

## RETHINKING SOCIAL CORPORATE RESPONSIBILITY: A Case in Argentina From the point of view of the civil society

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**Abstract.-** On the basis of a concrete case, the negotiation about compensation and reparation on environmental damage in an Indio-Community in Northern Argentina, this Paper focuses on the relationship between state, business and civil society and on its expressions in everyday reality. The paper looks at the way extractive industry impacts on people and on the environment. It reflects on the growing ascendancy of business on governmental and multilateral circles. And it looks to the way CSR has evolved lately in order to rethink on its feasibility and threats.

Although conceptualizations of Corporate Social Responsibility (CSR) are diverse and divergent, the question is analyzed predominantly from macroeconomic or social approaches. From the perspective of the Social Anthropology this Paper tries to reflect on viability and risks of CSR, based on a detailed presentation of a case study: the negotiation on reparation of damage caused by the construction of a gas pipeline in northwest Argentina (NOA). The proposed approach complements the macro approaches by elucidating in detail the complex relationship between State, companies and civil society in the everyday reality. And furthermore, by describing how this relationship impacts on social subjects, emphasizing the need to develop new relational models among the three sectors.

From this same approach, the article seeks to insert the perspective of civil society in a discussion on CSR that seems to have implicitly placed the responsibility of Companies in their philanthropic activities, thus diverting the focus of what should be the center of the discussion: the predatory practices. In this sense, the article tries to promote a rethinking in today's approaches on CSR -that mostly go basically from philanthropy up to social policy- by bringing the discussion back to his core: to what extent should business play a role in social policy?.

Some of the considerations linked to the relationship between state-companies-society are incorporated in the description of the case study, specifying the different actors and linking the local level (community) with the national context (Argentina). Both levels are subsequently included in the framework of the general discussion on State, CSR and social policies.

The reflection on CSR from different perspectives is particularly relevant in a time when, while there is an increasing interest of transnational corporations (TNCs) to carry up resource extractive activities in the countries of the South, the discussion in the "central countries " gives as implied the incorporation of companies in development policies.

The article begins with a detailed description of the case study with the purpose that the subsequent discussion on CSR could be related to it

## THE CONTEXT

In 1991, with the privatization of Yacimientos Petrolíferos Fiscales and of the Oil- Basin in NOA<sup>1</sup>, begins the big development of hydrocarbons sector in the province of Salta. In this context took place the construction of two pipelines from Salta to north Chile: Atacama and Norandino<sup>2</sup>

The first question regarding it remains unanswered until today: why two pipelines, starting almost from the same place, arriving at the same destiny and with two routes almost parallel, that run through ecologically fragile regions as the valleys of Yungas and the Puna? This question, repeatedly asked by the opponents to both pipelines did not received any response from Governments of Salta and Jujuy nor from the relevant Regulatory Board (ENARGAS)<sup>3</sup> It is not the purpose of this article to analyze the complex web of relations that existed behind the construction of the two pipelines, but it includes some considerations that can be relevant to assess the State – Companies– Civil Society relationship.

Whereas the Atacama pipeline was and is strangely less criticized by the people, its route –in order to reduce distances and avoid conflict zones– passes by the center of the city of Jujuy, buried in the bed of Rio Grande, a high mountain river, with dire consequences from potential dangers caused by floods, swelled and altered waterways The danger increases every summer when floods cause changes in the riverbed. Although it seems that Atacama conducts a regular maintenance of the pipeline, there is no record of periodic checks performed by independent teams and whose results are provided to the citizens.

Much more questioned since its beginning, the construction of the pipeline Norandino (NAA) is a clear demonstration of the way in which public works in

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<sup>1</sup> Northwest Argentina

<sup>2</sup> "The pipeline Norandino starts in Pichanal (Salta) and reaches Tocopilla (Chile)... to supply a electricity generating plant in the Port of Mejillones. The total investment is in the order of 400 million in provincial territory (Salta) and is addressed by the consortium Tractebel-Edenor. The Gas Pipeline Atacama, begins in Coronel Cornejo – Prov of Salta-and run Mejillones... is carried out by the consortium CMS ENERGY-ENDESA-Pluspetrol-ENERGY-ASTRA-CAPSA"(CIEES, 1998:7)

<sup>3</sup> The answers of the construction companies ranged from phrases like "That is not matter of Techint" until insinuations of corruption and "buy" of state officers with which some technicians from Atacama "explained" the granting of a construction license to the company Techint (subsequent certainly to the licence of the company Atacama) See, Guidi, 2006

Argentina were distributed and controlled during the 90s<sup>4</sup>. The dispute that the project generated in the provinces of Jujuy and Salta is evidenced in the journals<sup>5</sup>. From the various levels of government (nation, provinces of Salta and Jujuy, municipalities) the pipeline was presented as an important element of progress that would bring welfare, work, wealth and all kinds of advantages to the affected areas. From the side of the affected people, the pipeline was seen largely as a tragedy.

A study by the opposition to the pipeline summarizes the issue and the positions of different actors: "This endeavour, known as Norandino Gas Pipeline, traverses through seven environmentally critical areas among which is the biological corridor of the Yungas.... The company Techint, which carries out the work on behalf of the consortium owner of Norandino, hired the company Techint, Brown and Caldwell, i.e., contracted itself, to make the necessary report of environmental impact..... According to Greenpeace, the report lacks objectivity and presents omissions and gross technical failures.... In its defence, the company maintains that the pipeline will not alter the ecosystem; the engineer and environmental director of the project, Mr. Ymaz (Techint), said that the pipeline will bring fewer complications to the Yungas than those made by the Collas people..... The company, without denying the necessity of changing the route, categorically rejects it as it would increase the cost by 100 million dollars over the 390 million dollars originally projected"<sup>6</sup>

Since the pipeline NAA crosses mainly lands of indigenous communities of Salta and Jujuy, these communities were the main opposition to its construction. This opposition, however, revealed a recurring problem in struggle for rights in the region: the divergent views and the "internal competition" of Organizations. While the Council of Aboriginal Organizations of Jujuy (COAJ) opposed to the pipeline, some community leaders accepted donations from the Corporation and avoided any public opposition to that affect, rather deferred to the Prelature of Humahuaca, which initially took an active role in favor of the pipeline and discredited the opposition leaders as "obstructionists to progress".

The discussion on the "safety" of Norandino's route, which was to have been settled in 1998, was concluded two years later, with the first accident of the pipeline in the jungle of Yungas (March 2001) when a flood of the river San Andrés first "washed" field and then broke the pipe. Despite the intensive safety measures immediately taken by the company (NAA), in less than a year (January 2002) there was a second accident in the region. Since then, NAA and TGN established permanent monitoring and maintenance schedules of the pipeline, which in 2002 were integrated into a Maintenance System Plan.

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<sup>4</sup> During the Government of C. Menem

<sup>5</sup> see e.g. El Tribuno de Jujuy: 07,10,11,12,15,17,18,21,24 and 31 March 1998

<sup>6</sup> Petrarca G, September 1998. The disputed modification of trace relates exclusively to the area of Yungas, in which later have taken place two accidents

## THE IMPACT ON JUJUY-THE ACTORS

Once the possible construction of two pipelines was announced in the middle of 1990s, indigenous communities of the Puna Jujeña spoke out against the project for considering it a risk to their sacred sites, their productive activities, and their environment in general. The forms this resistance adopted as well as its limited success are described in this article because they illustrate how the forms of organizations and resistance are eroding in Argentina since the 1990s

Within the indigenous communities, the arrival of pipelines generated disputes and confrontations between a majority frightened by the potential dangers of the project, and a minority ready to take advantage of the situation by "doing business". The cases are not few in which "the business" benefited even the communal delegate. In all cases, contradictory situations occurred, such as communities blocking routes to impede the passage of machines attempting to reach a field, which in fact was already rented from a member of the community to the company at a relatively low cost and without limitations. Although the versions of events vary according to the informant, it is significant that the resilience of communities has always been dissipated by the clientelistic attitudes of politicians, social workers of the Church, and some indigenous leaders, all of them in a kind of permanent competition for the small doses of power that the situation could generate

Let us look at the different actors:

-The **provincial authorities**: as noted, both provincial and municipal authorities spoke out from a beginning in favour of the pipeline, which were identified as "agent of progress" that would bring development and growth to the region. Therefore, all opposers belonged to the group of "enemies of progress and development".

