

# INVESTIGACIÓN

## OPERATING IN AN ARMED CONFLICT - A Case Study of Nestle in Colombia

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### Abstract

Businesses and corporations have positively influenced and brought opportunities for excluded populations. However, they have also negatively impacted the communities and territories where they operate. Many multinational corporations have incorporated social responsibility (CSR) programs in order to acquire legitimacy and to meet human rights expectations of the host country's constituencies. Nevertheless, to genuinely respect human rights corporations, it is necessary to go beyond the CSR approaches and address the impact they generate with their operations. Porter & Kramer developed the concept of shared value, arguing that corporations can improve their competitiveness and, at same time, advance the economic and social conditions in the communities where they operate.

Through Nestlé's example in Colombia, this article aims at illustrating how the concept of shared value can work to bring social benefits to excluded populations in a developing country, as well as how it falls short in other human rights challenges that businesses face, specially in situations of armed conflict. It also aims at evidencing some ways in which businesses can overcome these human rights challenges that cannot be addressed by the concept of shared value.

**Keywords:** Business and human rights, business operation in armed conflicts, shared value, corporate social responsibility, Colombia, Nestlé.

## Operando en un conflicto armado - Un estudio de caso de Nestlé en Colombia

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### Resumen

Los negocios y las corporaciones han influenciado positivamente y traído oportunidades para las poblaciones excluidas. Sin embargo, también han afectado negativamente las comunidades y los territorios en donde operan. Muchas corporaciones multinacionales han incorporado programas de responsabilidad social (PRSC) para adquirir legitimidad y satisfacer las expectativas de derechos humanos de los distritos electorales del país anfitrión. Sin embargo, para realmente respetar a las corporaciones de derechos humanos, es necesario ir más allá de los planteamientos de los PRSC y tratar el impacto que generan con sus operaciones. El Porter y Kramer desarrollaron el concepto de valor compartido, argumentando que las corporaciones pueden mejorar su competitividad y, al mismo tiempo, avanzar las condiciones económicas y sociales en las comunidades donde operan.

A través del ejemplo de Nestlé en Colombia, este artículo tiene como objetivo el ilustrar cómo el concepto de valor compartido puede funcionar para traer beneficios sociales a las poblaciones excluidas en un país en vías de desarrollo, así como se queda corto en otros retos de los derechos humanos que enfrentan los negocios, especialmente en situaciones del conflicto armado. También tiene como objetivo el evidenciar algunas maneras en las que los negocios pueden superar estos retos de los derechos humanos que no pueden ser atendidos mediante el concepto de valor compartido.

**Palabras clave:** Empresa y derechos humanos, operación comercial en conflictos armados, valor compartido, responsabilidad social corporativa, Colombia, Nestlé.

## Opérer en plein conflit armé - Étude du cas Nestlé en Colombie

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### Résumé

Les entreprises et les grandes sociétés ont eu un impact favorable et ont apporté de nouvelles opportunités aux populations exclues. Toutefois, elles ont également eu un impact négatif sur les communautés et les territoires où elles exercent leurs activités. De nombreuses multinationales ont développé des programmes de responsabilité sociale (RSE) afin d'acquérir une légitimité et de répondre aux attentes des différents acteurs des pays d'accueils en matière de respect des droits de l'homme. Néanmoins, pour respecter véritablement les droits de l'homme, il est nécessaire d'aller au-delà des approches RSE et de remédier à l'impact que ces sociétés génèrent de par leurs activités. Par conséquent, Porter & Kramer ont développé le concept de valeur partagée. Pour eux, les entreprises peuvent améliorer leur compétitivité tout en faisant progresser les conditions économiques et sociales des communautés où elles opèrent.

A travers l'exemple de Nestlé en Colombie, cet article cherche à démontrer comment le concept de valeur partagée peut générer des retombées sociales positives pour les populations exclues dans un pays en développement, puis comment ce concept est clairement insuffisant face aux nouvelles difficultés soulevées en matière de respect des droits de l'homme, en particulier dans des pays en proie à un conflit armé. De plus, cet article présente également des alternatives permettant aux entreprises de surmonter ces défis en termes de droits de l'homme lorsqu'ils ne peuvent être résolus par le concept de valeur partagée.

