



**The influence of the UNGPs and NAPs guidance in the processes of framing, agenda setting and multi-stakeholder participation in the Business and Human Rights field in Chile and Mexico.**

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## **Abstract**

The purpose of this thesis is to contribute to understanding the extent to which the United Nation Guiding Principles on Business and Human Rights (UNGPs) and the National Action Plan (NAPs) guidance influence the domestic processes of framing, agenda setting and multi-stakeholder participation (MSP) in Chile and Mexico. The UNGPs focus on three pillars: the state's duty to protect human rights, businesses' responsibility to respect human rights and the remedy mechanisms both actors should provide. Business and Human Rights have been widely investigated, however, research on the UNGPs' implementation is still emergent, especially in regions of the Global South like Latin America. Literature about the UNGPs emphasises that the UNGPs' influence might be observed in the processes of framing, agenda setting and multi-stakeholder participation. The thematic analysis was led by semi-structured interviews with IGOs, NGOs, government officials, business associations and academia, and triangulated with the analysis of documents. This study finds that the key framing actors, the agenda setting, and the multi-stakeholder participation were present in both countries, yet the depth of their influence was diverse in each country. The context affected how actors engaged with the UNGPs, but also the priorities that would make sense given the reality and political traditions of each country.

Moreover, this research finds that there is little influence of the UNGPs in how each country frames and sets the agenda on Business and Human Rights, as the countries remain with a traditional view where only the state is responsible for the protection of human rights. The thesis argues that the countries' political and economic context, affected the way in which the decision-making actors engaged with the UNGPs. Chile formed an Inter-Ministerial group, whilst Mexico formed a multi-stakeholder group to implement the UNGPs and develop the NAP. Consequently, framing in Chile focused on developing political coherence and on initiating changes on the narrative regarding human rights within the government slightly excluding business sector from the decision-making process. Mexico's process attempted to make the business sector responsible through law enforcement, however, it is still largely reliant on the state as the only actor. In the agenda setting process, the UNGPs placed business and human rights higher in the government's agenda in Chile whilst Mexico's process shows a bigger scope of influence as it involved different sectors like NGOs, academia, government, and business associations. However, both NAPs are focused on the government's administrative changes which is not the sole purpose of the UNGPs as its objective is to include responsibilities for the public and private sector. Finally, the analysis finds that UNGPs' influence on MSP has been greater than its effects on the agenda setting or framing in these countries as both countries developed inclusive participation.

## Table of Contents

Abstract .....	3
List of Tables.....	8
List of Figures .....	9
Abbreviations .....	10
<b>Dedication and Acknowledgments.....</b>	<b>11</b>
<b>Author's declaration .....</b>	<b>12</b>
<b>Chapter 1 Introduction.....</b>	<b>13</b>
1.2 'Business and human rights' and the UNGPs .....	21
1.3 Methodology .....	24
1.3.1 Methods.....	25
1.4 Main Findings .....	28
1.5 Structure of the thesis.....	31
1.6 Conclusion .....	32
<b>Chapter 2 Literature Review: Hybrid governance and mechanisms of soft-law for business regulation.....</b>	<b>34</b>
2.1 Introduction .....	34
2.2 Globalization and difficulty of regulating TNCs and business actors .....	35
2.3 Rise of hybrid governance to address regulation of business .....	37
2.3.1 Rise of BHR and focus on soft law initiatives that rely on both state and private authority .....	38
2.3.2 The United Nations Guiding Principles: example of hybrid governance and soft law.....	41
2.4 Implementation of international standards and importance of national/ local context .....	45
2.4.1 Focus on agenda setting, framing and multi-stakeholder participation as way of analysing implementation of UNGPs .....	51
2.5 The implementation of National Action Plans as mechanisms of soft-law .....	53
2.6 Conclusion .....	57
<b>Chapter 3 Methodology .....</b>	<b>60</b>
3.1 Introduction.....	60
3.2 Research approach and rationale .....	61
3.3 The Research Process .....	65
3.3.1 Methods: Case study and comparative analysis .....	65

Case Study Selection.....	69
3.3.2 Data Collection.....	72
3.3.4 Ethical Considerations .....	75
3.3.5 Thematic Analysis.....	76
Analysis of the data collected .....	79
3.4 Conclusion .....	83
<b>Chapter 4 Why Context Matter: Mexico and Chile before the implementation of the UNGPs .....</b>	<b>84</b>
4.1 Introduction .....	84
4.2 Chile's transition to democracy .....	85
4.2.1 The Military Regime of Pinochet and the economic policies .....	85
Economic policies implemented in Chile .....	87
Business system in Chile.....	88
4.2.2 Transition to democracy: Institutions, Civil Society and Human Rights .....	93
Institutions: the constitution, political parties and corruption.....	93
Emergence of Civil Society and Human Rights Organisations .....	96
Chile's Corporate Social Responsibility (CSR).....	98
4.3 Mexico's transition to democracy: from the Partido Revolucionario Institucional to electoral alternation .....	101
Economic Policies implemented during the authoritarian regime .....	103
Business System in Mexico .....	105
4.3.1 Transition to democracy: institutions, Civil Society and Human Rights .....	109
Opposition and Institutions .....	110
The emergence of civil society and human rights in Mexico .....	111
Mexico's Corporate Social Responsibility (CSR) .....	113
4.4 Comparing the differences and similarities in Mexico and Chile's Contexts .....	116
4.5 Conclusion .....	118
<b>Chapter 5 The influence of the UNGPs in framing business and human rights in Chile and Mexico.....</b>	<b>119</b>
5.1 Introduction.....	119
5.2 The process to frame business and human rights in Chile: actors and context .....	122
5.2.1How the actors engaged with the NBA and UNGPs in the process of framing business and human rights .....	127

5.2.2 Implications of framing business and human rights focusing on Pillar 1: The State's duty to protect .....	131
5.3 The process of framing business and human rights in Mexico: Actors and NBA .....	132
5.3.1 How the actors engaged with the NBA and UNGPs in the process of framing business and human rights .....	137
5.3.2 Implications of framing business and human rights on enforcement of the law .....	140
5.4 Comparison between Chile and Mexico .....	141
5.5 Conclusion .....	143
<b>Chapter 6 The influence of the UNGPs in the agenda setting of business and human rights in Chile and Mexico .....</b>	<b>145</b>
6.1 Introduction .....	145
6.2 The agenda setting process of business and human rights in Chile .....	147
6.2.1 Consequences of a government-led process to set the agenda of business and human rights in Chile .....	148
6.2.2 The influence of the UNGPs on the National Action Plan in Chile.....	153
6.2.3 Implications of the agenda setting process on the domestic governance of business and human rights .....	157
6.3 The Agenda Setting process of business and human rights in Mexico .....	158
6.3.1 The multi-stakeholder group's influence on the business and human rights' agenda-setting process .....	159
6.3.2 The influence of the UNGPs in the National Action Plan in Mexico .....	163
6.3.3 Implications of the agenda setting process on the domestic governance of business and human rights .....	166
6.4 Comparison between Chile and Mexico .....	167
6.5 Conclusion .....	169
<b>Chapter 7 The influence of the UNGPs in multi-stakeholder participation in the process to the develop the NAP in Chile and Mexico .....</b>	<b>170</b>
7.1 Introduction .....	170
7.2 Participation during the development of the NAP in Chile .....	173
7.2.1 Participation Activities for Chile's NAP development: the actors involved and the multi-stakeholder participation .....	173
7.2.2 Tracing civil society organisations and its influence in the process .....	177
7.2.3 Implications of the multi- stakeholder participation in the NAP and on domestic governance of business and human rights in Chile.....	180

7.3 Participation for the development of the NAP in Mexico .....	182
7.3.1 Multi-stakeholder participation in the NAP process in Mexico: the actors involved and spaces for participation.....	183
7.3.2 Tracing civil society organisations and its influence in the process .....	187
7.3.3 Implications of the multi- stakeholder participation in the NAP and on domestic governance of business and human rights in Mexico .....	189
7.4 Comparison between Chile and Mexico: The influence of the UNGPs on civil society and participation mechanisms .....	190
7.5 Conclusion .....	192
<b>Chapter 8 Conclusions .....</b>	<b>193</b>
8.1 Introduction .....	193
8.2 Key findings and implications for hybrid governance of business and human rights .....	194
8.3 Limitations of this study and future research projects .....	203
<b>Appendices .....</b>	<b>208</b>
Appendix 1 – Sample information sheet for participants (in Spanish) .....	208
Appendix 2- Sample Consent Form for participants (in Spanish) .....	210
Appendix 3 – Sample of questionnaire for the interviews (in Spanish) .....	211
Appendix 4- List of participants .....	212
Appendix 5 – Documents.....	214
<b>List of References .....</b>	<b>215</b>

## List of tables

Table 1.1 Human Rights Victims Killed in Chile and Mexico.....	26
Table 3.1 Analysis phases and their descriptions.....	78
Table 3.2 List of codes and themes.....	81
Table 4.1 Economic Performance Chile.....	90
Table 4.2 Economic performance Mexico.....	107
Table 5.1 Themes of interviews and NBA regarding framing BHR.....	121
Table 6.1 Themes of interviews and NBA regarding agenda setting of BHR.....	147
Table 7.1 Themes in multi-stakeholder participation.....	172
Table 7.2 Distribution of participation by region and Dialogues groups in Chile.....	177



## List of Figures

Figure 4.1 Gini Index Chile.....	90
Figure 4.2 Main Partner Countries Chile.....	92
Figure 4.3 Gini Index Mexico .....	106
Figure 4.4 Main Partner Countries Mexico .....	108
Figure 5.1 Timeline process Chile .....	124
Figure 5.2 Timeline process Mexico.....	133

## **Abbreviations**

BHR – Business and Human Rights

CSR – Corporate Social Responsibility

ECLAC - United Nations Economic Commission for Latin America and the Caribbean

EU - European Union

FSC - Forest Stewardship Council

IGO - International governmental organisations

ILO - International Labour Organisation

IOs - International Organisations

ISO - International Organization for Standardization

MNCs - Multinational Corporations

MSI - Multi-stakeholder Initiatives

MSP- Multi-stakeholder Participation

NAPs – National Action Plan

NBA – National Baseline Assessment

NGO Non - governmental organisations

OECD – Organisation for Economic Cooperation and Development

OHCHR- Office of the United Nations High Commissioner for Human Rights

PAN – Partido Accion Nacional

PPPs - Public and Private Partnerships

PRD – Partido Revolución Democrática

PRI – Partido Revolucionario Institucional

SAPs- Structural Adjustment Policies

SEGOB – Secretaría de Gobernación

TNCs - Transnational Corporations

UN – United Nations

UNGC - United Nations Global Compact

UNGPs / GPs – United Nations Guiding Principles

UNWG – United Nations Working Group for Business and Human Right

WSSD - World Summit on Sustainable Development

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**Author's declaration**

I declare that, except where explicit reference is made to the contribution of others, this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

Signed: Evelyn I. Uribe Navarrete

Signature:

A handwritten signature in black ink, appearing to read 'Evelyn I. Uribe Navarrete', written in a cursive style.

## Chapter 1. Introduction

This thesis focuses on the influence of the United Nations Guiding Principles (UNGPs) by examining if and how the NAPs adopted by Mexico and Chile to implement these principles have shaped the framing, agenda setting and multi-stakeholder participation of business and human rights in these two Latin American countries. The UNGPs are an international framework that promotes the protection and respect of human rights within the business sector. This framework is based on three pillars: The State's duty to protect human rights, the responsibility of businesses to respect human rights and the establishment of remedial measures. The business and human rights field studies, challenges and reinterprets the adequacy of state exclusivity in matters of international human rights legislation in a way that would include and address also non-state actors, and particularly corporations as actors that can prevent human rights abuses (Wettstein, 2012). The research studies the UNGPs' implementation process through the development of National Action Plans on Business and Human Rights. Through these documents, the UNGPs target their influence on public policy, setting conditions for companies, public entities, and civil societies to prevent human rights' violations. The dynamics of the process, along with the actors involved (including those who were missing from the process), map how hybrid initiatives with the use of mechanisms of soft law can influence and, in some cases, meaningfully change human rights issues in a country. Therefore, the main research question is *'To what extent did the UNGPs and NAPs guidance influence processes of framing, agenda setting and multi-stakeholder participation of business and human rights in Chile and Mexico?'*

The literature and NAPs guidance suggest that the UNGPs are expected to influence the implementation process on business and human rights in at least three ways in these two countries: how the issue was framed, the agenda setting process, and the nature of multi-stakeholder participation. The thematic analysis for framing and agenda setting observes the influence across the three UNGPs' Pillars, specifically how they are addressed and included in the processes. Moreover, for the process of multistakeholder participation the analysis focuses on the nature of the participation and the range of actors involved. Also, the analysis identifies the influence the UNGPs had on the participants, and how the participants influenced the NAP's development along with that of business and human rights governance. This thesis argues that this influence was primarily guided by the national context, and the establishing of relevant differences between these countries. In other words, the key framing actors, the agenda setting, and the multi-stakeholder participation were present in both countries, yet the depth of their influence differed in each. The context affected the forms in

which their respective actors engaged with the UNGPs, but also the priorities that would make sense given the reality and political traditions of each country. Due to the similarities and differences found in economic, democratic and inequality issues between Chile and Mexico, this research has selected them to develop a comparative case study.

My findings indicate that the implementation of the UNGPs had little or some influence on the BHR field on the framing and agenda setting processes in Chile and Mexico because both countries rely mainly in the state's role to protect human rights and thus give less attention to the role of the business sector. In Chile this is observed by the government-led process that focused in developing political coherence and changing the narrative of business and human rights only within the government. In Mexico, the process focuses on using legislation as the main mechanism to make business accountable. Although this seems like an effort to include the business sector in the process, this strategy still relies in the state's performance, which is not the sole purpose of the UNGPs as they intend to also influence the business sector. Regarding the agenda setting process, the UNGPs placed business and human rights higher in the government's agenda in Chile, whilst Mexico's process shows a wider scope of influence as it involved different sectors like NGOs, academia, government, and business associations. Moreover, while Chile focused on responding to the government's mandates, Mexico tried to develop a more ambitious plan that included the outcomes of the National Baseline Assessment (NBA) which involved the analysis of legislation and other voluntary mechanisms of regulation already in place, due diligence, and access to remedy. Nevertheless, both countries ended up drafting NAPs that concentrated on administrative actions of the government and left the role of business out of the plan. The UNGPs do not try to lessen state responsibility, what is novel is the increase in the business community's responsibility. In the case of the multi-stakeholder participation, it is possible to observe in the analysis a greater influence here than on the first two processes because both countries developed inclusive participatory mechanisms like seminars and NAP consultation processes. The main difference between the countries is that Mexico developed a remarkable multi-stakeholder process as it included a variety of sectors in the decision-making and civil society organisations monitored the process. Chile developed a process 'behind doors' where non-state actors had little influence on the decision-making process.

I consider the impact of the economic liberalization in countries of the global South, specifically in the Latin American region, as the starting point for analysing human rights abuses in the business sector. Also, that since economic liberalization, the operation of

Transnational Corporations (TNCs) has been difficult to regulate as they function as globally integrated entities, but with the parent company having a separate legal personality (Ruggie, 2013). This makes parent companies subject to individual jurisdiction and generally not liable for wrongs committed by a subsidiary operating in other countries. Moreover, the main body of law governing corporations is domestic law, but domestic law often is not able to reach beyond its national borders (Zerk 2006, 2010 in Ruggie 2018). Further, in many contexts, but notably in the Global South, domestic law can be inadequate or poorly implemented because of low-capacity levels even if there is political will to regulate companies (Deva, 2013; Bartley, 2018).

During the economic liberalization in Latin America (1973 – 1995), Structural Adjustment Policies (SAPs) were implemented, with the aim of reducing the state's participation in economy, and government spending. Several countries in the region opened opportunities for foreign investment, allowing multinational corporations to establish subsidiaries that gained influence and power over time. As a result of economic deregulation, drastic reductions in government expenditure, and the new trading agreements, these corporations have not been properly regulated by the state (Benería, 2000). In addition, international trading treaties serve set conditions to benefit and protect foreign investments, permitting a lax regulation of corporations and tax exceptions, among other things (Cantú, 2017). Although broadly defined as neoliberalism, each country confronted these processes in unique ways and from within very specific contexts. Even though the business sector was not the main actor responsible for these economic changes, both national and transnational business directly benefited from the country's economic policies.

As industrial growth precipitated in Latin America, international structures emerged to support the countries that lacked the ability to manage the economic and sociological impacts (Voegtlin, and Pless, 2014). Partnerships were formed between corporations, governments, international organisations (IGOs), nongovernmental organisations (NGOs) that shaped the traditional governance. This form of cooperation marked a new form of political cooperation, power sharing and responsibility to address global imbalances. Under these circumstances, corporations were involved as a fundamental actor in a global effort to reach feasible solutions for social and environmental problems (Lim and Tsutsui, 2015).

The research focuses on the interaction between international guidelines of business and human rights, in the form of hybrid initiatives and the use of soft law to influence domestic processes like framing, agenda setting and Multi-stakeholder Participation (MSP). These

concepts also underpin the conceptual framework of the research. The literature about the UNGPs, especially the work developed by Ruggie (2014) and the BHR NAP guidance suggests that hybrid initiatives, mechanisms of soft-law, framing, agenda setting, and multi-stakeholder participation are relevant for the processes of implementation. Hybrid governance means that regulation takes place within and between national contexts with various actors and institutions (public and private) interacting at different levels (multi-level governance) (Bair 2017; Pacheco et al, 2020). Therefore, there is a combination of state and private authority which links hybrid governance to multi-stakeholder participation because of the diversity of the actors involved in the regulation of business (Armitage et al, 2012). Moreover, for this research, following Choudhury (2018), I understand soft law as principles, norms, standards, or rules that do not create enforceable rights and duties. These two concepts – hybrid governance and soft law - describe the essence of the UNGPs as they invite multi-sectoral participation to develop strategies and implement the Pillars domestically. They also promote the development of National Action Plans - as a mechanism of soft law - that aim to influence the development of policies, but which do not create extra legal obligations for the states.

Palmer's (2017) analysis about the emergence of hybrid schemes to regulate businesses illustrates how the UNGPs are a hybrid initiative by including the participation of the state and business actors in regulating business activity. The UNGPs provide clear responsibilities in the form of Principles for states and business actors, thus they are a multi-actor initiative. It creates cooperation and dependence between these two forms of governance (public and private) in the sense that the government can elaborate public policy and internal government strategies whereas companies can focus on prevention through mechanisms of due diligence. Therefore, the involvement of different actors and sectors is also a characteristic of how UNGPs are a hybrid initiative (Taylor, 2020). Moreover, Methven O'Brien et al (2015) and Ahmad (2021) state that the UNGPs promote the implementation of soft-law mechanisms like the development of the National Action Plan of Business and Human Rights to regulate corporations.

Furthermore, an analysis of the empirical data shows that to some extent the UNGPs influenced the three local processes of framing, agenda setting and multi-stakeholder participation when developing the National Action Plans of Business and Human Rights in Chile and Mexico. Firstly, in this research, framing is defined as 'problem definition, causal interpretation, moral evaluation, and/or treatment' (Entman 1993: 52 in Hänggli and Kriesi, 2010). Secondly, agenda setting encompasses the multiple issues that a range of actors are



paying attention to and prioritizing (Rothman, 2009; Cobb and Elder, 1971, 905 in Zahariadis, 2016). Finally, multi-stakeholder participation will be understood as a combination of the state, business, and civil society in actions such as co-management, public-private partnerships and private-social partnerships (Armitage et al, 2012). These three elements help answer the research question by exemplifying the type of processes that can be influenced, but also the extent of this influence in the implementation of the UNGPs and the NAPs guidance.

The UN Guiding Principles on Business and Human Rights - developed in 2011 - represents an innovative hybrid initiative to develop guidance for main actors (states and multinational corporations) who are capable of globally improving the human rights situation. The UNGPs help in identifying and organising the existent international law to distinguish the role of the states and business communities in a voluntary scheme. This is fundamental to the thesis, as it focuses on the UNGPs implementation from the perspective of the state, since the UN Human Rights Council recommends governments develop National Action Plans (NAPs) for business and human rights, which should provide guidance in the form of soft law to states, corporations, and civil society throughout the implementation. NAPs are policy documents that are drafted by governments to present state priorities and strategies to support the enforcement of policy regarding human rights abuse by corporations (Methven O'Brien et al, 2015; Augenstein et al 2018). While NAPs bring business and human rights to the national level, the multi-actor dialogues associated with NAPs have informed discussions and engagement at more local levels thus placing the processes as important for the analysis of the UNGPs. NAPs have supported increasing awareness of business and human rights, enabled capacity building, and facilitated dialogue across different sectors, including business, government and civil society (Ferguson et al, 2018).

Moreover, BHR NAP guidance encourages the development of National Baselines Assessments (NBA) for the development of NAPs. An NBA is a tool for evaluating a state's current UNGPs' implementation and relevant business and human rights frameworks. It analyses national legislation to identify and select measures that can be included in a NAP in a coherent and transparent manner and provides a baseline assessment against which to measure progress in any given context (Ferguson, et al 2018). Therefore, according to the BHR NAP guidance a robust understanding of the context matters for the development of NAPs and the implementation of UNGPs. Correspondingly, NAPs represent the commitment of taking into consideration the issues that are relevant to each country, rather than imposing a 'top to bottom' strategy. It also allows governments and other actors to track

progress. However, this research shows that aspects like the voluntary nature of the UNGPs means that embedded patterns of domestic governance are difficult to challenge and left largely unchanged. Consequently, governments are able to manipulate the strategies to be seen to comply with them, without really developing a thorough implementation process.

To help flesh out the role that national context plays in the implementation of such schemes I turn to the standard international human rights literature, which is crucial since this research is focused on the implementation of the UNGPs and development of the NAP of business and human rights in two specific countries Chile and Mexico. According to Risse and Sikkink (1999) implementation processes regarding human rights can rely on processes of socialization. This involves advocacy networks that work developing pressure and synergy with local networks, NGOs and grassroots organisations. In sum, when countries feel the pressure, they start talking the human rights talk and begin developing internal changes regarding human rights that are difficult to stop. However, it also depends on the type of regime and wealth the country has as evidence shows that poorer democracies often have more issues with human rights than wealthier democracies. The State's capacity, institutions, and channels for citizens to demand their rights all allow for a better protection of human rights (Anderson and Murdie, 2017).

Moreover, the human rights implementation processes in Latin America have their own characteristics. For example, a lack of state compliance and domestic implementation is common in the Latin American region. Reforms are needed to include streamlining complaints and giving victims more direct access to regional institutions such as the Inter-American Court of Human Rights<sup>1</sup> (Cárdenas, 2010). Also, Hillebrecht (2013:67) explains that countries that want to commit to human rights do not necessarily have the domestic political institutions necessary to comply fully with the tribunals' rulings. Therefore, this literature suggests that implementation of human rights in the region is slow and needs domestic changes and improvements in national institutions to achieve better implementation processes and enforcement.

Moreover, scholars have increasingly highlighted the importance that local settings have on the influence of such global schemes. Scholars like Pinto and Puppim (2008), Bair (2017),

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<sup>1</sup> The Inter-American Court is one of three regional human rights tribunals, together with the European Court of Human Rights and the African Court of Human and Peoples' Rights. It is an autonomous legal institution whose objective is to interpret and apply the American Convention. The American Convention on Human Rights, also called the Pact of San José, Costa Rica, is an international treaty that contemplates the rights and liberties that must be respected by States. In addition, the Convention establishes the Commission and Court as organs competent to hear issues regarding the compliance of agreements undertaken by States to the Convention and regulates their operations. (I/A Court of HR, 2022)

Bartley (2011 and 2018), Amengual and Chirot (2016) consider the relevance of understanding and acknowledging the context of each country where international programmes or other forms of regulation are being implemented. Bartley (2011) recommends examining the intersection between the private and hybrid initiatives and domestic orders which can shape the implementation process. Subsequently, Bartley (2018) builds on this to argue against the notion of ‘empty spaces’ in which he considers that the state is always there in the background and often governments are involved in schemes of governance like hybrid governance. He argues that it is more fruitful to start by considering the places of implementations as crowded with actors, agendas, and rules. These actors might include firms, international and domestic NGOs, and a variety of government agencies. Therefore, the successful implementation of international frameworks depends on several characteristics of the local context including participation of national stakeholders, congruency between the international and national aims, authorities that participate (horizontal participation), and possible continuity after political successions (Pinto and Puppim, 2008).

Accordingly, the theoretical contribution in this research relates to the relevance of context within hybrid governance and the implementation of soft law mechanisms. First it is important to emphasize there is still too little work done on how the UNGPs have been implemented, particularly how they have been implemented in the countries in the Global South. Second, that the UNGPs are a hybrid initiative that encourage the implementation of soft-law mechanisms. Therefore, for this research it is vital to consider that the implementation of any hybrid initiative depends on the country’s national context in which policy makers implement their framework. ‘One size fits all’ initiatives regarding human rights should change to initiatives based on the national realities rather than the global purposes, as these can sometimes contradict each other. The research argues that context is often bypassed by the policy makers in order to adapt a programme. As shown above, for the development of hybrid initiatives, it is important to consider that countries are not ‘empty spaces’ and take into consideration all the possible influences and difficulties to have a clear panorama of the local situation and the possible results of an intervention (Bartley, 2018). The study argues that not considering the unique conditions of different countries can hinder the effective implementation of the hybrid initiatives like the UNGPs.

Moreover, soft law is useful to introduce business and human rights locally and develop skills, but this thesis argues that the actors involved in the implementation process may adapt only those strategies that make sense to the local reality and ignore those that present more

challenges and contradictions with the traditional ways of interactions or norms. This situation happens because soft law mechanisms do not require mandatory or legal actions, leaving the NAPs and UNGPs like a voluntary scheme. Felice and Graf (2015) developed a study about the NAPs processes in Europe in which one of the observations made is that it is important to analyse processes of implementation to understand the outcomes. I draw on Felice and Graf's study to argue that understanding the local dynamics and interactions to develop bottom-up strategies determines the success of the implementation of the hybrid framework. Therefore, this study contributes by establishing that analysing the processes rather than only the outcomes is more beneficial when studying the implementation of hybrid initiatives. The reason is that when studying processes, it is possible to observe a bigger scope of the influence on actions that may not be able to be registered in a document, actions such as relationships, networks, interactions, concerns, traditional policy making, etc. Moreover, it is possible to see that aspects like framing, agenda-setting, and enhancing MSPs are necessary and prior to BHR outcomes improving.

I will explore the debates between the actors to achieve consensus or agreement in terms of what business and human rights should look like in Chile and Mexico respectively. I will show that framing and agenda setting in Mexico and Chile were not linear processes as the actors involved in the decision-making process tend to move back and forth from defining the problem to prioritizing several times during the process of developing the NAP. Also, I will show how priorities are tied to political traditions, interests and authority when making decisions. Finally, I will present the actors' role in the multi-stakeholder process, combined with the advantages and disadvantages presented in their participation. The purpose of Chapter 1 is to introduce the consequences of the global economy on human rights, the emergence of hybrid governance and, the rise of Business and Human Rights as a field of policy and activism and the implementation of UNGPs through NAPs as forms of soft law. This chapter will also introduce the methodology and techniques employed to develop the research. The final section presents the main findings in relation to the research's question and an outline of the remaining chapters.

## 1.2 ‘Business and Human Rights’ and the UNGPs

The traditional view in human rights debates is that states are the sole entities with international legal personality. Thus, states are the exclusive addressees of international law. This makes them the sole bearers of direct human rights obligations at least as they refer to international law. Consequently, all other institutions may only have indirect human rights responsibilities, as the respective governments stipulate them in their domestic legislations. Therefore, actors like companies are not bound directly by international law but rather indirectly through domestic legislation. Human rights violations are considered an internal political issue with which companies should in principle not interfere (Chandler, 2003).

According to Ruggie (2014: xxiii) ‘business and human rights can be described as a microcosm of a larger crisis in contemporary governance, that of widening gaps between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences’. The emergence of non-state actors like the business community in addressing global issues has been innovative but questions remain about the effectiveness of the state as the sole protector of basic rights (Chandler, 2003). Therefore, business and human rights is a field that studies, challenges and reinterprets the adequacy of state exclusivity in matters of international human right legislation in a way that would include and address also non-state actors and particularly corporations as direct duty-bearers (Wettstein, 2012).

Current debates start to call for a more rigid enforcement of the responsibility of the business sector through legal and policy means rather than emphasizing the alleged benefits of more flexible, private initiatives (Schneider and Scherer, 2019). The state has a key role in the regulation and supervision of economic actors and companies to prevent violations of human rights or ensure access to justice and reparation for those who have suffered violations (Schönsteiner, J., 2016). Therefore, state regulation matters to the mechanisms of governance in the form hybrid regulation. With hybrid governance regulation takes place within and between public and private authority with various actors and institutions that interact at different levels (Bair 2017; Pacheco et al, 2020).

In 2011, the UNGPs were unanimously accepted by the United Nations Human Rights Council (United Nations, 2014). The UNGPs have their foundations on Corporate Social Responsibility (CSR)<sup>2</sup>; but are considered to go beyond this concept as they aim to build a

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<sup>2</sup> Corporate Social Responsibility is an umbrella term for a variety of theories and practices that according to Blowfield and Frynas (2005) recognise that companies have a responsibility for their impact on society and

combination between voluntary actions and public policies at national levels. The UNGPs draw on CSR understandings of responsibility and CSR practices of internal policy, target setting, reporting, stakeholder dialogue, among other practices.

The UN Guiding Principles for Business and Human Rights are grounded in three pillars:

- (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms.
- (b) The role of business enterprises as specialized organs of society performing specialized functions, which are required to comply with all applicable laws and to respect human rights,
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

Each pillar contains specific principles, 31 in total, which explains how the pillars should be implemented (United Nations, 2011). The UN expects that the Guiding Principles cover a broad range of public policy areas and encourages all states to implement the principles through the development of NAPs (United Nations, 2014). Hybrid governance emerges as a framework in which state and private authority meet to regulate business activity and its impact on human rights. It also encourages the participation of civil society as observers, providing training when needed and monitoring the processes.

The UNGPs demonstrate that it is possible to achieve a meaningful degree of convergence of norms and policies even in highly controversial issue areas. In this regard, the state by itself cannot do all the work to meet the most relevant challenges and therefore it needs to engage with other actors to leverage its capacities. Hence, through hybrid regulation and multi-stakeholder processes it is possible to regulate the business sector behaviour (Ruggie, 2014). Despite the innovation proposed by the UNGPs, the initiative is still emergent (Mcphail and Adams, 2016) and little progress in the business and human rights field has been observed in the past years. For example, when a country commits to the implementation of the UNGPs it commits to developing a National Action Plan on Business and Human Rights, 25 countries have developed a NAP, most of them in the Global North (NAPs on business and human rights, 2020).

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the natural environment, sometimes beyond legal compliance and the liability of individuals; that the business community should share responsibility with whom they do business (e.g. supply chain); and that companies need to manage their relationship with society.

National Action Plans (NAPs) on business and human rights are a growing phenomenon that began in 2011 with the European Union's (EU) request to member states to develop NAPs to support implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) and, in 2014, the UN Human Rights Council (UNHRC) also encouraged states to develop NAPs (Methven O'Brien, et al 2015). National Action Plans can be defined as policy documents drafted by governments that outline and articulate state priorities and strategies to guide action that can support the enforcement of policy commitment in order to prevent corporate-related human rights abuse (Methven O'Brien et al, 2015; Augenstein et al 2018).