-The **Catholic Church**, also the Catholic Church through the Bishop of Jujuy and the Archbishop of Humahuaca openly aligned itself in favour of the construction of the pipeline and instructed its social workers to promote this position. This consequently created internal divisions in the communities that until today have not been successfully overcome. After the legal writ of Greenpeace for the Justice to suspend the construction of the pipeline, the Archbishop of Humahuaca proactively collected signatures in favour of the pipeline

-**Indigenous organizations**: while most of the indigenous organizations from inside the province remained a significantly silent on the pipeline, the Council of Aboriginal Organizations of Jujuy (COAJ) was the only organization that consistently opposed to its construction. Coordinated at that time by an advocate, the COAJ made countless allegations to State agencies (Institute of Indigenous Affairs, Defensoría del Pueblo, etc) and in the media, allegations that unfortunately never had a concrete effect. Perhaps the most significant example of this is the Public Hearing on the pipeline that is described below

**-the Community of Cianzo:** For the people of the affected communities, the construction of the Pipelines became a daily nightmare, completely beyond its control, and that became different nuances depending on who transmitted it: indigenous leaders and some environmentalists warned the communities against almost apocalyptic dangers linked curiously more to the construction works than to the real dangers inherent in the transport of gas. As we began to immerse into the situation in Cianzo, for example, it was astounding to observe the insistence on claims for compensation for alleged death of animals, whose owners still lived in plots totally eroded by the works of machines, and with severe risk of collapse, that did not constitute the core of their claims. Or, that the community at large could feel more threatened by erosion in the "mule track"<sup>7</sup> than by a gas transporting pipe that crosses the community, two rivers, and hundreds of microbasins whose erosion could affect the security of the pipe. The data is particularly curious as between 1998 and 2000 the community had been visited by different professionals to whom the COAJ had requested to assess the damage.

**-Environmental organizations:** only two environmental organizations participated in the discussion of the pipeline Project: Greenpeace and Vida Silvestre. The direct intervention of Greenpeace in opposition to stretch of the route through the Yungas Jungle granted public voice to a conflict that otherwise would have remained –as many others- "void" of public opinion and would had been resolved by a combination of pressure and coercion with the payment of "gifts" to opposition leaders or with the construction of some "solidary work" in the communities. However, Greenpeace confined itself to the Yungas Jungle and explicitly distanced itself from the opposition against pipelines of the indigenous communities of the puna of Jujuy<sup>8</sup>.

The attitude of the Foundation Vida Silvestre (FVSA), is summarized here in version of the same FVSA, as it is significant for the reflection on CSR: "“Everything began in February 1998, when the pipeline NAA was denounced because of its environmental impact.... Between May and July (1998), the FVSA held numerous meetings with companies responsible for the gas pipelines, and on 23 July proposed to the Company Norandino a series of concrete actions aimed at alleviating their main impacts. But, above all, it was about going beyond, pointing to solve the substantially environmental problems of the region.... Very few days later, on 26 July, NAA and Techint agreed to apply the proposed recommendations..... The proposal of the FVSA pointed to four basic premises:: 1) Responding to some key social demands, associated with environmental problems<sup>9</sup>, 2) Helping to consolidate a regional environmental perception. 3) Exercising a better environmental control of the pipeline. 4) to resolve conflicts in one community opposed to the pipeline, taking into account the local indigenous interests. In a very prominent place of the proposal of the

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<sup>7</sup> Pathway for animals used as shorter access to the provincial routes

<sup>8</sup> The argument was always "limitations of budget and personnel which force us to limit the areas of action". Obviously, the limitations exists; nevertheless it would be pertinent to reconsider how much time, resources or personell involved, for example, a simple letter of support? In how far is it valid to defend the environment as a unit, separate from the populations? And in how far are the limits linked to budgetary or to marketing criteria?

<sup>9</sup> (refers to the request of the Bishop of Humahuca for an extension of the pipeline to carry gas to communities)

Foundation Vida Silvestre Argentina figure, as seen, the attention of both the social problems as the opportunities to solve them, as happened with the access to gas in the communities that required it."<sup>10</sup>

It should be noted that until today only the city of Humahuaca (and no community adjacent) has achieved the promised access to natural gas. In any case, highlighted here is how the solidary contribution of the companies is confounded with what must be its inevitable responsibility in regard to the security measures and to the prevention of environmental damage. At no time does FVSA make an issue of the pipeline. It is only limited to suggest actions to "mitigate" negative impacts<sup>11</sup> and to propose the intervention of the Company in environmental activities unrelated to its own environmental questions<sup>12</sup> and in "solidary actions" for the affected communities. It is as if destruction were implicitly permitted if combined with actions such as the financing of environmental research or the construction of a school in the community.

**-The Companies:** the two construction companies had different attitudes to the communities, what apparently would explain the differences in the reaction from these ones: while the personnel of Atacama were instructed for establishing "good relations" with the communities and to convey tranquillity and the certainty of using a technology that would ensure the pipeline's safety, the attitude of engineers and technicians of the Techint Group was characterized by a marked distance. The works of the pipeline NAA had begun several months after the Atacama and its route was significantly longer; for Techint and Norandino the priority was clearly "gain time" for their business as providers to the Chilean market.

**-The national government and the control entities:** as noted, all areas of government promote the discourse "progress/anti-progress", traditionally used in Argentina to justify the lack of control and foresight in the public work. Based on this logic is not difficult to understand how the ENARGAS approved the project of NAA in only a couple of days, or its attitude regarding the Environmental Impact Studies (EIS). ENARGAS not only approved without reservations the EIS submitted by the consultant Techint, Brown and Caldwell, which should have been rejected from the outset, because a company cannot assess itself. When due to pressure of environmental groups the ENARGAS had to require a new EIS, it gave to the contracted consultant only 15 days for the survey<sup>13</sup>

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<sup>10</sup>In. FVSA, 11.05.2000

<sup>11</sup> like the "Revegetation in critical sectors of the track"

<sup>12</sup> As the signing of an agreement with the University of Tucumán to create the Pro Yungas Program for "the generation of information for the management and conservation of the Yungas, the formation of specialized human resources, the generation of scientific and technical answers to restrain the degradation of this ecoregion, and the implementation of alternatives of sustainable environmental management." (In: FVSA, 11.05.2000)

<sup>13</sup> "Given the increased objections and protests of the affected people, ENARGAS decided to demand to Techint an external audit for a new EIS, which fell on Coprogetti-CH2M Hill International, Italo-. American consortium, allegedly linked to the company Tractebel.... ENARGAS granted 15 days for making the survey report" (In: Petrarca, G: op.cit)

Also the Secretariat of Natural Resources of the Nation supported the works of both pipelines

**-The Justice:** despite a negative precedent in the province of Salta, where the Justice had spoken out openly in favour of the construction companies, Greenpeace submitted an Appeal for Legal Protection to the Federal Jurisdiction, which issued a Protectionary Restriction Measure decreeing the suspension of the works in the Yungas Jungle by arguing that the judgement of the Justice of Salta had not been taken into account competing interests. Immediately the construction Company and the own ENARGAS appealed this measure by the *Cámara Federal Contencioso-Administrativa*, whose members responded accepting the appeal and rescinding the Restriction Order. The judge of Salta, Abel Cornejo, also ordered those who questioned the work "to refrain from any act or event which prevents or paralyse the normal and continuous implementation of the construction of the pipeline." Apparently, the fierce official defense of the pipelines was linked to the payment of royalties, which undoubtedly were a significant contribution to the meager provincial budgets in the NOA<sup>14</sup>.