**Mots clés:** Entreprises et droits de l'homme, opération commerciale dans des pays en proie à un conflit armé, valeur communes, responsabilité sociale des entreprises, Colombie, Nestlé.

### Resumo

Empresas e corporações influenciaram positivamente e trouxeram oportunidades para as populações excluídas. No entanto, elas também impactaram negativamente as comunidades e os territórios onde operam. Muitas corporações multinacionais incorporaram programas de responsabilidade social corporativa (RSC) para adquirir legitimidade e atender às expectativas de direitos humanos dos eleitores do país anfitrião. Porém, para respeitar verdadeiramente os direitos humanos, é preciso ir além das abordagens RSC das empresas e enfrentar o impacto gerado com suas operações. A Porter & Kramer desenvolveu o conceito de valor compartilhado, preconizando que as corporações podem melhorar sua competitividade ao passo que promovem as condições econômicas e sociais nas comunidades onde operam.

Com o exemplo da Nestlé na Colômbia, este artigo visa ilustrar como o conceito de valor compartilhado pode ser útil para trazer benefícios sociais a populações excluídas em um país em desenvolvimento, bem como ele é insuficiente em outros desafios de direitos humanos que as empresas enfrentam, especialmente em situações de conflito armado. O artigo também visa apresentar algumas maneiras para as empresas superarem esses desafios de direitos humanos que o conceito de valor compartilhado não aborda.

**Palavras-chave:** empresas e direitos humanos, operação de empresas em conflitos armados, valor compartilhado, responsabilidade social corporativa, Colômbia, Nestlé.

### Corporate Social Responsibility and the place for business in the developing world

Corporations have brought greater power, success and opportunities for excluded and poor populations, especially in developing countries (Lodge & Wilson, 2006). They have positively influenced wages, access to basic services and resources for socially ignored populations (Werner, 2009). However, they have also negatively impacted the communities and territories where they operate.

Many multinational companies have incorporated corporate social responsibility (CSR) programs in order to acquire legitimacy and to comply with human rights expectations of the host country's constituencies such as consumers, investors, media and communities. Although these programs have had, on many occasions, positive outcomes in communities, most of them don't take into account the impact of the companies' operations.

The idea of CSR was developed in the 20<sup>th</sup> century. However, since one of the first definitions of CSR was proposed by Howler Bowen in his book *Social Responsibilities of the Businessman* in 1953<sup>1</sup> (Raufflet, Barrera, García, & Lozano, 2012), there have been a diversity of definitions, approaches and schools of thought that underline the concept from totally different perspectives. In the first decade of the 21<sup>st</sup> century, several theories of CSR emerged associated with political, social, environmental and ethical needs at the time. Thus, the concept of CSR integrated demands of civil society and international organizations such as the UN and the European Union (Fernández & Galán, 2009).

Later, the need to articulate CSR with the organization's strategies emerged, so that both society and corporations -managing their activities responsibly- benefited therefrom. This is how proposals like those of Porter and

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<sup>1</sup> Bowen argued that social responsibility referred to the obligations of businessmen to implement policies, make decisions and follow desirable lines of action from the standpoint of goals and values of society.

Kramer (Porter & Kramer, 2011) appeared, conceiving CSR as a shared value. They contended that corporate responsibility should not be a source of useless costs, but a lucrative proposal for organizations in terms of reputation, social legitimacy and brand strengthening (Cone, DaSilva, & Feldman, 2003).