NAPs have a range of potential merits once the processes begin. First, the UNGPs and NAPs guidance suggests that NAPs should be based on a National Baseline Assessment which allows for an analysis of the national legislation to help a state identify and select measures to be included in a NAP (Ferguson, et al 2018). Second, the process encourages the participation of a diversity of actors that includes advocacy networks, local organisations and a consultation process that can empower local actors. Also, their development can trigger the evolvement of national laws, policies, and institutional practices with international commitments, thus strengthening the rule of law and, ultimately, greater human rights effectiveness (Methven O'Brien, et al, 2015). In fact, for Cantú (2019) what NAPs are doing is defining the measures and projects that states must develop to fill the regulatory, legislative and policy gaps that enable business to abuse human rights.

In Europe, the development of NAPs has encouraged legislation in countries such as Denmark, Switzerland, France, Germany and the United Kingdom. This legislation is related to the UNGPs because it encourages companies to act with due diligence and helps prevent harm and human rights abuses, which is one of the main principles within Pillar 2 of the UNGPs. Therefore, we know that in wealthier and stable democracies there is more chance to influence legislation. However, this research will show that the processes of implementation have not encouraged significant reform in legislation in Latin America yet, as the context of the countries analysed in this study are different. Chapter 4 will explore the context in which the UNGPs were implemented in Chile and Mexico and will show specificities of each country that made each process unique. For example, Chile and Mexico are both liberal economies but Chile follows a very specific type of capitalism with a state that has a subsidiary role, that of regulating and defending national capital (Saucedo et al.2015; Bizberg, 2014). In Mexico capitalism is a disarticulated one because according to

Saucedo et al and Bizberg (2015; 2014) the articulation of the productive structure occurs externally and there is little state intervention.

Finally, the discussion presented here illustrates the need for further research and analysis of the topic of business and human rights initiatives, as the field of BHR and the implementation of the UNGPs is still novel. There is little research on the processes of implementation, which is in fact an additional contribution of this study, and specifically in countries of the Global South, as it looks at its local implementations and the difficulties, obstacles and tools that are needed for a proper understanding of the business and human rights debate. This research will investigate problems with implementation like the relevance of the national context and local dynamics that can enable or hinder the influence of the UNGPs in Mexico and Chile.

### **1.3 Methodology**

This research conducted an in-depth study of the UNGPs' implementation through NAPs in two Latin American countries, Chile and Mexico. International influence over the economic affairs of these two countries established some conditions that influenced their economic, democratic and social development. This has triggered imbalances that resulted in inequality and lack of protections for human rights. The effective implementation of the Guiding Principles and the development of NAPs could help address these imbalances. Consequently, the processes by which the governments recognize, identify and implement international initiatives to address human rights as a national priority deserve further study. The purpose of this research is to analyse the adaptation of UNGPs into national contexts, i.e., NAPs, observing the proposed strategies and mechanisms that could influence public policy into building government capacity, multinational corporations and civil society co-regulating business behaviour.

The approach selected for analysing the data collected in this research is thematic analysis. This approach considers that themes are built out of group codes that are identified in the transcription of an interview or document (Braun & Clarke, 2006). The purpose of coding the information collected was to identify findings that can contribute to theoretical knowledge and practical use (Boeije 2010 in Chowdhury, 2015). Three key topics were found in the literature on the UNGPs, especially John Ruggie's work emphasises framing, agenda setting and multi-stakeholder participation as the processes in which the UNGPs might have effects. Then, the analysis focuses in two cases to observe the extent to which the NBA and NAP process influenced framing, agenda setting and multi-stakeholder



participation surrounding BHR in each country. The data I used for my study were interviews from both countries and public documents like the National Baseline Assessments, National Action Plans and Participation Reports. The reason I chose these documents is that they are outcomes of the implementation of the UNGPs. The NBAs were expected to influence the framing process of BHR in each country and the development of the NAP. Simultaneously, the NAP is also the reflection of the discussions of the agenda on Business and Human Rights (BHR). On the other hand, the Participation Reports offer insights on what was discussed in the seminars, what was expected by the participants and the scope of their influence in the process. Comparing the documents with the narratives developed in the interviews was also useful in developing the analysis.

### 1.3.1 Methods

I planned my research as a comparative case study to observe the extent to which context is relevant to this type of research. Chile and Mexico have a similar background on economic liberalization and the implementation of SAPs in the 1980s. But at the same time, they have important differences in their outcomes regarding economic development, democracy and social structure. For instance, Chile is considered by the World Bank as a high-income economy, while Mexico's development still positions the country as an upper middle-income country (World Bank, 2018). Nevertheless, both countries have shown high levels of inequality<sup>3</sup> which have a direct impact on issues regarding human rights, e.g., access to health services, education, job opportunities and working conditions, land ownership and displacement, corruption, etc. Additionally, the conceptualization of human rights is different in both countries and the way in which they design public policy. While Chile has been more successful in its economic stability, both countries show high levels of inequality (Chile has a Gini coefficient of 44.4 in 2017 and Mexico 46.3 – data from World Bank Indicators, 2021a and b). with regards to human rights Chile and Mexico also have important differences (see Table 1.1). While Chile's human rights victims are mostly concentrated in the dictatorship period, in Mexico victims have increased in the last couple of decades. This increase in the number of victims could be related with *transparency* in public information, however it is also related to the War on drugs and corruption. In 2007, Mexican President Felipe Calderón launched a “war on drugs” that was immediately backed by the United State government. The US government has provided 1.3 billion dollars, training, equipment, and intelligence. The main justification for the support was to cut the flow of drugs to the US.

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<sup>3</sup> Mexico's Gini Index in 2017 was of 0.459 and Chile's Gini index was of 0.454 (OECD, 2017b; The World Factbook, 2017; OECD, 2015a and 2015b)

However, the flow of drugs during Felipe Calderón's presidency increased almost thirty percent, and drugs were cheaper and more accessible to consumers (Sánchez, 2019).

Table 1.1

Human Rights Victims Killed in Chile and Mexico

Country (years)	Description	Estimated number of victims (median)
Chile (1973)	Civil violence (army ouster of Allende)	5000
Chile (1974)	Repression of dissidents ("disappeared")	20,000
Chile (1987)	Civil violence	3,000
Mexico (1994)	Ethnic violence (Chiapas)	1,000
Mexico (2006-2018)	Federal Army and police offensive against entrenched drug cartels and corrupt police and officials, mainly in the northern region bordering the USA	95000

Source: Elaborated with data from Centre for Systemic Peace (Knoema, 2021)

Comparisons will be used to study and analyse Chile and Mexico's UNGPs implementation, their respective processes, and broader agenda on business and human rights. In addition, what I aim to achieve with the comparative method is to identify the effect international structures may have on domestic political processes and how the differences in basic structure from both countries affect the outcomes in public policy (Schmidt, 1995). In this regard, the research observes two Global South countries exposed to the UNGPs and the processes these countries faced. Moreover, it offers an explanation of their results regarding the extent of the influence of the international framework on domestic governance. The comparison will also identify national dynamics and governmental procedures that determine how actors interact and the outcomes that can be expected on public policy. The research observes the similarities and/or differences between Chile and Mexico's policy dynamics, to understand the reasons behind how the policy regarding the Guiding Principles has been constructed.

Selecting a case study was relevant for this research as one of the main purposes is to build explanations that will inform further research in Latin America and elsewhere. For the case selection in this research, I employed purposive selection (Gerring, 2008). The number of

countries that had experienced the UNGPs' implementation in Latin America was only Colombia, Chile and Mexico. Additionally, Chile and Mexico were contemporary processes, as both countries were implementing UNGPs from 2014 to 2017 and using the same guidelines from the Danish Institute for Human Rights. While the purpose is not to generalize from my findings, the selection of these case studies provides the possibility of understanding to what extent the implementation of the UNGPs can influence the local governance in any given country and to consider the relevance of each context.

Further, the techniques selected to collect data are semi-structured interviews, and document analysis. The participants selected for the interviews were professionals from the main organizations involved in the planning of each National Action Plan. Snowball sampling was used to reach other participants. In total, I conducted 30 interviews. For my document analysis, I developed a systematic procedure for reviewing and evaluating documents, as documents need to be examined and interpreted to produce meaning, gain understanding, and develop empirical knowledge (Corbin & Strauss, 2008; Rapley, 2007 in Bowen, 2009). Therefore, the National Baseline Assessments and the National Actions Plans were key data sources in the development of my research as they can support the information collected in the interviews.

It is worth mentioning that I faced some difficulties while conducting my study. First, both countries had a new presidential administration in 2018. For Chile this meant that the new administration could come with new priorities and would lack the political will to implement the plan that had been developed under the previous incumbent. However, it is important to bear in mind that the last administration tried to insert the NAP into the National Plan for Human Rights giving to the process legal support to guarantee continuity. In the Mexican case, the Multi-Stakeholder Group in charge of the plan failed to launch the NAP before the administration changed in November 2018. Therefore, the final draft of the Mexican process can be easily discarded by the new government as there is no document to be used as a base for the monitoring of the UNGPs in the country. Second, as the Mexican NAP has not been completed yet, working with unfinished material represent a difficulty as the final draft could have some changes that might produce some incoherence in the analysis. However, during the period of this research the Mexican government did not launch any formal document regarding the UNGPs. These difficulties highlighted two main aspects of framing and agenda setting processes that show some kind of fragility. First that the processes have a nonlinear nature as the limits between framing and agenda setting mixed during the study adding more complexity to the analysis of the topic of human rights. Second, that NAPs need domestic

legal guarantee to ensure their implementation as governments tend to follow their own goals when administrations change. This could help avoid losing the progress done by past administrations on sensitive topics like Human Rights.

#### 1.4 Main findings

The main argument of this research is that the UNGPs expected to influence domestic governance on business and human rights in at least three ways in Chile and Mexico: how the issue was framed, the agenda that was established and the nature of multi-stakeholder participation. However, this influence was uneven and guided by the national context, which determines relevant differences among the countries. In other words, the framing, agenda setting, and participation were part of the processes implemented in both countries but each of them presents a variance in the depth of the influence. The research concludes that it is the embedded patterns of domestic governance that affected the forms in which the actors engaged to the UNGPs, but also in the priorities that make sense given the reality and political traditions of each country.

Regarding *framing* business and human rights both countries focused on the traditional view where the state is the main actor responsible for human rights. Although there are some variances in each process, to be explained in the following paragraphs, the evidence showed the UNGPs had little influence in the definition of Business and Human Rights (BHR) in either country. Chile's traditional form of policy making – narrow elite consensus style – affected the focus of the decision-making group. In Chile defining business and human rights was centred first on forming a political coherence and changing the narrative of what human rights means, rather than extending this exercise to other actors. The UNGPs do not suggest that the state does not have a central duty in upholding HR it adds the business responsibility for contributing to rights realization. Although specific topics were identified in the NBA such as Constitution, Discrimination, Labour Rights, the framing process did not take them as such into consideration when defining business and human rights in Chile. Consequently, the decision-making group did not give a specific definition of BHR and role to each actor (including the business sector). Thus, keeping the old narrative in place in which the state is the only actor responsible for human rights abuse, basically a less critical and inclusive agenda.

In contrast, the process of framing business and human rights in Mexico was a multi-stakeholder process in which the actors committed to building a plan on the NBA findings, like improving law enforcement and corruption, and representing the UNGPs main aspects

such as due diligence and access to remedy. Due diligence means businesses should avoid infringing human rights and address adverse human rights impacts in which they may be involved (Ruggie, 2014; Methven O'Brien and Dhanarajan, 2016). These factors (due diligence and access to remedy) point indirectly to the responsibility of business to respect human rights by preventing negative impact through risk assessments and by complying with the law. However, focusing on law enforcement is related to the state's performance which is the traditional view of human rights. Therefore, the frames did not significantly change after the implementation of the UNGPs. The reason for considering there was a minimal change in Mexico is that the mechanism that is considered in the process to make business accountable is the law but the UNGPs promote to 'go beyond the law'. What this suggests is that the role that relates to the business community is missing from the process.

The analysis in Chapter 6 aims to observe the extent to which the UNGPs placed business and human rights higher on the *agenda* of the actors that formed the decision-making group in each country before their implementation. What the study found is that the UNGPs influenced in Chile mostly the agenda of governmental offices while in Mexico the UNGPs reached the agenda of a more diverse group. This showed some influence of the UNGPs in both countries but limited to the actors involved in the decision-making group. In terms of the NAP both countries missed to express an agenda based on the UNGPs spirit. In the Chilean case, most of the actions were thought or planned as duties of the government. Moreover, the agenda of business and human rights was focused on gaining experience and learning about the field of BHR by delivering a first NAP. This also shows an interest in responding to its international commitment in a timely manner. For this reason, the agenda does not pay attention to issues related to the Chilean context exposed in the NBA like the Constitution, discrimination, and Labour issues, and thus aspects such as due diligence and access to remedy are only adapted to the Ministries' mandates rather than used to change the business sector's practices. Therefore, the UNGPs influence on the agenda setting was focused on the state's duty to protect rather than in Pillar 2 with business practices, as most of the responsibilities are based on administrative changes like training and promoting the UNGPs within the government.

In Mexico's case, the agenda setting process shows that the multi-stakeholder group followed the topics that were identified in the stage of framing and positioned structural problems, like law enforcement and legislation as main issues to address business and human rights. The diversity of the group and the participation of civil society allowed an alignment to the UNGPs with the main topics of due diligence and access to remedy/justice and gave

structure to their work and discussions. Consequently, the process indirectly positions Pillar II -the business responsibility- to respect in the agenda as actors understand the prevention of human rights abuse by complying with the law (at least). Although the UNGPs aimed for more than enforcement focusing on legislation make sense given the reality of the country. Because the UNGPs influence the agenda of different actors, thus the scope of the UNGPs is potentially greater than in Chile. Moreover, the process positioned business and human rights in the business sector's agenda which can be exemplified by the *defensive* participation of lawyers who represented business associations. The analysis of the NAP identified that the actions selected did not represent the bold agenda previously discussed by the decision-making group, as the tasks were addressed mainly pointing the state's responsibility. Mexico's process (until 2017) was not able to culminate in a NAP that represented all the voices.

Regarding the multi-stakeholder participation of the processes, the implementation of the UNGPs was foreseen as inclusive and participatory. The analysis identified the participants involved in the process, its influence on the development of the NAP, and how the process influenced back onto some of the groups that participated in the process. What the analysis found is that the UNGPs' influence over multi-stakeholder processes and related learning processes has been greater than its effects on agenda setting or framing of business and human rights. The activities developed as part of the implementation included training sessions about BHR and UNGPs, therefore there was capacity building involved in the process. The actors involved here were civil society organisations, business, business associations and indigenous groups. But, as it has been mentioned before, these groups were not involved in the decision-making process of the NAP, thus their little influence on framing and agenda setting. Yet, who was invited to participate, and the degree of participation hindered the democratic inclusion of the process and the capacity of civil society to influence the agenda of business and human rights. This was also influenced by the traditional dynamics (or crowded spaces) of the governments and progress on democracy. In the case of multi-stakeholder participation, Chile implemented external activities, as the activities were planned as external to the decision-making group. This shows political will to involve other groups, but the decision-making group kept them away from the final decisions. In a country with a history of democratic governance like Chile that characterizes for having solid democratic processes and institutions (with exempt of the Coup), one would expect to observe mechanisms that could position civil society organisations or other non-state actors where they could influence the process. However, even when non-state actors participated, my research shows that they exert little influence on the process. Also, that they were

subjects of the process as the process meant to build skills on non-state actors regarding the UNGPs.

In contrast, the presence of non-state actors in early stages of the process in Mexico, allowed a stricter accompaniment to the framing and agenda processes. The development of a multi-stakeholder group sets a 'good practice' for the country to develop participation mechanisms for the decision-making process. In addition to the multi-stakeholder group, the process included other spaces of participation, in different regions of the country. The interviews suggest that the influence of non-state actors in the NAP was supported by the monitoring of the Focal Group (a group formed by ten different organisations dedicated to Business and Human Rights) in the decision-making group. The role that the Focal Group played in the process certainly empowered them and positioned the group as a reference for the business and human rights field in Mexico. Therefore, the influence the UNGPs had on these specific non-state actors is clearer than in Chile. Moreover, the process in Mexico shows advancements in developing mechanisms to include non-state actors and share power, like in hybrid governances.

The influence that is observed in some respects differ in the depth and form and context dependent. The scheme in which the UNGPs are implemented show there is still a needed to build more inclusive, bottom-up strategies that could help in the implementations, adaptation, and the complete embracement of the programmes. The UNGPs and guidelines like the ones developed by the Danish Institute for Human Rights consider the national context. However, they do not directly consider aspects like traditional political styles and structural problems like law enforcement that may also affect the adaptation of the principles. Although the UNGPs were not created to solve the latter situation, this research shows the need for each country to build their own strategies (perhaps with international 'good practices' as examples) that can help break the structures that keep them from fully enjoying democratic processes.

## **1.5 Structure of the thesis**

Chapter two provides a review of the academic literature in relation the rise of hybrid governance and the use of soft law mechanisms in the business and human rights field. It also presents the UNGPs and its main characteristics as these are considered in the literature as hybrid initiative. I will present the discussions about the implementation of human rights in domestic contexts to highlight the relevance of acknowledging the existent actors, norms and laws that can influence how an initiative is implemented. Finally, the chapter examines

the literature about the implementation of the National Action Plans of Business and Human Rights. Chapter three will present in detail the methodology and methods selected and used to develop this research. The Methodology chapter will present the research question and the decision to select a comparative study. It will also show the rationale for the decisions taken and will explain the stages, challenges and implications overcome throughout the fieldwork and data analysis.

Chapter 4 will provide context for the countries selected as case studies. The thesis argues that context plays an important role when translating hybrid initiatives into domestic levels as places of implementation are not empty spaces. In fact, NAP guidance encourages the development of National Baseline Assessments, thus there is an acknowledgment of the relevance of context. Therefore, it is crucial to present the background of the countries prior to the implementation of the UNGPs. The chapter will explore the similarities and differences in the political trajectories of both countries' contexts, exploring their transitions to democracy, their relationship with human rights, and the business system they have in place. This is to further understand how each country embraced the UNGPs and proceeded to its domestic implementation.

Chapter five, six and seven will present and analyse the empirical data of this research. Each chapter first presents the thematic analysis and rationale behind the data analysis. This shows how I developed the analysis, the findings and conclusions for each theme. Then, following a case study approach, the chapters are structured in two main sections, the first one for Chile and the second one for Mexico. Each chapter will additionally have a comparison section to highlight the main findings and how they relate to the research question.

Chapter 8 presents the conclusions of the research. It illustrates the ways in which our understanding of the implementation of hybrid initiatives can influence the domestic adaptation of them. Specifically, it highlights that context matters, that there is no such thing as 'empty spaces' when considering first the design and then the implementation of the transnational regulation on business and human rights (or any other international framework). In the case of hybrid initiatives, to the best of their abilities, they should build programmes that allow the development of bottom-up strategies to ensure local actors' commitment and support. Finally, the chapter will outline the limitation of this study and present avenues for further research.



## 1.6 Conclusion

Chapter 1 has provided an introduction to the thesis. I have offered an overview of the main argument of the thesis, specifically that the UNGPs expected to influenced domestic governance on business and human rights in at least three ways in Chile and Mexico: how the issue was framed, the agenda that was established and the nature of multi-stakeholder participation. The authors of the UNGPs and the literature expected the UNGPs to have influence in these key processes. But my findings show that in fact the UNGPs (to date) induced minimal change despite these expectations. Moreover, I highlight differences across cases, demonstrating the importance of attending to the ways in which influence is guided by the national context. The research states that it is the context through its traditional dynamics that affected the forms in which the actors engaged towards the UNGPs, but also in the priorities that suited best their respective realities and political traditions. I have introduced key concepts such as hybrid governance, soft law, framing, agenda setting and multi-stakeholder participation to locate this research stands withing wider debates in the academic literature. Also, the chapter presents that context in the implementation of hybrid initiatives matter and argues that context is often bypassed by the policy makers to adapt a programme. For the development of hybrid initiatives and the implementation of mechanisms of soft law, it is important to consider that countries are not ‘empty spaces’. Chapter 1 also presents a summary of the methodology and techniques employed to develop the research and the structure of the thesis.

## **Chapter 2 Literature Review: Hybrid governance and mechanisms of soft law for business regulation**

### **2.1 Introduction**

The question this research aims to answer is: To what extent did the UNGPs and NAPs guidance influence the processes of framing, agenda setting and multi-stakeholder participation in the Business and Human Rights (BHR) field in Chile and Mexico? The purpose of this chapter is to examine key conceptual debates that can help explain the current UNGP's role in human rights and business field. This research focuses on two main aspects. First, it observes the international guidelines of business and human rights as a form of hybrid governance. Second, it looks at how these guidelines use mechanisms of soft law to influence the domestic processes of framing, agenda setting and Multi-stakeholder Participation (MSP) in this field. The UNGPs provide clear responsibilities in three separate Pillars for state and corporate actors in terms of business and human rights. The government can develop public policy and internal government strategies whereas companies can focus on prevention through due diligence or risk assessments. One form in which the UNGPs and the international guidelines of BHR encourage government's strategies is through the development of National Action Plans. The latter suggest that the UNGP promote a hybrid approach of implementation as it involves state and private authority. Also, that it encourages the use of mechanisms of soft law like the NAPs rather than focusing on the development of binding mechanisms. This research investigates the process of implementation of the UNGPs in Mexico and Chile through the development of NAPs.

The chapter begins by explaining hybrid governance as the process by which regulation takes place within and between national contexts with various actors and institutions (public and private) interacting at different levels (multi-level governance) (Bair 2017; Pacheco et al, 2020). Here, state, and private authority come together to regulate business activity. Therefore, there is a clear relationship between hybrid governance and multi-stakeholder participation (Armitage et al, 2012). The chapter also argues that a robust understanding of context is crucial in the implementation of hybrid initiatives and in defining framing, agenda setting and MSP, as the literature and the NAPs guidance suggest these three concepts be present in the implementation of UNGPs. Moreover, NAPs guidance acknowledges the relevance of context as it encourages the development of the NBAs as part of the process to develop NAPs. NBAs, therefore, serve to both understand the context in which NAPS are developed and provide a baseline against which progress can be measured.

The chapter is structured around four main sections. The first section discusses globalization and the difficulty of regulating TNCs and other business actors. The second section explores the rise of hybrid governance and the use of soft law mechanisms in the business and human rights field. It also presents the UNGPs and its main characteristics as these are considered in the literature as hybrid initiative. The third section presents the discussions about the implementation of human rights in domestic contexts to highlight the relevance of acknowledging the existent actors, norms and laws that can influence how an initiative is implemented. Finally, the chapter examines the literature about the implementation of the National Action Plans of Business and Human Rights to present what NAPs have achieved in the Global North and how the process of implementation has evolved with the participation of a variety of actors and the development of baseline assessments. Together these sections present the main literature on the UNGPs as hybrid governance and the most relevant evidence on the implementation of this initiative.

## **2.2 Globalization and the difficulty of regulating TNCs and business actors**

Globalization has altered world-wide economic, social and political dynamics. Since economic liberalisation, multinational corporations have gained global prominence and dominant power over the international markets. However, transnational corporations (TNCs) operate in a way that makes it difficult to regulate their activities as they function as globally integrated entities or “groups”, but with the parent company having a separate legal personality (Ruggie, 2013). Thus, parent companies are subject to individual jurisdiction in which they are incorporated and generally are not liable for wrongs committed by a subsidiary operating in other countries. Also, in some cases, states fail to implement the law because they lack the capacity or because they fear the competitive consequences of doing so. Local leaders can also allow companies to get away with illegal behaviour as they can subordinate the public good for private gain, thus promoting corruption (Ruggie, 2013; Ruggie, 2018). The main body of law governing corporations is domestic law, but domestic law is only able to reach beyond its national borders in limited circumstances (Zerk 2006, 2010 in Ruggie 2018). Moreover, in developing countries domestic law can be inadequate or poorly implemented because of low-capacity levels, even if it has the political will to do so, which can often be the result of factors such as an undeveloped legal regime, weak enforcement of laws, economic hardships, corruption, and non-independent courts (Deva, 2013; Bartley, 2018).

In Latin America, the implementation of global economic policies like Structural Adjustment Policies in the 1980s and 1990s (SAPs) reduced the state's influence on economic policy and public investment (Harris, 2000; Benería, 2000). All the countries in the region, except for Cuba, opened their markets to foreign investment allowing multinational corporations to establish subsidiaries that gained influence and power over time. While this phenomenon was not new it was intensified during this period in the Latin American region. As a result of the deregulation of many economic activities, the drastic reduction of government expenditure, and new trading agreements, these corporations were not properly regulated by the state. Moreover, the international trading treaties set conditions that benefited and protected foreign investment, permitting, among other things, a lax regulation of corporations, and tax exceptions (Cantú, 2016).

Therefore, economic globalisation creates global governance gaps, resulting in deficits in global business regulation that give corporations opportunities to exploit their workforce, the local community, or the environment without legal consequences. According to Zurn (2018), this kind of integration weakened the states' mechanisms of social protection as countries cut their expenditure and public investments. Thus, liberalisation attacked its own institutional cushioning mechanisms. At the same time, globally active companies invested increasingly in all parts of the world, benefiting from these 'weakened' mechanisms, for example by utilizing cheap labour costs in poor countries (Zurn, 2018). Governance gaps appear where protections in the form of public goods expected by citizens, and many others codified in international agreements, go underprovided or simply overlooked by governments (Hirschland, 2006). In this sense, international structures emerged to support the countries that lacked the ability to manage the economic and sociological impacts (Voegtlin, and Pless, 2014).

In response to these economic and regulatory gaps, governance initiatives emerged with the participation of different actors like international organisations, civil society actors, and private companies which try to regulate global business and compensate for market failure and the insufficient provision of public goods (Scherer et al. 2013 in Voegtlin and Pless, 2014). This form of cooperation implied more political cooperation by sharing power and responsibility between public and private actors to address global imbalances. Under this form of governance corporations were involved as a fundamental actor in a global effort to reach feasible solutions to social and environmental problems (Lim and Tsutsui, 2015: 2). This point is important because business is encouraged and at times pressured to take a proactive stance on producing solutions, thus becoming rule makers and not just rule takers.

### **2.3 Rise of private & hybrid governance to address regulation of business**

The UNGPs are an example of hybrid governance characterized by the cooperation of a variety of actors and tools to help guide and monitor business behaviour. The UNGPs is a hybrid initiative because it involves the participation of a variety of public and private actors and mechanisms at local and global levels to advance in human rights issues. Through its pillars and principles, the UNGPs promote the use of soft law mechanisms like National Action Plans to influence domestic processes like framing, agenda setting and MSP.

Hybrid governance is one form of partnerships for cooperation that were mentioned above to address governance gaps created by the market and global business. With hybrid governance the main characteristics are that there is an interaction between private and public action, and the authority these actors have. Bair (2017) and Pacheco et al (2020) argue that regulation in hybrid governance takes place within and between national contexts with various actors and institutions (public and private) interacting at different levels. In this regard, hybrid governance is also tied to multi-stakeholder participation because there is a combination of the state, businesses, and civil society in actions like co-management, public-private partnerships and private-social partnerships (Armitage et al, 2012). According to Johnson (2022) hybrid governance refers not only to the overlap of public and private governance areas and mechanisms, but also to the mutual dependence of both forms of governance. Hybrid governance is characterised by an explicit, deep co-dependence between the public and the private sectors (Ponte and Daugbjerg, 2015; Moser and Leipold, 2021). Johnsons (2022) argues that this mutual dependence emerges as mechanisms that rely upon the enforcement and legitimating capacities of the state (Johnson, 2022).

Finally, I mentioned before that hybrid initiatives are characterised by multi-stakeholder participation which also involves civil society (Armitage et al, 2012). Civil society is defined here as the “third” sector of organisations that represent societal (public) concerns and are distinct from the state or business sectors as they include national and international non-governmental organisations (NGOs) as well as social and grassroots movements. Other definitions consider that civil society is formed not only by social movements (neighbourhood associations, women’s groups, religious groupings, and intellectual currents) but also by civic organisations of all classes (lawyers, journalists, trade unions and entrepreneurs) which allow for self-expression and advancement of their interests (Stephan, 1988 in Avritzer, 2006). Within hybrid governance, open participation allows the collection of different views to build more ‘representative’ programmes that people can identify with (Ruggie, 2014).

Hybrid governance involves the participation of state and private authority. Regarding BHR, the UNGPs provide guidance and specific actions for state and businesses to improve business regulation. The principles and international guidance of BHR also encourage the development of NAPs to influence policies and strategies but is not a binding mechanism. The following section will introduce the rise of BHR and the implementation of mechanisms of soft law and UNGPs to explain the connection between these three main concepts.

### **2.3.1 Rise of Business and Human Rights (BHR) and focus on soft law initiatives**

The human rights movement, unlike the environmental movement, came late in seeking positive engagement with business, as it regarded governments as its traditional target. Human rights organisations sporadically exposed and condemned direct corporate involvement in human rights violations, but they were slow to attempt to recruit the influence of the corporate world for the protection of such rights (Chandler, 2003). This was mainly due to the relationship between companies and civil society, which has been characterised by ‘mutual ignorance and hostility’ and which needed to improve to advance in the protection of human rights. Chandler argues that companies need the knowledge of NGOs in areas in which they have little knowledge, such as development, child labour, the environment, and human rights, and NGOs could not achieve their own ends without the positive involvement of the business sector (Chandler, 2003).

Traditionally, human rights international law saw human rights as the duty of the state and not of companies. In other words, human rights violations were regarded as an internal political issue with which companies should on principle not interfere (Chandler 2003). The traditional view in human rights debates is that states are the sole entities with international legal personality and as thus are the exclusive addressees of international law. This makes them the sole bearers of direct human rights obligations at least as they refer to international law. All other institutions, consequently, may only have indirect human rights responsibilities, insofar as and to the extent that the respective governments stipulate them in their domestic legislations. Actors such as companies are not bound directly by international law but rather indirectly through domestic legislation. Hence, many of the questions about business and human rights revolve, in one way or the other, around the issue and adequacy of state exclusivity in matters of international human rights policy and legislation (Wettstein, 2012).

For this reason, the traditional view has been reinterpreted to include corporate responsibility alongside traditional state obligations. For example, The Universal Declaration of Human

Rights (UDHR), even though principally focusing on nation-states, does not exclude other institutions as duty-bearers, but explicitly mentions in its preamble that it applies to individuals of society (Wettstein, 2012). Moreover, the UDHR implies that non-state actors have the responsibility to avoid the destruction of any of the rights and freedoms set in the declaration (UDHR, 2020). In addition, the United Nations Committee of Human Rights and the Committee on Economic, Social and Cultural Rights, consider that private actors, especially companies, must ensure that they do not prevent the state from complying with its human rights obligations, and they must themselves respect human rights (Schönsteiner, J, 2016).

The debate has also contemplated ways to extend domestic legislation to include corporations' human rights conduct abroad by exploring questions of extraterritorial or universal jurisdiction (in general or by reference to specific statutes such as the Alien Tort Claims Act in the United States<sup>4</sup>). Such instances of 'foreign direct liability' centre on having a parent company directly involved in any cases of harm caused by one of its subsidiaries abroad. Also, the field of business and human rights has focused on the design of a "new international normative regime", that is, on the possibility of new international codes or legislation which would directly address corporations' human rights conduct (Wettstein, 2012). This evolution of the debate is particularly important for this research, as it is focused on the implementation of hybrid initiatives that aim to advance the protection and respect of human rights.