In this way, during most of 1998, while opponents and proponents of Pipelines engaged in intense discussions in the media<sup>15</sup>, the Government and the Regulatory Entities approved the projects and both companies advanced with the construction of the pipelines. It must be noted that the refusal of Techint to modify its route, as we said, was based in the interest of saving costs and making the work in the shortest time possible; but also because modifying the route would have meant coming too close to the pipeline Atacama, what not only could increase the risk in case of accident but also could have exacerbated a trade war between companies. Finally, a perfectly parallel route would have given more support to the arguments of those that felt that two pipelines with the same fate and the same trail had no sense and therefore one should not run.

We emphasize once more that if the construction of the pipeline NAA was so full of irregularities that could have been foreseen and avoided, it is due to the impunity that was guaranteed to the construction company from the Argentine State: as it usually happens in Argentina, the construction of the pipeline NAA was granted in an arbitrary way. In other words, Techint – one of the most powerful companies in menemist Argentina- obtained (without bidding and without the prior EIS) official permission to build a pipeline parallel to the already approved Atacama pipeline; Techint formed a temporary shareholder with NAA (company that acquired the pipeline), and later split when it obtained the license as construction company of the pipeline; Techint also created the company conveyor of gas (TGN) and also solved the "formal problems" by creating the consulting firm that would assess the security of the trace and its possible impact in the region.

It is necessary to clarify that in 1998 there was no legislation in Argentina to specifically regulate the possible environmental impact, even if the need to

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<sup>14</sup> see CIEES,1998; see Petrarca, op.cit.

<sup>15</sup> More consistent in rhetoric than in the content

avoid it and the obligation of the authorities to "provide for the protection of this right" are spelled out in the Constitutional Article 41. Anyway, and although the Environmental Law enacted in November 2002 clearly states that "Any work or activity in the territory of the Nation that is susceptible to degrade the environment, or any of its components, or to significantly affect the quality of life of the population, shall be subject to a procedure for environmental impact assessment prior to its implementation" (Act 25675, Art. 11), the mechanism for arbitrarily granting public works remains customary in Argentina<sup>16</sup>

In this context, the Resistance of the communities was giving up because of the impotence, the threats... and some payments. The glaring exception was the Community of Cianzo, one of the most directly affected by the errors in the construction of the pipeline, whose route instead of "ring" around the community, crosses along it, passing through the door of homes, crossing the two big rivers of the District and generating severe erosion problems in hillsides, riverbasins and microbasins

## 1- The community of Cianzo and the Pipeline

The history of the relationship between the community of Cianzo and the pipeline NAA is in general similar to the other communities. The peasants learned of the project when it was already consummated (i.e: when the technicians reached the community to begin the work); lacked any objective information on the work; were frightened by those who predicted the total destruction of its habitat and its main economic resource: livestock/grazing; they doubted between the fear of environmental apocalypse and the promise of a prosperous future that came from the Prelature of Humahuaca and government officials; and established different relations with the technicians from Techint (from whom generally received little dialogue and several threats). With some peasants, technicians also negotiated a payment as rent by using their fields to storage their machinery

Member at that time of the Organisation COAJ and not too much under control of the Prelature of Humahuaca, the Community of Cianzo further presented three particular features that distinguished its opposition to the pipeline: a level of internal cohesion of the community notoriously higher than in other communities in the region, two community leaders conscious of real danger of the pipeline and seriously committed to its opposition and a District-leader that in addition to her commitment provided two other advantages: residing in the city of Jujuy and having university training. So that neither the few peasants who negotiated with the technicians of NAA, nor the distorted information that came from the Prelature and the Municipality of Humahuaca succeeded to break a resistance that was always presented as "of the community as a whole". This fact is not of little significance: Cianzo was the only community

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<sup>16</sup> see for example the discussion on a new attempt to grant the construction of a new pipeline – the NOA Pipeline- to the Techint Group, once again without EIS and without call for bids, (magazine Noticias, 30 April 2004)



whose leaders had not accepted the fee for the passage of the pipeline, circumstances that later enabled the reorientation of the negotiation<sup>17</sup>

The history of resistance against the pipeline performed by the community of Cianzo and its delegates is compelling due to the engagement of the protagonists, which for over three years invested all their energy and time in an obviously uneven dispute and which seized every opportunity to make public the conflict, aware that this was the only way to make their claims heard. Nevertheless, after three years the results had been almost null. Objectively considered, the opposition (almost exclusively limited to the media) was excessively focused on protests more than in the legal arguments and on the concrete damage. Another significant issue, both in Cianzo as in all affected communities, is that the claim is based solely on a discussion about money (i.e., by the amount of a type of compensation for damage caused)<sup>18</sup>

It is striking for example, that even when the entire effort was coordinated from the COAJ by an advocate, the community had never tried to Appeal for a Protective Order, which would have allowed them to bring the case first to Upper Instances and then to the International Justice. It is curious that "procedural errors" have been committed like not to take a complete record and not ordered each meeting and/or discussion with government officials or representatives of the Company. The process is full of "anecdotes" referring to threats received by the community, to telephone discussions, to failed interviews with government officials in Jujuy and Buenos Aires, etc, most of which were not properly registered. It is as if the core of the struggle had been placed more in the struggle self than in the goal pursued. In the same way, when the community called for support to INAI and the Ombudsman of the Nation, the almost nil reaction of both agencies was limited to sending a writ to the ENARGAS

Revealing this "outward" attitude is the Public Hearing which took place in the city of Jujuy on January 14<sup>th</sup>, 1999. Convened by the ENARGAS and with large participation of people from Jujuy and Salta, and of representatives of the Government, the ENARGAS and the Companies, the Hearing became a Forum of heated complaints spread by the press, radio and television.... but a Forum that served only for informational purposes and that did not reach any kind of consensus or resolution aimed to alter in any measure the construction in progress. After hours of complaints and competing discourses, representatives of civil society signed a document that requested 1) suspending the construction of both pipelines; 2) lifting the pipes that cross the city of Jujuy and other localities; 3) pay for the damages caused. The Hearing was widely spread by the local press, but none of these proposals had any specific effect. The construction of both pipelines was not affected in any way and both were

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<sup>17</sup> While the passage fee had been paid to the government being "public lands", the company needs to establish a harmonious relationship with the community – ground or surficial owner- in order to be allowed for transporting the gas and for the tasks of necessary monitoring and maintenance throughout the usable life of the pipeline.

<sup>18</sup> Accordingly, stated by beginning of advising the community and as reflected in various surveys of environmental damage made at request of COAJ during 1998 and 1999

completed as they had been planned, receiving immediately the certification of the Regulatory Entities and the Government.

The subordination of the Judiciary to Political power, which was reinforced in Argentina during the Government of Menem<sup>19</sup> was – and is- perceived by civil society not only as the absence of justice but even as a potential danger<sup>20</sup>. It would be interesting to analyze how this dilution of legal protection corresponds to a change in the "social struggles" in Argentina, which in recent years in addition to increased levels of violence seems to be characterized by an excess of noise which generally corresponds with immediatism.