Michael Posner<sup>2</sup>, expert in business and human rights, explains that although there are different schools of thought, traditionally CSR has been seen as a form of philanthropy, or public-private partnerships to reach social goals. In his words:

Corporate social responsibility often means corporate philanthropy or public-private partnerships to achieve social aims, both of which can be vital avenues that lead to positive outcomes around the world [...]. These kinds of initiatives are commendable and we applaud companies that take steps to address poverty, global warming, public health, increasing women's participation, and other objectives. (Posner, 2012)

However, he has vehemently argued that to actually respect human rights, businesses and corporations have to go beyond the approaches of CSR and address the impact they have while operating:

We need rules of the road to address companies' responsibilities to respect human rights in their

own operation. In this sense, [b]usiness and human rights is often a more challenging endeavor for companies, not because combating poverty is easy, but because

business and human rights require companies to take a hard look at their own operations. Business and human rights is about the actions companies take in situations in which they –knowingly or inadvertently– are causally linked to violations of human rights. (Posner, 2012)

## Going beyond CSR: The concept of shared value

As noted above, Michael Porter<sup>3</sup> & Kramer<sup>4</sup> developed a concept that differs in some ways from CSR called shared value. They defined it as “policies and operating practices that enhance the competitiveness of a company while simultaneously advancing the economic and social conditions in the communities in which they operate” (Porter & Kramer, 2011) reconnecting companies success with social progress. They suggested that capitalism could serve to meet human needs, improve efficiency, create jobs and build wealth. Moreover, they argue that “[b]usiness acting as business, not as charitable donors, are the most powerful force for addressing the pressing issue we face.” (Porter & Kramer, 2011) According to the authors, there are three ways of creating shared value: (i) reconceiving products and markets, (ii) redefining productivity in the value chain; and, (iii) enabling local cluster development.

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2 Michael Posner is an American lawyer, former assistant Secretary of State for Democracy, Human Rights, and Labor (DRL) of the United States, currently a Co-Director for the Center of Business and Human Rights and Professor at NYU Stern School of Business. NYU Stern School of Business. Experience Faculty & Research. Stern School of Business. Michael H. Posner. <http://www.stern.nyu.edu/faculty/bio/michael-posner> (Last seen 21/06/17)

3 Michael Porter is an American economist, researcher, author of various books and teacher at Harvard Business School. He is known for his theories on economics, business strategy, and social causes. Harvard Business School. Faculty & Research. Michael E. Porter. Bishop William Lawrence University Professor. <http://www.hbs.edu/faculty/Pages/profile.aspx?faclId=6532>

4 Mark Kramer is a lawyer is co-founder and Managing Director of FSG and the author of influential publications on shared value, catalytic philanthropy, collective impact, strategic evaluation, and impact investing. <http://www.fsg.org/people/mark-kramer> (Last seen 26/06/17)

Through Nestlé's example in Colombia, this article aims at illustrating how the concept of shared value can work to bring social benefits for excluded populations in a developing country, but also how it falls short in other human rights challenges that businesses face. It also aims at proving some ways in which business can overcome human rights challenges that cannot be addressed by the concept of share value.

## Colombia's Internal Armed Conflict

For more than a century Colombia has been a constitutional democracy with relatively independent institutions. Contrary to other conflicts in the world, Colombia has not experienced an oppressive dictatorship, religious, ethnic or serious border conflicts. (Guáqueta, 2006) Nevertheless, the country has been involved in an armed conflict for more than 50 years with a constant struggle between illegal armed groups and the state, leaving behind over 8 million victims (Víctimas., 2017). The United Nations Development Program stated: "Colombia's war is particularly complex" portraying it as an "eight-faced monster" (Diaz, 2007) .

There are three main actors in the conflict: (i) the Colombian State; (ii) the Marxist guerrillas mainly represented by the FARC and the ELN (for their acronyms in Spanish) that emerged in the 50s to create "a socialist system to redress political and economic inequalities" (Diaz, 2007); and (iii) the paramilitaries, which are right-wing groups that were founded and trained to act as anti-guerrilla forces (Contreras, 2003) by a sui generis coalition between powerful land owners, businesspersons and the state (Echandia, 1999).

In the last decade Colombia has been in a transition process to put an end to one of the oldest internal armed conflicts in the region. In 2006 the paramilitary groups demobilized after reaching an agreement with

the government (Ley de Justicia y Paz, 2006). In 2016, the government signed a peace accord with the FARC guerrillas (Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz estable y Duradera, 2016). However, violence persists in many places of the country and the progress in reducing it has been insufficient (Restrepo & Aponte, 2009).