As mentioned in previous sections the emergence of non-state actors like the business community in addressing global issues has been innovative and relevant. At the same time, the emergence of non-state actors questions the effectiveness of the state as the sole protector of basic rights and calls for extending responsibility to non-state actors in general and for the voice of the private sectors becoming louder (Chandler 2003). In a time in which power and authority are increasingly shared between state and non-state actors and the boundaries of the private and the public sphere are blurring, the challenge of the business and human rights debate requires the reinterpreting and redesigning of the international human rights regime in a way that would include and address also non-state actors and particularly corporations as direct duty-bearers (Wettstein, 2012). An expansion of governance regarding business and human rights includes both legal and quasi-legal standard-setting projects like

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<sup>4</sup> The Alien Tort Statute ("ATS"; also known as the Alien Tort Claims Act) refers to 28 U.S.C. § 1350, granting jurisdiction to federal district courts "of all causes where an alien sues for a tort only in violation of the law of nation or of a treaty of the United States." Broadly speaking, it serves as a statutory instrument for gaining universal jurisdiction over violations of international law (LII, 2020).

the UNGPs. As a result, the inclusion of domestic law and public rules show that an effective solution to implementation of frameworks would be complementarity between the public and private programmes ‘filling’ different niches, which would help to spread the overall impact of standards more broadly (Amengual, 2010). In other words, there is an interest in and increase use of soft law mechanisms in the field of business and human rights to help guide the state and the companies in preventing negative impacts.

Soft law initiatives are also known as a non-legal standard which refers to principles, norms, standards, or other statements of expected behaviour that do not create enforceable rights and duties (Abbot and Snidal, 2000). On the other hand, hard law refers to legally binding obligations that create enforceable rights and duties that are precise and that delegate authority for interpreting and implementing the law (Abbot and Snidal, 2000; Choudhury, 2018). In this sense, soft law is more flexible than hard law as it grants governments the room to manoeuvre and can make it easier for them to respond to problems or changing circumstances on an as-needed basis, especially when states need to adapt the commitments to their particular contexts, readiness for legalization and capacities (Abbot and Snidal, 2000; Choudhury, 2018). However, soft law also makes it harder to determine whether a state is living up to its commitments or will try to avoid them with softer actions. They also can affect the ability of governments to commit themselves to policies by invoking firm international commitments and thereby making it easier for domestic groups, including other branches of government, to undo the agreement (Abbot and Snidal, 2000).

In areas which are developing or changing quickly, like business and human rights, soft law instruments are particularly useful as they can be adopted rapidly and can be easily changed. The utility of soft law instruments is also especially high for areas marked by a lack of consensus or in which governments are reluctant to make binding commitments and issues of extra-territoriality, which is the case of the UNGPs and the business and human rights field. Some countries unhappy with the slow progress of the UNGPs in improving the behaviour of corporations promoted the development of a binding treaty. The binding treaty proposal, first led by Ecuador and South Africa, brought back the divisive ‘binding versus non-binding’ rhetoric that has marked this discussion for at least the past two decades, and Western states and businesses accused them of not allowing enough time for the implementation of the UNGPs (Cantú, 2017). However, the process to agree a treaty that involves business for the first time has been slow, which is exactly what Ruggie wanted to prevent given the urgent situations of human rights that need an immediate response (2013 in Wettstein, 2015). Therefore, Ruggie believed that soft law can be used to overcome the



current problematic of agreeing on a Binding Business and Human Rights Treaty to regulate business behaviour and impact on human rights affairs especially because soft law is not subject to the normal legal enactment processes and yet can still influence conduct in a desired manner despite its non-legal status (Choudhury, 2018).

In sum, the lack of consensus among states on the extent of corporate responsibilities for human rights suggests that a soft law approach may be more appropriate in the business and human rights field. In fact, relying on soft law for BHR issues is supported by its pervasive use in other areas of the law. In some areas, the increased usage of soft law results from its ability to act as a precursor to hard law with the goal being the conclusion of a binding international treaty (Choudhury, 2018). For this reason, Choudhury (2018) considers that ‘soft’ and ‘hard’ law, are not dichotomous but rather operate on a continuum, as do Abbot and Snidal cited above. Methven O’Brien (2020) states that achieving respect for human rights from businesses does not require choosing between hard and soft law but on creating the right architecture to sustain collaboration between the two. She explains that the United Nations Guiding Principles (UNGPs) offer a structure to implement guidance related to business and human rights while avoiding the difficulties that come with developing a binding treaty. The following section will present the UNGPs and its relation to hybrid governance and mechanisms of soft law.

### **2.3.2 The United Nations Guiding Principles: example of hybrid governance and soft law**

In 2005, John Ruggie was appointed UN Secretary-General’s Special Representative on Business and Human Rights (SRSG). The UN Norms on the Responsibilities of Transnational Companies<sup>5</sup> (TNCs) had already failed to gain support from government, business and even labour organisations (Methven O’Brien, 2009 in Methven O’Brien and Dhanarajan, 2016). In contrast to the approach adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights, which had sought to specify substantive corporate human rights duties that were broadly co-extensive with those of government, Ruggie publicly accepted that human rights laws did not place direct obligations on companies from the outset. Accordingly, he gave greater emphasis to the ethical and moral character of human rights norms regarding business (and pragmatic risk considerations),

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<sup>5</sup> The Norms constitute an authoritative guide to corporate social responsibility. They set out the responsibilities of companies with regard to human rights and labour rights and provide guidelines for companies in conflict zones. They prohibit bribery and provide obligations with regard to consumer protection and the environment. General provisions of implementation include the obligation to provide reparation (Hillemans, 2003).

rather than seeking out their potential legal ramifications. Moreover, he was open in his intention that his mandate should succeed politically, explicitly espousing an approach of “principled pragmatism” which, he hoped, would result in broad support by states and business for his recommendations, and hence “reduce corporate-related human rights harms to the maximum extent possible in the shortest possible period of time” (Ruggie, 2008 in Methven O’Brien and Dhanarajan, 2016).

Here it is useful to draw on Palmer’s (2017) analysis about the emergence of hybrid schemes to regulate businesses to illustrate how the UNGPs are a hybrid initiative by including the participation of the state and business actors in regulating business activity. Palmer argues that the UNGPs provide clear responsibilities in the form of Principles for states and business actors, thus it is a multi-actor initiative. They create cooperation and dependence between these two forms of governance (public and private) in the sense that the government can elaborate public policy and internal government strategies whereas companies can focus on prevention through mechanisms of due diligence. Collaboration and dependence are therefore the main characteristics of any hybrid initiative which are embedded in the Pillars of the UNGPs as they encourage the cooperation of state and nonstate actors. Also, Taylor (2020) analyses Human Rights Due Diligence processes as part of the UNGPs and states that UNGPs are hybrid initiative involving a diversity of actor for the regulation of business. Moreover, both Ahmad’s (2021) analysis of the implementation of UNGPs in Malaysia and Methven O’Brien et al (2015) suggest that the UNGPs require a multi-stakeholder participation and agree that the UNGPs promotes the implementation of soft-law mechanisms like the development of the National Action Plan of Business and Human Rights to regulate corporations.

The UNGPs are based on three pillars that identify the actors and their business and human rights role. The UNGPs is a hybrid initiative with a clear role for states, business and civil society actors. Pillar 1 focuses on the state’s duty to protect human rights and Pillar 2 on the business responsibility to respect human rights. Moreover, Pillar 3 concentrates on the mechanisms of access to justice and remedy from both the state and the business communities. Each pillar is formed by principles, producing a total of 31 principles that draw on different discourses reflecting the respective social roles that these governance systems play in regulating corporate conduct. Ruggie’s mandate was clear, the UNGPs do not constitute law or regulation, rather the principles rest on social norms intended to guide practice. Therefore, the UNGPs ‘provided at least an initial ‘soft law’ solution to a problem that many had viewed as relatively intractable – how to get businesses to pay attention to

human rights issues without alienating the entire business community or the UN itself' (Rasche and Waddock, 2021).

The UNGPs promote 'due diligence' as a mechanism for states to protect and for business to assess any possible harm. However, the framework is more complex, which suggest actors should go beyond the mere promotion of due diligence (Ruggie and Sherman, 2017). For states, the focus is on the legal obligations they have under the international human rights regime to protect against human rights abuse by third parties (Ruggie, 2014). 'Due diligence' regarding states refers to 'the obligation of states to regulate, supervise and provide effective access to justice and reparation for human rights violations by private parties, which through the inactivity of the State, or its complicity, would become violations attributable to the State. In this sense, their obligation has a preventive and reparatory aspect' (Schönsteiner, 2016:132).

For business, beyond compliance with legal obligations, the UNGPs focus on the need to manage the risk of involvement in human rights abuse, which requires that companies act with due diligence to avoid infringing on the rights of others and address harm when it occurs. For affected individuals or groups, the UNGPs stipulate ways for their further empowerment to realize the right to remedy. Another positive characteristic of the UNGPs is that they achieved the active engagement of effort from the most prominent organisations and initiatives: The OECD, the ISO 26000 and the European Union which executed several actions to align their work to the GPs. The involvement of states was also promoted by the UN Working group on business and human rights to develop National Action Plans for the UNGPs' domestic implementation, who also recommended that these processes be developed by multi-stakeholder actors (Ruggie, 2014). Methven O'Brien and Dhanarajan (2016) consider that the UNGPs seek to contribute to preserving the legitimacy of human rights through a re-orientation of norms, if not laws, due to the reluctance of creating additional binding mechanisms.

The UNGPs state that the corporate responsibility to respect human rights, which forms the second "Pillar" of the UN Framework on business and human rights, requires businesses both to avoid infringing human rights and to address adverse human rights impacts in which they may be involved. Businesses should thus seek to prevent or mitigate impacts that they have "caused or contributed to". It also argues they should promote HR more broadly where they operate even if they do not have a direct or even indirect impact on certain rights, by lobbying authoritarian governments for example. The UNGPs afford a central role to 'human

rights due diligence’, a process which, they indicate, should enable any corporation to achieve full respect for all human rights, if executed correctly. According to Methven O’Brien and Dhanarajan (2016) the GPs aimed to influence the business sector by promoting the adoption and publication of a policy commitment to respect human rights. Then, each company should include a human rights risk and impact assessment; address impacts by integrating appropriate measures into company policies and practices; tracking the effectiveness of the new measures to preventing or mitigating adverse human rights impacts; and communicating publicly about the due diligence process and its results. In this regard, the National Action Plans form part of the international strategy to influence the domestic level of business and human rights as a form of soft law and are expected to reflect in some degree the aspects mentioned to change the behaviour of the business sector at the national level.

The UNGPs form part of a new regime of hybrid governance, that displaces traditional conceptions of state power as the exclusive form of public power. As noted above, the GPs constitute a hybrid scheme sponsored by the assigned states. They represent a challenge to established conventions and codes that have structured meaningful discourse on human rights, the state and corporate responsibility. On one hand, the UNGPs open a new way for corporations to talk about their responsibilities and for communities to talk about the legitimate role of corporations in the realization of human rights. On the other hand, the possibilities of these new discourses are delimited by the powerful grammar of existing conversations. The corporate responsibility to respect human rights shifts the discourse away from its traditional focus on the sovereign state to a hybrid approach, which shows the relevance of complementarity between different initiatives rather than being seen as separate programmes. This synergy could also reduce the costs of implementation for companies and governments (McPhail and Adams, 2016) and less intervention from external actors in local communities. Moreover, the implementation of the UNGPs implies the involvement of different groups of civil society in the process and argues for the inclusion of the roles and duties of governments, business sectors and non-state actors (Ruggie, 2014). The UNGPs appear to differentiate the business sector from other non-state actors. An objective of including civil society actors in hybrid governance systems has been to increase the legitimacy and accountability of the regulations developed by these partnerships. Therefore, processes of implementation can be altered by the local context, backgrounds, and interactions of the actors in place.

## **2.4 Implementation of international standards and importance of national / local context**

The effects that hybrid governance such as the UNGPs have on the target actors through mechanisms of soft law has been difficult to establish in the literature. Increasingly scholars have highlighted the importance that local settings have on the influence of such global schemes (Bair, 2017; Bartley, 2011 and 2018; and Amengual and Chirot, 2016). To help flesh out the role those national contexts play in the implementation of such schemes I turn to the standard international human rights literature which is crucial as this research is focused on the implementation of the UNGPs and development of the NAP of business and human rights in two specific countries, Chile and Mexico. Therefore, these sections will explore the literature about human rights implementation and the relevance of context within these processes of implementation.

Traditionally states are the main entities capable of protecting but also of abusing human rights. However, studies have registered differences in implementation and compliance between regimes, economic stability and the states' capability (Anderson and Murdie, 2017). For example, it is often considered that wealthy democracies would have less reasons to abuse the rights of its citizens than poor democracies because they have more economic and political resources to satisfy their citizen as states can grant concessions in the forms of goods and services (Anderson and Murdie, 2017). Also, wealthy democracies have stronger institutions that can allow for a peaceful turnover of power and constrain the executive's power; democracies often have more channels of communication and compromise between regime leaders, and allow political opposition (Anderson and Murdie, 2017). Moreover, citizens in stable and wealthy democracies have also more resources to have their demands met and have spaces for public participation. Poor states, on the other hand, often have more problems distributing wealth or gains from globalization, and thus concentrate increased wealth in the hands of political elites. This increases the possibilities of corruption, poverty gaps in a country and a generalised unrest within the population. However, wealth is also connected to the capacity of the state to protect human rights. Anderson and Murdie (2017) argue that state capacity can be thought of as the centralized power within a state and it is necessary to be able to monitor the behaviour of government agencies. Regarding human rights, they explain that sometimes abuses can occur not because they were authorized by the regime leadership, but because state agents are not trained and/or monitored to prevent abuse.

Moreover, Simmons (2009) argues, that international law matters most where domestic groups have the motive and the means to demand the protection of their rights as reflected in ratified treaties. Therefore, the role of domestic actors is crucial for the implementation of human rights in a country which is why the UNGPs literature and guidance encourage a multi-stakeholder participation in the implementation. Moreover, the scholar explains that ‘in unstable autocracies, citizens have the motive to mobilize but not the means. In stable democracies, they have the means but generally lack a motive. Where institutions are most fluid, however, the expected value of importing external political rights agreements is quite high’ (Simmons, 2009:16). Which means that democratic countries are expected to follow international initiatives and have stronger implementation. In Chapter 4, I explain how Chile and Mexico are democratic countries with different levels of democratic quality and with areas of weak governance, all of which affects the form in which the UNGPs can be adopted in these two countries. Therefore, different contexts can result in different processes of implementation and outcomes in the form of NAPs.

Moreover, instruments like international treaties have been and can be implemented domestically by its institutionalisation. This can be observed in the way in which treaties are embraced by the local institutions and the actions around it. By institutionalisation scholars (Risse and Sikkink, 1999; Simmons, 2009) mean the ratification of the treaty and further development of policies that would change the behaviour of the state in regard to human rights. Methven O’Brien (2020) propose the need of “*the right architecture*” for business and human rights and that the UNGPs offer this structure through political commitment and actions. Political commitments and local actions are the institutionalisation of the UNGPs when implemented locally. As mentioned before, the UNGPs aim to influence public policy through mechanisms of soft law and encourage states to develop National Action Plans of Business and Human Rights. The NAPs could be considered the institutionalisation of the UNGPs. Therefore, the UNGPs follow processes of implementation, where the international influence meet domestic levels. In a study about processes of implementation Risse and Sikkink (1999) define them as processes of socialization, where the states are able to recognize (and sometimes deny) their position and interests within international human rights law. The literature on the implementation of human rights links with the discussion about local and national context in the implementation of the UNGPs. This connection happens because of the interaction of international and national actors (in a multi-level governance) for the development of National Action Plans. The relevance of context in implementation processes will be explored further in the following section.

The processes of socialisation, according to Risse and Sikkink (1999) should be accompanied by strong advocacy networks that work to develop pressure and synergy with local networks, NGOs and grassroots organisations. Transnational advocacy networks are defined as the structured interactions between state, international organisations and non-state actors (economic actors, firms, academia, activists, etc.) that open and add new paths of access to the international system (Keck and Sikkink, 1998). Some of the purposes of developing networks are the diffusion of international norms in the human rights field, the link between the domestic and international actors, and alerting the Global north when abuses are being held in some countries. The overarching goals are to use external pressure to compel a state to act in accordance with international norms and to be the place where weak domestic actors seek access to more-powerful allies (Thomas and Mitre, 2017). This type of network is present in hybrid initiatives like the UNGPs as multi-stakeholder participation is expected and can help empower local organisations regarding the BHR field.

Risse and Sikkink (1999) developed the spiral model for the socialization of human rights, which has five phases. Phase one is characterized by a state that represses human rights, one with weak opposition and little information on the repression. In phase two an initial activation of domestic and transnational networks takes place, applying pressure, denunciation, and shaming. In phase three, as domestic and international pressures escalate, the norm-violating state seeks cosmetic changes to pacify the pressure. For that it may employ instrumental tactical concessions while still denying that its own policy is wrong. However, they argue that once the change starts it is almost impossible to stop or regress. In phase four, this debate ceases, and there is no longer controversy over the violations. Repression may continue in practice, but there is a slow process of change, with new laws, and change in behaviour. In the last phase the practice of human rights violations decreases (Risse and Sikkink, 1999; Shor, 2008).

Within hybrid governance not only the state is affected by the process of implementation as non-state actors included in the process can continue developing instances to promote UNGPs. This is well exemplified by the Mexican case as it shows an interaction between the local group of organisations of business and human rights with organisations like the Danish Institute of Human Rights and European consulates in the country which helped financed the development of the NAP. What this achieves is involvement and capacity building of local actors through multi-stakeholder processes, which is one of the characteristics of hybrid initiatives.

Human Rights implementation processes in Latin America have very specific characteristics. Cárdenas (2010) states that the lack of state compliance and domestic implementation represent major challenges in the Latin American region. She argues that reforms are needed to include streamlining complaints and giving victims more direct access to regional institutions. Also, that at the domestic level, national laws have to be changed so that findings of regional institutions like the Inter-American Court may be adopted automatically, leading to greater state compliance. Further, Hillebrecht (2013 :67), in an analysis developed about Colombia, explains that some countries that want to demonstrate a commitment to human rights may not have the domestic political institutions necessary to comply fully with the tribunals' rulings, nor do the political elites of such states always want to comply with the rulings. This literature suggests that implementation of human rights in the region is slow and requires domestic changes and improvements in national institutions.

This is another reason context needs to be analysed before implementation processes of human rights because differences in institution's capacity, political traditions, and business elites can affect the results. In the specific case of UNGPs, the relevance of context, relies in the fact that it can hinder or facilitate the processes of adaptation, it all depends on how well the national actors, norms, and traditions are understood and acknowledged.

Previous sections argue that during processes of implementation of human rights, domestic context is relevant as it will affect both how the process develops and its outcomes. For example, the type of regime and local non-state actors can influence the course of implementation. Therefore, acknowledging domestic context is an important step in the implementation of hybrid initiatives like the UNGPs, which is the interest of this research. Within the UNGPs and BHR guidance context it is used as a framework for the analysis of the implementation of the UNGPs. The UNGPs and NAPs guidance encourage the development of a National Baseline Assessment (NBA) to understand how much progress there is regarding business and human rights and the UNGPs. Moreover, Methven O'Brien (2020) explains that the UNGPs offer a structure for local implementations, however, to achieve this it is necessary to make a contextual analysis of each case. The empirical chapters will show the forms and shapes the UNGPs take when translated into two different local contexts, those of Chile and Mexico and their National Action Plans.

Scholars like Bair (2017), Bartley (2011 and 2018), Amengual and Chirot (2016) consider the relevance for understanding and acknowledging the context of each country where international programmes or other forms of regulation are being implemented. For these



scholars, context matters in the implementation process and when assessing the influence and adoption of the international initiatives in domestic levels. In addition, according to Lock (2013 in Amengual and Chirot, 2016) research has repeatedly shown that domestic political and social context greatly influences the performance of international and hybrid initiatives.

Bartley (2011) recommends examining the intersection between private initiatives and domestic orders which can shape the implementation process. The scholar proposes to ‘begin with an analysis of the content of public, private, and customary rules, and then seek empirical evidence on how the relationships between these standards are managed on the ground. This approach takes seriously both the force of rules themselves (as structuring attention and shaping actors' interests and strategies) and actors' attempts to mobilize rules and exert power in a given field. Most importantly, scholars should avoid analysing private regulatory standards in isolation and embrace the task of unpacking the interplay of multiple rules in different national settings’ (Bartley, 2011:541).

Bartley (2018) argues against the notion of ‘empty spaces’ as he considers that the state is always there in the background and often governments are involved in schemes of governance like hybrid governance. He argues that it is more fruitful to start by considering the places of implementations as crowded with actors, agendas, and rules. These actors might include firms, international and domestic NGOs, and a variety of government agencies. The rules include locally based private agreements, such as those developed by industry associations, informal but also strong norms about how business is done, production culture, and perhaps most importantly, national law. The law may be weak, contradictory, or contrary to the goals of transnational reformers, but it can still influence the people and structures involved in the process (Bartley, 2018). Moreover, endemic conflict may make these spaces appear un-governable; this is a result of competing sets of rules and claims, not a generalized lack of social order.

Moreover, Bartley (2011) explains that as evidence of a governance gap, scholars often cite the lack of a world state or the failure of international agreements. He recognised that this lack of a world state makes global governance difficult, but it does not erase domestic regulations or make states irrelevant. The scholar even adds that a focus on the global often obscures implementation processes, which involve assessments of performance in particular places. Moreover, the discussion about the relevance of context links with the literature about implementation of human rights as it raises the relevance of local actors and backgrounds when institutionalising an instrument in any country. In fact, for Pinto and Puppim (2008)

consider that the successful implementation of international initiatives depends on characteristics of the local context like participation of national stakeholders, congruency between the international and national aims, authorities that participate (horizontal participation), and possible continuity after political successions.

Bartley (2011) argues that the existing literature on transnational standards, codes of conduct, and certification systems fails to take states and the layering of rules seriously. Moreover, it shows that scholars often treat private regulatory standards as either transcendent or technical and that in fact many scholars view them as transcending old systems of governance, bypassing the state, and expressing a truly global set of principles. Emphasising that international standards can fill ‘regulatory voids’ and ‘governance gaps’, contributes to a vision of empty spaces at the point of implementation, but this conceptualization could be a misleading image (Bartley, 2018).

In this regard, there is an imminent return to the state for stability in markets, economy, and social issues. Therefore, it seems reasonable that the state could be interested in promoting and adapting UNGPs as a framework to guide a company’s practices through governmental action in the form of initiating steps to legislate or take executive action to develop self-regulation (Halteck 2006; Héritier 2003; Segerson and Miceli 1997; Rottmann and Lenschow 2006; OECD 1999, 2003 in Héritier and Eckert, 2008). This is also relevant for the UNGPs as one of the main pillars is focused on the state’s duty to protect human rights from any abuse or violation (public or private). Therefore, the UNGPs refocus on the importance of state participation.

Acknowledging and considering the national context is precisely what the UNGPs aim to achieve with the development of National Action Plans of business and human rights. The UNGPs and NAPs guidance suggests developing National Baseline Assessments before the implementation and development of NAPs. For this reason, different results in different contexts could be expected, especially when the focus is on the processes rather than on only the documents. In this regard, this thesis focuses on the three main processes of framing, agenda setting and multi-stakeholder participation of business and human rights as the local processes that could be influenced by the implementation of the UNGPs. The literature of UNGPs, specifically the work of Ruggie (2014) and NAPs guidance suggest these as elements that can be found in the processes of implementation. However, these processes are also tied to the local context and respond to the reality of each country and actors involved. The following section will explain the definitions and considerations of these three

concepts as framing, agenda setting and MSP are also the main focus of the empirical chapters (Chapter 5, Chapter 6 and Chapter 7).

#### **2.4.1 Focus on framing, agenda setting and multi-stakeholder participation as way of analysing implementation of UNGPs**

The sections above explain that the UNGPs aim to influence national law and public policy through mechanisms of soft law and encourage states to develop a National Action Plan of Business and Human Rights. The UNGPs and NAPs' guidance suggests that some of the processes that are taking place during the implementation are those of framing business and human rights, thus setting an agenda on business and human rights and multi-stakeholder participation. For example, Ruggie explains that UNGPs need to be adapted to each country and encourages multi-stakeholder participation in the processes of implementation. Also, NAPs' guidance encourages the development of National Baseline Assessments to clarify what is already in place in each country regarding the UNGPs and the field of Business and Human Rights. In this sense, Chapter 5, 6 and 7 will show that the implementation of UNGPs in Mexico and Chile has opened a conversation about what the BHR field should mean in each country. It has developed skills within the government and other non-state actors involved in the implementation and helped prioritise actions regarding BHR according to each particular context. The implementation processes of the UNGPs have developed more knowledge on BHR issues and have also highlighted the issues that keep being a challenge globally, like the extraterritoriality mentioned above. I argue from the cases studied in this research is that what the implementation has not changed is the development of more strict law or guidance in countries of the Global South for companies and/or bigger commitment from the companies to the UNGPs to avoid binding mechanisms.

This section focuses on defining three processes that have been found in the UNGPs and the BHR guidance, those of framing, agenda setting and multi-stakeholder participation, which will be analysed and contextualised for Chile and Mexico in Chapter 5, 6 and 7. Framing can be understood as the definition of a problem in order to promote a specific understanding of it and make sense of how to address it. Framing is also dynamically built and altered by the parties involved and interactions (van Hulst and Yanow, 2016). According to Entman (1993: 52 in Hänggli and Kriesi, 2010), 'to frame is to selectively emphasize/evaluate certain aspects of a perceived reality in a way that promotes a particular problem definition, causal interpretation, moral evaluation, and/or treatment'. For the business and human rights field, broader discussion has been characterised by the transition from a traditional view where states are the only actors responsible for the protection of human rights to a field that

recognizes that businesses have a responsibility to protect human rights. Although this discussion has been around since 1970 with the international code of conduct for businesses, it gained traction in 2011 with the development of the UNGPs. The discussion is ongoing, especially concerning which rights and how far the private sector can take over duties that have been traditionally assigned to states.

It is important to distinguish framing from agenda setting since the international agenda can encompass the multiple issues that a range of actors are paying attention to at any given time (Rothman, 2009). Agenda setting is defined as identifying a set of political controversies that deserve the attention of the polity (Cobb and Elder, 1971, 905 in Zahariadis, 2016). For Kingdon (2013). There are three streams for agenda setting: problem recognition, generation of policy proposals and developing political events. An issue becomes part of the governmental agenda when it attracts policymakers' attention and interests. The interpretation of these events and their understanding, as problems requiring action from several state and non-state actors, is what determines the success of an agenda issue. In the second stream are ideas related to solutions developed by experts, while some are discarded, others survive and are considered by government actors. The third stream covers public opinion, organised political forces and the government itself (the governmental structure or management changes) (in Béland and Howlett 2016; Niedhardt, 2016). Kingdon's (in Béland and Howlett 2016) approach suggests the need for collaboration between government and non-state actors to develop an agreement on a national agenda. Actors involved bring to the discussion their own interest, authority, and their understanding of the national context. In this regard, the implementation of the UNGPs' business and human rights became an issue that was positioned in the agenda of several actors like government, academia, organisations of civil society, IOs, and business associations. In this regard, the literature might expect the UNGPs could help to frame HR as a business issue and put it higher on the agenda, not only as CSR strategies but ethical and moral responsibilities of the business sector. In regard to multi-stakeholder participation, Leewis (2000) argues there are different types of participation include passive participation, participation by consultation, functional participation, empowering participation and interactive participation. In this research, participation is understood as stakeholders' active involvement on agendas that empower actors (Sartas, et al, 2019) and any other involvement in the development process of the NAPs in Chile and Mexico. As mentioned before, multi-stakeholder participation is where there is a combination of the state, markets, and civil society in actions like co-management, public-private partnerships and private-social partnerships (Armitage et al, 2012). This form of participation encourages partnerships which are defined as institutionalised transboundary

interactions between public and private actors, that aim at the provision of collective goods, and without a central hierarchy (Schaferhoff et al., 2009: p. 455 in Pattberg and Widerberg, 2015). Multi-stakeholder participation has proved to be a relevant characteristic for hybrid initiatives and more specifically for the UNGPs, which recommend including a diversity of actors in the planning, development and monitoring of the National Action Plans of Business and Human Rights. The following section explores NAPs literature, what we currently know about the implementation, its influence and what is still missing in the literature, specifically about how the process of drafting NAPs influences national settings.

## **2.5 The implementation of National Action Plans as mechanisms of soft law**

National Action Plans (NAPs) on business and human rights are a growing phenomenon that began in 2011 with the European Union's (EU) request to member states to develop NAPs to support implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) and, in 2014, the UN Human Rights Council (UNHRC) also encouraged states to develop NAPs (Methven O'Brien, et al 2015). National Action Plans can be defined as policy documents drafted by governments that outline and articulate state priorities and strategies that indicate future action to support the enforcement of policy commitment to prevent and redress corporate-related human rights abuse (Methven O'Brien et al, 2015; Augenstein et al 2018). NAPs indicate a political commitment to align domestic laws, policies, and practices to the objectives of the UNGPs. What NAPs are doing is defining the measures and projects that states must develop to fill the regulatory, legislative and policy gaps that enable business to abuse human rights (Cantú, 2019). According to Methven O'Brien et al (2015) NAPs may be considered instruments of soft law. This point is relevant to the discussion above on hybrid initiatives and soft law because it identifies the NAPs as a tool of implementation at national level. In sum, NAPs are the representation of a political commitment and provide a clear guidance for states and business actors to improve and protect human rights.

In 2013, the United Kingdom and the Netherlands published its NAPs, followed by Denmark and Finland in 2014 and Lithuania in 2015 (Methven O'Brien et al 2015). Also, calls to action from different actors showed support and relevance that the UNGPs gained in the two years. In 2013, the Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Roundtable (ICAR) launched a project to develop guidance and criteria to ensure that NAP processes and outcomes align with human rights standards. In addition, the United Nations (UN) Working Group on Business and Human Rights also called on states to develop NAPs in a June 2014 and published its draft guidance. The

Council of Europe's (CoE) draft 'Recommendation on Human Rights and Business' included, by 2014, a call for the development of NAPs. These calls to action from different groups, organizations and initiatives showed support and relevance that the UNGPs gained in two years (Methven O'Brien et al 2015).

In Latin America, NAPs processes also began in Chile, Mexico and Colombia, and other governments, like Argentina and Brazil, indicated a commitment to develop NAPs. The United States government launched its NAP process in September 2014, with multistakeholder consultations taking place during 2015. In Africa, the governments of Mozambique and Tanzania have committed to develop NAPs. Civil society groups or NHRIs have initiated studies or other activities to support progress towards a NAP process in Ghana, Morocco, South Africa, and Zambia, amongst others. In Asia, Malaysia's NHRI has published a 'Strategic Framework on a National Action Plan on Business and Human Rights for Malaysia' and the Malaysian government has undertaken to lead development of a NAP. The Philippines' NHRI and CSOs in Kazakhstan are respectively taking steps to encourage NAPs processes (Methven O'Brien et al 2015). Also, Soh and Nam (2018) developed a study about Korean companies' progress on due diligence and how can Korea improve its legal system and capacity to improve corporate human rights abuses. They suggest the key is to incentivise companies to adopt these human rights due diligence standards through various policy and legal measures including non-financial reporting requirements, as well as conditions for trade and investment and other public procurement activities. This evidences interest from different regions of the Global South to commit to the UNGPs. Currently, 25 countries have developed a NAP (most of these are in the Global North), 21 are in the process of developing a NAP, and 13 countries are not committed to NAPs on business and human rights (NAPs on business and human rights, 2020).

NAPs have been shown to have a range of potential merits once the processes begin. On one hand, the UNGPs and NAPs guidance suggests that NAPs should be based on a National Baseline Assessment which allows an analysis of the national legislation that helps a state identify and select measures to be included in a NAP in a coherent and transparent manner (Ferguson, et al 2018). Moreover, the interaction with advocacy networks and the consultation process can empower local actors to develop synergies and monitor the actions of government and business. Also, their development can trigger the evolvement of national laws, policies, and institutional practices with international commitments, thus strengthening the rule of law and, ultimately, increasing human rights effectiveness (Methven O'Brien, et

al, 2015). However, for Cantú (2019) what NAPs are doing is defining the measures that states must develop to fill the regulatory, legislative and policy gaps.