In the Cianzo case, on the other hand, the core of the problem was incorrectly regarded as an "indigenous problem" and not as what it really was: a violation of environmental rights and civil rights enshrined in the Constitution for all inhabitants of the Country. Neither the pipelines nor any of the megaprojects made or planned in the provinces of northwest Argentina are linked to an "indigenous question", but to poverty, marginalization, lack of information and the absence of legality that plague the Region. The logic of these undertakings and the way they are carried out are linked to the need of gaining markets in a world of wild and globalized competition and to the consequential need to shorten times and reducing costs. It is not the "ethnic quality" of a region that attracts this type of ventures, but its marginality. In the case of Cianzo we might even say that the ethnic component was more a basis for the defence than the reason for the outrage. As a product of its long history of resistance, indigenous communities have achieved levels of organization unknown in other sectors of society, equally affected by poverty, marginalization and lack of rights, but much more legally unprotected.<sup>21</sup>

## THE NEGOTIATION: REFRAMING OF THE STRATEGY

In March 2000 we suggested to the Community of Cianzo to rethink the entire negotiating strategy with NAA<sup>22</sup>, not only in its forms but especially in terms of its content. The year 2000 was a very particular in Argentina: with the government of the Alliance slowly began to restore the legality. That opened for us the possibility of incorporating in the discussion the three sectors involved: Civil Society (Community of Cianzo), Company (NAA) and Argentine State (Secretariat of Environment, Enargas)

One novel fact in this new strategy was to work for the core of the discussion did not pass by the "indigenous" but by the environment. Although Article 75 of

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<sup>19</sup> and that can be understood in a more comprehensive context if analyzed from the perspective of "state capture"

<sup>20</sup> To resort to the Justice „can be dangerous"

<sup>21</sup> It is significant, for example, that while both pipelines had to face numerous reclamations by potential damage to archaeological patrimony of communities, the less conflicting section of Atacama pipeline has been precisely the one that crosses the city of Jujuy, undoubtedly the most dangerous of all and the one that could cause a greater number of victims in case of accident.

<sup>22</sup> Once construction was finished, the pipeline became property of NAA, any reclamation therefore is to be made by this company and not by the construction company Techint

the National Constitution (which recognizes the rights of indigenous communities) was to be included in all our documents, it was emphasized that the long list of irregularities committed during the construction of the pipeline particularly violated Article 41 of the Constitution, which stipulates that whosoever causes environmental damage must repair it. In this context we drafted a document that explicitly raised the issues:

"A-compensation to the Community for economic losses incurred during 1998 and 1999 B-Financing of an independent evaluation of environmental damage and elaboration of programs designed to 1) repair and improve problems caused in the soil and irrigation infrastructure; 2) recovery and improvement of agricultural land; 3) repair of the communication and marketing pathways. C-Strictly apply the rules governing the path and use of gas pipelines<sup>23</sup>.

Another wrong "assumption" that we changed during the negotiation was the criterion of "polluter payer" commonly applied in Argentina, which implies that once the Enterprise assumed the responsibility for the damage caused, only the compensation amount needs to be negotiated. After many discussions, the Community and the Company realized that this approach is wrong because in reality, neither the environment, much less the survival of a human group are commodities reparable with a monetary payment. The only remedy is to restore the 'order' as prior to the damage. This is why "*who damages must first repair, and also pay*". This new perspective meant a change in approach for all stages of the negotiation, from the discussion, through the terms for the impact study, the works on repair and protection, and the entire relationship of the Company with the Community.

Focusing the problem in the complete repair of environmental damage, we could develop a new strategy that count on the backing of the Secretariat of Environment(SMA). We managed to arrange an interview with the then Secretary of Environment, Oscar Massei, who from beginning was willing to personally support the claim of the Community, and in turn appointed some technicians and officials of the Secretariat (SMA) to support our position. We also invited the National Institute of Indigenous Affairs (INAI) to participate in the first phase of this new negotiation. We started by resolving some of the many irregularities committed during the design and approval of the route, through joint meetings with the Secretary of Environment, the INAI and the Enargas, until we reached an essential step: after long discussions the representatives of Enargas accepted the possibility that it had been some technical error in the certification of the routes in the district Palca de Aparzo, and consented to carry out a new visit to the site, accompanied by communal representatives, technicians from the SMA and a representative of INAI. This visit was a turning point in the negotiation: once the evidence of environmental damage was acknowledged by the State agencies, the Community had a new starting point that allowed the discussion with the Company to be directed in the proper path. Thus, the first meeting took place in which participated from one side the Community, the SMA and the INAI and on the other, the General Manager and the Advocate of the Company

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<sup>23</sup>April 2000

In this way began a long round of discussions, full of advances and setbacks, during which small but progressive agreements were slowly made on the three points raised by the Community, although the primary discrepancy was always in the criteria for the environmental damage assessment<sup>24</sup>. Finally, in November 2000 an agreement with NAA was reached on a Survey of Environmental Damage (SED), which terms of reference would be framed by the Community and agreed with NAA. After a very bad experience with the first NGO which proposed itself for the Study (SED) and also in order to protect the Community from political and private interests, it was decided that in the new phase of negotiation that was opened with the SED the Community would only discuss directly and exclusively with the Company

Summing up the role of the actors involved in this first negotiation phase, we might say:

**-SMA:** as noted, the strong support of the then Secretary of Environment was essential for the development of our strategy. The direct intervention of Dr. Massei in discussions with the Enargas was crucial to achieve, in very short time, that the Agency revises its approval of the route and acknowledges the existence of damage, necessary prerequisites to redirect the negotiations with the Company. Officials of the SMA also collaborated in the development of some of the technical criteria for the SED

**-INAI:** Although the INAI was never a principal actor in the negotiation, its presence in the first meetings was important as institutional support for the claim of the Community. The INAI participated in all meetings of this first phase, represented by a hierarchical official, and by a lawyer, who also supported the community, resolving doubts on legal aspects of the first draft of Agreement.

**-ENARGAS:** Whereas the Agency initially refused to recognize the errors in the evaluation of the pipeline, it modified substantially its position after the joint visit to the community, withdrawing from the negotiation meetings after implicitly supporting the need to review the environmental situation and the security of the pipeline in the area.

**-the Community of Cianzo:** for the community of Cianzo this first negotiations phase was mainly a stage of growth. For the leaders, because both the Communal Delegate and the District Delegate participated in all discussions (in Jujuy and Buenos Aires) not only owing to their quality of representatives but also with the goal of "on the job training ". For the community in general, the change in the relationship with the Enterprise had a direct positive impact on the reevaluation of its self-perception as social subject. After years of having been ignored, they finally achieved to be recognized as main subjects of the

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<sup>24</sup> Remember that at the time the negotiation took place it was until not promulgated the General Law of Environment, newly enacted in November 2002

negotiation and as equal negotiations partners that not had to beg for "charity" but demanded and effectively attained the recognition of their rights

**-The Company:** for NAA the whole negotiating process was a long learning process, that somehow continues until today, and that considerably improved its way of interacting with some stakeholders. The experience served as a means to improve its own perception as company owner of a gas pipeline that –had to be admitted - had had many irregularities in its construction. What concerns highlighting here is that in the new relationship, the Community – given any problem- accesses directly the officials of the Company. And that the Enterprise has understood that the communication should be permanent and direct and must be addressed to the members of the communities far more than to the political authorities in the area.

**-NGOs:** no NGO participated in the negotiations, conducted exclusively by the representatives of the community and its adviser. However, as reported, the Community had a bad experience with an environmentalist NGO which offered itself to conduct the SED, accepting fully the terms of reference and that at the last moment tried to pressure the Parties, tying the realization of Study to an extra payment. Faced with this attitude, -which nearly causes a breakdown of the negotiation- the Community decided to exclude definitively this NGO from any contact with the negotiation. This episode also triggered the Community decided to protect itself by excluding from negotiation any actor besides of itself and the company

The new direct relationship established between Community and Enterprise also resulted in all discussions thereafter – despiting the profound differences- be fluent and exclusively concentrated on finding a consensus solution to the problems

### **1-The phase of evaluation and repair of damage: a new relationship Community-Company**

Shortly after, we recruited an independent team that worked in close contact with the community. They did a very good job on damage assessment, and proposals of reparation. Once this Study was finished (May 2001) another long series of meetings with NAA was necessary to agree on amounts and characteristics of the reparations, culminating in the signing of a final agreement on September 2001.... i.e, three months before the collapse of the Government of the Alliance and the outbreak of the worst economic and political crisis in Argentina

The objectives of SED were based on the three basic claims of the Community: reparation of damages, economic compensation, and regulation of pipelineoperation. We designed the study also so that the experience would serve to strengthen the internal cohesion of the community of Cianzo. On this basis, the study and the subsequent Agreement on Reparation signed with the company included, besides compensation for losses incurred during the construction of the pipeline, a series of Program for Reparation, and Rebuilding

(of the track, of agricultural land, of the communications ways, the irrigation infrastructure and the sources of water supplies); as well as the mitigation and control of the erosion; and the repair and protection of the micro watersheds.