## Operating in an Armed Conflict

The UN Guiding Principles on Business and Human Rights acknowledge that businesses are more likely to commit serious human rights violations when they operate in places with ongoing-armed conflicts (Ruggie., 2001). Consequently, these Principles establish duties for the companies that work in an adverse environment<sup>5</sup>. These duties comprise the responsibility to undertake due diligence that includes a human rights perspective to "become aware of, prevent and address adverse human rights impacts" (Ruggie, 2008) resulting from their operation.

Despite the effort undertaken by the international community –and by corporations- to avoid negative impact of their operation, businesses have caused or have been implicated in human rights violations in conflict zones in many parts of the world. In the case of Colombia there are several examples that illustrate how local and multinational corporations contributed or took advantage of the conflict<sup>6</sup>.

## Nestlé's Concept of Corporate Social Responsibility - A Framework for Creating Shared Value

During and after a period of conflict countries are economically and socially devastated. In Colombia, "poverty and inequality [are] key causes for the conflict." (Guáqueta, 2006) Companies have a huge political, financial and

5 See for example: principle 13: "The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."

6 See for example: *Sinaltrainal v. Coca-Cola Co.*, 256 Fed. Supp 2d, 1354 (S.D. Fla, 2003) At 1350 and *Balcerio et al. v. Drummond Company, Inc.*

social role to play, especially in countries where governments are weak and corrupt. Thus, corporations are an angular piece in the economic reconstruction of a country and in helping eradicate discrimination and poverty. It is a fact that “improving the lives of the poor population prevents them from joining [or re-joining] illegal armed groups” (Guáqueta, 2006). Moreover, “[o]verall, the private sector has amassed a good record in positively influencing the course of peacemaking” (Gerson, 2001).

Nestlé, the Swiss food giant, has operated in Colombia since the 1990's. Nestlé manages five industrial sites and has commercial presence in 12 cities. They employ 328.000 (Nestlé, 2017) people worldwide and work with almost 165,000 direct suppliers (Nestlé, 2017).

The company's sales in 2016 amounted to USD 90.796 (Nestlé's Corporate Social Responsibility Report, 2016).

Nestlé's 2013 Corporate Social Responsibility Report (The Nestlé Concept of Corporate social Responsibility as implemented in Latin America, 2009) acknowledged that businesses cannot survive in failed societies and that societies cannot survive without a strong economy. It also noted that businesses could generate both positive and negative social and environmental effects through their daily operation in their value chain. To achieve its goals of creating value for the company and the society where they operate, 10 years ago, Nestlé incorporated the concept of shared value (CSV) developed by Michael Porter & Kramer.

The 2016 Corporate Social Responsibility Report recognized that the CSV is “the strategy tool that Nestlé uses to operationalise and manage all the actions it takes to ensure it creates value for shareholders and for society”(Nestlé's Corporate Social Responsibility Report, 2016) and that “it is our way of delivering a long-term positive impact for shareholders and for society, through everything that we do as a company” (Nestlé's Corporate Social Responsibility Report, 2016).

Mark Kramer, director of Nestlé's Foundation Strategy Group explained that “[c]reating shared value is a very

different approach from CSR (...) because it is not focused on meeting a set of standard external criteria, or on philanthropy. Rather, we are talking about creating social and environmental benefits as a part of making a company competitive over the long term” (The Nestlé Concept of Corporate social Responsibility as implemented in Latin America, 2009). Nestlé's idea has been to incorporate their CSR programs in the companies' day-to-day operation.

## Nestlé's Initiatives in Colombia

### Nespresso in Antioquia

Nespresso, one of Nestlé's strategic business units, has launched several public-private initiatives in some of the most excluded areas of Colombia in order to provide training and technical assistance to small farmers, while improving their coffee production and maintaining its quality (Empowering Small-Scale Coffee Farmers in Colombia, 2014).

In 2010 Nespresso, Expocafé, USAID, a number of NGOs and international development organizations cofounded a centralized and more efficient milling process center in El Jardín, Antioquia, Colombia. The main idea of the project was to help farmers share their workload, doubling the volume of AAA standard coffee, “seeking to increase progressively their net income by at least 30 %” (Helping farmers to share their workload in Jardín Colombia, 2014). Nespresso noticed that milling and gyring coffee beans on the farm –as farmers did before- generated a negative impact on the farmer's income, because if the quality of the beans was poor they would not be able to secure a premium price. They also noticed that better and centralized milling techniques at the central mill resulted in higher yield of AAA standard coffee because cherries were less likely to be damaged during the milling process and thus rejected for bad quality.