This relates to the focus of this research as the implementation of UNGPs and development of NAPs do, to some extent, influence the framing, agenda setting and MSP processes regarding business and human rights. It supports the idea presented above that the implementation processes should be analysed rather than only the outcomes (the NAPs). What this means is that by observing the processes it is possible to look at the scope of influence, the debates between the actors, the possible changes within the actors involved, etc. The synergies and processes of empowerment may have a direct influence on the domestic context. The NAPs are relevant too, but they represent the more formal side of the process of implementation. This is one of the main contributions of the thesis as it looks deep into the processes of implementation and observes the scope of influence in the three specific processes of framing, agenda setting and MSP.

Another contribution to take in consideration is that NAPs have the potential to encourage in some states the development of mandatory actions. For example, in Denmark, corporations must also expressly discuss their actions on reducing human rights impacts, regardless of whether they are already included in their human rights policies. France introduced substantive due diligence obligations requiring corporations to identify and prevent risks to human rights. The Swiss Responsible Business Initiative imposes a due diligence obligation on Swiss companies to respect human rights and environmental standards by obliging companies to identify real and potential impacts on internationally recognized human rights (Choudhury, 2018). The obligation extends to both the parent company as well as any companies it controls, even if located outside Switzerland.

In 2015, the UK government introduced the Modern Slavery Act, which seeks to combat slavery and human trafficking by requiring corporations to prepare annual statements (Choudhury, 2018). The German government has adopted a draft human rights due diligence law, the so-called Supply Chain Act (*Lieferkettengesetz*), aimed at ensuring companies' compliance with human rights with respect to their business activities throughout their global supply chains (Business and Human Rights Resource Centre, 2022). This legislation is related to the UNGPs because the UNGPs encourage companies to act with due diligence and prevention of harm and human rights abuses, which is one of the main principles within Pillar 2. Therefore, we know that in wealthier and stable democracies there is more chance to influence legislation. This research will show that the processes of implementation have not encouraged reform in legislation in Latin America yet, due to the different background,

economies, and quality of democracies which are different to countries in Europe. Chapter 6 argues that after long processes of framing and prioritization, the NAPs in Chile and Mexico are mainly guidelines with recommendations for the government and have not encouraged any reform or change in legislation. However, the evidence of the countries in the Global North show ‘good practices’ of business and human rights regulation that could be used as an example for other regions.

Cantú (2019) concludes that the slow impact on national law in regions like Latin America can be explained by the state-centred focus of the NAPs, which are limited to only having an effect on public officials from the Executive branch, the branch in charge of regulatory functions, but not on the Legislature or the Judiciary of the state, which could have a different (but possibly binding) role to play within the state structure. For example, in the Chilean case the development of the NAP was government-led but it did not include groups or agencies of the government that have greater influence at the legislative level. It could also be explained by the lack of the state’s capacity, the fact that some are new democracies, and that some states place their business relationships and economic gains above human rights. This does not affect the relevance of developing a NAP, given that Pillar I of the UNGPs refers not only to legislative action (such as in the case of corporate law), but also to other administrative issues which includes awareness raising in the context of business operations in conflict zones, the nexus between state and businesses (through state-owned enterprises, joint ventures or public–private partnerships, for example), and most importantly, to horizontal synergy and coherence among the different ministries (Cantú, 2019). Therefore, Cantú suggests that the process is equally important when looking at the results of the implementation of the UNGPs. Based on this and my analysis in Chapter 5, 6 and 7, I consider that the processes are important units of analysis given that there will be differences in the context and the type of actors involved.

Literature on National Action Plans and the UN guidance on business and human rights (Felice and Graf, 2015; and UNWG in Augenstein et al 2018) identify key elements and essential criteria for the development of the NAPs based on their assessment of NAPs where they analysed the precision of norms and adaptation of the UNGPs, the localization of the norms, the information on compliance gaps, and the implementation capacity and the empowerment of local human rights actors. The process of NAP development should include comprehensive baseline study/gap analysis, involve all relevant state agencies and multi-stakeholder participation (transparent process), and continuously monitor implementation. NAPs should also be based on the UNGPs, incorporate all three pillars and be informed by



core human rights principles, express firm commitment to implementing the UN Guiding Principles on Business and Human Rights, respond to challenges in the national context and reflect country-specific priorities, offer unambiguous commitments and clear deadlines for future action, and envisage capacity-building initiatives. Felice and Graf explicitly mention the relevance of looking into the process to understand the implementation and the outcome for each country, which is one of the contributions of this research.

The literature about NAPs of BHR is relevant to provide a guidance for countries and businesses. However, it is worth noting that differences between countries can (and should) lead to different NAPs. The cases of countries in Europe show how NAPs have encouraged legal reforms; however, the context, for example the type of regime (quality of democracy), type of policymaking, legal arrangements, the national business system, the actors involved in the decision-making, etc., in countries of the Global South may not allow this kind of influence. As mentioned above, the capacity of these states is different, and the interests of the actors in powerful positions have not aligned to the UNGPs efforts. Chapter 5 and 6 show that the process of framing and agenda setting have encountered difficulties due to the characteristic of the actors involved and traditional forms of policy making. Chile developed a process ‘behind closed doors’ and involved only government agencies. Mexico, on the other hand, developed a multi-stakeholder group with the leadership of an empowered group of civil society organisations. Nevertheless, what the literature is not showing are details about the processes of implementation. The evidence in this research shows that interactions between the global and the local have taken place in Mexico and Chile. These interactions influenced, to some degree, some of the actors involved through synergies and building knowledge, which affected the BHR field in the country, though there is little evidence of this in the literature. This thesis focuses on the three processes of framing, agenda setting and MSP that took place in two specific countries of the Global South, Chile and Mexico. In general, it highlights the relevance of looking more deeply into the processes that underpin the development of the plans rather than only the outcomes (NAPs), since the context in which this takes place can be determinant in what is learnt and embraced throughout the process.

## **2.6 Conclusion**

The question that this research aims to answer is: To what extent did the UNGPs and NAPs guidance influence processes of framing, agenda setting and multi-stakeholder participation of business and human rights in Chile and Mexico? Therefore, the purpose of this chapter was to explore debates in the literature of the topics that involve the UNGPs like hybrid

governance, soft law, and implementation of human rights in domestic contexts. The review of the literature aims to broaden the understanding of domestic processes such as framing, agenda setting and multi-stakeholder participation in Chile and Mexico. Here, the notion of hybrid governance draws on private and state authority (Bair 2017; Pacheco et al, 2020) and promotes mutual interdependence in the implementation of mechanisms to regulate business activity (Johnson, 2022; Armitage et al, 2012). Soft law initiatives are non-legal standards which refer to principles, norms, and standards that do not create enforceable rights and duties (Abbot and Snidal, 2000). Moreover, Methven O'Brien et al (2015) and Ahmad (2022) consider that National Action Plans are mechanisms of soft law. Also, the chapter explains that National Action Plans are policy documents drafted by governments that outline and articulate state priorities and strategies for future action to support the enforcement of policy about corporate-related human rights abuse (Methven O'Brien et al, 2015; Augenstein et al 2018). NAPs guidance encourages the development of National Baseline Assessments to understand both the development of context-appropriate plans and to measure how much progress there is regarding business and human rights and the UNGPs in each country. This supports the relevance of looking into context, specifically with the participation of domestic actors and domestic traditions, as they may have an influence on how the UNGPs are adopted.

My research contributes to the literature by presenting that context is relevant when implementing mechanisms of soft law in hybrid governance. This thesis argues that the actors involved in the implementation process may adapt only those strategies that make sense to the local reality and ignore those that present more challenges and contradictions with the traditional ways of interaction or norms. It is also argued that soft law mechanisms are useful to starting a conversation about UNGPs, and developing skills, but NAPs are not able to register all the types of influence, especially those fewer tangible ones like empowerment, the debates, and the concerns of the actors involved. This is one of the reasons processes should be considered in the analysis of implementation rather than merely studying the outcomes (the NAPs). The NAPs are relevant too, but they present the more formal side of the process of implementation. This is one of the main contributions of the thesis as it looks deep into the processes of implementation and observes the scope of influence in the specific processes of framing, agenda setting, and MSP.

Moreover, a second important contribution to the literature is that this is one of the first studies about the implementation of the UNGPs focused on the Global South, and specifically in Latin America. It shows that while in Europe the implementation of UNGPs is encouraging modifications in the law, in other regions of the world these changes are still

slow or non-existent. This supports why it is important to analyse and consider contexts when studying the implementation of hybrid initiatives like UNGPs, as countries in Latin America may still lack the capacity to implement mechanisms of soft law. Also, the consequence of not committing to the UNGPs is still little in comparison to the negative effects committing to them can have on their business environments, as these countries depend on external markets.

## **Chapter 3 Methodology**

### **3.1 Introduction**

Chapter 3 presents the methodological approach to addressing the influence of the United Nations Guiding Principles' implementation on the domestic governance of two countries, Mexico and Chile. As discussed in Chapter 2, the Guiding Principles are an international framework based on three pillars, the state's duty to protect, the business responsibility to respect and the remedy mechanisms that should be offered by both actors when facing human rights violation. In this sense, the purpose of this chapter is to explain the foundation of the research and provide a roadmap that can illustrate how this research was developed to address the question around the extent to which the UNGPs are influencing domestic governance on business and human rights in Mexico and Chile.

This research was designed as a qualitative research and based on a comparative case-study. It follows an interpretative approach to study a specific situation, implementation in each country. Thomas Schwandt (1994, p. 118 in Willis, 2012) uses two ideas, lived experiences and understanding, to explain the essence of interpretive qualitative research where proponents share the goal of understanding the complex world of lived experiences from the point of view of those who live it. This was useful for interpreting the information shared by the participants that were involved in the process of implementing the UNGPs. As the introduction mentions, the case selection was a process based on literature evaluation, online public documents and guidelines. For the case selection I employed purposive selection (Gerring, 2008) as the number of countries that had experienced the UNGPs' implementation in Latin America was considerably small, where only Colombia, Chile and Mexico could contribute to the study. Additionally, Chile and Mexico were contemporary processes, as both countries were implementing UNGPs from 2014 to 2017 and using the same guidelines from the Danish Institute for human rights. While the purpose is not generalization, the selection of this case study provides the possibility of understanding to what extent the implementation of the UNGPs can influence the local governance in any given country and to consider the relevance of each context.

This chapter is consequently divided into three sections. The first section presents the research approach and logic behind the research process. This is important because social research is tied to different visions of how social reality can be studied. Data for example is always collected in relation to something that could be a social problem or a theory. The second section will explain the research process, starting with the reformulation of the

question; which also guided the research to select a comparative study and the case selection. Finally, the last section I present the methods, techniques, data collection process and the analysis.

### **3.2 Research approach and rationale**

The purpose of this section is to explain the decisions made about the research approach to address the topic of the implementation of hybrid initiatives on business and human rights in domestic contexts. Therefore, it is important to clarify that the methodological approach selected for this research was an inductive approach. In other words, this research was envisioned as a work that could focus first on the data collected and then inferring the implications of the findings. However, it is not strange to find that most research includes both inductive and deductive elements (Bryman, 2012) and in this case, both my own prior knowledge of the cases and a preliminary literature review preceded data collection. These affected methodological choices such the selection of the themes (framing, agenda setting and multi-stakeholder participation) and the case selection, providing some deductive elements to this research.

However, there were two important reasons for reviewing the existing literature. First, considerable research has been devoted to CSR in the Global North; human rights have been addressed as an international priority and cannot be avoided. Relevant findings have emerged from existing studies that are useful for the research. In addition, it was also important to the gaps in knowledge in the relationship between business and human rights and the implementation of CSR initiatives in the Latin American countries' context. Therefore, this also provided direction to the potential contribution that this research could be making to the business and human rights literature. The existing literature serves as the relevant evidence that CSR has on international economic and political processes; and explains the importance of studying in-depth its role and influence in countries of the Global South. In other words, to develop an inductive approach, I needed to build a general overview of the subject.

Second, different initiatives have been designed and studied to guide businesses' responsibility towards human rights. An important part of the debate lies in creating a binding instrument for the private sector and mainly multinational companies to respect and protect human rights. Yet, the international community has failed to achieve this endeavour as both the private sector, and, although this is slowly starting to change, almost all the states

in the global North have shown discontent with the possibility of introducing a new legal instrument. For that reason, and due to the urgency of responding to human rights abuse hybrid programmes can be more efficient. All types of hybrid and multi-stakeholder initiatives exist, and the boom in these organisations can be observed in the 1990s when social movements – with the support of modern communications – began to pressure companies about their impacts and unethical behaviour around the globe, for example, the Global Compact or the OECD Guidelines for Multinational Corporation (OECD, 2011).

In this regard, the UNGPs are considered a high-profile initiative that has achieved the support of all the actors involved, thus becoming one of the most comprehensive approaches to specifically deal with Business and Human Rights. Unlike the other voluntary initiatives, UNGPs directly influence public policy by aiming to build the capacity of governments, business enterprises, civil society and other stakeholders to better prevent business-related human rights abuse, provide effective remedy and manage challenges in the area of business and human rights (United Nations, 2014). The UN Guiding Principles and the NAPs were planned as mechanisms that aim for diverse participation and specialized expertise by promoting the use of voluntary strategies. Meanwhile, the state's role in planning and implementing an international initiative as public policy is gaining relevance and is providing an instrument for regulation.

Moreover, I chose an inductive approach because it supported the epistemological considerations of my research, which I based on interpretivism. Interpretivism considers the nature of reality as socially constructed, and the purpose of research is based on the understanding of the reality that is under study with the implementation of the UNGPs. Interpretivists do not accept the premise of positivism where the scientific method is a way of objectively learning about the external world. On the contrary, interpretivists assert that all research is influenced and shaped by the pre-existing theories and of the researchers' world views. The terms, procedures, and research data have meaning because a group of scholars agreed on that meaning (Willis, 2012). A core belief of this paradigm is that the reality we know is socially constructed. Researchers therefore have access only to a socially constructed reality. None of us, including those who conduct research using the scientific method, has direct access to external reality. Moreover, interpretivism looks for understanding of a particular context. Interpretivists believe that understanding the context in which any form of research is conducted is critical to the data interpretation gathered.

This is relevant because, as I will explain later, the semi- structured interviews allowed me to conduct the conversation not only on what was expected of the hybrid initiatives, but on how each participant considered and interpreted the implementation process of the UNGPs. Participants from the government were convinced that the form in which they managed the implementation was correct because they followed most of the steps in the guidelines of the Danish Institute. However, participants from NGOs or even from international organisations had different points of view. In both countries, these groups considered that the governments could have done more, such as achieve more relevant commitments, especially from the business sector, to modify the current behaviour and impacts regarding human rights. Most of the participants gave personal opinions that reflected their daily life and interactions with other people and organisations regarding the National Action Plans development. On the other hand, my background and personal biases are also fundamental to consider in this research. I worked for the Global Compact in Chile and was born and raised in a country of the global South – one of the case study countries - thus I had to be extremely careful when selecting and contacting participants, and when listening to them making sure I understood their point of view.

With regards to the ontological considerations, a constructivist approach reveals a clear path for this research, as, according to Bryman (2012) it implies that phenomena and categories are produced through social interaction. In other words, it implies that social properties are outcomes of the interactions between individuals, rather than only considered as phenomena ‘out there’ and separate from those involved in its construction (p. 380). Following this line of thought, I considered that the *understanding* of the implementation of an international framework is developed through the analysis of the actors, their interactions, and the outcomes from these interactions, like the strategies they select. In Chile for example, there were big events that claimed to be the spaces for individuals and organisations to participate however, the interaction between the government, NGOs and the business sector was limited. This little interaction, in my opinion, affected the way in which the process achieved consensus on the commitments included in the NAP. Participants were only able to interact with their peers without having input from different groups. Moreover, the government oversaw the decision-making process and achieved consensus behind closed doors.

The implementation of the framework is done in a specific place with a specific background, affecting the depth and form of the influence of the UNGPs in each country. This is why it is relevant to consider the context of involved countries in the study. For example, each country had different governmental organisations leading the development of the NAPs, the

Ministry of External Affairs for Chile and the Secretariat of the Interior in the Mexican case. This leadership could mean that similar financial and human resources were involved in the implementation, but this could also mean different governmental and social acceptance from non-state actors. The decision to have these organisations as head of the processes responds to the context and tradition in politics of each country supporting once more that the notion of ‘empty spaces’- that Bartley contest- is incorrect. Another relevant example of how context matters, is that both processes were planned as inclusive and participatory, where different actors could be involved. However, their decisions and strategies had different effects in how much influence non-state actors could have on the decision-making processes. The Chilean process was a government led process, limiting non-state actors’ participation, while Mexico planned the decision-making group as a multi-stakeholder group, with strong leadership from a group of organisations of civil society. This group is known as the Focal Group and their purpose was to guide the process closely to the National Baseline Assessment and the three Pillars of the UNGPs. Both countries also opened external activities for non-state actors to participate in the process and potentially influence the actions selected for the NAP.

The comparison aims to identify how the local actors understood, anticipated and implemented the Guiding Principles, the obstacles in the planning stage, the positive aspects of implementing an international initiative, the interests at stake for each of the actors involved and their influence, and finally, the strategies to achieve approval to launch the plan. However, comparing these two cases will also reveal which actors were missing from the discussion table and the reasons why. For example, in Chile, the reasons for having a government-led process are due to Chile’s elite consensual style (which will be presented in Chapter 4) to design public policy and their lack of tradition to reproduce multi-stakeholder initiatives. Also, this suggests a focus on complying with an international commitment rather than commitment to a debate the needed to build robust content to define business and human rights in Chile. In Mexico, they had a multi-stakeholder group for the decision-making processes; yet victims and indigenous communities were missing from the decision-making group. Companies participated only through business associations that were in fact represented in the process by lawyers. None of the processes showed the active and direct participation of companies, which suggests lack of interest in the framework.



### 3.3 The Research Process

The previous section was focused on the justification of the methodological approach, overarching strategy and rationale of the research. This second part will describe the research process. The section will start by explaining the research design for this two-case study, which encouraged the comparison between the two countries. Subsequently, the selection of these cases will be discussed and how, through literature review and the other National Action Plans, revision in the region supported the decision in selecting Mexico and Chile as the cases. To develop a comparison, it was important to consider that the countries had differences and similarities in their contexts and that this could potentially reveal different strategies in their respective UNGPs' implementation development which made them good cases to be compared in this research. This does not mean they were completely alike. While there are some shared similarities between these countries, they also have specific characteristics due to their own histories and political decisions. Finally, this section will explain the techniques used to collect and analyse the data. The interviews and documents were analysed through a manual coding and NVivo to help systematically organise the information and produce the analysis. This decision was helpful for observing the different topics that emerged from the data.

#### 3.3.1 Methods: case study design and comparative analysis

A two-case study design was selected for this investigation. A case is an instance of a class of events which refers to a phenomenon of scientific interest, such as revolutions, types of governmental regimes, kinds of economic systems, or personality types that the investigator chooses to study with the aim of developing theory (or "generic knowledge") regarding the causes of similarities or differences among instances (cases) of that kind of event. A case study is thus a well-defined aspect of a historical episode that the investigator selects for analysis, rather than a historical event itself (George and Bennet, 2005). I selected case studies because it allowed me to develop an in-depth analysis of a case, but more specifically of a process in which each country implemented the UNGPs. During my study I was able to collect detailed information over a sustained period of time (Yin, 2003; Creswell and Creswell, 2017).

In my research I focus on the process followed to develop the National Action Plan on business and human rights in two specific countries between 2014 and 2017. The selection of my cases followed a purposive selection technique, also called judgment sampling, which is the deliberate choice of a participant due to the qualities the participant possesses (Etikan,

Musa and Alkassim, 2016). Moreover, purposive selection is used to isolate a sample of cases which both produce relevant causal features of a larger universe (representativeness) and provide variations along the dimensions of theoretical interest (causal leverage). In large-sample research, the task of case selection is usually handled by some version of randomization. However, in case-study research the sample is small (by definition) and this makes random sampling problematic (Gerring, 2008). The purpose is to gain deeper understanding of those particular types of cases (Neuman, 2009), and not to generalize the findings. Since generalization (and not analytical generalization) is not an issue, the selection of participants can be conducted non-randomly (Ishak, Bakar and Yazid, 2014). Therefore, this technique does not need underlying theories or a set number of participants. Simply put, the researcher decides what needs to be known and in this research I selected the cases that could provide the information by virtue of knowledge or experience and to make the most proper utilization of available resources (Etika, Musa and Alkasim, 2016). In Latin America only two countries (Chile and Mexico) were conducting the process of developing the NAP at the same time and were following the guidelines of the Danish Institute.

According to Bennett and Elman (2007) there are many different reasons why social science subfields adopt particular approaches to analysis, including the interposition of significant events, academic entrepreneurship, and others. However, the authors consider that one important reason why qualitative methods have been important is that case study methods, especially the combination of process tracing and typological theorizing, have considerable advantages in studying complex phenomena. Hybrid initiative on business and human rights as discussed in Chapter 2 are a complex phenomenon that have been difficult to understand given the difficulties in the implementation processes. This proves useful for a case study (Yin, 2003). This research is focused on the implementation of a hybrid initiative that emerged from the global governance attempts to balance the inequalities produced by the global economic system. In addition, case studies are preferred in examining contemporary events, specifically when the relevant behaviours cannot be manipulated for experiment. In this regard, the processes of UNGPs' implementation in Mexico and Chile are contemporary, as they both began in 2014 with the governments' commitments to develop a National Action Plan and ended in 2017 with the final drafts of the plans. Comparing two countries with their NAPs provided the evidence of the actions and topics each country is willing to prioritise. Moreover, they serve as examples of how the governments decide to 'manage' the business and human rights field in each country. Also, comparing these specific countries

can show if context affects the way in which they respond to the implementation of hybrid initiatives.

In addition, the case study's unique strength is its ability to deal with a full variety of evidence – documents, artefacts, interviews and observations. As mentioned before, some concerns on case studies highlight the lack of rigour and that they provide little basis for scientific generalization (Yin, 2003). In my research, I aim to offer an analysis of the UNGPs' influence that will inform further research in Latin America and elsewhere. My case study design is appropriate to achieve this. In addition, case studies allow a researcher to achieve high levels of conceptual validity, or to identify and measure the indicators that best represent the theoretical concepts the researcher intends to measure. According to George and Bennet (2005) many of the variables that interest social scientists, such as democracy, power, political culture, state strength, and so on, are notoriously difficult to measure. Thus,

researchers must carry out “contextualized comparison,” which “self-consciously seeks to address the issue of equivalence by searching for analytically equivalent phenomena—even if expressed in substantively different terms—across different contexts.” This requires a detailed consideration of contextual factors, which is extremely difficult to do in statistical studies but is common in case studies (George and Bennett, 2005).

This consideration was especially relevant when selecting the research design as my study focuses on an international framework that aims to be implemented in different countries worldwide, thus requiring a consideration of the different contexts when analysing how the implementation worked in each country. In other words, what works for one country may not work for another. In fact, the UNGPs understand that each country needs to develop its own process of implementation to adapt the UNGPs to their local issues. For this reason, Chapter 4 will show the contextual background for Mexico and Chile to present the specificities of each country when implementing the UNGPs.

Given that I selected a two-case study, I develop a comparative analysis of the process of UNGPs' implementation between Mexico and Chile. Moreover, a comparative case study adequately helped address the research question as it is an explanatory question, allowing the study of operational links that needed to be traced over time and space (Bennet and Elman, 2007; Yin, 2003). My research is a combination of description of a phenomenon that

is still very new in the Latin American region, and therefore relatively unknown, and theory evaluation. The comparative analysis in my research does not aim to test hypothesis.

I based the case study design on George and Bennett's (2005) discussion of the method and logic of structured, focused comparison. The method is "structured" where the researcher writes general questions that reflect the objective of their research, and how these questions are asked in each case under study to guide and standardize data collection, thereby making a systematic comparison and an accumulation of possible cases found. The method is "focused" in that it deals only with certain aspects of the historical cases examined. For example, my research is focused on the influence the UNGPs have over domestic governance and it is structured in the sense that the questions for the interviews were standardized to collect similar data about the process. In this regard, the comparative method is a preferred strategy for political and social scientists when they investigate institutions or other macro political phenomena such as policy and implementation of international norms and/or soft law (della Porta, 2008). This is related to the purpose of analysing the implementation of a hybrid initiative.

Ragin and Zaret (1983 in della Porta, 2008) suggest that there are two different logics in comparative politics (or social sciences in general), often addressed by contrasting Durkheim's and Weber's research approaches. Durkheim's approach aims at a generalization in search of trans-historical permanent causes, focused on using it as an instrument of analysis, statistical correlation and regression. Durkheim understands explanation as functional proposition about patterns of relations among abstract variables; singling out external causes. However, I selected Weber's research approach of comparative methods, as this research aims to search for limited generalization and concrete knowledge about two specific processes. It relies on a kind of similarities and differences method, using the narrative as the analysis instrument (Weber, 1949:90 in della Porta, 2008:206). Weber's approach aims at the in-depth understanding of a context and the exploration for the 'causes of effects.'

A comparison aims to identify the effect that structures can have on political processes and if the differences on the basic structure in both countries affects the outcomes in public policy (Schmidt, 1995). Chapter 4 explores the context of both countries in which the UNGPs were to be implemented. There, the most relevant (for this research) basic structures of the countries have been identified as the business systems of each country (protectionism or commercial openness), quality of democracy (corruption, civil society participation) and human rights commitments (international commitments and mechanisms to respond to

human rights abuse). The comparison will also identify national dynamics and governmental procedures that determine how actors interact and the outcomes that can be expected on public policy. The research aims to observe how the local dynamics in Mexico and Chile are similar and/or different to understand the reasons behind how the National Action Plans have been constructed.

### **Case study selection**

The case study selection drew up on the literature review, and a mapping of CSR global initiatives. The literature review evidenced the high impact of the neoliberal policies in countries of the global South defining their role in the Global Chain Value, and the challenge that represents to the international system creating a framework to regulate businesses as a new form of Global Governance. Moreover, a revision of the most important global initiatives regarding social responsibility and sustainability was conducted with the purpose of identifying the scope of their local implementation in countries of Latin America. The revision was useful as it was possible to identify that the different international initiatives have some presence in the region. At the same time, this exercise facilitated the observation of a current phenomenon - The Global Compact, ISO 26000 and the OECD Guidelines for Multinational Companies are currently aligning with the UN Guiding Principles for Business and Human Rights and supporting the National Action Plans. Having two of the most influential initiatives on CSR collaborating with the UNGPs means that the Principles were gaining validation, credibility and more influence in the CSR field. In addition, an interesting feature of the Guiding Principles is that this initiative requests UN member states to develop a National Action Plan to show their commitment on Human Rights issues. In other words, this initiative involves the states directly as public policy should be created to develop national guidelines. The aim of this initiative is to form a hybrid mechanism.

When searching for a case study Colombia was the only country in Latin America that had published (in 2014) a NAP on business and human rights. This positioned Colombia as a possible candidate to be a part of the study. The country probably had some interesting similarities with Mexico, for example in terms of structural problems like violence, crime in general and the size of the country. However, the Chilean NAP was still in process like in Mexico, providing a comparative study between two contemporaneous processes. Mexico and Chile's plans were both developing from 2015 to 2017. In addition, Chile allowed me to compare the Mexican process to the most stable country in the region, with a growing economy, a modern society and relevant experience on CSR strategies. It also represented a

challenge as Chile presented low levels of corruption, crime and social problems after their democratic transition. Nevertheless, Mexico and Chile also had some interesting elements in common; they had both been ruled by authoritarian governments and had high levels of inequality. All these factors are notable because it means that both countries have been transitioning to a democracy in the past decades. Moreover, their participation in the global market has triggered economic growth but less of economic development.

Chile and Mexico are the only Latin American countries that are members of the OECD, Chile joined in 2010 and Mexico in 1995 (OECD, 2010; 2020). Chile and Mexico implemented similar economic policies in the past and they are both considered highly competitive countries in the region. Nevertheless, Chilean economic liberalization began in the 1970s, while the Mexican process took 10 more years to start and it came with the international pressure of implementing the Structural Adjustment Policies. The SAPs were implemented in Chile at the same time, but Chile had already 10 years participating in the neoliberal global market. However, scholars agree that Chile was able to take some actions to protect the national economy while they also implemented the SAPs (Chapter 4 Context). Both countries have close trade relations with powerful economies. China is the primary commercial partner for Chile while for Mexico; the United States is the most important partner for both exports and imports.

In addition, Mexico is classified as a middle-income country, while according to the OECD, Chile is considered the first developed country in Latin America (Chile graduated from the Development Assistance Committee in 2018) (OECD, 2017a). Yet, both countries show high levels of inequality. Chile has also developed some experience regarding Corporate Social Responsibility; Chapter 4 will show the experience the country had accumulated in developing CSR initiatives through business associations. For example, there is a Local Global Compact Network in Chile and the country implemented a National Contact Point for the OECD to promote the Multinationals Guidelines and work as mediator in case of developing conflicts between companies and communities. More recently, the government also established the Council for Corporate Social Responsibility and Sustainability as part of the Ministry of Economy to guide on public policy, and in fact was one of the main actors involved in developing the NAP in Chile.

In regard to quality of democracy Chile and Mexico face different challenges. Quality of democracy is linked to the capacity of a state to allow Liberal, representative democracy; political parties and power alternations; uninterrupted democracy for a minimum number of

years; and institutions to guarantee the rule of law (Hay, 2006; Lijphart, 2010). Moreover, democracy and human rights ‘are grounded in the shared principles of accountability, individual liberty, integrity, fair and equal representation, inclusion and participation, and non-violent solutions to conflict’ (Landman, 2018). The human rights performance in any country is closely related to its quality of democracy however it does not guarantee a human rights protection. According to Pérez-Liñán and Mainwaring (2013), after the authoritarian regime that ruled in Chile, the country was able to attain a high level of democracy. This can be explained by and ‘intertemporal bridging mechanisms’ or strong democratic institutions like political parties and legal systems that can carry the influence of the past to the present. For example, party systems that were institutionalized under democracy should generate interests (among politicians, citizens, and organized groups) and identities connected to democracy; they socialize new generations in those interests and identities and preserve them over time. In contrast, an institutionalized governing party that sustained an authoritarian regime such as the Partido Revolucionario Institucional (PRI) in Mexico will not (Pérez-Liñán and Mainwaring, 2013).

At present, Chile is considered a stable democracy that has experienced a significant expansion of political rights and civil liberties since the return of civilian rule in 1990. Ongoing concerns include corruption and unrest linked to land disputes with Indigenous Mapuche people. In 2019, Chile experienced massive protests against the government and societal inequality. The demands for change culminated in a national plebiscite in October 2020, in which voters chose to replace the dictatorship-era constitution (Freedom House, 2021a). Mexico, on the other hand, has been an electoral democracy since 2000, and alternation in power between parties is routine at both the federal and state levels. However, the country suffers from severe rule of law deficits that limit political rights and civil liberties. Violence perpetrated by organized criminals, corruption among government officials, human rights abuses by both state and nonstate actors, and rampant impunity are among the most relevant challenges for the country (Freedom House, 2021b). The examples above show that human rights performance vary across the two countries.

The case study selection also indicated some challenges in Chile and Mexico. Both countries have faced issues regarding human rights related to the authoritarian governments. This could have an impact also on how business and human rights could be conceptualized in the countries. Also, there were some difference and similarities in the way each country liberalised its market and participated in the global economy. For this reason, the following chapter will explore each country’s history further contextualise business and human rights.