The community had already introduced an innovative approach in the negotiation: *'who damages, must first repair, and also pay for caused damage'*. That is why we began by distinguishing "compensation" from "reparation". To calculate the compensatory amount it was assessed the damage that the construction of the pipeline had caused on houses, corrals, tracks, cultivation fields and irrigation canals, then multiplying the value of the losses by the corresponding indices. But in addition to the compensation for losses, the company executed or funded fully all the works proposed by the Study of Environmental Damage. And even after repairing the old 'mule track' the company also assumed all costs of engineering, machinery, materials and manpower that transformed this path as a roadway for vehicle access to the community.

The 'little works' of reparation were drafted to be performed by the community and totally paid by the company. These included the revegetation of pipelinetrack, improvements in agricultural soil, reparation and restitution of homes and corrals affected by the construction of the pipeline, settlement and improvement of the irrigation infrastructure and sources of water supplies, and of the roads. To fix the problems of erosion in hillsides and micro basins were necessary engineering works, planned and directed by engineers and technicians from Norandino, but using salaried workforce from the community<sup>25</sup>

The repair work was divided between "executed by the community" and "executed by the company" aiming for the Community, far from feeling an alienated victim of the problem, understood that the solution was in its hands. The organization and execution (wage) of the "minor repairs" (revegetation, etc.) also served to reinforce communal cohesion, to generate new areas of participation (as the participation of youth in collecting and classificating indigenous seed for revegetation) and also to realize the old wish to build a community centre for meetings

It was aimed to achieve a change in the perception that the community had of itself and of its relationship with the company. The community not only was executing and "executive" partner of the reparation work: working as salaried workforce at all engineering works the people of Cianzo also learned to identify and assess the risks of erosion, to determine mitigation and prevention measures, and to evaluate potential real dangers of the pipeline and appropriate forms of response. The employment in engineering work also served as training and converted them into the only skilled manpower for this

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<sup>25</sup> Immediately after the first crash of the pipeline in San Andrés, in March 2001, we agreed with the company to carry out two complementary studies, focusing on the assessment of the security of pipe and on determining the needed engineering work, as well as new activities of control and maintenance. The implementation of these works was conducted with the same scheme that was used for the reparation programmes

type of work in the region. Finally, and given that the reparations activities were performed throughout 2002 and part of 2003, the negotiation also provided an advantage which had not been envisaged: in the midst of national economic debacle of 2002, the community of Cianzo was one of the few places in Argentina that did not lack work, work paid with wages that exceeded in a 100% to the accustomed in the region.

In short, **for the community** the negotiation implied a long list of positive effects, which together with the repair of environmental damage, collection of compensation, new sources of work, training of the workforce, etc. included professional growth of the leadership, and especially the revaluation of its self-perception as social subjects. After years of having been ignored, they achieved to be recognized as main subjects of the process. So they were no more perceived as assistance beneficiary but as equitable negotiations partner, who could demand and obtain the effective recognition of their rights.

**What did it mean for the Company:** It would be naïve to claim that this experience has achieved a radical change in the prospect of Companies like NAA, Tractebel or TGN. However, it is significant the way in which NAA changed its approach to interacting with affected communities and how the activities of maintenance and security of the pipeline were modified. Obviously, concern for the security is primarily determined by the accidents in the jungle of Yungas. But, besides intensifying the activities of control and maintenance, what improved especially after the negotiation, is the way in which these activities are undertaken, such as including the participation of communities, the consensus with the communal authorities, and the direct access of communities to representative levels in the Company.

In general what is notable is that communities ceased to be "passive victims" of the pipeline and became that what they always should have been: direct partners, actively involved in matters of maintenance and security.

We are aware that this experience does not mean that NAA or TGN will modify substantially in future ventures the perspective of increasing revenues and reducing costs. But certainly they will change their position in relation to the populations affected by their undertakings. In the case of the Puna of Jujuy, change began by dismissing the concept of "other" as a hindrance in the development of an endeavor by regarding them as a social subject affected by an enterprise and with rights that must be respected.

No less important is learning that those rights cannot be "replaced" with philanthropy. In the traditional asymmetrical relationship Company/Community, the principle of "polluter pays" disguises the dangerous right for the Enterprise to destruct in exchange to "compensate with money." When the relationship is established between Pairs, or between parties with different economic power but equal rights, the concept is amended to imply first the duty to avoid the damage and after the damaged, the obligation to repair it fully, in addition to compensate economically the affected. It is commendable that Corporates contribute to improving the infrastructure of education or health by poor populations. But these contributions do not in any way shirk their responsibility

to avoid the damage, and when it is caused to repair it and to compensate the victims.

This observation is relevant for the today's discussion on Corporate Social Responsibility

## STATE, CSR AND SOCIAL POLICY

The reflection on "socially responsible Business" acquires special relevance in a time when the discussion in the "central countries" gives as implied the active participation of companies in development policies. If the criteria of an "elementary responsibility" of companies and the criteria of CSR are not thoroughly defined *a priori*, this new modality of cooperation could have dangerously negative consequences for the "developing countries". It seems as if the discussion on the responsibility of companies would have been anyway limited to its philanthropic activities, distancing from what should be the center of the considerations: the responsibility that companies compete in the realization of their undertakings.

What is mostly understood under „CSR“? For the promoters of the new philanthropy in Latin America, notes Sanborn, "it plays a crucial role in the promotion of healthy, sustainable and democratic civil society – not only in supporting individual civil society organizations but also in building constituencies for pluralism, civic participation, equity and social justice" (Sanborn,2005:18)

But this is a limited perspective. One of its lacks is due to the fact, that the most studies of CSR are conventional studies that focus only on best practices, relying on information provided by corporations themselves, without taking into account the opinion of "others", particularly the opinion of the affected groups. Furthermore, these studies concentrate mostly on the philanthropic activities of Companies, referring only about the activities of Companies-Foundations and excluding of the analysis the concrete practices of Companies. As Sanborn points, "if one looks at actual practice in the region, it is important to ask how many donors are actually working toward these (philanthropic) objectives. More specifically, where *does* their time and money go?" (Sanborn,2005:18).

This question is specially relevant concerning resource extraction companies. Most of the mining and oil Corporations working in Latin America have created foundations in the late years to undertake local or regional "social" and "development" programs as part of their efforts to achieve social acceptance and improve their corporate image. But they did not change how their predatory practices, nor the way their undertakings are carried out. And here lies one of the principal problems by confusing philanthropy with CSR. The responsibility of Companies is in the way they carry out their activities and not in their philanthropic ones. Therefore this article began with a detailed description of a case-study, to integrate the discourse on CSR with extensive information of the concrete practices of Companies.



If with “CSR” we only mean the social or philanthropic activities of companies, than we are not talking about CSR but rather about CSA<sup>26</sup>. Corporate solidarity is not irrelevant since it makes a big difference for many NGOs working on environmental or social issues as well as for the benefiting communities. CSA is also an interesting counterpoint to state clientelism and helps especially to cover many of the governmental lacks in health, education and culture. But it does not replace the real responsibility of the companies<sup>27</sup>. And it cannot tend to involve the companies in the decision making of social policy. It is beneficial and necessary that companies go beyond the roles established by law and be solidary committed, and this should be even a business principle. But social oriented activities of companies belong to CSA; the **responsibility** lies in their practices. Therefore what is discussed in this paper is not CSA but its instrumental utilization under the concept of CSR as a way to gain influence on States and Cooperation Agencies as well as to evade regulations.

If in the 1990s the CSA focused mainly on the promotion of philanthropic initiatives of Companies related to environmental and social activities, the Global Compact has created the institutional context for the CSR to be incorporated in the agenda of the policies of development, generating a new form of social policies that, through the Public Private Partnership (PPP), combines the traditional postulates of international cooperation with some claims of NGOs and with the active promotion of private economy.