By improving milling and drying techniques in the mill, Nespresso assures higher yields of AAA standard coffee (necessary for its product), while providing cash flow and environmental benefits for farmers. Furthermore,

through this project the farmers are paid when they take their coffee to the mill, rather than after it has been processed. Priorly, payment could take up to eight days after the coffee was processed. This means that farmers can spend more time in administrative tasks and with their families (Empowering Small-Scale Coffee Farmers in Colombia, 2014). Luis Alfonso, a coffee farmer at the Jardín expressed that

Before, I used to work the full day [...], but now I no longer process my own coffee cherries. They are delivered straight to the cooperative the day they are harvested and I have free time to grow my vegetables and bananas. (Empowering Small-Scale Coffee Farmers in Colombia, 2014)

The mill is also more sustainable

The average smallholder of the AAA program in Colombia will use around 25 liters of water to process one kilogram of coffee. However, at the central mill, only 11 liters of water per kilo of parchment are required to produce coffee. It represents a reduction of 24800 liters of water per farm, meaning an overall reduction of 4.2 million liters of water. (Empowering Small-Scale Coffee Farmers in Colombia, 2014)

Moreover, the Nespresso AAA Sustainable Quality Program grew from 6.225 farmers in 2007 to 71.000 farmers in 2016, in 12 countries (Nestlé's Corporate Social Responsibility Report, 2016). Also, in 2016, Nestlé worked with the Colombian National Coffee Federation "to rejuvenate coffee production in areas of Colombia which were severely affected by decades of conflict" (Nestlé's Corporate Social Responsibility Report, 2016). To such end, the Company "distributed 28.9 million new, leaf-re-

sistant coffee trees and trained 18.000 farmers in soil conservation, water management, solid waste, and the use of agrochemicals and fertilizers". The result was a "35 % increase in green coffee productivity and a 41% rise in profitability, while the proportion of coffee growers leaving the industry has fallen" (Nestlé's Corporate Social Responsibility Report, 2016).

## Milk production in Caquetá

Caquetá is one of the poorest regions in Colombia which has been most affected by the armed conflict. There, the conflict has left more than 2 thousand victims. The attacks on road and energy infrastructure perpetrated by gurrilla groups, has made this one of the least developed regions of the country (Fundación Ideas para la Paz., 2014).

Nestlé helped "dairy farmers increase their milk production five-folds though nutrition supplements for their cows, while simultaneously improving the quality of their milk. This helped them earn above-market prices" (The Nestlé Concept of Corporate social Responsibility as implemented in Latin America, 2009). According to Nestlé's 2013 report, these assets, combined with better agricultural practices, have strengthen Nestlé's core business while helping farmers "earn a better living by producing higher food outputs using fewer natural resources" (The Nestlé Concept of Corporate social Responsibility as implemented in Latin America, 2009).

In its effort to reach its goal, Nestlé, in partnership with the Center for Tropical Agriculture, invested in the reintroduction of native species of grass in 1.4 million hectares of grazing grounds and developed a phosphorus-rich supplement that is fed to cows. "As a result, the average daily production per animal increased by four liters." Rafael Torrijos, President of the Caquetá Cattle Farming Committee commented that "[t]hanks to an average growth of 7 % per year, we are now producing 400.000 liters of milk per day. This makes Nestlé the principal promoter and development engine of the region." (The Nestlé Concept of Corporate social Responsibility as implemented in Latin America, 2009). Milk production is an

important source of income in the region. This initiative was recognized by the Governor of the Department who awarded Nestlé in 2005 the “Coraje de Oro” medal for “its steady presence and continued contribution to the development of the conflict-struck region” (The Nestlé Concept of Corporate social Responsibility as implemented in Latin America, 2009).