Given that human rights is a sensitive topic, with the process mainly led by the government, I faced some challenges when contacting participants for the interviews since some of them may have mistrusted the purpose of my enquiries. For example, I tried to contact a Mapuche journalist in Chile to ask about their experience with the work developed by the government regarding the UNGPs. When he replied he seemed to be interested in participating in my research. However, after I gave him more information about my research and the topic, he stopped replying my emails. I tried writing him back several times explaining my role as researcher, my ethical commitments and the focus of my research to assure him that my purpose was of an academic interest. Nevertheless, I did not hear from him again<sup>6</sup>. It was particularly important to establish a good relationship with participants, present a good explanation of my work and the ethical measures I would apply to take care of the information they provide for my research. In the Chilean case I also planned to reach to the Global Compact for recommendations and contacts that could be useful to collect the data I needed for my research.

These similarities and differences feed into the analysis by presenting how relevant contextual factors for each country inform the examination of the implementation of the UNGPs. These include: the exposure of their economies to global markets and their levels of Foreign Direct Investment; the levels of Human Rights violations; state capacity and the quality of their democracies. These are all relevant to observe the implementation of a transnational governance instrument by emphasising in specific fields of domestic governance that could be relevant to the analysis of the influence of the UNGPs.

### **3.3.2 Data collection**

The techniques selected to collect data were semi-structured interviews, document analysis and archival records. The questions developed for the semi-structured interview were open-ended to get descriptive answers rather than “yes or no” answers. This type of interview gives the researcher a guide to lead the conversation around the topic of interest, while at the same time allowing more flexibility for the interviewee to frame and interpret on issues and events (Bryman, 2012). The interviews were recorded and transcribed, but only the information used in the final document was translated from Spanish to English.

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<sup>6</sup> The Mapuche Conflict will be explained further in Chapter 5, however to contextualise, this conflict characterises of an occupation process by the state and land concentration during the 19th and 20th centuries. The conflict increased with the expansion of the forestry industry and the land concentration by the companies which are established in territories that Mapuche communities claim as their own. This conflict has developed constant tensions and lack of trust to government’s initiatives from the Mapuche community



To contact each participant, I relied firstly on the public information that was available in both countries regarding the NAPs. The first contact with the people leading the processes was established by email. The participants from the pilot study also provided some contact details from people involved in the development of the NAP, therefore, I relied on a ‘snowball’ sample, which is a form of convenience sample, in which the researcher makes initial contact with a small group of people who are relevant to the research topic and then uses these to establish contact with others (Bryman, 2012:202). For my research purpose, this approach was really useful as the interviews were planned as ‘elite interviews’ and most of the people involved are professionals at managerial levels that had the experience needed to participate in the research. At the same time, the participants had good networks of contacts they shared with me, facilitating the encounter with other professionals interested in my research. The function of elite interviews is to provide the political scientist with an insight into the mind-set of the actors who have played a role in shaping the society in which we live in and an interviewee’s subjective analysis of a particular episode or situation (Richards, 1996). This is the case of studying the phenomenon of the UNGPs’ implementation in Chile and Mexico. After some interviews, meetings and emails more contacts were added as potential participant for interviews.

It is also relevant to mention, that in the case of Chile, due to my previous relationship with the Global Compact where I worked for four years, they became gatekeepers for approaching some of the participants. Gatekeepers within the research process are typically described as the individuals, groups, and organizations that act as intermediaries between researchers and participants (de Laine, 2000). They do not provide the technical expertise to carry out research or the financial means to do so, they support the research process by providing an efficient and expedient conduit for access between researchers and participants (Clark, 2010). However, I knew it was important to keep my focus on my own research and prevent any situation that could change my priorities. This could have been the case if the Global Compact wanted to influence my investigation for example with the questions that I was going to ask or in how to approach the topic (Bryman, 152). Nevertheless, my past relationship with the Global Compact allowed me to have full transparency (in the type of questions I was going to ask) and their trust in giving me access to some experts they knew, especially professionals from United Nations who are based in Santiago. In total I was able to conduct 30 interviews, 16 for Mexico and 14 for Chile. Of course, there were some contacts that never replied to my emails and given the limited time I had in both countries I had to continue without their input. This is the case of one company and organisation of civil

society in Chile, which suggested their lack of interest in sharing their experience during the UNGPs' implementation. Interestingly, Chapter 7 will show that civil society in Chile had limited and/ or meaningful access to the process.

The principal documents collected for the analysis of this research were the two National Baseline Assessments and two National Action Plans. Other documents were used as support documents but were not part of the analysis, like the public guidelines shared by the Danish Institute of Human Rights or the UN Working Group for Business and human rights and the Reports of the Consultation processes. The Mexican Action Plan was just a draft version as it was never formally launched. The National Baseline Assessment is a document developed by an independent non-state actor to draw the situation in 2014 -2016 in the business and human rights field. In Chile, the Centre for Human Rights of the University Diego Portales was responsible for the development of the assessment. While in Mexico, an organisation of civil society PODER developed the assessment regarding the business and human rights situation. These actors added credibility to the assessments as they were independent from the government who was going to implement the UNGPs. The countries selected for my study based their assessments on the guidelines developed and promoted by the Danish Institute of Human Rights (DIHR). The DIHR also gave advice to the actors developing the assessments and the ones leading the implementation of the UNGPs.

The National Baseline Assessment, according to the Danish Institute (2014), is a tool for evaluating a state's current UNGPs' implementation and relevant business and human rights frameworks. One of the main strengths of the NBA is that through the analysis of the national legislation it can help a state identify and select measures to be included in a NAP in a coherent and transparent manner (Ferguson, et al 2018). The Danish Institute based its own work on the definition provided by the Food and Agriculture Organisation (FAO) on national baseline assessments where they established that 'A baseline assessment is a study that is conducted at the beginning of a project or a programme, to analyse the current (...) situation. It gives a picture of the situation before the inception of the programme, and results can then be compared with a follow-up assessment towards the end of the programme, in order to understand the effects of the programme' (FAO, n.d.). One of the main weaknesses is that the guidelines used for the NBA only analyse Pillar 1, State's duty to protect, and Pillar 3, remedy Mechanisms of the UNGPs, thus it was very difficult to construe a NAP without the adequate analysis of the business sector's role in issues regarding business and human rights (Pillar 2 Business responsibility to respect).

Moreover, with the National Action Plans the Danish Institute uses a more general definition of the documents and considers them policy documents in which a state articulates priorities and actions to support the implementation of international, regional, or national obligations and commitments with regards to a given policy area or topic (DIHR, 2014). In the case of Chile, the credibility is based on the document having been developed by the government and that feedback from actors of civil society was included in the document. In the case of Mexico, the credibility is based on the Multi-stakeholder Group, which attempted to represent a diverse range of actors. Civil society actors followed the plan's development closely to highlight where it could improve. However, one important weakness is that the NAP in Mexico never reached consensus and therefore it was not launched. My research is based on the analysis of the last draft of the NAP in Mexico. The NAP therefore takes different forms in Mexico and Chile, specifically because the process of implementing the UNGPs is affected by the actors, their interests and power, and the national situation concerning business and human rights. However, the documents are similar in that they seem to represent mainly Pillar 1 of the UNGPs.

The National Baseline Assessment was used as a key source of evidence as they were the documents that gathered the state of art of the business and human rights field in the countries before the implementation of the UNGPs. These documents contextualise the instruments, law and main actors involved in issues regarding business and human rights in the country. In addition to the NBA, both countries developed National Action Plans which attest to the implementation of the UNGPs as they gathered all the commitments of the actors involved in the development of the NAP. In other words, both documents evidence all the work done around the business and human rights field before and after the implementation of the UNGPs. The use of these two documents, the NBA and NAP, for each country was of great importance when analysing the evolution or improvement of the field in Chile and Mexico regarding the influence of UNGPs.

### **3.3.4 Ethical considerations**

My research has the ethical approval from the College Research Ethics Committee (CREC) of the University of Glasgow. Regarding the use of interviews and taking into consideration that humans were going to be involved, an ethics consent form was included and presented to all the participants. Also, a participant information sheet informed the participants of the purpose of the investigation and how the data was going to be used. Although I was contacting professionals who are not put in danger by sharing their experiences, there were

some comments ‘off the record’; some of the participants asked me to carefully treat the information and others asked me to share the final translation of the citations. However, all the participants agreed to be cited by their name and organisation.

In line with my ethics approval by the University, each interview was conducted in the office of the participant or public space, some others were conducted through Skype due to agenda issues, but I always looked for a safe space for everyone to speak freely about their experience on the process. The information gathered was saved in files by codes and passwords were used to access the interviews and personal details of my contacts in both Chile and Mexico. I had one copy on my personal laptop, one on my office computer and a third one was saved on ‘one drive’ as a backup. All my computers and programmes work only with a personal password. Additionally, due to insecurity issues in Mexico, I provided my information to my supervisors about the meetings and schedule, so they could know at any time where I was going to be. In Chile, this was additionally shared with the Global Compact, who as mentioned before worked as gatekeeper for some of my contacts. I consider this was a relevant decision in my research, even though I was conducting elite interviews in urban spaces, it was important to include strategies for my own safety.

### **3.3.5 Thematic Analysis**

In qualitative research, the data analysis is commonly described as a range of processes and procedures whereby a researcher moves from the data that have been collected into some form of explanation, understanding, or interpretation of the people and situations that the researcher investigates (Gibbs 2002 in Chowdhury, 2015). The purpose of qualitative data analysis is to describe and understand social phenomena in terms of the meaning people bring to them. This description aligns with the purpose of my research as it aimed to understand a process, the UNGPs’ implementation, and its influence on the domestic governance of two countries. In other words, my research aims to offer an explanation of how the translation or adaptation of an international framework can be similar or different from one country to another, thus exposing also the need to improve the frameworks, the processes and the expectations for the implementation.

The approach selected for analysing the data collected in this research is thematic analysis. This approach considers that themes are built out of groups of codes that are identified in the transcription of an interview or document. When searching for themes it is recommended to look for repetition or patterns, similarities and differences, metaphors or missing data. I focused on repetition and patterns found in the data, for example the connection between

business and human rights with national legislation or law enforcement. Also, repetition helped me when analysing the interviews to identify how much the participants mentioned due diligence or access to remedy, as these are two of the main aspects of the UNGPs. Moreover, to interpret the data I focused in using identification, coding, sorting, and sifting of themes in the search for findings that could contribute to theoretical knowledge and practical use of the implementation of transnational governance framework (Boeije, 2010 in Chowdhury, 2015). Therefore, after gathering all the interviews I developed a process of identifying codes with the themes selected from the literature. As mentioned before, framing, agenda setting and multi-stakeholder participation are the processes where most influence was expected (especially by authors like John Ruggie). This first attempt to revise the data collected was a manual revision, where I coded the text and grouped the information to organise and analyse the data.

I also looked for patterns in the interviews to contrast the outcomes in the NBA, for example, when I revised the interviews for Chile, rather than enforcement of the law, which appears to be a priority in the NBA, the main topics were *the mandates* as participants in the decision making process represented by a Ministry in the government of Chile and which did not have full authority to change the ministries' course of action. When focusing on repetition the researcher is required to reflect on the initial codes that have been generated and to gain a sense of continuity and linkages between them. Therefore, I had to 'go back and forth' through the outcomes to create a meaning or an interpretation out of them.

I selected thematic analysis because it involves the search for and identification of common threads that extend across an entire interview or set of interviews. Thematic analysis provides a purely qualitative, detailed, and nuanced account of data (Braun & Clarke, 2006). Thematic analysis is sometimes compared with content analysis. However, in content analysis the researcher qualitatively analyses the data and at the same time quantifies the data. Content analysis uses a descriptive approach in both coding of the data and its interpretation of quantitative code counts, whereas thematic analysis can offer the systematic element characteristic of content analysis and permits the researcher to combine the analysis of the meaning in the text within their particular context (Vaismoradi, et al., 2013). If content analysis focuses mainly on the frequency of codes to find significant meanings in the text, there is the danger of missing the context. For this reason, when employing content analysis researchers are sometimes accused of removing meaning from its context. This last characteristic of the thematic analysis approach is very important for my research as the main

argument states that context affects greatly how the UNGPs' implementations was developed in the two countries that were selected for the study.

Table 3.1 Analysis phases and their descriptions

*Familiarising with data*

Transcribing data, reading and rereading the data, noting down initial ideas.

*Generating initial codes*

Coding interesting features of the data systematically across the entire data set, collating data relevant to each code

*Searching for themes*

Collating codes into potential themes, gathering all data relevant to each potential theme.

*Reviewing themes*

Checking if the themes work in relation to the coded extracts and the entire data set, generating a thematic map.

*Defining and naming themes*

Ongoing analysis for refining the specifics of each theme and the overall story that the analysis tells, generating clear definitions and names for each theme.

*Producing the report*

The final opportunity for analysis. Selection of vivid, compelling extract examples, final analysis of selected extracts, relating back of the analysis to the research question and literature, producing a report of the analysis.

Source: Braun and Clarke, 2006

The concept 'code,' as used in relation to qualitative research, is said to have originated in Howard Becker's work (Fielding and Lee, 1998 in Gibson and Brown, 2009), and has become a standard apparatus in discussions of qualitative research. To code is to create a category that is used to describe a general feature of data; a category that pertains to a range of data examples. In this respect, a code draws attention to a commonality within a data set. We can distinguish two types of code: apriori codes and empirical codes. Apriori codes are defined prior to the examination of data, while empirical codes are generated through the examination of the data itself (Gibson and Brown, 2009). As mentioned before, I based my

research on an inductive approach, therefore the codes were generated while examining the data, specifically the interviews, the NBAs and NAPs. On the other hand, a theme is defined as a coherent integration of the disparate pieces of data that constitute the findings (Sandelowski & Leeman, 2012 in Vasimoradi et al., 2013). It captures something important about data in relation to the research question and represents some level of response pattern or meaning within the data set (Braun & Clarke, 2006). Furthermore, the importance of a theme is not necessarily dependent on quantifiable measures, but rather on whether it captures something important in relation to the overall research question (Braun & Clarke, 2006; Vasimoradi, et al., 2013). It should not be forgotten that data analysis processes in both approaches are not linear, simply moving from one phase to another, but should be recursive with frequent reviews. This happened frequently through the identification of codes, as the process forced me to go back to the original data to clarify in some cases if my interpretation was correct. In addition, the result should be the identification of a story which the researcher tells about the data in relation to the research question or questions (Braun and Clarke, 2006). In other words, it is the result of the decisions taken by the researcher.

The following section will explain what I did with the data and how I used it for the analysis to explain the story regarding the data collected from the interviews and the documents that can answer the extent to which the UNGPs influenced domestic governance in two different countries.

### **Analysis of the data collected**

Qualitative research can produce high amounts of texts that should be organized and classified to select the most relevant data to be analysed. Creating a database or spreadsheet was convenient in organizing the data. This database was created in the preliminary mapping exercise, which helped to keep record of the organisations that were contacted and the ones that finally got involved in the project. However, the database was also useful when providing each participant with information like an ID, the interview number, the sector they represent, the type of interview (Face to face or skype), date, and minutes. The trend moves towards making a systematic review and research synthesis to aggregate, summarize, and synthesize findings from qualitative research studies (Chenail, 2009). Therefore, the database includes some key words, discussions or topics that emerged through the conversations to achieve a synthesis for the interviews.

Following the interviews and the transcriptions, I developed a first report on the findings as a form of summarising the empirical material. It was my first attempt to work with the information from the interviews and I cross-checked some of the ideas with the documents that I was also able to collect like the National Action Plans and the National Baseline Assessments. This exercise made clear to me the need to process the information in a more systematic way. As explained in the section ‘Thematic Analysis,’ I relied on Braun and Clarke’s work (Table 3.1) to develop the process of coding and organising them in the themes that were identified in the literature review (framing, agenda setting and multi-stakeholder participation. In addition, I tried to align it with the criteria promoted by the scholars (Braun and Clarke, 2006). Firstly, I transcribed the data to an appropriate level of detail; in fact, the transcriptions adhered literally to the recordings obtained from the interviews as I wanted to be accurate in the interpretation given by each participant. The coding process involved two phases, the first one was done manually, and it was the first attempt to develop codes.

However, due to the importance of providing information order, I decided to conduct a second coding using NVivo. This software was suitable for the large amounts of text from the interviews and the documents, which helped me in avoiding biases and double checking my first interpretations of the data collected (Bowen, 2009). In regard to the document analysis and archival records a systematic procedure for reviewing or evaluating documents was implemented — as documents need to be examined and interpreted in order to produce meaning, gain understanding, and develop empirical knowledge. Therefore, the empirical chapters will show the relationship between the themes that emerged from the literature with the information that arose from the analysis of the interviews and documents like the National Baseline Assessment and the final documents for the National Action Plans.



Table 3.2 List of codes and themes

Codes	Description	Themes
Decision-making groups	Actors involved/ authority and interests in the decisions around the implementation of the UNGPs. Dynamics and styles developed through the process (elite consensus style and multi-stakeholder negotiation).	Framing
Outcomes from the NBA	The gaps in legislation found in the NBA could help define what business and human rights should be for each country. National characteristics including: Constitution, Labour issues and Mapuche Conflict in Chile. Corruption and law enforcement in Mexico.	
Priorities	Interests regarding their roles but also the capability in terms of authority (technical advisors and observers).	Agenda Setting
National context	Priorities defined by the actors involved according to the context and their local dynamics.	
Pillars	Aspects of the UNGPs considered in the agenda and NAP: state duty to protect, due diligence and access to justice.	
Actors	The actors that participated. Actors that were missing from the activities. And also, the transparency on this information.	Multi-stakeholder process
Participation	The spaces open for participation of non-state actors (workshops, seminars and dialogues).	
Influence	How the UNGPs influenced the actors in the process and if the actors were able to influence back the process through their inputs/roles.	

In addition, field notes and participant observation notes were used to remember specific topics that should be investigated in-depth or included as main themes, depending on the emphasis placed by the participants. For example, the discussion on transnational regulations, business systems, CSR and the limited statehood presented by Bartley, helped me understand the situation in each country. However, other topics emerged like the relevance of advocacy networks and the interaction between international non-governmental

organisations and domestic NGOs for the implementation of hybrid initiatives. Additional information was also reviewed to explain the context of each country from 1970s to the 2000, which was the period when both Mexico and Chile had authoritarian governments and implemented liberal economic policies. This will be explained further in Chapter 4.

As mentioned before there was a first manual revision of the documents that generate the themes. Document analysis involves skimming (superficial examination), reading (thorough examination), and interpretation (Bowen, 2009). The document analysis provided a systematic set of procedures for achieving reliable and valid findings. Document analysis is often used in combination with other qualitative research methods as a means of triangulation. The qualitative researcher is expected to draw upon multiple (at least two) sources of evidence; that is, to seek convergence and corroboration through the use of different data sources and methods. Apart from documents, such sources include interviews, participant or non-participant observations, and physical artefacts (Yin, 1994 in Bowen 2009). By triangulating data, the researcher attempts to provide evidence that reproduces credibility. For this reason, this stage of the analysis identified themes that were persistent in the documents and in the interviews.

The themes identified in the first revision of the literature were first conceptualized under a general topic 'local dynamics.' The reason I gave this name to this umbrella topic is that the analysis showed different local interactions of actors around themes like priorities, collaboration and regulation. Regulation relates mainly to the analysis of the national legislation found in the NBA and the interviews in which participants suggested that changes in legislation could help improve the business and human rights situation. Despite different methods applied within each country, regulation was a topic used to frame the BHR field. Also, under priorities, I observed the interests and options that actors had and what they aimed at with regards to advancement in the business and human rights field. For this reason, codes like political will and status quo were first considered, but the actors involved did not have the power to influence the path for business and human rights significantly in the country since they had to follow institutional mandates. Later, it was clear in the evidence that the local priorities, the NBA and the UNGPs intersected to develop a national agenda in the BHR field. For example, in Mexico, participants suggested that issues like corruption can improve through legislation, which is Pillar 1 of the UNGPs, and that this could potentially benefit the BHR field. Finally, the theme regarding collaboration responded to the different actors involved state and non-state actors that participated in different forms during the elaboration of the National Action Plan. This coding led to identifying that there

was a decision-making group for each process and that each process planned different actions or activities for other actors to participate in. Perhaps because the UNGPs perceive the implementation as a multi-actor process, the general idea in both processes was to develop an inclusive process. It seems also important to mention that these are only the most relevant and common empirical codes found that could help in answering the research question *‘To what extent did the UNGPs and NAPs guidance influence processes of framing, agenda setting and multi-stakeholder participation of Business and Human Rights in Chile and Mexico?’*

Additionally, this exercise aided in the planning and structuring of the research and gave a roadmap of the key elements that were needed to understand the process of implementation conducted by each country. The comparison between these countries was mainly based on the process developed by each. It was imperative to identify main strategies, main actors involved and how they addressed participation in their design of the process itself. However, the purpose of presenting the elements of the analysis is to provide some insights on how the research was developed.

### **3.4 Conclusions**

The purpose of this chapter was to explain the formulation of the research question and a roadmap that can show how this research was developed to address the question. The chapter explained how the research was designed as qualitative research and the design selected was a comparative case-study. It largely presented a rationale for the case selection, where similarities and differences between the countries presented an interesting case to observe the implementation of a hybrid initiative. For this reason, the main techniques used to collect data were in-depth semi-structured interviews with policymakers, NGOs, academia, international organisations, business associations, etc. In other words, the research was based on elite interviews and a ‘snowball’ technique was used to reach more participants. However, it was not easy to contact everyone given the level in which the phenomenon developed was mainly in the political elite. In addition, I collected several documents that were fundamental for understanding the process of implementation, but which were concentrated on the National Baseline Assessments analysis and the final document registered as the National Action Plan for each country.

## **Chapter 4 Why Context Matters: Mexico and Chile before the UNGPs**

### **4.1 Introduction**

This research argues that context matters in the implementation of hybrid initiatives. I draw specifically on Bartley's notion of 'empty spaces' and consider that places of implementations are not empty spaces. Countries are crowded with actors, norms, rules and traditions that form their contexts. Therefore, contexts need to be considered when planning implementation of hybrid initiatives like the UNGPs. Amengual and Chirot (2016) suggest that domestic politics and engagement with state processes are crucial for positive regulatory interactions of transnational regulators. Moreover, Bair (2016) suggests the domestic context can shape the implementation of an international initiative because the outcomes reflect the beliefs of domestic stakeholders and government officials. Other scholars like Bartley (2011) and Pinto and Puppim (2008) consider that examining the intersection between hybrid and private initiatives and domestic orders is relevant to an effective implementation because characteristics of the local context (like stakeholders, authorities, congruency between international and national aims) can influence the processes of implementation.

Moreover, NAPs guidance of BHR encourages the development of National Baseline Assessments before the implementation to understand what legislation is in place and how it is enforced. It also includes a compilation of voluntary schemes that promote CSR and business and human rights. Therefore, NAPs guidance recognises the need to analyse the context, and this research argues other characteristics (beyond legislation) must be considered such as democratic processes and the nature of national business systems. To assess the influence of the UNGPs on the processes of framing, agenda setting and MSP in Chile and Mexico it is important to present a general panorama of the main political, social and economic aspects in these two countries. Chapter 2 explains that regime type, wealth and economic system, and local NGO's and activists shape the implementation of international HR standards (Anderson and Murdie, 2017). It also claims that countries in Latin America are characterised by a lack of state compliance and domestic implementation due to weak institutions (Hillebrecht, 2013). The purpose of Chapter 4 is to present a general panorama and the local context of Chile and Mexico in which the UNGPs were implemented.

Chapter 4 is divided in two main sections, one for Chile and one for Mexico, and a final section that compares the two countries to highlight similarities and differences. The sections for Chile and Mexico are divided as follows: a first section explores past authoritarian governments, which includes the economic policies that both countries followed; the second

section focuses on the democratic transition and the problems faced by the institutions, civil society and human rights; finally the third section will present the business systems and the economic panorama of the countries, alongside how the business communities and the governments responded to the challenge of economic liberalization.

## **4.2 Chile's transition to democracy**

### **4.2.1 The Military Regime of Pinochet and the economic policies**

A military regime ruled in Chile from 1973 to 1990 that implemented market-oriented policies, liberalized the economy, privatized important national enterprises, and left important legacies for the field of business and human rights, which I discuss here. A key strategy of this government was to persecute, murder or disappear anyone who was against the regime. The Rettig Truth Commission estimated that there were more than 3,000 murdered or disappeared, and victims of torture exceeded 100,000 (Win, 2004). Although this affected the liberties of people and violated human rights, a significant part of the population saw the military coup as a solution to return to order after the socialist government of Salvador Allende (1970-1973), specifically, large elements of the business class (Arriagada, 2015). The business community appreciated the return of the state-controlled economy and the implementation of neoliberal policies. As a result of the military government's support, a business class that could be more influential on politics and economy in Chile emerged. Therefore, the dictatorship of Augusto Pinochet began both on an anti-Communist ideology and the importance of managing the economy.

General Augusto Pinochet was the leader of the military regime, which was characterized for being 'strongly legalistic and complemented the ready use of repression with the observance of certain institutional formalities' (Collins, 2010). The dictatorship was founded as a collective sovereign, and this gave rise to the need for legal-constitutional limits on the power of the dictatorship as a whole (Barros, 2003). With 'collective sovereign' Barros meant that the government was established as a group that collectively took power and held power. Therefore, decisions were taken in consultation with all the parties involved in the 'Junta Militar' (military league) and it was through this group that the government ruled. The relevance of this is that even within an authoritarian government Chile maintained a tight relationship with legality, albeit their own kind of legality.

In 1980 Pinochet replaced the constitution of 1925 installing in Chile a 'protected' - authoritarian- democracy (Collin, 2010; Barros, 2003). 'Protected' in terms of protecting private property and consolidating a neoliberal economic model (Navia, 2010). In addition,

the new Constitution provided amnesty and judicial tolerance for those who committed atrocities (Collin, 2010), systematically violating human rights. However, it also specified that a plebiscite would be held by the end of 1988 to confirm or reject eight more years of Pinochet's presidency (Collin, 2010). Surprisingly for the government, the opposition won with 56% of the vote embracing the idea of a peaceful transition towards democracy. In December 1989, the country held open elections for head of state and both chambers of Congress (Arriagada, 2015).

Elections marked the opportunity for the opposition to form a coalition of political parties named 'Concertación de Partidos por la Democracia' (commonly known as Concertación). This coalition developed an elite consensual policy making style, implementing the law and formality that gave continuity to their traditional and institutional way of government. The Concertación emphasized the need to work together, compromise, and avoid serious conflict as much as possible, both internally and with other political actors (Weeks and Borzutzky, 2012). The consensual elite policy making style defines the way Chile continues developing and implementing public policy (Blake, 2008). In their search for stability, governments aim for (elite) consensus in decision-making. In other words, decisions are made without public debate and by only a handful of leaders (Weeks and Borzutzky, 2012).

During the military regime business associations like the National Agricultural Society (Sociedad Nacional de Agricultura, SNA founded in 1869) and The Manufacturing Promotion Society (Sociedad de Fomento Fabril SFF founded in 1883) existed freely and no military intervention was needed to secure their support (Meschkat, 2000; Blake, 2008). This suggests that the business class in Chile sympathised with the authoritarian regime, thus benefiting from the economic policies implemented by the government. In contrast, the labour movements, which were aligned to political parties, did not enjoy the same freedom as the business associations. During the dictatorship unions and strikes were made illegal to avoid any resistance to the economic changes that the new government would implement. For the transition to democracy and post-transition, this was significant. Trade Unions and strikes had been allowed by previous democratic governments, but these have been restricted since the return to democracy. Elected governments have continued to limit Trade Union influence on policy formulation and put obstacles on freedom of labour association. In 2008 the union density in Chile was 13.9 which was low with respect to most European countries but higher than in the United States, France and Turkey (Solimano, 2012)

## **Economic Policies implemented in Chile**

The authoritarian government in Chile (1973 – 1980) was extremely focused on economic actions. The government planned to restructure the Chilean economy favouring transnational capital and the interests of the Chilean upper class (Harris, 2000) which can explain the good relations with the business sector. The government had the support of U.S.-educated Chilean economists, inspired by Milton Friedman at the University of Chicago, and the assistance of the International Financial Institutions (IFIs) to introduce a combination of economic and social “reforms.” The reforms reduced Chile’s public sector and social programs, privatized government-owned enterprises, deregulated the economy, eliminated price controls on basic necessities, removed most restrictions on foreign investment, dismantled progressive labour laws, and reduced or eliminated most of the government subsidies and services previously provided to the popular classes (Harris, 2000).

In the early 1980s, neoliberalism provided the ideological justification for a strategy that consisted in a capitalist restructuring known as the “Washington Consensus”. This ideology was adopted by the IFIs to justify the so-called stabilization and structural adjustment programs (SAPs) (Harris, 2000). The plan was to lead governments to impose programmes that alleviate the economic crisis, pay off their debts, open up their economies to transnational capital, and “integrate” themselves into global markets. Chile was the ‘laboratory’ of an economic liberalisation imminent in the region (Benería, 2000). Nevertheless, the Chilean government managed the liberalization of the economy differently compared to other Latin American Countries. Its relationship with Bretton Woods Institutions showed more autonomy in managing pressure by developing its own policy and taking advantage of the priorities of the different actors in Washington (Gilbert, 2002). In this regard, for Schurman (1996a in Kurtz, 2001) trading liberalization was not necessarily the main characteristic of Chilean export success, but rather new methods of public intervention were the crucial catalysts. Public interventions at the sectoral level in credit, input, risk, information, and distribution markets can produce economic reorientation along the lines of international comparative advantage more rapidly and at lower cost than “market” forces alone. This goes against neo-liberal ideology to some extent, but it gave Chile the opportunity to change the course of their economic performance to their own advantage.

Interestingly, the cases of human rights violations that were known worldwide did not affect Chile’s commercial relationships with western countries during the military regime. It was not until 1985 that the relationship with the U.S. and the IFIs changed to take Chile into a

democratic transition (Angell, 2013). In 1994, during the first presidential period of the Concertación Coalition, Chile received an invitation to become a member of the North American Free Trade Agreement (NAFTA). However, Chile opted for separate negotiations with Canada and Mexico allowing it to reap some benefits from NAFTA. Chile also pursued a closer integration with its neighbours, but its economic strategy of trade liberalisation was incompatible with the gradual liberalisation strategy of Mercosur<sup>7</sup>, which made them opt for a less encompassing Economic Complementation Agreement<sup>8</sup> (ECA) (Bull, 2008). The Southern Common Market (MERCOSUR for its Spanish initials) is a regional integration process whose main objective is to promote business and investment opportunities through the competitive integration of national economies into the international market (Mercosur, 2021).

According to Olavarría (2003), the neoliberal model in Chile resulted in and is reliant on a debilitated labour movement, increased inequalities of income distribution, job insecurity, and low wages, illustrating the failure of the model's benefits to trickle down. From 1987 – 1996, the richest 20 percent of households received 57 percent of the total personal income, while the bottom 20 percent received only 3.8 percent (Mideplan, 1998 in Olavarría, 2003). The state's social policy-making prerogatives have been curtailed by the privatization of much of the state-run health, education, and social security systems and pensions (Vergara, 1993 in Olavarría). With the Concertación governments which came after the dictatorship, the economic policies did not change much. They boosted Chile's economic growth even more, attracting more foreign investment.

