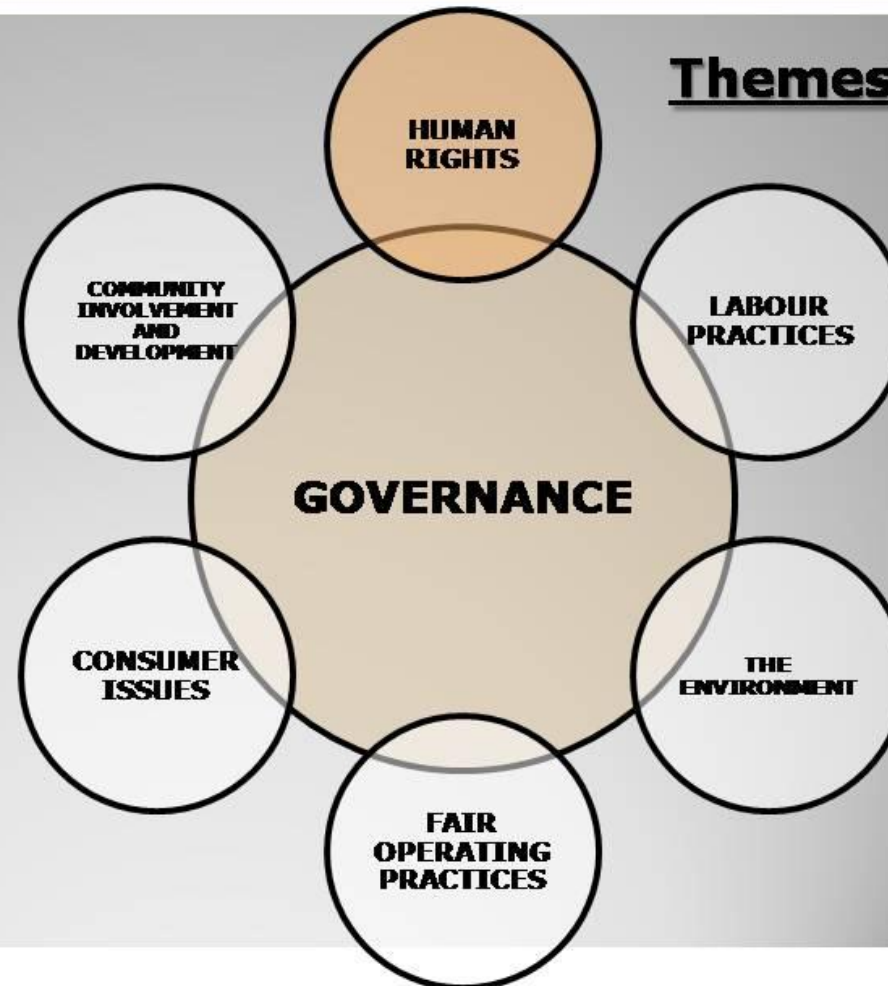
Rules, Standards and Codes

LEGAL COMPLIANCE	SOCIAL EXPECTATIONS	ETHICAL IDEALS
INTERNATIONAL LAW AND REGULATION	INTERNATIONAL STANDARDS AND PRACTICES	INTERNATIONAL CODES OF PRINCIPLES AND ETHICS
COUNTRY, PROVINCIAL AND MUNICIPAL LAW AND REGULATION	COUNTRY, PROVINCIAL AND MUNICIPAL STANDARDS AND PRACTICES	COUNTRY, PROVINCIAL AND MUNICIPAL CODES OF PRINCIPLES AND ETHICS
SECTORAL AND ORGANIZATIONAL LAW AND REGULATION	SECTORAL AND ORGANIZATIONAL STANDARDS AND PRACTICES	SECTORAL AND ORGANIZATIONAL CODES OF PRINCIPLES AND ETHICS
Level 1	Level 2	Level 3

Territories of Social Responsibility

Levels of Ethical Challenges to Social Responsibility

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Principles and Themes of Social Responsibility according to ISO 26000: 2010