Nestlé also implemented “drip irrigation” in four farms suppliers of milk. The farms used an average “55 % less water for crop cultivation, while milk production year after year increased by 42% between 2014–2015” (Nestlé’s Corporate Social Responsibility Report, 2016). Nestlé’s idea is to extend the project to 30 dairy farms over the next two years.

## Nestlé’s Involvement in the Colombian Conflict

As a consequence of the armed conflict in Colombia, many union leaders have been murdered (IACHR, 2011)<sup>7</sup>. In 2005, Luciano Romero, a worker of Nestlé’s Colombian subsidiary was murdered. Romero’s family accused Nestlé of inviting paramilitary groups to the region and turning a blind eye to the constant harassment and persecution of union leaders. The Colombian judiciary initiated criminal investigations against the material perpetrators. A Criminal Court found two members of the AUC paramilitary group guilty of the crimes, and in dicta, it underscored the importance of investigating Nestlé’s role in the persecution and murder of union leaders. The Court pointed to the fact that Luciano Romero had been leading an effort to file a lawsuit against Nestlé before the Permanent People’s Tribunal in Bern, where they planned to testify about persecution and assassination of other union leaders (Judgment in proceedings against Jose Ustariz Acuna and Jhonatan David Comtreas., 2007).

In March 2012 the NGO ‘European Center for Constitutional and Human Rights’ (ECCHR) and the Colombian trade union Sinaltrainal filed a criminal complaint against

Nestlé and some of its top managers with the Swiss prosecution authorities. This complaint “accuses Nestlé managers of being in breach of their obligations by failing to prevent crimes by the Colombian paramilitary groups and failing to adequately protect trade unionists from these crimes” (European Center for Constitutional and Human Rights Case Report, 2016). The prosecution authorities closed the proceedings in May 2013.

Later, in December 2014, the same NGO submitted, on behalf of Romero’s widow, a complaint to the European Court of Human Rights against Switzerland. The NGO based “its case on the right to life (Article 2) and the right to an effective remedy (Article 13) guaranteed by the European Convention on Human Rights” (European Center for Constitutional and Human Rights Case Report, 2016). The European Court rejected the case in March 2015 “without justification” (Idem). Unfortunately, the Colombian legal framework –and the inherent limits of international public law and diplomacy- did not provide a mechanism to hold Nestlé headquarters’ accountable.

The NGO Food and Water Watch denounced that in its 2013 CSR Report, Nestlé did not address important issues about its practices in Colombia. The NGO explained that although the report mentioned that the company provides human rights training to its security personnel, it made no mention of the fact that in “2009 a number of labor and human rights organizations launched a campaign demanding Nestlé to be expelled from the UN Global Compact for trade union busting” (Food and Water Watch, 2013). It also argued that Nestlé did not discuss the fact that in 2013, Oscar Lopez became the 15<sup>th</sup> trade union Nestlé worker to be assassinated by a paramilitary organization while many of his fellow workers were in the midst of a hunger strike protesting against the corporation’s refusal to hear their grievances (Idem). In the 2016 report, Nestlé also made no mention of its practices towards union leaders in Colombia.

7 The Inter-American Commission on Human Rights reported that over the last 25 years, 2,500 were murdered.



For the NGO ECCHR:

This case is an example of a wider problem of transnational corporations failing to conduct adequate human rights risk assessments in regions of weak governance or conflict and in particular, failing to react appropriately when their employees and trade unionists are at risk. Indeed, through their activities, corporations often trigger social conflict and can exacerbate the human rights situation when their managers on the ground have not been trained in dealing with the risks. (European Center for Constitutional and Human Rights Case Report, 2016)

Nestlé's disclosure about its involvement with small-scale farmers is one of the most advanced, and the company is working with its suppliers to tackle issues faced by small-scale farmers. It requires suppliers to support farmers' organizations, but it still doesn't ensure farmers earn a living income. (Behind the Brands, 2017)

It also admitted as very positive that

In August 2014, Nestlé adopted a strong policy – it committed to zero tolerance for land grabbing. Nestlé also requires its suppliers to support the 'Free, Prior, and Informed Consent' of indigenous and local communities, and commits to advocate to sourcing country governments to implement strong land tenure. (Behind the Brands, 2017)

## Conclusion

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### Challenges

Through its share value policy, Nestlé has made great progress in improving the social and economic situation of –mostly poor and excluded- farmers in depressed regions in Colombia; this has certainly contributed to the regions' stability and growth. From 2013 to 2016, the Oxfam initiative 'Behind the Brands' has rated Nestlé with a 'fair' average, the second best score given to food brands for its human rights practices (Behind the Brands, 2017).