Formally enacted in July 2000, the Compact proposes a list of 9 (now 10) principles related to environmental protection, labour standards, human rights and the dissemination of what is called "good practices"<sup>28</sup>. The Compact is proposed as a kind of "organizational learning" which promotes communication between shareholders and stakeholders; as an innovative and pragmatic initiative that tends to reform the culture of corporations installing new values and mobilizing resources of Business for a socially and environmentally sustainable development.

The positions on the effectiveness of the Compact are almost antagonistic: While its supporters generally see the initiative as “an innovative and pragmatic approach that can reform corporate culture by instilling new values and mobilize resources of the big companies for the promotion of social and sustainable development”, critics of the initiative are concerned “that it may be doing more to enhance the reputation of big business than aiding the environment and

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<sup>26</sup> “We define corporate social action as behaviors and practices that extend beyond immediate profit maximization goals and are intended to increase social benefits or mitigate social problems for constituencies external to the firm”.(Marsui, Glynn and Davis,2007:1)

<sup>27</sup> It seems obvious, but it is necessary to stress that a Foundation is not the company but only an organized instance of companies philanthropy

<sup>28</sup> The Initiative proposes a list of minimum standards (already considered in various documents from United Nations), which are neither obligatory nor controllable. In 2004 is added the clause on corruption

people in need. They are worried that companies with a reputation for malpractice have been welcomed into the Global Compact, and that the conditions imposed on business to comply with the principles are very weak" (Utting,,2003:1)

While making important contributions, such as the strengthening of labor rights, the resurgence of the "precautionary principle" of the Rio Summit in 1992, and installing in the context of UN issues of the social, environmental and human rights questions, the Compact overestimates the role of corporations and has contributed in practice to strengthen their influence on governments.

In the practice, both the Compact as well as CSR in general, are mostly being used by Companies to evade the fulfillment of the existing regulations. "Even more importantly, the promotion of CSR by international business is viewed as important to the prevention of more restrictive international codes of conduct. The international business community has come out strongly against such regulations. The ERT (2001) and ICC (2002) have made strong representations to reassure governments that existing business commitments to responsible behavior, kept in check by market pressures, makes the imposition of international codes of conduct unnecessary.... In its formulation on CSR it (ICC) urged governments to 'reject demands to impose codes on companies' especially companies that invest 'outside their home countries' (ICC 2002)" (Farnsworth, 2004:80)

This uncritical position spreads out also in many United Nations Agencies, even though the Compact Office has always made clear that this is not a substitute for other regulatory policy. As Utting points: " As the energies and resources of UN agencies are increasingly channelled toward partnerships, there seems to have been a decline in efforts to engage in critical research and policy analysis on TNCs and their social, environmental and developmental impacts, as well as on alternative regulatory arrangements. And when alternatives are proposed, the Global Compact has been held up by some as a reason for nipping such initiatives in the bud..... One of the arguments put forward is that such initiatives are not needed because business is already engaged with the Global Compact and that regulatory initiatives would undermine the spirit of the United Nations new entente with big business". (2003:1)

Evidently, in practice the Compact has conveyed in a sort of double standard, in which TNCs invest in topics related to human rights and environmental protection, while on the other hand they continue undertaking predatory practices. Social and environmental investments even have become a sort of "marketing strategy": the same TNCs that implement predatory ventures, also finance activities of NGOs, foundations and independent projects, and integrated them into its consumer-oriented strategies<sup>29</sup>

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<sup>29</sup> This 'double standard' practices were generalized during the 90s, but is notorious how the Global Compact has turned into the justification strategy . For the "case-studie" of this Article: in 1998 when construction of the NAA pipeline began, the company Techint already financed some Programs of the Education Ministry as well as some activities from environmental NGOs like Foundation Vida Silvestre. In 1998, Techint and NAA created jointly with the Ecological

Although Public Private Partnership was already a practice by the international cooperation in the 90s<sup>30</sup>, the Global Compact has become one main supporter of PPP, which is increasingly considered by industrialised countries as a "key tool of development". The uncritical incorporation of PPP is also evident in the UN agencies. In this regard, denote for example Utting and Zammit that "Concerning the UN's relationship to the private sector in general, and partnerships with TNCs in particular, such (critical) thinking has been marginalized within the UN system. The lack of critical thinking is not simply a question of resources and priorities, or mindsets associated with pragmatism; it also has to do with imbalances and distortions that characterize knowledge management in international organisations" (2006:38)

Also the Compact Office has developed no critical thinking thereon: "Such (critical) thinking would likely focus attention on a set of crucial issues that to some extent explain the plight of many developing countries, and in which TNCs are heavily implicated.....They also include the gross distortions that have occurred in the distribution of income between capital and labour under corporate globalization, and the salaries of CEOs and workers" (Ibid: 39-40)

This article tries to underline that cooperation between business and development policy cannot in no way be divorced from the specific practice of companies<sup>31</sup>. While some conjoined ventures can have positive results at single projects, widespread as the central strategy of cooperation policies the PPP may be even dangerous, as in practice it contributes to greater interference from the TNCs in both the operational directives of the "donors" countries as in the internal politics of the developing countries. This consideration has generally been excluded by the Agencies in its considerations on PPP and on the insertion of TNCs in social policy. The supporters of the initiative elude integrating in the discussion the mentioned "double standard" of companies.

While the Cooperation Agencies take for granted the success of the "win-win initiatives", as the cooperation between Business and development policy would help improving the image of Companies, from the side of corporations the promotion of CSR is perceived as a key instrument for preventing stricter international standards. "The ERT (2001) argued, in its response to the EC's 2001 Green Paper...that: 'Companies have a clear understanding of their social responsibilities.....There is no need for further regulation of corporate social responsibility as a whole within Europe'.....The ICC (2002) echoed these sentiments. In its formulation on CSR it urged governments to 'reject demands to impose codes on companies', especially companies that invest 'outside their home countries'" (Farnsworth, 2004:78)

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Research Laboratory of the Yungas (Univ.of Tucumán) the Programme Pro-Yungas, in which today involved the University, Vida Silvestre and Greenpeace

<sup>30</sup> The German Ministry for Cooperation (BMZ), for example, had already promulgated in 1996 a „Concept for the Promotion of Private Economy in the Partner Countries". (bmz.de)

<sup>31</sup> And even when it seems to be obvious, this consideration is mostly not integrated in the discussion about CSR or about PPP

In this context, the reflection on CSR is particularly relevant in a moment in which –while the gap between rich and poor countries widens- it seems to be a new and special interest of extractive TNCs (based in the industrialized countries of northern hemisphere) to develop their activities in the countries of South<sup>32</sup>. If we talk about "responsible companies", alone this fact should already be reason for a serious discussion referred to the standards that regulate and limit the negative impacts of these activities on society and on the environment, and that obviously should be the same for all countries in both hemispheres. Any "socially responsible" discussion in this sense, should include both companies and States so much as suitable representatives of the civil society

## 1- Neoliberalism and Public Private Partnership

Even when neoliberalism was global imposed as "unique economic thinking" during the 80s<sup>33</sup>, the "neoliberal experiment" had started in Latin America in the 1970's, specifically in 1973 after the establishment of the military dictatorship in Chile, when neoliberal Chileans economists<sup>34</sup> applied a pilot program to resolve the high inflation and economic problems inherited from the government of S. Allende by implementing a program of privatization of state enterprises and extremely reducing of fiscal expenses through the reduction in social spending, the tax abatement and the stagnation of salaries.<sup>35</sup>

With different nuances, the proposal to combat inflation reducing public spending and the need to "reduce the State" was put in place in all countries of the Region. It is striking how since the late 70s and especially during the 80s and 90s the economy in all countries of the Continent was performing within similar patterns, both of crisis and of solution models. In this process, the International Financial Organizations (International Monetary Fund, World Bank, WTO, and IDB) imposed the strict application of neoliberal policies in different countries, in an amazing process of "accommodation" to a new reality<sup>36</sup>. If in the 1980s, the worst threat for the economies of the region was the inflation, in the 1990s the common themes were convertibility and crisis. And the answer was surprisingly always the same: "the State must be 'reformed' (scoped)" It would be very interesting to analyze the parallels between inflation-convertibility-crisis and devaluation, related to the development of "new democracies" and the increasing of corruption in the Region, as well as the relationship between these inefficient States and the neoliberal model.