## **Business system in Chile**

Today Chile enjoys the most stable economy in the Latin American region. Growth has slowed down due to the fall in copper prices but has been less problematic than in other Latin American Countries. According to the Varieties of Capitalism (VoC) framework focused on the national determinants of state-business relations, Chile has developed its own characteristics. In addition, the literature shows that the institutional frameworks in which

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<sup>7</sup> The Southern Common Market (MERCOSUR for its Spanish initials) is a regional integration process, initially established by Argentina, Brazil, Paraguay and Uruguay, and subsequently joined by Venezuela and Bolivia\* -the latter still complying with the accession procedure. its main objective has been to promote a common space that generates business and investment opportunities through the competitive integration of national economies into the international market (Mercosur, 2021)

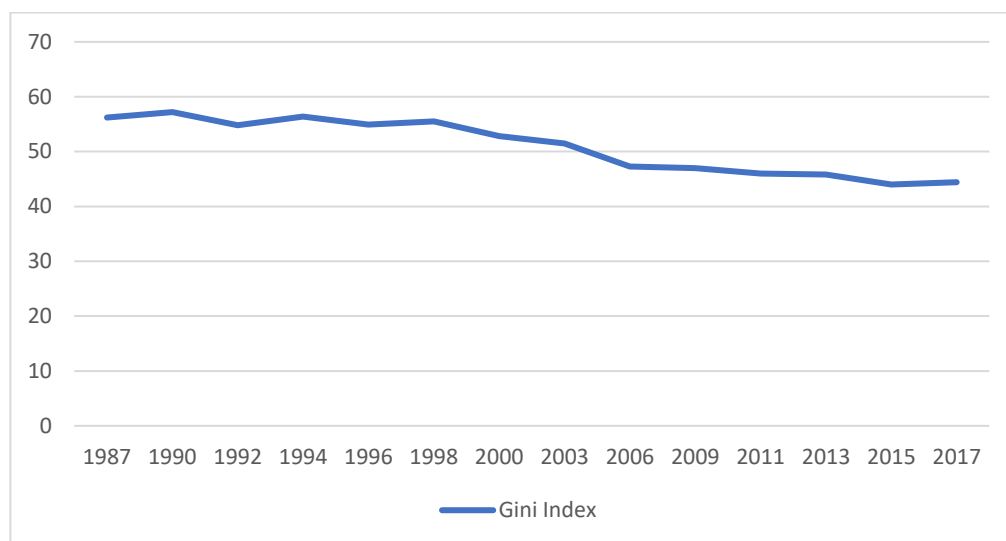
<sup>8</sup> This kind of Agreement covers negotiations between the MERCOSUR bloc and countries that are not members of the MERCOSUR. The agreement establishes a legal framework for trade relations and sets the basis for periodic negotiations towards a free trade agreement (Foreign Trade Information System, 2018).



businesses operate conditions what they can do in terms of strict legal frameworks or the permissibility that the business sector faces in developing business activities (Hall and Soskice, 2011; Royo, 2008). Chile conforms to the hierarchical variety of capitalism (Fernández and Alfaro, 2011), which is dominated by strong economic actors that coordinate these processes, in which there could be poor participation of stakeholder involvement

The concept of business systems is central to the belief that firms are economic actors affected by numerous influences arising from the context. Firms operate in markets, business sectors have to comply with laws and regulations, etc. In other words, the national context affects how the firms behave. This relates to Bartley's work discussed in Chapter 1 and 2 about the relevance of the *places* where 'implementation' is developed for changing or improving locally. According to Witt et al. (2018), Chile is categorized as an *advanced emerging economy*, as the countries in this group have relatively high levels of per capita GDP. Their military dominance and military involvement in the commercial sector are also considered as characteristics of the economy in Chile (Witt et al., 2018). This speaks to human rights agenda because it violated the political freedom of Chilean people to direct their country freely into the economic path they wished to follow. Other characteristics of countries ruled by military regimes are decent levels of education, medium-length employment tenures, on-the-job and private vocational training, bank-led financial systems mixing relationships and market criteria in allocating funds and top-down decision-making inside the firm. It also includes control paired with investor protection that is somewhat above average, developmental state policies, top-down state governance, and above average institutionalized trust, voice and accountability, and state effectiveness (Witt et al., 2018). The main political implications of these characteristics are stable relations between business and government where they act jointly in benefit of the country's economic growth. This may be positive, but it also neglects the social needs of the country. In other words, this system strengthens the elites and develops more inequalities in the country. These inequalities could potentially create social unrest and backlash against the government's efforts to develop stability.

Figure 4.1 Gini Index



Source: Elaborated with data from the World Bank (World Bank Indicator, 2021a)

Table 4.1 Economic Performance Chile

Indicator	1990	2000	2010	2018
GDP (current US\$) (billions)	33.11	77.86	218.54	298.23
GDP growth (annual %)	3.3	5.3	5.8	4.0

Source: Elaborated with information World Bank 2019

Chile's GDP growth rate averaged 3.9% between 2005 and 2015, compared to 3.1 % for the region. From 2010 to 2014, the economy of Chile grew more than double the OECD average (OECD, 2018p in OECD 2019). Unemployment<sup>9</sup> has gradually decreased since 1999, with the average over the last decade of 7.3% falling slightly below the regional average (8.3 %) (World Bank Group, 2018u in OECD 2019). Wages have risen, allowing for a drastic decrease in poverty levels (ECLAC, 2016 in OECD 2019). However, inequality remains an important challenge to development and generates increasing demands on the authorities; the country has a Gini coefficient of 0.454 in 2017 (see Graph 4.1), as compared to the OECD average of 0.311 (OECD, 2018).

In terms of sectoral structure, industry is the most relevant (38 % vs. 32 % LAC), specifically mining (12 % of GDP), and copper mining in particular (11%) (BCC, 2017 in OECD 2019). Chile has one of the most developed financial markets of the region. Domestic credit to the private sector<sup>10</sup> (112.5% of GDP 2017) is more than double the Latin American average (49.2% 2017), and this can be seen as an example of the support given to the business sector. This has contributed to a sustained level of fixed capital formation over the past decade. However, structural reforms are still needed to strengthen total factor productivity (OECD, 2017p in OECD, 2019).

Foreign direct investment (FDI) averaged 7.7 % of GDP over the last 10 years, more than double the regional rate. In addition, Chile is one of the most open economies in the Latin American region (LAC). Exports and imports of goods total 55.7% of GDP, as compared to the regional average of 46%. In Chile mining has a significant role in its export basket (54%). Agricultural products (fruits) and manufacturing (fish fillets, wine) complete the picture. Manufacture represents 13.7% of external sales GDP. Service trade represented on average 11% of GDP (2005-2015), compared to 6.2 % for the LAC region (World Bank Group, 2018 in OECD, 2019). Chile's top export destinations are China (26% exports and 24% imports), the United States (13%), European Union (13%), Japan, South Korea and Brazil (48%) (MIT, 2018 in OECD, 2019). Regional trade blocs play a less important role. In the Pacific Alliance (PA), Mexico is the main destination of exports (2.2%) and origin of imports (3.5%),

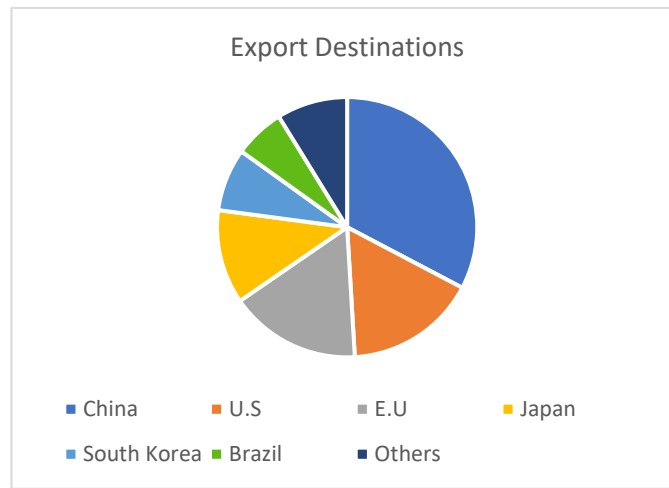
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<sup>9</sup> Most of those workers are employed by informal, non-registered enterprises or are self-employed (32.2 %), while 6.3 % are employed in formal enterprises and 2% are non-registered household workers (ILO, 2018e). Data from the 2017 Microenterprise Survey (Encuesta de Micro Emprendimiento, or EME) shows that 66.5% of the employees working in Microenterprises do have formalised labour contracts, but work on verbal agreements.

<sup>10</sup> Domestic credit to private sector refers to financial resources provided to the private sector by financial corporations, such as through loans, purchases of nonequity securities, and trade credits and other accounts receivable, that establish a claim for repayment.

followed by Peru. The bloc accounts for 6.4% of Chile's exports and 8.4% of its imports (European Commission, 2017).

Figure 4.2 Main Partner Countries



Source: Elaborated with data from Santander Trade Portal 2017

Therefore, the Chilean economy has diversified its market, which can be helpful in maintaining stability in case of a crisis with one of the commercial partners. However, Chile still faces several medium-term challenges, such as the evolution of commodity prices, the need to diversify the economy towards non-resource activities, and the need for continued fiscal consolidation. Figures show Chile became a stable and resilient economy probably due to the public interventions at sectoral levels as mentioned above. Chile follows a very specific type of capitalism with a state that has a subsidiary role, that of regulating and defending national capital, implementing counter-cyclical measures. Social actors are weak, and coordination between unions and capital is almost non-existent, and what does exist is full of conflicts. Here the industrial relations system is dominated by flexibility, and the welfare system is residual, assistance oriented and may be called a State regulated/externally oriented capitalism (Saucedo et al.2015; Bizberg, 2014).

In sum, understanding the context in which businesses perform their economic activity speaks to the wider research question as we can understand the part of the domestic governance that relates only to business. In other words, we are looking at the business environment, relationship, dynamics and expectations of its performance. It is possible to conclude that the business sector in Chile has enjoyed a good -arguably preferential-relationship with the government and this relationship can influence government's decisions regarding issues like human rights.

#### **4.2.2 Transition to democracy: Institutions, Civil Society and Human Rights**

Chile's post-transitional period has to date comprised four completed presidential terms: Patricio Aylwin (1990 – 1994), Eduardo Frei (1994 – 2000), Ricardo Lagos (2000- 2006), and Michelle Bachelet (2006- 2010), all representing the centre-left Concertación coalition<sup>11</sup>. For the first time in 20 years, Chileans were able to vote in free elections. However, democracy involves more than free and transparent elections of government officials. Democracy should guarantee rights and organise society. Thus, the quality of democracy is directly linked to the capacity of a state to allow Liberal, representative democracy, where political parties mobilize public opinion and alternate in power to ensure accountability. It combines institutions with a reinforcing political culture that together guarantee the rule of law while ensuring that policy follows the considered preferences of public sentiment (Hay, 2006).

The restoration of democracy brought back the full reactivation of the oversight institutions of the government's performance, such as the Contraloría General, the judicial system, the parliament, the political parties, the mass media, research institutes and civil society (Silva, 2016). However, citizens in Chile did not enjoy their full rights, specifically because the Constitution dated from the military regime. Additionally, the dictatorship had long lasting effects on the institutions of the state and therefore people's perception of government. For example, the judiciary branch was close to the regime and underwent little change with transition, leaving 'authoritarian enclaves' within the state which promoted feelings of distrust among the population. Political parties were affected by disengagement, resulting in a certain lack of representation for the general public within government. Also, levels of corruption increased during the military regime which was specifically demonstrated by the accumulation of wealth of those in power (Silva, 2016). According to Orellana (2004) this was expected to change with the transition to democracy. However, he argues that the new politicians did little to change the authoritarian structure, they did not reject the traditions established by the military such as undeclared bonuses and moonlighting. Therefore, we see that legacy issues are important when analysing the wider context of governance in the country.

#### **Institutions: the constitution, political parties and corruption**

The Constitution of the 1980s was developed by the military regime to manage the transition of power largely on its own terms, and safe-guard its economic and institutional projects

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<sup>11</sup> Bachelet was replaced in 2010 by the right-wing Sebastian Pinera

(Collins, 2010). The constitution works as an *enclave* of the military government due to the high number of power-arrangements that are not subject to the normal democratic political process. In other words, the constitution is ‘territory’ of the government that can be used to achieve their main purposes. It gives the political right wing the power to veto any substantive change the democratic process can introduce to a constitutional design created by a military junta (Heiss, 2017). This creates problems of representation and legitimation, which affects political and civil rights as any initiative that goes against a ‘right-wing ideology’ can be excluded. The key to constitutional change should be then removing its current role as a guarantor of the project of “protected democracy” imposed by the dictatorship. This would imply eliminating the Organic Constitutional Laws to leave the issues currently regulated by them to parliament. The role of the Constitutional Tribunal to revert decisions by the legislature should also be discussed, as well as the quorums for constitutional reform (Heiss, 2017).

Before the military government political parties in Chile had developed identities within the communities and strong representation (Garretón, 1993 in Olavarría, 2003). However, political parties, were banned and repressed during dictatorship, therefore were left completely fragmented and isolated from society. As consequence, from 1973 to 1989 problems emerged in the political sphere of Chile. First, elite politicians operated above the level of the party decision-making mechanisms, in a way quite similar to the Concertación governments during the negotiations with the armed forces. This would not have been easy for party militants to understand<sup>12</sup>. Second, a bipolar electoral choice – a result of the binomial electoral law, which creates two member-districts - was imposed on an electorate with a multiparty tendency and on intraparty structures lacking in democracy (Arriagada 1997 in Olavarría). With the disappearance of the party as a reference of definitive programs, interaction between political elites was reduced to disputes over power (Olavarría, 2003) which provoked a disengagement<sup>13</sup> and lack of representation, thus affecting political rights of the people in Chile. There is a need for parties to play traditional role as interpreters of social interests providing channels for the resolution of conflicts within the political system; for example, when discussing topics around access to health, education or the pension system in Congress.

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<sup>12</sup> The Concertación coalition avoided debates over issues, relying instead on polls and technical solutions – practices that have tended to fragment the party-society matrix (Garretón, 2003 in Olavarría).

<sup>13</sup> This lack of engagement from the populations is observed in the levels of abstention that have risen since the plebiscite in 1988 having a 2.5 percent of abstention and 13.7 percent in presidential elections in 1997.

In addition, the judicial branch in Chile during the Dictatorship from 1973 – 1989 was not independent of the authoritarian regime's aggravation of human rights violations (Rettig, 1993 in Collins, 2010). The judges supported the regime but maintained the façade of an independent judicial branch supervising the regime's activities and finding nothing inappropriate (Collin, 2010). In addition, an Amnesty Law, passed during the dictatorship, stipulated that amnesty should be extended to all persons who, as principals or accessories, have committed criminal offences during the period of siege, between 11 September 1973 and 10 March 1978 (Decree Law 2.191 in Collins). However, this did not change when the democratic transition began. It was only in 1998 that the Supreme Court ruled that the law should not apply to cases of human rights abuse. This decision was crucial for investigations to move forward and hugely important in shaping the wider field of Human Rights in Chile (Amnesty International, 2015).

Further, levels of trust affected the democracy in Chile. Chile possesses a long history of having relatively low levels of corruption and a political class which has shown high standards of probity. According to the Anti-Corruption Policy index (from 0 to 10), Chile scores 9.0, above the Latin American and Caribbean Region (LAC) and OECD average of 5.12 and 6.91 respectively (OCDE, 2018). But a critical factor in keeping low levels of corruption was the early and solid consolidation of the Chilean state in the early nineteenth century. Chile managed to establish state institutions which guarantee the rule of law, economic progress and political stability. It was not until the coup that top officials got paid extra bonuses; the privatization of state enterprises benefited right-wing politicians and Pinochet became the only president in Chile who accumulated wealth during his administration (Silva, 2016). This situation created 'mistrust' in society which also affected representation and the degree of interest in participation. In 2016 82% of Chileans perceived corruption as being widespread (OCDE, 2018).

In sum, during the transition, some elements of democracy were not fulfilled by the government. These were likely down to the pragmatic Concertación approach of keeping the peace and keeping the military regime out of the government, one which did not give the people full use of their rights. The governments from the Concertación Coalition had to negotiate with the military regime and at the beginning, specific situations marked the scope that the governments had to provide justice and order in the country. For example, under the Aylwin administration, Pinochet -who was still commander in chief - put the troops in the streets in combat gear to intimidate the civilian authorities. The government insisted on subordinating the armed forces to civil control and the rule of law (Arriagada, 2015).

However, this last example, together with the Amnesty law and the courts previous attitudes show the difficult path that Chilean transition had to follow. Nevertheless, a mobilised civil society was born to defend the rights and liberties of the people in Chile (Silva 2016).

### **Emergence of Civil Society and Human Rights Organisations**

Oxhorn (1995 in Avritzer, 2006) relates the emergence of civil society in Chile with the repression carried out by authoritarian regimes, a repression that targets political society (traditional political party activities (p.41). Authoritarianism effectively outlawed political society by banning political parties and transformed civil society into the only available place for political activity. The re-emergence of grassroots activity that played a strong role in Chile had a pre-authoritarian heritage due to the need of self- help organisations that were a consequence of an economic depression. Also, authoritarianism targeted political society more than civic organisations (Avritzer, 2006). Therefore, the lack of representation and relations between the political parties and the citizens promoted the interaction between people forming an organised civil society.

During the dictatorship, civil society was represented by Human Rights Organisations that developed systematic work to record the abuses of human rights. This is one of the legacies of Chile's dictatorship period; a well-organised, often lawyer-led human rights movement that adopted a legally framed strategy from the earliest days after the coup. This legacy according to Collins (2010), laid the foundation of later persistent and renewed attempts to pursue justice claims in the national courts. Moreover, the emergence of the Chilean human rights community owed much to the support from the Catholic Church. The Church created the Vicaría de la Solidaridad (1976 – 1992), which granted legal, economic, technical and spiritual assistance to people persecuted by the military regime and their families (Memoria Chilena, 2019). These organisations were discredited rather than repressed. However, during the post-transitions period there was a fragmentation of the Human Rights Organisations. The Vicaría disappeared, and so ceased to exercise its former centripetal force over the organisations. The human rights community appeared to both shrink and fragment, and remaining organisations were extensively streamlined (Collins, 2010). This situation was a consequence of accountability in legal and legislative matters as it was not a goal shared by all the actors, and even those who shared it did not have a concerted strategy.

On the other hand, for some scholars (Goicovic, 2010; Rosas, 2004 in Iglesias, 2017), the Concertación administration, under the cover of democratic legitimacy deactivated social movements and, when necessary, repressed them. Some hypotheses point to a transaction



more than a transition. This transaction was made by the popular movement's (like the labour movement that was mentioned above) supposed allies, 'middle-class professionals and center-left politicians' that involved concessions and high-level deals that ignored the aspirations of the popular sectors. 'Transformism' (Moulian, 1997: 141 in Iglesias 2017) and 'alienated transition' (Villella in Iglesias 2017) are other names for this process which is characterized by allowing the same structures dressed in other political trappings to expropriate the transition from the popular movements, which led to the exclusion of the 'arrangements' and the political participation necessary, that of 'governability' (Garcés, 2012: 23 in Iglesias, 2017). This shows a pattern in their way of achieving agreement, as mentioned before, that of a consensual policy-making style. At the same time, there was a transfer of social movement activists into governmental institutions, leading to a "disciplining" or institutionalization as a control strategy. This type of co-optation explains the breaking up of the socio-political group of actors who conducted a gradual reconstruction during the dictatorship and actively participated in the anti-dictatorial struggle (Iglesias, 2017).

In Chile Human Rights have been institutionalized recently with the creation of the Undersecretary of Human Rights 2016<sup>14</sup>, thus the structure around human rights in Chile is still new. In 2019, the quality of democracy was measured through electoral processes and pluralism, civil liberties, government, political participation and political culture. The index shows (The Economist Intelligence Unit, 2019) Chile with a punctuation of 8.08 positioning itself in the category of a full democracy; countries in which not only basic political freedoms and civil liberties are respected, but also where they tend to be underpinned by a political culture conducive to a flourishing democracy where the functioning of government is satisfactory, the media is independent and diverse, there is an effective system of checks and balances, and where the judiciary is independent and judicial decisions are enforced.

However, during the same year (2019) social unrest followed by riots and protests around the country demanded a new Constitution and the protection of cultural, economic, social and political rights. These contradictions can be explained by the little progress in solving inequality issues in the country. As shown in Graph 4.1, the Gini Index has not changed dramatically despite steady growth in the economy. Another explanation could be the lack of trust of the people in Chile in the business sector which is creating wealth but is not helping in the distribution of the wealth. In this regard, Corporate Social Responsibility has

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<sup>14</sup> The Undersecretary of Human Rights in Chile involves the development of the National Action Plan for business and human rights, as seen in Ch. 3.

been a common instrument in Chile used by the business sector to respond to social discontent.

### **Chile's Corporate Social Responsibility (CSR)**

Chile has deep roots of traditional philanthropy specially coming from religious leaders such as Father Alberto Hurtado who founded in 1947 the Asociación Sindical Chilena (Union Chilean Association – ASICH) which aimed to train future union leaders with Christian Socialist thinking and fair treatment of the workers, in order to contribute to the implementation of the principles of Corporate Social Responsibility (Escudero, 2019). Entrepreneurs organized around their concern for the social situation of the country; however, these actions focus more on the ‘forms’ of welfare rather than a real concern for the ‘content’ of development (Uribe, 2011). An example of this is the Chilean Chamber of Construction, operating since 1951, which promotes the development of this economic activity, and the well-being of workers (Acción Empresarial, 2003: 24); and the Sociedad de Fomento Fabril (SOFOFA), a non-profit trade union federation bringing together companies and unions, to promote good business practices in Chile (Beckman et al., 2009).

However, in the face of Chile's economic liberalisation, one of the ways in which Chile has faced challenges and gaps triggered by capitalism has been Corporate Social Responsibility. In 1998, the Mining Council was founded, a trade association that brings together the 17 largest mining companies established in Chile and encourages within the mining sector companies to act from strong ethical foundations (Consejo Minero, 2004). The importance of this entity relies in the value that mining has in Chile, as it is one of the most important economic sectors. Likewise, the mining sector has served as an example for the rest of the national industry in Chile, since in addition to promoting socially responsible practices, it maintains important communication with its stakeholders - the communities and workers, because of the high risk involved in working in such a sector (Uribe, 2011).

In 1998 one of the main organizations promoting CSR in Chile was born, Prohumana. It defines its mission as philanthropy and social responsibility developed through various programs and actions (Prohumana, 2019). The concept of CSR became more widely accepted in Chile around 2000, although the initiatives were still fragmented compared to modern CSR which is seen as being integrated into a strong management model (Beckman et al. 2009). By 2003, national companies in Chile still conceptualized CSR as “a way to provide economic support to assistance projects, through donations and contributions or

financing of programs” (Acción Empresarial, 2003: 33). Therefore, the evolution of CSR in Chile sometimes would appear to have stagnated in the philanthropic stage.

International organisations also influenced the country on CSR topics in the early 2000s. In 2001, Chile was the first Latin American country to join the Global Compact. By the end of 2007, 45 Chilean companies had signed the compact. Acción Empresas is an organization formed by more than 130 companies that aim to do business through sustainability. In Chile, this organisation represents the World Business Council for Sustainable Development<sup>15</sup> and seeks to position business sustainability as a business vision necessary for the construction of a more inclusive society (Acción, 2019). Both organisations have influenced the agenda on business and human rights. For example, the Global Compact introduced into the country human rights as a business issue with the promotion of Principle 1, where businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2, where they make sure that they are not complicit in human rights abuses. In addition, Acción develops paths for the business sector to integrate strategies as part of its core business. However, both organisations depend financially on the business sector conditioning their potential to demand major changes in their business behaviour.

According to Beckman et al. (2009) there at least two drivers of CSR in Chile. The first one is that business and civil society that have been promoting CSR in the country, in contrast to western economies where consumer and government regulators have driven CSR initiatives. The second driver is that successful CSR companies use a collaborative multi-relationship model, suggesting the importance of developing context-specific models. Chilean firms are at many different stages of CSR: companies with no CSR initiatives, those with philanthropic programmes, others with initiatives in particular areas such as marketing or operations; and leading companies developing initiatives in strategic management models. In addition, there is scant evidence on the CSR influence over Small and Medium Enterprises (SMEs) unless they work as suppliers for Multinational Corporations. In fact, MNCs were largely responsible for initiating CSR practices in Chile (Beckman et al. 2009).

The government of Chile has also promoted corporate social responsibility through initiatives like the Council for Corporate Social Responsibility of the Ministry of Economy which aims to advise in policy making regarding social responsibility for the country’s sustainable development. The government also supports international standards like

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<sup>15</sup> WBCSD is a global, CEO-led organization of over 200 leading businesses working together to accelerate the transition to a sustainable world (WBCSD, 2019).

International Finance Corporation (IFC) Performance Standards, which help developing countries achieve sustainable growth by financing investments, mobilizing capital in international financial markets, providing advisory services to businesses and governments (IFC, 2016), and OECD Guidelines for Multinational Enterprises, through a focal point, explained in Chapter 2.

Chile also supports the Tripartite Declaration of Principles on Multinational Enterprises and Social Policy, adopted by the ILO in November 1977 which provides direct guidance to enterprises (multinational and national) on social policy and inclusive, responsible and sustainable workplace practices (ILO, 2017). Moreover, the country supports The Guide to Principles on Corporate Social Responsibility in the human rights field and the environment in the Organisations of American States (CJI / doc.449 / 14. rev1). The Dow Jones Sustainability Chile Index (DJSI Chile) is composed of Chilean sustainability leaders, determined by a company's Total Sustainability Score (TSS) as identified by SAM through its annual Corporate Sustainability Assessment (CSA). The index uses the "best-in-class" approach representing the top 40% of the Santiago Stock Exchange's IGPA Index (Índice General de Precios de Acciones) based on long-term environmental, social, and governance factors (Dow Jones CLP, 2019).

In sum, the events explained in this section shape the way Chile responded to the implementation of the UNGPs. Therefore, context matters (or the crowded spaces matter) to understand the performance and commitments from the actors involved in the development of the NAP. In the first place, historical background shows that the democratisation process involved the restoration of institutions and the search for justice for victims of human rights abuse. We can see from these processes that Chile maintains a 'closed' and/or elitist form of doing politics. This is called consensus style as in the search for stability the groups in power wanted consensus in the decision making and policy making. Another key factor in this analysis is the national business system which shows the relevance of the state and business sector relationship and their participation with the global market. The stability in the economy of the country has been useful to create a sense of social stability specially after several years (1973 – 1989) of a dictatorship that violated human rights. Moreover, to understand how the implementation of the same hybrid initiative can be different or similar in each country, we need to provide the same background for Mexico.

### **4.3 Mexico's transition to democracy: from the Partido Revolucionario Institucional to electoral alternation**

The Partido Revolucionario Institucional (PRI) was formed after the Mexican revolution in 1929 to share power and give continuity to the revolution's ideals, and it continued in power until 2000 (Blake, 2008). The government built a strong political party, concentrating the power in it which gave a sense of efficiency and stability to deliver policies. The party was at the heart of the clientelistic networks that were the foundation of the authoritarian rule in Mexico. It was also the vehicle of the president's symbolic presence at all levels of society. Decisions regarding the party's leadership were all taken personally by the president during the 70 years that the PRI ruled in Mexico. The PRI corporatist structure traditionally organized and controlled the participation of workers, peasants, and urban middle-class groups (Loaeza, 2015).

In economic policy, the PRI pursued state capitalism. For most of this period, the growing economy and the government's willingness to dole out economic favours proved enough to convince citizens not to challenge the party. In addition, the PRI's use of transactional politics took patron-clientelism to a new level transforming most of the country into a patchwork of interrelated political machines. The line between the party and the government evaporated (Blake, 2008:326). However, the continuity of the political system was made possible by strong institutions: a coherent state, a powerful presidency, and the virtually unchallenged dominance of a party closely linked to the state. A weak rule of law and arbitrary public officers, particularly with respect to law enforcement, characterized Mexican authoritarianism. The party extended presidential authority beyond constitutional limits, selecting candidates for elected office at the local, state, and national levels. This gave him control over the renewal of the political elite and, more importantly over Congress (Loaeza, 2015).

During the period of authoritarian governments (1930- 1990s), business associations like the Confederation of National Chambers of Commerce (Confederación de Camaras de Comercio – CONCANACO) and the Confederation of Chambers of Industry (Confederación de Cámaras Industriales de los Estados Unidos Mexicanos- CONCAMIN), formed in the late 1930s, were established and sustained by government intervention. The largest rival organisation to CONCANACO and CONCAMIN is The Employer Confederation of the Mexican Republic (Confederación Patronal de la República Mexicana -COPARMEX). Formed in 1929, COPARMEX is the organisation of employers in Mexico which identified with the call for market-oriented reforms and which supported candidates

from the opposition, the Partido Acción Nacional (National Action Party, PAN). The labour movement held close ties to the PRI as some members of the Confederation of Mexican Workers (CTM) were also members of the PRI (Blake, 2008:336). This situation calls attention to the possible conflict of interest and corruption that has permeated all the branches in government due to the well-known corporatist characteristic of the Mexican state. There is collusion regarding economic interests of those few actors that can reach spaces of influence, to protect individual economic interests. Corporatism is defined as a form of interest intermediation, a formalized system between representatives of the state, labour organizations, and the private business sector. Schmitter (1974 in Samstad, 2002) further distinguishes between "state corporatism," in which the government exercises a high level of control and influence over the constituent corporatist groups, and "societal corporatism," in which those groups maintain a significantly greater degree of autonomy from the state. This applies to Mexico in two ways. First, the government's influence is visible in organisations that should be autonomous as they promote the government's agenda; and second, it was not only the government involved, but the national party was able to manipulate the people through the co-option of organisations and labour movements thus spreading its hegemony throughout the country.

Economic growth from 1960-1979 (Faal, 2005) helped develop a more urbanized and educated society, that could not be controlled so easily. Consequently, by the end 1960s, the PRI regime was becoming less effective. The student mobilization of 1968, which resulted in a massacre of protesters in Tlatelolco in Mexico City showed Mexicans could turn to nonelectoral forms of participation (Loaeza, 2015). In 1988, the presidential election was plagued by irregularities and allegations of fraud. Many Mexicans and observers believed that Cuauhtémoc Cardenas, had won the elections and was the new face for the opposition. Once a member of the PRI himself, he was expelled from the party for demanding PRI's presidential nomination to be a competition and encourage public debate. In 1987 Cardenas founded the Frente Democrático Nacional (FDN), a coalition that was a forerunner of the Partido de la Revolución Democrática, which in 1989 united various currents of the left into a single organisation (Loaeza, 2015).

After the 1988 election, President Carlos Salinas changed government-group relations, giving greater attention and consequently prestige to business and less attention to labour (Ai Camp, 1996). Labour needed less attention because the government controlled the leaders, thus organised labour failed to achieve political and economic influence because of its co-option by the party and because it represents a small proportion of all workers. Unions

have also remained weak and dependent on government for funding because most of their members did not pay dues. Nevertheless, more recently workers have been paying dues to maintain the Unions without obtaining any real advantage from their memberships<sup>16</sup>. It makes sense that the Salinas government paid more attention to business, as overt participation of entrepreneurs in the electoral arena changed the traditional relationship between business and government (Ai Camp, 1996). This contributes to corruption in Mexico as the boundaries between the business sector and the government overlaps, creating more privilege among the business elites to develop their activities with fewer obstacles.

It is worth mentioning that corruption was grafted onto the structure of the country by the PRI. 'The Mexican state has historically lacked the checks or autonomous sources of power necessary to force its representative to behave according to the rules. Under such conditions, the president and in fact all superiors have been able to reward loyalty and other behaviour that corresponds to interests other than to the law and general will' (Morris, 1999: 627 and 628). As suggested earlier, one of the primary consequences of corruption has been widespread sentiment of distrust toward the government. However, the political corruption and public disillusionment noted earlier all coexisted for years with the regime's remarkable record of political stability. This suggests that these patterns have contributed to that stability, or at least have failed to undermine it (Morris, 1999).