In the 2014 report, Oxfam acknowledged that "Nestlé is working with its suppliers to tackle issues faced by small-scale farmers." Yet, it also pointed out that Nestlé "doesn't insist that suppliers conduct business fairly, support farmers' organizations or help farmers complain when they need to" (Behind the Brands, 2014). In the 2016 report, Oxfam recognized that

Likewise, the 'Behind the Brands' initiative held that "Nestlé recognizes workers' rights, international labor standards and UN business guidelines." Nestlé is also part of the United Nations Global Compact, the largest corporate voluntary platform in which companies agree to "support and respect the protection of internationally proclaimed human rights; and that they are not complicit in human rights abuses" (United Nations Global Compact, 1999) upholding among others, rights such as freedom of association and the effective recognition of the right to collective bargaining. However, in Colombia, involvement of the company in human rights violation in this area is still recurrent.

This represents a great challenge for the company where, over the past 10 years, more than 15 of its trade union leaders have been murdered. Juan Carlos Morraquín, Bolivarian Region Head of Market explained that in Caquetá

Our employees have at times been caught in the crossfire with both, managers and workers, being subject to violence. Because of this, we have made significant efforts, in consultation with both authorities and trade unions to protect our union leaders, our workers and managers. (The Nestlé Concept of Corporate Social Responsibility as implemented in Latin America, 2009)

Security challenges, such as the one faced by Nestlé's trade union members, cannot be overcome by the share value policy.

Efforts made by the corporation to protect the human rights of union members have not been sufficient, although the Colombian state is the one obliged to provide security to its own citizens.

The emerging conversation about business and human rights goes to the question of the responsibility of companies in a global system where states have the primary duty to protect rights, but where the reality is that many states are not up to the task. (Posner, 2012)

### Some ideas to move forward

- Nestlé has to make more efforts to condemn the killings of its union leaders in Colombia, not only through the directives of its local subsidiaries but also through its representatives in Switzerland. Headquarters should exert pressure upon business-

es to do the right thing in host countries: "where transnational corporations are involved [in human rights challenges], their 'home' States have a role to play in assisting both those corporations and host states to ensure businesses are not involved in human rights abuse" (Ruggie J., 2011).

- Corporation's headquarters should have due diligence obligations towards their subsidiaries. Headquarters should "monitor their subsidiaries and prevent management at their subsidiaries from contributing in any way to human rights violations" (European Center for Constitutional and Human Rights Case Report, 2016).
- Taking into account that for different reasons judicial measures have not been available for union leaders, Nestlé should design and adopt a non-judicial but adjudicative and dialogue-based grievance mechanism, as recommended by the UN Guiding Principles (European Center for Constitutional and Human Rights Case Report, 2016).
- Processes undertaken by the extractive sector through the Voluntary Principles in Human Rights and Security<sup>8</sup> could inform of the steps that the commodity sector could take in order to improve its security policies and community affairs when operating in zones of conflict.
- Finally, the Colombian state should also contribute to provide guarantees of non-repetition to victims of violations of human rights by "promoting the observance of codes of conduct and ethical norms, in particular international standards, (...) by economic enterprises"<sup>9</sup>.

8 "The Voluntary Principles are the only human rights guidelines designed specifically for extractive companies. Participants in the Voluntary Principles Initiative -including governments, companies, and NGOs -agree to proactively implement or assist in the implementation of the Voluntary Principles".

<http://www.voluntaryprinciples.org/> (Last seen 06/28/2017)

9 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human

These are not easy tasks but there is no doubt that nowadays corporations play a major role in societies where they operate and have the challenge to address impact generated (knowingly or not) involving human rights violations.

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