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<sup>32</sup> In the case of Argentina – and of all Latin America- the intention of these undertakings is evident in the countless new starting open-pit mining projects .

<sup>33</sup> specially promoted from the governments of M. Thatcher and R. Reagan

<sup>34</sup> Known as the "Chicago Boys": group of Chilean economists trained by the School of Economics at the University of Chicago and influenced from neoliberal theories of Hayek, Friedman, Harberger, and others.

<sup>35</sup> The literature on the subject is very wide. For a good condensed version, see Rösch, 2001/02

<sup>36</sup> The discussion about the Washington Consensus policies goes beyond the limits of this Paper. Anyway, it is important to indicate here that the consolidation of neoliberal model, while taking as reference the Chilean model, is deepened during the exercise of democratic governments.

Since the 1980s and especially in the 1990s Latin American States were reduced, but not related to scope the state bureaucracy or making it more efficient, but by the drastic decline of budgets for health, education and defence. What was reduced, in short, was not the inefficient state bureaucracy but the State itself as responsible generator of public policies. Within the course of a few years, the national economies turned into Corporations' domain, as the principal state-owned companies came under private control, mostly foreign control. The catastrophe that this process implied for civil society is not only evident in the "shantilization" of Latin American societies, but also in all aspects of their daily live<sup>37</sup>. And it is only in this context that we can understand the massive increasing of CSR practices in the Region since the 1990s. But none the less, from the same *logos* from which the "need to reform the State" was then uncritical accepted, it is now seek to impose the implementation of a Public-Privat Partnership, once again uncritical incorporated by the Agencies of Cooperation, and that tends to grant Business a deciding role in social policies. Since the late 90s, has become a "matter of course" by IGOs and Cooperation Agencies what is defined as a "succesfully alliance between cooperation policy and business, for mutual benefit"<sup>38</sup>.

Innovative in the PPP (or "new approach to publish policy") is that it seems to complement the limitations on public policies and to contribute to sustainable development through a model of international cooperation which includes both the TNCs and Agencies of bi-and multilateral cooperation as Governments and NGOs. For its proponents, PPP could become an alternative for developing countries as Business could contribute to the faults in financing, knowledge, experience and "good practices"<sup>39</sup>. But in this regard it must be underline that PPP programmes are being integrated within a "new corporate Paradigm" which in no way implies limitations to own activities of the Companies<sup>40</sup> In

<sup>37</sup> For the case of Argentine write Roitter and Camerlo that "Argentine society underwent a deep and swift transformation in 1990s, characterized by a process of reforms that, in one way or another, affected all of Latin America. This transformation redefined the public and private roles in the economy, as well as a shift of the relative power of the social actors. Policies like privatizacion, open markets and deregulation had a noticeable impact in economic and political terms. And this cannot be considered just a byproduct but an effect intrinsic to the aims, modes and scope of this processes. It was actually a plan to produce...a reorganization of social hierarchies....the same forces promoting privatizations in order to cut down on bureaucracy and waste also promote cuts in social expenditure which caused the systematic trend toward privatization to produce a regressive redistribution of wealth" (Roitter and Camerlo,2005:225)

<sup>38</sup> See e.g. the page of German Ministry for cooperation („An Alliance between Policies for Economic Cooperation and Economy for mutual benefit? It works and is worth ". In: www.bmz.de) On this "mutual benefit" wonder Ireland and Pillay: "But is meaningful CSR really reconcilable with the maximisation of shareholder value by corporations? Or was the business executive who told a reporter from Marketing Week that `the idea that making a profit can be reconciled with being ethical is nonsense' getting closer to the truth? (2007:13)

<sup>39</sup> The discussion on poverty and on "good practices" in industrialized and in "developing" countries is beyond the limits of this article

<sup>40</sup> "The perspective of PPP does not require something like that the Corporate renounce their business goals in exchange for humanitarian goals. On the contrary, the concept builds on assuming that Corporations are qualified actors in the Development Cooperation not 'in regret of', but exactly 'by' its goal of gain ..... The calculation of the Development Cooperation attempts to exploit the own commercial interests of Enterprises in Developing Countries to generate 'win-win' situations in the framework of joint activities in the Development Cooperation "( Benno Engels: 2000) "

contrast, the critics of the initiative underline the growing influence that through the PPP are getting the TNCs on governments and IGOs<sup>41</sup>. According to Martens, “So much ‘win-win’ rhetoric begs the question – where is the problem? The basic problem is that these assessments of the advantages of global partnerships and multistakeholder approaches are for the most part not based on empirical research, and the widely-held notion that there is no alternative is often no more than a profession of faith”. (2007:34)

Asking about “what is new in this area called CSR?” answers Durand that “the newness is relative, and does not involve a sudden new corporate concern for the society around it. Instead, it involves renewing and perfecting traditional business and philanthropic practices and adopting a new language about them, in response to the impulses of a changing international context and the subsequent accommodation of national institutions” (Durand, 2005: 191) The very important question is also “to what extent do current CSR practices meet the collective need to legitimize a new social pact at a time when the private sector dominates the national economy?” (Durand, 2005: 192)

Placing the social policy under the influence of business means to make it definitely inaccessible for civil society<sup>42</sup>. The question is consequently: what kind of society is being constructed? A society of “paupers” and “aid-providers”? Are we attending a new social pact where TNCs dictates the rules, governments and international organisms validate them and the civil society has remained limited to the minimal status of aid-dependent?

We cannot fail to consider here that both the list of Companies making part of the Compact as the list of Companies involved in PPP Initiatives include firms known by their environmental predatory practices or by corruption scandals.

## 2- Neoliberalism and State capture

If in the 80s-90s the axis was in “reforming the State”, in the 21 st Century (and after the multiple corruption scandals that characterized the reform process ) the central problem is linked to corruption, institutional weaknesses, and deconsolidation of democracy.

D. Kaufmann begins his article on “Investment Climate Reconsidered” (2007) with an anecdote of Menem’s government that is very appropriate to analyze the notion of state capture in the case of Argentina: *“Have dinner menus here always been the same?,’asked Menem’s aide to the chef at the Argentinian presidential residence. ‘The menus change, the presidents change. What never*

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<sup>41</sup> See e.g. Engels, 2000; Farnsworth, 2004; Martens, 2007; Utting, 2000; Utting/Zammit, 2006.

<sup>42</sup> “To alter the balance between the public and private spheres means to change the distribution of material and symbolic resources which have an impact on the shape of political life...shifting from from openness and visibility into a domain more reluctant to access and revision” (Starr, 1993 in: Roitter and Carmelo, 2005: 225)

*changes are the dinner guests', retorted the presidential chef, referring to the cadre of businessmen who frequented the residence*"<sup>43</sup>

Lobby is undoubtedly the most used way through which companies exert influence on central levels of governmental structures. However, this influence can only be so decisive because the companies have attained the control of strategic resources which was guaranteed them during the 1990s through the implementation of neoliberal policies of "reforming the State" imposed by International Financial Organizations<sup>44</sup>. And Argentina is a paradigmatic example of these policies implementation and of its consequences.