### **Economic Policies implemented during the authoritarian regime**

Mexico suffered a series of situations that led the country into a deep economic crisis. In 1970, President Luis Echeverría attempted to restore stability with an economic program of Shared Development that called for income redistribution and increased help for the agricultural sector, government investment in the social security system, education and in housing (Nazmi, 1996). These policies, together with fiscal imbalances and the oil shock of 1973 compounded Mexican economic difficulties. Mexico decided to fight the recessionary impact of the oil price increase by adopting pro-growth policies financed by foreign resources (Nazmi, 1996,). In 1981, with Jose Lopez Portillo (1976-1982) as president, government's revenues increased by fewer than 7 percent, while public sector expenditure rose by close to 25 percent. Public sector borrowing requirements doubled to more than 14 percent of the GDP (Nazmi, 1996). The Mexican government turned to foreign banks for new loans, but the country was hugely indebted to domestic and foreign bankers and was

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<sup>16</sup> Currently new reforms are taking place that could give more rights, better salaries and representation to the worker. Today, the discounts for paying the memberships are not automatic and have to be accepted by each worker. These reforms are related to the renegotiation of the NAFTA now called USMCA (Cattan, 2019.)

paying very high interest rates. Therefore, the banking system was nationalized to control the economy promoting a lack of trust from business and the loss of foreign capital, which affected the business- government relationship (Ai Camp, 1996).

In December 1982, President Miguel de la Madrid introduced a programme to restore economic order by generating trade surpluses needed for servicing the country's foreign debt. In 1983, Mexico and its foreign creditors reached a restructuring agreement involving new loans with more attractive terms (Nazmi, 1996). However, import substitution, industrialization and the overreliance on oil exports became a danger for Mexico. To correct these, a major trade reform was implemented that included tariff reductions, a phasing out of import license requirements, and a gradual elimination of quantitative restrictions on imports and import price controls. In 1987, President de la Madrid initiated structural reforms targeting the fiscal deficit and liberalizing foreign trade. Consequently, Mexico entered bilateral agreements with the United States that strengthened the trade relations between the two countries (Nazmi, N., 1996, p. 102).

In December 1988, Carlos Salinas de Gortari introduced a Pact for Stability and Economic Growth followed by an important debt reduction package. This administration implemented reforms in three areas: acceleration of the privatization program, privatization of the 'ejido' communal land tenure and putting into effect the North American Free Trade Agreement (Nazmi, N., 1996). Structural Adjustment Policies (SAPs) were tied to international financial loans for many countries across the globe. These policies were high-powered austerity programs that included currency devaluation, cuts in government spending, market deregulation and trade liberalization (Benería, 2000), but for Mexico the SAPs were implemented as a 'shock therapy' to open the markets and restructure the foreign debt. In this sense it is possible to consider that the economic liberalization and privatization of state-owned enterprises were decisions taken as a solution to the economic crisis that was faced in the 1980s -1990s. Thus, the relationship with foreign investment and the private sector was built from the beginning as a tool for stability and economic growth linked to externally imposed agendas.

These economic policies had impact on higher import prices and foreign competition that generated unemployment and the shrinking of household budgets for a large proportion of the population (Benería, 2000). The loans had their origins in the accumulated foreign debt that was a result of a variety of factors such as the oil crisis, the lax lending policies that resulted from the accumulation of petrodollars, the rise in interest rates in the United States, the withdrawal of large amounts of funds from indebted countries resulting from fears of



devaluation and the growing trade and balance of payment deficits, and the falling prices of commodities exported from Developing Countries. The goal of these packages was to return to economic health and generate resources that would help pay the debt (Benería, 2000 and Pearson, 2000). However, the acceleration of the economic liberalization increased internal balances, both in their social and territorial aspects; this reflected in the concentration of wealth, increasing levels of poverty, inequality, crime, and violence (Torres and Rojas, 2015).

The establishment of the North American Free Trade Agreement (NAFTA – 1 January 1994) between the United States, Canada, and Mexico was a trading regime that guaranteed the advantages of transnational companies and their local partners. Mexico accommodated to the interests of the corporations by keeping low wages and open economies, “favorable” to foreign investment. Its governments also provided cheap natural resources, weak labor laws and ineffective environmental regulations (Harris, 2000). In 2012, trilateral trade amounted to \$ 1,056 billion dollars, a record growth of 265% since it came into force. Mexico became the second largest trading partner of the United States (SRE, 2016). However, according to Nazmi (1996), most Mexican people are worse off today than they were before NAFTA. In 2012, Mexico’s poverty rate was of 52.3 percent almost identical to the poverty rate of 1994. As a result, there were 14.3 million more Mexicans living below the poverty line in 2012 (Weisbrot, et. al., 2014).

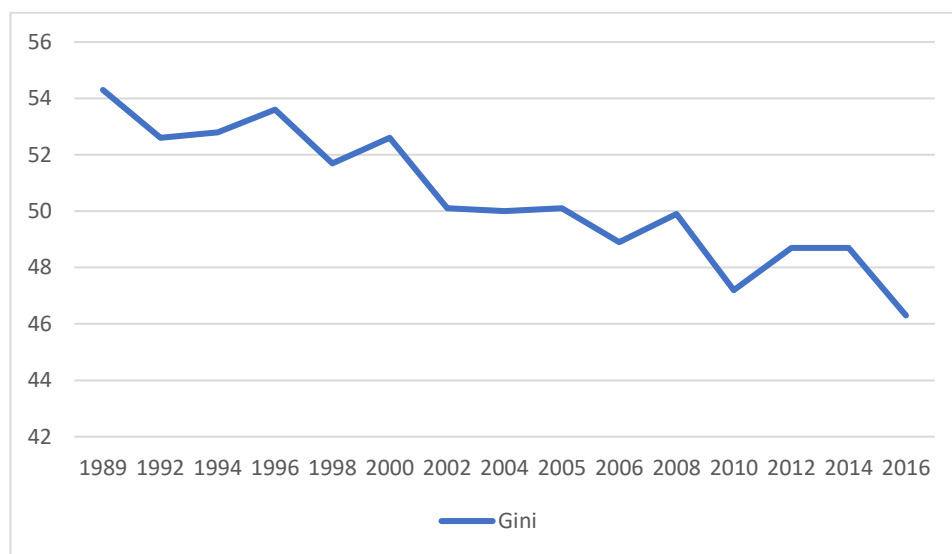
### **Business system in Mexico**

Mexico has a large industrial complex dedicated to export activities. Primary activities like extractive industry or agriculture are less relevant than in other countries of the region, even though oil is a significant source of fiscal revenue (OECD, 2019). The Mexican economy had undergone profound structural change since 1980. Direct government intervention and participation in the productive economy substantially diminished, notably through a vast privatisation program. In the 1980s and early 1990s, market-oriented structural reforms transformed Mexico's economy from a highly protectionist, public-sector-dominated system to a generally open, deregulated "emerging market" (Global Security, 2019). As mentioned previously, Witt et al. (2018) present a classification of the business systems and locates Mexico as an *emerging economy* due to the relatively low levels of per capita GDP (Witt et al, 2018).

Other characteristics include a weak past, short-term job tenures, private skills acquisition, suppression of unions, bank-led finance allocated on the basis of relationships and state

guidance, top-down decision-making inside firms with low levels of delegation, promotion based on relationships, family and state ownership of firms with often poor investor protection, low rule of law, predatory state policies, top-down state decision-making with generally low levels of voice and accountability, and poor state effectiveness (Witt et al, 2018). The main political implications of these characteristics are the lack of accountability in the business-government relationships, which could lead to benefit private interests through mechanisms like corruption thus affecting social cohesion and trust in society. As a consequence, the elites in the country get richer while large sections of the population are condemned to extreme poverty, rather than facing mere inequality issues. Distinguishing poverty from inequality is crucial to understand the impacts of the business system on the lack of development. ‘The distinction should be simple: poverty is when people do not have very much and inequality is when some people have more than others’ (Worstell, 2015).

Figure 4.3 Gini Index



Source: Elaborated with World Bank Data (World Bank Indicator, 2021b)

Table 4.2 Economic performance Mexico

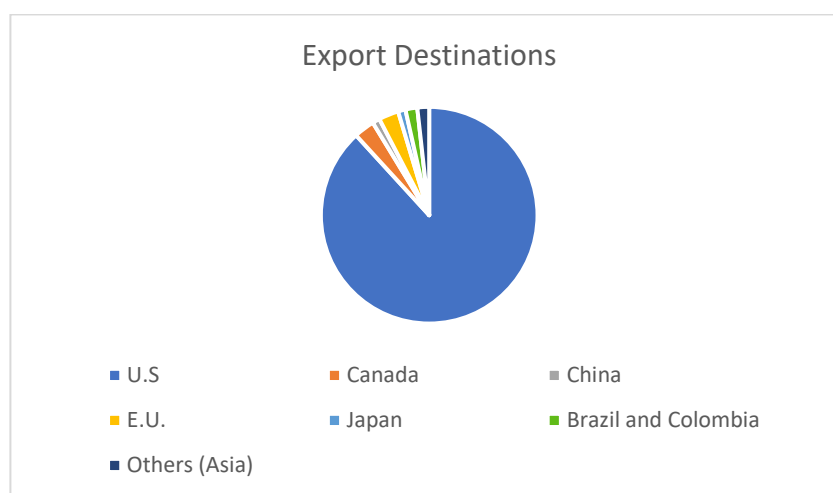
Indicators	1990	2000	2010	2018
GDP (current US\$) (billions)	261.25	707.91	1,057.80	1,223.81
GDP growth (annual %)	5.2	4.9	5.1	2.0

Source: Elaborated with World Bank data for 2019

In Mexico, GDP growth averaged 2.5% from 2005-2015, and it is expected to remain close to 2% in the coming years (OECD, 2017s in OECD, 2019). However, protectionism by trade partners like the United States and Canada, poses a risk to the Mexican economy. Unemployment has remained low for most of the past decade (4.5 % average), failing to achieve a reduction in poverty. 50% of the population is below the national poverty line, the same as two decades earlier (OECD, 2017H in OECD, 2019), additionally, 56 % of employment is informal (INEG, 2017 in OECD, 2019).

In terms of sectoral composition, agriculture accounted for 4.2% of GDP during the past ten years, the lowest figure in this report (World Bank, 2018). Mining accounts for around 6% of total value added, in line with the regional average (ECLAC, 2016 in OECD, 2019). Manufacturing averaged 18% of GDP during the past decade -above the regional average. Services account for 61% of the economy, with real estate and financial intermediation and commerce shares above the LAC mean (OECD, 2019). The amount of domestic credit provided to the private sector remains below the regional mark (35.6 % of GDP compared to 49.2 % for LAC in 2017). Nevertheless, Mexico is a very open economy; its openness ratio (66 % of GDP for the past five years) is high for such a large economy (World Bank, 2018). NAFTA has transformed the Mexican economy; the new United States-Mexico-Canada Agreement (USMCA) signed on 30 November 2018 will continue to give Mexico a privileged entry to the US and Canadian markets (OECD, 2019).

Figure 4.4 Main Partner Countries Mexico



Source: Elaborated with data from Santander Trade Portal

The US is the biggest destination for Mexican exports (81% of exported value) and the principal origin of imports (46%). China and the European Union (EU) follow in the import origin ranking (18 % and 11%, respectively). This data shows there is less diversification in the Mexican market. The exports basket is dominated by manufacturing (90 %) (OECD, 2019). The automotive industry heads the list of exported products, followed by electronic devices like data-processing machines and telephones. Agriculture, fuel, and mining products make up only 16% of exports, a low figure when compared with South American countries. Foreign direct investment (FDI) is relatively low, averaging 2.6% of GDP in 2005-2015, compared to 3.2 % for LAC (OECD, 2019).

In short, capitalism in Mexico is a disarticulated one because according to Saucedo et al and Bizberg (2015; 2014) the articulation of the productive structure occurs externally. The state intervention is weak, the coordination between unions and capital is almost non-existent because social actors are also weak, the industrial relations system is dominated by flexibility, and the welfare system is residual and assistance oriented, this is therefore international subcontracting capitalism. The current economic system has been a consequence of the crisis that prevented a more rational planning; the decisions have been taken to achieve stability more than development, thus the huge problems of inequality and poverty in the country.

Understanding the economic policies implemented during the authoritarian governments provides my study with the background to comprehend the current economic situation and the current relationship between the government and the private sector. It is clear that Mexico

has developed dependency on the economy of the U.S. therefore it is affected greatly when the U.S. economy suffers any difficulty. It is also important to highlight that while the economic policies have created some sort of 'stability,' inequality in the country has not improved significantly. Moreover, the business sector developed during the government of President Salinas has benefited by the economic policies. The following section will discuss the transition to democracy to understand the most recent changes that have been made to fight some key factors like corruption and impunity.

#### **4.3.1 Transition to democracy: institutions, Civil Society and Human Right**

The democratic transition in Mexico began with the administration of Ernesto Zedillo in 1994 and was followed by an economic crisis aimed at achieving democratic normality in the political system, involving setting limits on presidential power, loosening the ties between the presidency and the PRI, and assuring the effectiveness of checks and balances. Zedillo appointed an active PAN leader as attorney general, established dialogue with Partido de la Revolución Democrática (PRD, the opposition) and supported a reform in 1996 to strengthen the autonomy of the electoral authorities (Loaeza, 2015). These actions created tensions in the relationship between the president and the PRI elite but gave an opportunity for other political parties to perform better in federal elections. In 1997, PAN and PRD together won majority of 247 representatives in the Chamber of Deputies compared to 239 from the PRI. Between 1994 and 2000, PRD and PAN also won gubernatorial elections, leading to the path for alternation when in July 2000 Vicente Fox from PAN won the presidential elections. Since then, PRI as the hegemonic party lost the exclusive space for the exercise of politics and access to government.

As explained before regarding the quality of democracy, a country is sufficiently democratic when it has universal suffrage, and its democracy has been uninterrupted for a minimum number of years (Lijphart, 2010). Although the situation in Mexico did not represent a perfect example of Lijphart's definition, it was the first time in 70 years that Mexico had an electoral process with such low levels of suspicion of fraud and manipulation. Currently, the Mexican government promotes a plural forum of free debates. The Supreme Court of Justice plays a more determining role in the resolution of political conflicts. The emergence of autonomous state agencies also helped to limit the presidential regime. In 2002, President Fox created the Freedom of Information Law:

The final product is a very good law: well-conceived, well-articulated and unequivocal in its intent to guarantee of the right of citizens to obtain information

about their executive branch. It rests on a premise of disclosure, defining all government information as public (Article 2), and directing government agencies and entities to favor “the principle of publicity of information” (Article 6) over secrecy. It requires agencies to publish in a routine and accessible manner all information concerning their daily functions, budgets, operations, staff, salaries, internal reports, and the awarding of contracts and concessions (Article 7). It grants citizens the right to seek the release of information that is not already public through an uncomplicated request process (Article 40), with a right to appeal an agency’s decision to deny information (Article 49), and the right to take the case to court in the event that the appeal is denied (Article 59) (Doyle, 2002).

However, Mexican democracy is still incipient, as its main institutions have not yet been consolidated. The consolidation process aims to be the same or longer than the transition process, because structural elements from the past persist that have not been overcome (Giménez, 2017). Two important examples will be mentioned in this section, the political party opposition and the development of the Federal Electoral Institute.

### **Opposition and Institutions**

The development of political party opposition is an important aspect of the democratisation process in Mexico. During the first years of the transition to democracy, there were two major political parties that became the opposition to the PRI, Partido Acción Nacional (PAN) and Partido de la Revolución Democrática (PRD). PAN was founded in 1939 by a group of Mexico City middle-class professional-Catholics representing the conservative opposition to the revolution (Loaeza, 2015). The Partido de la Revolución Democrática, which united various currents of the left in Mexico, became the dominant left-wing party. In 1988 Cardenas was close to winning the presidential elections; but, as mentioned before, the manipulation of the elections helped PRI stay in power. However, the opposition changed Mexico’s political landscape as PRI failed to win its large majorities in the Congress. This panorama gave Mexico the opportunity to fulfil political rights for the first time in 70 years. Firstly, the political environment permitted more competition although elections were still manipulated by PRI. Secondly, having more political parties with the chance to win an election, gave the citizens the possibility of voting for the party and the people they believed in.

Moreover, opposition also led to the creation of the electoral code known as COFIPE, which was the price PAN demanded for accepting Salinas’ election in 1988 (Loaeza, 2015). The

most important feature of this legislation was the creation of the Federal Electoral Institute (Instituto Federal Electoral, currently Instituto Nacional Electoral – INE)<sup>17</sup>; which was an autonomous permanent body with its own budget and professional administrative staff, which also took charge of organising and administering the electoral process. In addition, Congress altered the composition of IFE by giving to six citizen councillors - who had no party affiliation, the balance of power in the member body that was formed by eleven people (Ai Camp, 1993). This institution gave more protection to the citizen's vote, which affected political rights by allowing more and fairer participation, which at the same time influences representation when discussing the basic needs and interests of the vulnerable majority.

### **The emergence of civil society and human rights in Mexico**

The emergence of civil society in Mexico in the early 1980s is linked to three factors: First, neoliberalism deepened the process of differentiation of the state, economy and society; Second, for the first time after the 1917 revolution, a consolidated party system appeared as a means for a regime change; and third, several civic-cultural movements spread across the country, creating a civil society centred on the struggle for political rights, democracy and rule of law (Avritzer, 2006). Civil society in Mexico involved a classical dispute between the political system and societal actors regarding the organisation political process. The formation of civil society in Mexico involved two different phases: a first one, as early as the 1980s, involved the formation of urban social movements in the struggle for the legalization of urban tenure. This led to the emergence of social action independent of the state which attempted to incorporate social leadership by the state. Second, in the 1990s civil society challenged the process of generalized election fraud and to constitute a civic movement for monitoring elections (Avritzer, 2006) which led to negotiations between associations, political parties and the PRI government for an electoral change.

The political changes introduced with President Salinas changed certain features and structures of established state-group relations, as mentioned before, with labour and business relations. This contributed to the increasing growth and strength of nongovernmental organizations and to links with groups in other countries, ranging from environmental to human rights allies. Human rights organizations in Mexico -both independent and affiliated with the Catholic Church- obtained media attention and support for their agendas, thereby becoming important actors in the political and social arenas (Ai Camp, 1996). Some analysts believe that President Salinas attempted to respond to local nongovernmental groups and to

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<sup>17</sup> In 1992, the INE introduced vote photo identification card that soon became the most important and reliable official ID document in Mexico.

reformulate the relationship between these grassroots organizations and the government by channelling large amounts of federal investment into local projects to develop a new kind of leadership (De Leon and Hernandez-Quezada, 2006). For years, the government either co-opted independent voices by involving them with the government or marginalized them by shutting off access to all levels of government (Blake, 2008:337). This form of co-option harms the social fabric and weakens the social movements. However, the erosion of the PRI's control over the political system expanded citizens' willingness to launch independent non-governmental organisations (Ai Camp, 1996).

In terms of human rights, in 2006 the Mexican government developed a report detailing human rights abuses committed by the state between 1964 and 1982. The report documented the country's 'dirty war' that amounted to hundreds of murders and disappearances as well as thousands of cases of torture and illegal detention as a consequence of drug trafficking, cartels, government opposition and the defence of human rights. In addition to daily abuse of human rights, Mexico has been stalled by a corrupted system, overseen by militarized police forces that have enjoyed substantial autonomy and impunity. According to Cárdenas, the country has had at least three prominent episodes of abuse: the massacre of students in Mexico City in 1968, an unarmed demonstration that was attacked by police and military force resulting in hundreds of students being killed; the conflict in Chiapas in the mid-1990s with the Zapatista Army where 45 indigenous people were killed; and the rise in murders and the disappearance of women, especially in Juarez city working for maquiladoras factories (Cárdenas, 2010). As mentioned previously, the War on drugs promoted during the presidency of Felipe Calderon in 2006 increased human rights victims. The death toll in Mexico was over 150,000 during Felipe Calderon's term and Mexican people experienced unprecedented levels of violence and insecurity. According to Sánchez (2019) the violence caused by the "war on drugs" has been instrumental in increasing control over and maintenance over poor social conditions and land in the interest of capital expansion. 'The narrative of the war on drugs through militarization was framed as a benevolent tactic to protect ordinary citizens. However, militarization and para-militarization has mainly benefited transnational corporate expansion' (Sánchez, 2019:177).

This violation of human rights also represents the failure of a political and economic system. As mentioned before, the consequences of the economic liberalization influenced the lives of people. The Zapatista Army was explicitly resisting globalization, and the maquiladoras factories are a product of the need for global economy to occur in multiple stages and in different countries with cheap labour. This provides a direct link between business and



human rights, as established by Benería in the section above; there is evidence that economic interest has been affecting human rights. One contemporary example is the case of environmental defenders who are assassinated in Mexico. Current data shows that during 2018, the Mexican Centre for Environmental Law, A.C. (CEMDA) documented 49 attacks against defenders of the land, the environment and the territory; in addition to the murder of 21 human rights defenders. The organization points out that in these cases the Protection Mechanism for Human Rights Defenders and Journalists is insufficient to address this problem, one which intensifies within a context of violence and the installation of megaprojects in the country (CEMDA, 2018). This suggests a need to connect business interests and human rights abuses more explicitly in the Mexican national agenda.

To summarize, Mexican democracy meets some of the main factors explained in the literature analysing the quality of democracy in a country. Zedillo's efforts to democratise the party, to develop opposition and protection for fair elections set the ground for improvement. However, a constant element in the discussion is impunity and the lack of rule of law in Mexico which allows systematic violations of human rights in the spheres of political, social and civil rights. Also, there is evidence that economic interests have been affecting human rights, as in the case of development projects. Mexico has been classified as a flawed democracy as there are significant weaknesses in governance, an underdeveloped political culture and low levels of political participation (The Economist Intelligence Unit, 2019). The following section will present how, similarly to Chile, Mexico has also used Corporate Social Responsibility as a strategy to decrease the business sectors' impact on society.

### **Mexico's Corporate Social Responsibility (CSR)**

Corporate Social Responsibility has also been an instrument implemented in Mexico to respond to the current economic situation and business system. Similarly to Chile, CSR in Mexico can be first traced to its philanthropic traditions (CEMEFI, n.d.; Blasco and Zolner, 2010). From 1940 to 1965, the ruling Institutional Revolutionary Party (PRI) extended welfare provision, particularly health and social protection. Both the church and state had specific activities, which left business with no obvious role or obligations in social issues (Blasco and Zolner, 2010). However, social inequalities worsened in the 1960s under the prevailing development model triggering a diversification process of welfare initiatives intended to promote development among marginal, rural and urban groups (Fernández & Villalobos, n.d., p. 4 in Blasco and Zolner, 2010). Businesspeople supported the initiatives to counter the state's paternalistic approach to welfare, whereas the church was experiencing

changes due to the Liberation Theology movement that reinterpreted the Christian faith to signal a preferential treatment of the poor and promotion of social justice (Berryman, 1989 in Blasco and Zolner, 2010).

Several important philanthropic institutions were established during this period to tackle new social problems, such as Miguel Alemán Foundation, the Mexican Health Foundation, the Environment Education Foundation, and the Televisa, Banamex, and Bancomer foundations (Blasco and Zolner, 2010). It is possible the institutions were linked to foundations linked to large firms or prominent businesspeople. According to Serna, Corporate Social Responsibility did not appear in Mexico until the 1960s when a group of entrepreneurs founded the Social Union of Mexican Entrepreneurs<sup>18</sup> (USEM), an initiative of Catholic inspiration that was constituted as a proposal of social promotion by carrying out training and technical assistance to poor regions of the country (Serna, n.d.).

The first expressions on CSR in Mexico were focused on labour relations, the extension of fiscal responsibility, poverty and community development, through compensatory actions. These actions evolved from traditional philanthropy and responded with social assistance to more specific strategies regarding corporate social responsibility (Serna, n.d.). Nonetheless different actors needed to be involved as the process required a more inclusive response to social affairs. Thus, companies expected that business associations, civil society organizations, trade unions, public sector and academia to become actively involved (Serna, n.d.). An actor that has promoted CSR in Mexico for almost 30 years is the Mexican Centre for Philanthropy (CEMEFI) which was established in 1988. This organization has been promoting practices and actions that seek to be considered as CSR (Serna, n.d.). CEMEFI gives awards to companies with the best CSR practices and considers CSR a new way of managing and doing business through sustainability and the interests of stakeholders (Cemefi, n.d.).

More recently international influence in Mexico can be observed by initiatives like The Global Compact (UNGC), which was launched in 2005 by Mexico's private sector umbrella organization, the Consejo Coordinador Empresarial. Also, the Mexican Sustainability Index (Mexican Exchange), launched in 2011, allows companies to follow up on environmental care, social responsibility and corporate governance issues (BMV, n.d.). In Mexico there is

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<sup>18</sup> The USEM is a voluntary association of business leaders with three main aims: (a) to disseminate the principles of Christian social doctrine in contemporary economic life, (b) to promote a professional identity among the business community that enables the practical application of the principles of Catholic social doctrine, and (c) to shape the conduct of businesspeople so as to have as much social impact as possible (Revista USEM, 2005, p. 5 in Blasco and Zolner, 2010)

also an innovative role of a Business Ombudsman that aims to promote among employers and workers ‘a culture of respect, protection and defence of political, social, economic, cultural and environmental human rights. This role is represented by Salvador Ortega Lopez, a well-known businessman in Mexico City who has as his main purpose is to protect the economic rights of companies and to safeguard the integrity of their personnel in order to achieve a healthy sustained development of the Mexican economy (Ombudsman Empresarial, 2020).

However, the interest in modern CSR in Mexico is very recent and has been specifically promoted by the business sector as they discovered the benefits that social responsibility practices can have for their businesses. The participation of civil society organizations in this topic has been very low and academia has addressed CSR in very general terms (Serna, n.d.). Nevertheless, some scholars like Tavis and Weyzig (2000 in Weyzig, 2006) consider that the low participation of NGOs has an important impact on the inception process of CSR in Mexico. This lack of awareness and interest in CSR by Mexican NGOs could be explained by their need to give immediate attention to acute poverty and other social emergencies. Furthermore, there exists a traditional civil-society perspective characterised by hostility towards the private sector in general (Weyzig, 2006).

CSR has also been promoted through the government with the implementation of the OECD’s Guidelines for Multinational Enterprises (adopted in 1994) and CSR awards (distintivos) which have been popular among the business sector. For example, the Family-responsible Company award that recognises workplaces that implement good labour practices in work-family balance, equal opportunity, and prevention of violence and sexual harassment (STPS, 2019). The Award of Inclusive Company (DEI) Gilberto Rincon Gallardo is given to companies that implement and operate inclusive labour policies for workers with different abilities or vulnerabilities. These types of awards are designed based on a ‘best practice’ scheme that identify good actions and replicate the practices. Although these kinds of initiatives are positive for CSR promotion and open spaces for debate, they fail to guide companies in improving their behaviour via their individual activities.

In summary, Mexico owns a tradition of philanthropy as a way in which the business community responds to its impact on society. Christian faith and foundations that belonged to private companies lead the social work around labour issues, poverty, and community building. More recently, CSR has become a field of interest in Mexico. In fact, the country has developed a diversity of initiatives that aim to promote good relationships between the

companies and society. Some of these initiatives had been promoted by the government and some others by international organisations which have had an influence in the country specially in informing and disseminating what CSR means. However, the inception of CSR in the country is still low due to the lack of participation of academia and NGOs. The following section will discuss the differences and similarities between the countries' contexts, and this will help understand how each country respond to the implementation of international frameworks like the UNGPs.

#### **4.4 Comparing the differences and similarities in Mexico and Chile's Contexts**

Democratic transitions in Mexico and Chile compare and contrast in many ways. First, Chile was ending a dictatorship by democratic means and Mexico was limiting the national party's power that had consolidated and held power for 70s years after the revolutionary movement. In a way both countries were ending authoritarian governments. However, Chile had institutions, a democratic tradition, and rule of law (even during the authoritarian government) that allowed a 'smooth' beginning to their democratic transition, albeit with some caveats. In Mexico, the PRI was able to develop a system based on corruption where the party held all the power, especially the president, who represented the party. But only the party and the corporatist relations were strong in Mexico, there was no indication of democratic traditions or rule of law.

Chile and Mexico had been implementing market-oriented approaches before the democratization process. Chile began after the military intervention of 1973, thus, Chile had been implementing liberalization policies for almost two decades and had economic stability. Mexico began 10 years later in the 1980s as a response to the economic crisis and international aid that came accompanied by structural adjustment policies which limited the State's influence on economic matters. Chile had to implement these policies too as they were accompanied by International Financial Institutions, which promoted the transition from the military regime to a democratic government. Chile was able to do this on its own terms by defining a business system based on a developmental state. In contrast, Mexico had a disorganized system that seemed to follow other actors' needs and interests. Both countries showed a close relationship with the business community. In Chile this sector became influential with the military regime and in Mexico with the privatization of national companies that benefited the political elite. This marked the type of relationship that the governments would have with the business sector. Perhaps one of the most important distinctions between the countries regarding the impact of their economic policies is that in

Chile the policies promoted inequality, whilst in Mexico they affected inequality and condemned the population to extreme poverty.

Although the transition to democracy and economic stability allowed the instauration of the rule of law to some degree in each country, the methods and scope have been different. In Chile some freedoms were regained with the first Concertación government, though the country still faces problems with free education and the health system that was privatized. Thus, access to good quality education and health services is available only to higher social classes. On the other hand, the Constitution of 1980 contains many obstructions to a real democracy, as it protects the right-wing goals by allowing the veto of certain topics. In addition, political parties were too debilitated during the military regime, thus there is an important lack of representation within the government. The lack of freedom for political opposition affected the connection between the people and the political parties.

In Mexico, democracy allowed the development of better conditions for respecting political rights through fair elections and by allowing political opposition. With the creation of INE, the government also gave more opportunities for fair competition. Further, the proliferation of parties in the Mexican system affects the efficacy of democratic elections as voters can be very divided thus allowing a candidate to win with a small percentage of voters. Although sectors like health and education are free for most people in Mexico (workers mainly) the access to the services can be restricted due to distance, as when people are located outside the big cities. It could be said that conditions improved in ways different to the state's capacity to protect rights. But it is also evident that the reforms lacked structure and profundity and were often superficially placative measures designed to calm the people's demands. However, the same measures promoted social mobilization and a more organised civil society.

The way in which governments respect the rule of law,<sup>19</sup> generally seen as key for upholding human rights -the way they do politics- marks important differences as to how they can implement and promote national frameworks. In this regard, we can observe a very close relationship between the government and the business elite in Chile, along with low levels of corruption. In Mexico, the corporatist relationship within society was more hidden.

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<sup>19</sup> A formal conception of the rule of law examines the formal characteristics that law must have if a legal system is to provide non-arbitrary framework around which subjects can form expectations and live their lives. This notion essentially concerns the character of law mechanisms of mediation between state authorities and social actors. A second notion of the rule of law is more demanding and requires that states authorities and lawmakers themselves be subject to law, such that laws and not men purportedly rule (Barros, 2003)

However, for both countries, the business sectors' role has been determinant in securing economic stability for Chile and economic improvement for Mexico. Both countries have very open economies and developed a good amount of trading treaties. On the one hand, Chile characterizes for reaching political agreements by elite consensual style whilst in the case of Mexico, it seems agreements are reached under a strong leadership.