The notion of "state capture" explains how great economic corporations obtain control on different areas of government for making profit at the expense of enormous losses to society. The interference of corporations in the policy is analyzed through mechanisms of lobby and corruption<sup>45</sup>. Within this perspective of analysis, Moreno Ocampo refers to the case of the extractive industries in Argentina: "Similarly, in Argentina, one of the most important corruption cases over the last years relates to a company that supposedly exported gold from Argentina, receiving approximately \$300 million in reimbursement. But there is no gold in Argentina. And yet, the company imported the gold, exported it, received the export incentives, then imported the gold again, exported it again, and received the export incentives again. Although there are no cultural or economic relations between Argentina and Kenya, the public management outcome is exactly the same." (Moreno Ocampo, 2007:1)<sup>46</sup>

A new approach in analyzing the capture of the State by lobby and corruption, focuses on the way corporations gain influence on the most important branches of state apparatus (Durand 2007) This approach focuses on the interaction between the concentration of economic and political power, the accountability and the institutional quality of departments and government agencies. Analyzing the case of Peru between 1990 and 2006, Durand underlines that state capture involves much more than access and influence. It involves the direct presence

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<sup>43</sup> (In El Octavo Circulo by G. Cerrutti y S. Ciancaglini, 1992)

<sup>44</sup> "International business has been able to present a relatively united front across borders and form linkages with important non-economic elites within IGOs. Organised business has also been boosted at the international level since the 1980s by the increasing number of opportunities afforded to it for institutional engagement by IGOs" (Farnsworth, 2007:8)

<sup>45</sup> "A fallacy that still persists today is the presumption that the state is almighty in shaping the investment climate—and thus seen as the investment climate "maker"—while the atomic and powerless enterprise sector is viewed as the passive investment climate "taker." In reality, powerful corporations often exert enormous influence over public policy, public institutions and officials, and particularly so in weak states. Even in strong states, such as those in rich OECD countries, powerful conglomerates can have significant influence in shaping regulatory policy, for instance..... often in collusion with segments of the political elite, or in more extreme cases, by capture of key institutions." (Kaufmann, 2007)

<sup>46</sup> In this respect we must clarify that, although the mechanism of corruption operates in the way which describes Moreno Ocampo, in Argentina there is certainly gold. Dispersed and of low quality, but enough to have generated another paradigmatic example of "state capture": the delivery of the Cordillera de Los Andes to transnational mining companies, who also enjoy all kinds of tax benefices and the state protection by the opposition of populations to their undertakings.

of representatives of corporations in key departments of governments. An example of this phenomenon in the Argentine case is evident by following the trajectory of Ministers of Economy and other senior officials of the area in the past 30 years, alternating positions in the government, advisory services to TNCs and charges in IFOs<sup>47</sup>.

In weakened States, affected by corruption and dependents of corporations, is more than appropriate to ask in how far is CSR an attempt to contribute to socio-economic development and how far it is only a new mechanism to evade controls and limits. In the current neoliberal paradigm, CSR and numerous PPP initiatives, contribute substantially to increase the interference of the TNCs on States and on Cooperation Agencies.

### 3- The paradigm CSR

The CSR has become the paradigm of the new Milenium<sup>48</sup> and as such is submitted by its proponents, by focussing only on the comparative advantages of a cooperation that is ultimately understood as philanthropy, excluding from analysis any reference to power relations. Even many critiques of CSR are more concentrated on its forms than on its essence

In the 1980s-90s the need for "scoping the State" was imposed. In fact, States had to become efficient; but it was tacitly accepted that "being efficient" was scoping it and thereby civil society and States were involved in a reform that mostly contributed to increase power of corporations<sup>49</sup>. The negative consequences of this uncritical accepted process are now evident. However, it seems that proposals from the same currents of thought are being once again uncritical accepted, this time related to the incorporation of "responsible" companies in development policy. In this way, the CSR tends to replace the State's activity of social policy to put it increasingly in the hands of companies. As Marques points, "by labeling itself as CSR initiative with UN backing, the Compact is promoting and legitimizing the use of CSR as the development alternative of choice and in so doing, imposing a conception of business-state-society relations that seems to run the risk of promoting another TINA<sup>50</sup> frame of mind on development practice" (2007:37)

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<sup>47</sup> For an excellent analysis of the relationship between IFIs, Governments and neoliberal economy in the region, as on the growing incorporation of neoliberal economists in international agencies, see Stiglitz 2002

<sup>48</sup> 'an industry in itself, with full-time staff, newsletters, professional associations and massed armies of consultants' (The Economist 2004. In: Ireland and Pillay, 2007)

<sup>49</sup> Not only at national but also at international level. "The erosion of conventional state and societal regulatory mechanisms at the national level has been accompanied by increasingly complex supranational regulatory arrangements that have both compounded the administrative and policy management demands on state governments and restricted their leeway. Moreover, at the international level, many analysts point to a "global regulatory deficit" due to the dearth of "legitimate" global institutions even as TNCs and Business Associations operate increasingly on a global scale (Marques, 2007: 33)

<sup>50</sup> TINA is the acronym for "There is no alternative" a shortened version of the phrase popularized by Margaret Thatcher: "there is no alternative to market capitalism (Marques, 2008\_37)



Observing the increasing power of TNCs in recent years it is evident that what in the Global Compact was raised as an alternative to promote the observance of international principles on human rights, labor standards, and environmental protection, has become mainly a strategy to increase corporate influence on politics, not only at governmental levels (in industrialized and non-industrialized countries) but also in International Organizations. And has especially become a strategy to circumvent the strict enforcement of regulations.

CSR has become a globalized hegemonic thought, justified in itself<sup>51</sup>, and that through the incorporation of Corporations in social policies tends to build a new ethical paradigm that restates the relationship between State-Companies-Civil Society. In this new paradigm, the incorporation of Business in politics is functionalized through what Sum called "new ethicalism", the generalization of a "business ethics" which tends to the CSRization of social, in the sense of reducing it to a corporate discourse of controls and audits<sup>52</sup>. In this process, the economic strategies are reconnected with the philanthropic ethic of companies insofar as the political and social issues are diluted and replaced with philanthropy.

Precisely in this de-politization of social and environmental questions and their reduction to the business framework of "controls" and "audits", lays one of the greatest dangers of PPP projects: that they are becoming a mechanism for the CSRization of social policies<sup>53</sup>.

This article included a detailed description of a case study just to show how reality can often not be adapted to models. The "responsibility" of companies is neither in their rhetoric nor in their philanthropic practices but in how they carry out their undertakings. And in this regard, while the solidary contribution from private economy to social or environmental projects is necessary and desirable, the main issue to consider about a socially responsible company is its obligation not to destroy the environment and not to negatively affect the conditions of life of the populations directly affected by their undertakings

The detailed description of a case study also contributes to demonstrate the complexity of the relational raster between State-Corporate-Civil Society, which seems to have been diluted in the new "successfully alliance between policy of

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<sup>51</sup> "CSR appears to treat a particular set of ideationally and culturally rooted values as universal, and while presenting itself as in some ways reformist, in fact reproduces the social, ethical, economic and political norms embedded in the hegemonic form of globalization" (Blowfield in Marques:37)

<sup>52</sup> "This tendency has led to the CSR-ization in which auditing and managerial practices took priority over the social-moral elements in corporate responsibility. In this regard, the 'S' in CSR is taken over by 'A' as in corporate 'audit' responsibility" (Sum:2007:8). For the concepts of CRization and "new ethicalism" and for the analysis of its relationship with the "new constitutionalism" (Gill, 1992), see Sum, 2007)

<sup>53</sup> Even the concept of Stakeholder is a reductionist concept if applied to "the Social". Reducing the social plurality to the homogenizer concept of stakeholder is a conceptual error that not only evidences a "CSRization" of social and political sciences, but also undermines the possibility of developing effective social policies, and avoids the reproduction of social plurality in its essence.

cooperation and economy"; and to underline the need to generate new relational models between the three sectors<sup>54</sup>.

Finally, it contributes especially to highlight that the Social is multiple and complex. The new "responsible" rhetoric of Corporations and its institutionalization as CSR (or as PPP) cannot in any way lead to the reduction of social complexity in an unicist and homogenizing logic. Neither does this rhetoric contribute to confound social policies with philanthropy and to make them thereby dependent on business.



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<sup>54</sup> In this perspective, the Article also wondered about the scope of "representativeness" of NGOs as interpreter of Civil Society and try to stress that the right of citizens to information and participation is rather a responsibility that has to be executed in a committed and qualified way

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