On the other hand, human rights were violated systematically in Chile during the dictatorship and in Mexico during the authoritarian government of the PRI. The dictatorship oppressed people that believed in different political ideologies, political parties were banned, people were killed and disappeared, and others had to flee the country. In Mexico social movements were oppressed, specifically in 1968 with the student movement, in Chiapas with the Ejército Zapatista, the extended femicides throughout the country and more recently with the disappearance of students in Guerrero. Therefore, this context presents a close and historically uneasy relationship between business interests and the lack of respect for human rights.

#### **4.5 Conclusion**

There are several aspects presented in this chapter that show that each country's 'crowded spaces' rather than 'empty spaces' to understand the countries' response towards other issues, like a new business and human rights agenda. In this case, the research looks at the influence of an international framework on business and human rights in domestic governance and the data presented here help contextualise the reasons for the decisions the governments made concerning this topic. This chapter shows how the transition to democracy has had an influence on the ways governments do politics, engage with business sectors and civil society. The Chilean government is characterized by developing elite consensus and agreement. On the other hand, Mexico's one-party type of government did not focus on developing strong institutions that could help enforce the law. Mexico appears a laxer environment for politics and for doing business due to the lack of structure that can provide accountability. The discussion and analysis showed that both countries have the tendency to protect the business sector to create wealth, stability or to survive economic crises. However, with the transition to neoliberalism less participation of the state, and a self-regulated market was expected. Although countries have to take certain decisions to attract FDI, the companies that are established in a specific business system can play an important role in balancing the inequalities. When the business sector promotes actions that can favour the workers and its communities the business system turns sustainable and fair.

## **Chapter 5 The influence of the UNGPs in framing business and human rights in Chile and Mexico**

### **5.1 Introduction**

This Chapter examines the first form in which the UNGPs could have influenced domestic governance, by focusing on how business and human rights has been framed in the two countries. Framing is the understanding of a situation that is built and transformed by the parties involved and interactions (van Hulst and Yanow, 2016). For this reason, it is relevant to explore who participated in the process to frame business and human rights and how the information was used. Additionally, I argue that framing is also an outcome of the implementation of the UNGPs, since the framework itself promotes a constant revision of business and human rights in each country. In the case of Chile and Mexico, there was only a minimal impact on the domestic practice of Business and human rights. The influence was limited by the political context, the actors involved and political dynamics. Also, the influence was analysed across the three Pillars, specifically how they were addressed and included in the process of framing BHR (in both the NBA and the interviews). As explained before, the innovative aspect of the UNGPs is the added responsibility of the business sector in respecting human rights. According to the Danish Institute guidelines the National Baseline Assessment (NBA) should influence the development of the NAP in each country. Therefore, presenting the main findings of the NBA<sup>20</sup> for each country is relevant to understand the context in which the UNGPs were implemented, and the response of the actors involved to the outcomes is part of the process to frame BHR. The period to observe how the business and human rights field changed, if at all, due to the UNGPs in Chile and Mexico began in 2014 and by 2017 the final drafts of the NAP was shared. I argue here that framing BHR is closely related to the type of the actors involved in the implementation of the UNGPs and the use they gave to the NBA to define business and human rights, which is different across both cases.

In the case of Chile, the implementation of the UNGPs was based on a state-centred approach, focusing on the narrative and political coherence within the government regarding BHR. Framing business and human rights in Chile was a government-led process where the Ministries did not use the NBA due to the lack of authority of the ministries involved and their explicit purpose to comply with their governmental mandates. Nevertheless, the UNGPs sought to frame HR as a business responsibility and aimed to influence both the

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<sup>20</sup> The National Baseline Assessment are cited by their authors. In the case of Chile Schonsteiner, J. et al, 2016 and for Mexico Grupo Focal and ICAR, 2016.

public and private sector, something that did not happen in Chile. This suggests that the changes happened, if at all, mostly in the political field of HR and that the UNGPs influenced less on the framing process of BHR in the business sector (see Table 5.1). However, the UNGPs did not change the meaning of BHR in Chile as the government's approach considers the state the key entity responsible for business and human rights.

In Mexico, the process followed a multi-stakeholder approach, where the decision-making group focused on the findings of the NBA. The evidence also shows that the Multi-stakeholder Group also promoted due diligence and access to remedy when framing BHR which suggests more influence from the UNGPs than in Chile. However, defining business and human rights as an enforcement issue does not show a meaningful change in how BHR has been traditionally framed where the state is the only actor responsible for human rights. Another relevant characteristic of the process in Mexico is the limited involvement of the business sector, suggesting only partial influence from the UNGPs in how this sector would define BHR (see Table 5.1). I consider that there is some influence because although business may resist the UNGPs, the multi-stakeholder approach allowed both state and other social actors to have greater expectations on how to behave regarding business and human rights. Nevertheless, in both countries, framing business and human rights perpetuated the traditional idea that the state is the only actor responsible for human rights issues, which contrasts with the spirit of the UNGPs that aims to include the business actors' responsibility. Therefore, the chapter finds that UNGPs did not change the meaning of BHR in either country.



Table 5.1 Themes of interviews and NBA regarding framing BHR

	Chile	Mexico
Pillar 1	<ul style="list-style-type: none"> <li>• The NBA identifies mostly legislation</li> <li>• Duties of the government framed as topics: Constitution, Anti-discrimination Law, Labour, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• The NBA focuses mostly on legislation</li> <li>• Duties of the government framed as problems of enforcement and corruption.</li> </ul>
Pillar 2	<ul style="list-style-type: none"> <li>• Business responsibility was framed in the NBA as voluntary actions: there is no regulation or incentives from government for investing in companies that respect due diligence; No indicators about due diligence in the country; Due diligence only required for state-owned companies; lack of policies about due diligence.</li> </ul>	<ul style="list-style-type: none"> <li>• The interviews suggest due diligence is a business responsibility and legislation is a way to make companies liable for their actions.</li> <li>• Business responsibility was identified in the NBA as voluntary actions: lack of methodology about due diligence processes; lack of ‘due diligence’ in the existent law; lack of mechanisms to measure or monitor human rights and due diligence, etc.</li> </ul>
Pillar 3	<ul style="list-style-type: none"> <li>• The interviews suggest little discussion of <i>remedy</i> when framing BHR.</li> <li>• The NBA raised issues about existent mechanisms for remedy: lack of financial resources in the NCP (OECD); the NIHR has no authority to represent victims of the business sector; and lack of private mechanisms in the companies to allow complaints</li> </ul>	<ul style="list-style-type: none"> <li>• The interviews suggest that the Multi-stakeholder Group promoted access to remedy and justice as commitments of both the state and the business sector through legal frameworks or public policy.</li> <li>• The NBA raised issues with lack of preventive mechanisms for human rights; of non-state mechanisms for remedy; and of a defined authority that investigates abuses of the business community.</li> </ul>

The chapter is divided in two main sections one for Chile and a second one for Mexico presenting the process of implementation of the UNGPs. In addition, the last section develops a comparison of the two countries to highlight main findings and how they relate to the research question. The sections for Chile and Mexico are divided as follows: first, they present the actors involved in the process for the implementation of the GP which influenced the framing process of business and human rights nationally in each country. Then they present the main outcomes of the NBA as the topics that emerged influenced how business and human rights were managed/ processed in each country. In the second section, the

chapter explores how the actors decided to engage with the NBA, which I argue was determined by their authority. The third section examines the implications of these conditions in the domestic governance for business and human rights.

## **5.2 The process of framing business and human rights in Chile: actors and context**

Framing business and human rights was one stage in the process of building a National Action Plan and implementing the UNGPs in Chile, which affected more broadly the domestic governance of the Business and Human Rights field. This process was influenced by the actors involved in the decision-making process and less by the information available through the NBA. In 2014 the Chilean government committed to the implementation of the UNGPs and formed a partnership with the Danish Institute of Human Rights<sup>21</sup>, who trained government officials in charge of the National Action Plan (NAP) and closely guided the process (Interview with Danish Institute for Human Rights, 9 January 2018). This partnership positioned the government as the expert on human rights abuses committed by the business sector. However, non-state actors were not involved in this partnership, thus denying them first-hand knowledge and experience of the Danish Institute. With this government-led approach non-state actors also lost the opportunity to learn from the process and to contribute to the process. The only external actor involved at the early stages of the process to implement the UNGPs was the Centre for Human Rights at the Diego Portales University, a private university, which was financed by the Danish Institute to develop the National Baseline Assessment (NBA). The NBA was meant to shape the development of the NAP informed by the UNGPs, and therefore, shape the meaning of business and human rights in Chile.

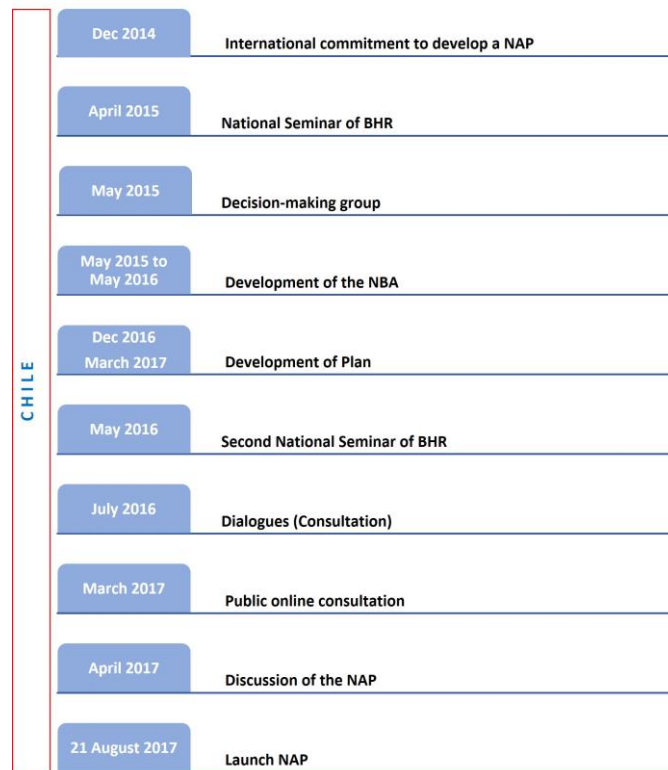
The very development of a NBA suggests that the government was interested in exploring the national context regarding business and human rights. However, how the actors engaged with the information from the NBA determined the UNGPs' scope of influence for the framing process of BHR. The following paragraphs will present the actors of the government involved in the process and the information available to frame BHR to show the relationship between the actors and the use they gave to the NBA when defining business and human rights in Chile.

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<sup>21</sup> The Danish Institute for human rights guided Chile and Mexico to develop the NBA and later the NAP. Their toolkit provides criteria, indicators, and scoping questions to assess how far current law, policy, and other measures at the national level give effect to the State's duty to protect human rights under the UNGPs and other international business and human rights standards. While permitting a standardized approach to baseline analysis across countries, is also designed to be adapted to local context.

The coordination of the implementation of the UNGPs was handed over to the Ministry of Foreign Affairs (Schonsteiner, J. et al, NBA Chile, 2017). This decision indicates that the commitment to implement the UNGPs in Chile was considered by the government as an international commitment rather than a national response to the context. Subsequently, an Inter-ministerial Group was formed as the decision-making group to develop the NAP, which became the most influential group on the domestic governance of business and human rights in the country due to their scope of action to implement an international framework. This group, as the name suggests, was formed only by ministries and other government offices. The ministries that participated in this group were the Ministry of Foreign Affairs, General Secretariat of the Presidency, General Secretariat of the Government, Ministry of Economy, Development and Tourism, Ministry of Social Development, Ministry of Justice and Human Rights, Ministry of Labour and Social Welfare, Ministry of Mining, Ministry of energy, Ministry of the Environment and Ministry of Women and Gender Equity (Schonsteiner, J. et al, NBA Chile 2017). That Chile developed a government centred process, reflects the Chilean tendency to develop policy from *elite consensus style* and a handful of leaders, as explained in Chapter 4. This had two immediate effects; first each ministry focused on representing its own mandate and second, the different offices mobilised a state centred approach to the implementation of the UNGPs. These two effects show that Chile followed a traditional approach to frame business and human rights where the actors involved considered that the state is the main actor with regard to human rights affairs.

Figure 5.1 Timeline process Chile



Source: Based on data of National Action Plan and Interviews.

In theory, the information from the NBA was expected to influence the development of the NAP and, specifically, the findings of the NBA were meant to shape the way in which business and human rights was framed in Chile. A coding analysis of the NBA identified four main issues for the field of BHR: The Constitution that needs a reform to include several rights that are not represented; Labour rights which still differ between men and women and freedom of association is not completely protected by the law; and the Antidiscrimination Law which hinders for example, the protection of indigenous communities. These issues connect directly and indirectly with business abuses of rights (Schonsteiner, J. et al, NBA Chile, 2016). The UNGPs focus on *three* pillars: the *state's* duty to protect, the *business* responsibility to respect and remedy mechanisms that should be provided by *both* actors. However, the assessment promoted by the NBA is focused on legislation, thus the process is selectively emphasising certain aspects that foreground the state as the main actor capable of changing BHR field. Moreover, the outcomes of the NBA focused on the state's performance, thus, the outcomes appeared to be, according to the ministries, *attacking* the government (Interview with Ministry of Foreign Affairs, 6 April 2018). Considering that the

NBA criticized the government – minimising of the role for Business - is one of the main characteristics of the process in Chile. I suggest here that this influences the path followed in the framing process of BHR to a significant degree. The following paragraphs will exemplify how and why the government had this perception.

First, the NBA identifies that current problems regarding human rights in Chile rely on the Constitution drafted by the military regime, as outlines in Chapter 4. The NBA argues that the Constitution ‘protects the privileges and rights of private actors over human rights obligations, thus there are existing gaps to protecting human rights against the private sector’ (Schonsteiner, J. et al, NBA Chile, 2016:16). Although, the purpose of the Constitution is to protect economic, social and political rights, the evidence in the NBA suggests that the Constitution focuses on private actors’ interests (like companies). For example, the Constitution protects the right to health and the right to education, but also states the right of private entities to provide these services (Senate Chile, 2020). Interestingly, the Constitution does not confirm the role of the state as guarantor of these rights. Moreover, the Constitution mentions the right to choose between public and private, however, the real chances of accessing private services are limited for the lower socio-economic groups due to the high cost. In this regard, it is the Constitution in Chile that determines the economic and political orientation of the country when it should be defining the principles of sovereignty and fundamental rights (political, economic, social and cultural rights) to leave these kinds of decisions to the people (Martner, 2016).

On the other hand, the legislation analysed in the NBA shows an asymmetrical relationship between the actors (companies and employees) under the law. For example, the Labour Law allows the employer to replace striking workers and there is no effective protection against anti-union dismissals, since the legislation does not establish robust sanctions (Schönsteiner, J. et al, NBA Chile, 2016). Moreover, the Law of Gender Equality (Law 20.820) ‘is more symbolic than real, as it aims to demand equal pay between men and women for work of equal value. However, the law actually says, "equal work, equal salary" and not ‘work of equal value’ (2016: 258). Consequently, women continue to earn less because they have less access to high positions which affect the economic rights of an individual (Schönsteiner, J. et al, NBA Chile, 2016). Therefore, the interpretation as "equal work, equal salary" and not as ‘work of equal value’ affects the opportunity to get a job according to the women’s skills, and to a salary that can help them improve their quality of life, housing, education and health.

Furthermore, the Anti-discrimination Law (20,609) does not include a framework to prevent and promote non-discriminatory practices, between private and public actors (Schonsteiner, J. et al, NBA Chile 2016). This has had an impact with the ongoing conflict between the state and the Mapuche community (Bugueño et al, 2017) which is characterised by discrimination against the Indigenous communities. During the economic crises in 1857 the “Araucanía Occupation” was promoted by the state due to the potential of the lands in the region to solve the economic problem of the moment (Pinto, 2000 in Bugueño et al, 2017). During the occupation process, the Chilean State appropriated Mapuche territory located in Bío Bío, La Araucanía, Los Ríos y Los Lagos regions and changed the type of land administration and control. Economical and governmental initiatives promoted economic development in the conflict zone, affecting the access to the land of the Mapuche people. Land concentration has been a common process during the 19<sup>th</sup> and 20<sup>th</sup> centuries but the conflict increased with the expansion of the forestry industry and the land concentration by the companies which are established in territories that Mapuche communities claim as their own. Nevertheless, Chile ratified ILO Convention 169 in 2008 which is based on the respect of the cultures of Indigenous peoples and aims at overcoming discriminatory practices, but as the example shows, the national legislation does not comply with the minimum criteria<sup>22</sup> as indigenous communities are criminalized when they protest against the state or companies’ activities.

Therefore, the government strategically ratified the convention but without the commitment to enforce the law. ‘Governments sometimes ratify human rights treaties because they want to enjoy praise and acceptance and avoid criticism. That is why they often respond to the social pressure to ratify when countries in their region begin to do so’ (Simmons, 2009: 355). This strategic behaviour of the implementation of the Convention 169 could mislead the attention of the international community, especially in countries like Chile, which are new democracies but show relevant improvement in areas of democracy and economic stability. What the UNGPs are promoting is that ‘states review whether existing regulation directly violates the norms of the treaties and if it violates human rights, either due to the lack of regulation (gaps legal or administrative) or indirect effects of regulation’ (Schönsteiner, J., 2016).

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<sup>22</sup> Currently, Mapuche communities are criminalized and judged with the Anti-terrorist Law when protesting (Amnesty Int., 2018; Richards, 2010), which typifies terrorist behaviours and establishes more serious penalties than common crimes. Interestingly, it was approved by the authoritarian government in 1984 (BCN, 2019).

In sum, given that the NBA focuses on legislation it diffculted the engagement of the Ministries with the data and disregarded the national outcomes. By doing this, the Ministries also paid less attention to Pillar 2 that focuses on the role that the business sector can have in the prevention of human rights abuse. One of the reasons for not using the information contained the NBA is that the Ministries considered it ‘criticized’ the performance of the government and the Inter-Ministerial Group has the duty to represent the government. Therefore, while the process taught the Ministries about the UNGPs, the government-led strategy did not change the approach on how to respond to business and human rights issues nationally. Consequently, the impact of business on human rights is framed within the traditional lens of the state’s responsibility to protect human rights, in other words the process is reduced to focusing on Pilar 1.

### **5.2.1 How the actors engaged with the NBA and UNGPs in the process of framing business and human rights**

The section above outlined the actors that formed the Inter-Ministerial Group and the outcomes presented by the National Baseline Assessment. According to the guidelines of the Danish Institute of human rights, the NBA (together with the UNGPs) was expected to guide the process to frame business and human rights in Chile (NAP Toolkit, 2017). On the one hand, the NBA gave the general panorama of the problems that Chile needs to address and on the other hand the UNGPs gives a clear direction on ‘who’ needed to change ‘what’. In other words, the UNGPs identify specific tasks for specific actors. Although there is still ambiguity on the role of business, the UNGPs represent the most successful attempt to connect business and human rights (Chapter 2). Nevertheless, the last section showed that the decision-making group disregarded the outcomes from the NBA, limiting the influence of the assessment on the framing process of BHR. The following paragraphs will explore how the process of framing BHR was developed and highlight the key aspects that show the extent to which the UNGPs had influence on governance in Chile, specifically in how they included Pillar 2 in the framing process (if at all).

Firstly, according to the participant who had a key role in coordinating the implementation of the UNGPs, the way framing worked in Chile was that the Ministry of Foreign Affairs (MOF), as coordinator of the NAP, ‘distributed the information according to the themes that corresponded to each Ministry, and each was supposed to assume their own commitments based on the information [provided]’ (Interview with Ministry of Foreign Affairs, 6 April 2018). That the organisations were supposed to follow their internal mandates also suggest that the National Baseline Assessment was used only as a reference when defining business

and human rights by each ministry. The Ministries ‘had a governmental mandate, specific to its Ministry, that they had to respect (...) each Ministry needed to assess its priorities and apply the UNGPs to them’ (Interview with Ministry of Foreign Affairs, 6 April 2018). This dynamic appears contradictory: the Ministries had to respond first and foremost to their mandates and only then were they able to ‘consider’ the NBA to commit to the actions related to BHR. Therefore, the way in which the Chilean government perceived, interpreted, and defined the issue of business and human rights was shaped by government interests, rather than drawing from the UNGPs to modify their priorities and improve the business and human rights practice.

Therefore, the Inter-Ministerial Group framed BHR based on what their internal mandates allowed them to see as the government’s ‘obligations to Respect, Protect and fulfil human right’ (UNGPs, 2011). This ignored the business role from the framing process. The interviews suggest that the process focused on giving a structure to the ‘business and human rights’ field for the government to learn about BHR and not on the content of the NAP to specifically promote actions related to the three Pillars for each actor. According to the interviews with the Ministry of Foreign Affairs, a representative from ILO and a representative from the UN Working Group (of BHR), the topics that arose were the development of internal political coherence and including a new narrative within the government about BHR. However, the UNGPs seek to create a broader responsibility for business within the contemporary regime; the state duty to uphold human rights is the status quo. The participants considered that the UNGPs were beginning to change the narrative on BHR in the government by including aspects such as due diligence in the debate. This was seen as a positive step that could later have an impact on the broader governance of business and human rights.

In Chile, there were two main aspects regarding political coherence: the negative definition of human rights and distinguishing ‘business and human rights’ from other initiatives. First, Chile had the challenge of changing the negative conceptualisation of human rights. As explained in Chapter 4 the term human rights has specific connotations in Chile due to the history of authoritarian government and is associated mainly with civil and political rights. This history ‘seems to strengthen the idea that Human Rights can only be violated by the state’ (Interview with Ministry of Foreign Affairs, 6 April 2018). Through this lens, participants considered that the government and business sector have problems understanding how business can be involved with issues regarding freedom, right to life and political rights. Consequently, a learning process was needed to conceptualise human rights



as a set of rights ‘where there is economic rights, social rights and cultural rights; not only political rights’ (Interview with ILO 11 April 2018). This served to develop a more coherent conversation so that different ministries ‘could have a common language’ (Interview with OHCHR, 26 April 2018) and ‘get all of the actors to agree on one strategy to address business and human rights’ (Interview with the National Contact Point, 13 April 2018).

The government-led approach selected by the Chilean process perpetuated the traditional state-centred understanding of business and human rights. This has an impact on business and human rights as ‘whatever is said of a thing, denies something else of it’ (Schon, 1977 in van Hulst and Yanow). Therefore, choosing ‘The state’s duty to Protect’ to frame BHR is resting importance to some extent on Pillar II The responsibility of business to respect. Affecting what business and human rights mean in Chile, as the role of the business sector, is left undefined. More importantly, by deprioritising the findings of the NBA, Chile was not responding to their national needs (context) which could also affect the policy. Even though following their own rules is reasonable to develop political coherence, this could be problematic since it could cause them to neglect Pillar II the business sector’s role. This contradiction faced by Chile could potentially affect policy design and legislation (Hudson et al, 2019) affecting the domestic governance of business and human rights. This is contradictory in the sense that the government seeks to frame its approach within a state-centred logic whereas the UNGPs explicitly promote the involvement of other actors and specifically the role that the business community should play in respecting human rights. Thus, there appears to be some misalignment as the UNGPs are grounded in the recognition of the role of business enterprises as organs of society, required to comply with all applicable laws and to respect human rights (UNGP, 2011).

Meanwhile, the process also tried to differentiate terms like Corporate Social Responsibility (CSR) and sustainability from ‘Business and Human Rights’, as these were already assimilated by the government. For example, ‘In Chile, corporate social responsibility is about self-regulation (...) however, business and human rights is about aspects like due diligence and access to remedy (Interview with OHCHR, 26 April 2018). In other words, the UNGPs promoted prevention of HR abuses and gives exact roles to the state and the business sector. These conceptualizations contributed to the knowledge and experience of the Inter-Ministerial Group but leaves Pillar II as a voluntary practice. Chapter 2 explained the debate which considered that voluntary practices can be improved with hybrid strategies (public and private authority) to address human rights issues, especially because HR is based on international law and should be assumed as an obligation by every actor or organisation.

Pillar II is controversial because due diligence procedures imply greater compliance, but it is not legally binding. Therefore, and based on the examples above, I argue that the process of framing in Chile reflects a government seeking political coherence and the result is more in the form of ‘civic education’ than transformative actions in the governance of business and human rights.

Nonetheless, developing political coherence promoted dialogue and conversation to begin the transformation within the government. Therefore, what the UNGPs achieved was clarifying for the government that ‘impact management’ in the business sector should be a priority for business and human rights. This was done through the normalization of concepts like due diligence and human rights in the business and human rights conversation. This was positive for the framing process as it provided ‘other elements to emerge as prior consultation’ (Interview with the UNWG, 10 April 2018). The idea was that by changing the narrative internally, other actors would start getting involved in business and human rights. For example, ‘if business associations validate the relevance of business and human rights’ (Interview with ILO, 11 April 2018) this could eventually influence the business sector.

To sum up, domestic actors are very important to processes of implementation of international frameworks. Given that the only actors involved in the process were governmental organisations, framing BHR based on the UNGPs in Chile seems successful only in achieving political coherence to achieve the national understanding of the framework, and in initiating a conversation of the main topics that the UNGPs promote. This, however, suggests a little inclusion of the UNGPs and NBA, especially in terms of Pillar 2. Therefore, I can conclude there was a small influence of the UNGPs in the framing process of BHR in Chile. The discursive narrative of the Inter-Ministerial Group - although sensitive to necessity of learning more about business and human rights issues - makes clear that the government avoids framing BHR based on direct business sector responsibilities in aspects of due diligence. The first attempt to frame BHR is not an ambitious one: the strategy of the Inter-Ministerial Group builds a structure on what governmental organisations can and do influence. It also shows that local dynamics – as crowded spaces (Bartley, 2018)- can affect the course that any implementation can take specially when considering the consensus style that has been used in politics in Chile to develop public policy. In this implementation the consensus is visible only within the government because there was a limited participation of other actors in this stage of the implementation of the UNGPs.

## **5.2.2 Implications of framing business and human rights focusing on Pillar 1 – the State's duty to protect**

The UNGPs promote three pillars, which are the state's duty to protect, the responsibility of business to respect and the remedy mechanisms that can be provided by both actors in their search for access to justice for the victims. Chile developed a government-led process, where the Ministries involved were the organisations in charge of framing what BHR should mean in Chile. This perpetuated the traditional lens where the state is the main actor responsible for human rights abuses. Moreover, the NBA provided the main priorities in terms of human rights and their relationship with the business sector in Chile. Previous sections showed that even though the decision-making group (Inter-Ministerial Group) knew about the outcomes of the NBA for framing business and human rights in Chile they were not strictly addressed, limiting the influence of the UNGPs in the overall process. This also allowed the government to keep its traditional and more conservative approach on how to respond to human rights concerns. Therefore, business and human rights is framed on the traditional lens of the state's responsibility to protect human rights, in other words the process concentrates in Pillar 1.

On the other hand, the state-centred approach left the business sector off (Pillar 2) from participating in the debate, therefore the process did not allow a joint effort on what aspects like due diligence mean for both the government and the business sector. This weakened the Chilean strategy in how other actors will embrace the UNGPs and specifically what the business sector will understand and define as BHR in relation to their activities and impacts. If business responsibility is not at the centre of the Chilean approach, the business sector may not take the UNGPs seriously. The approach promoted by the government, ignores that some of the national problems could be addressed by focusing on the business sector's responsibility to respect and protect issues like non-discrimination, equality or environment. Not addressing the context highlights the problems presented in Chapter 2 regarding the implementation of international frameworks with 'one-size- fits all' and top-to-bottom strategies. The literature shows that when these frames fail to respond to the national needs, there is a high probability of creating 'strategic commitment' from the countries.

In brief, political coherence and acceptance of a new narrative became central as a first step to frame business and human rights and not the topics that arose in the NBA. Crucially, based on my interviews the process fails to deliver a definition of what was important for the country's context. This failure could be associated with their focus on Pillar I, as they leave out the important component of the UNGPs, which is the inclusion of the business sector. Consequently, this reduces the scope and impact of the UNGPs as they (the UNGPs)

are kept as a commitment only of the government rather than being promoted as a national strategy where the private sector can play a role in preventing human rights violations.

### **5.3 The process of framing business and human rights in Mexico: Actors and NBA**

The process for framing business and human rights in Mexico has different characteristics to the Chilean case due to the multi-stakeholder approach that included -as part of the decision-making group- the proactive participation of organisations of civil society that specialised in human rights. These organisations formed a Focal Group<sup>23</sup> to encourage the government to develop the NAP. The coordination was in the hands of SEGOB (Ministry of The Interior) which showed interest in forming a diverse group for the decision-making process. Having the Ministry of The Interior in charge also shows, in contrast to the Chilean case, that the UNGPs were a matter of national interest and commitment in Mexico. SEGOB formed a multi-stakeholder group that led the overall conversation about what business and human rights would be in Mexico. The Focal Group partnered with the Danish Institute of Human Rights (DIHR), thus gaining a relevant support role. The latter was also different to the Chilean process, where it was the government who partnered with the DIHR. In Mexico the Focal Group was the actor that oversaw the development of the National Baseline Assessment (NBA) with the support of the International Corporate Accountability Roundtable (ICAR)<sup>24</sup>. The early participation of civil society organisations, and their partnership with international organisations had an immediate effect in increasing their skills and effectiveness in guiding the framing process.

Initially, the Multi-stakeholder group (the decision-making group) developed a dialogue and understanding of the different points of view that was more accepting of the framework promoted by the UNGPs. In addition to this, the development of the NBA and the use of its outcomes was crucial for the implementation of the UNGPs in Mexico. Nevertheless, when developing the analysis of the data it was possible to identify that the main problems found in the NBA and within the Multi-stakeholder group were law enforcement (See Table 5.1). Therefore, in Mexico, business and human rights was also defined as the state's

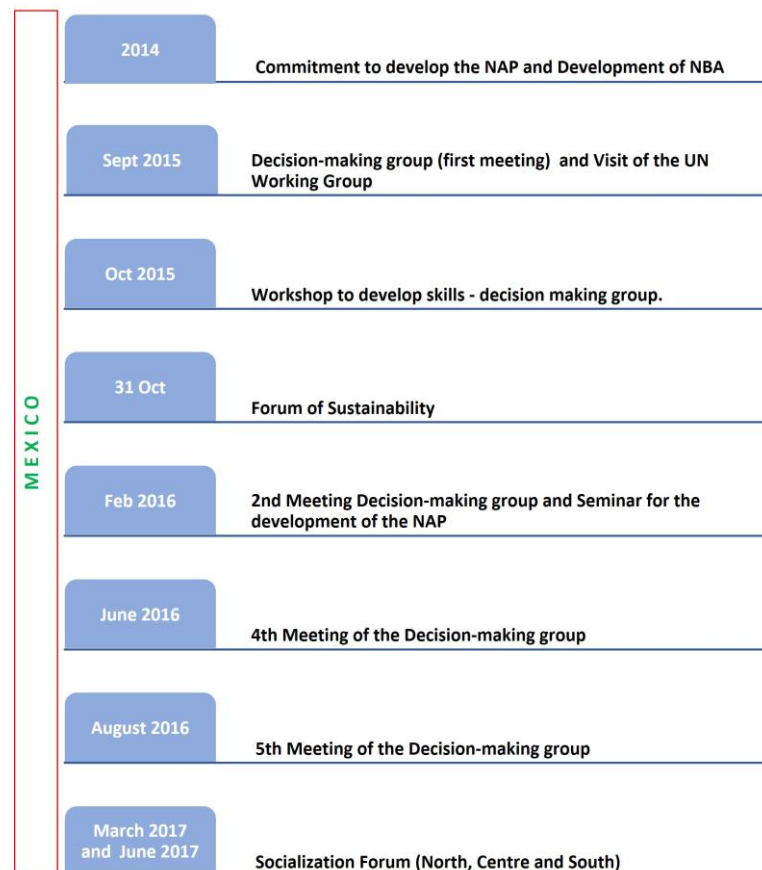
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<sup>23</sup> Mexican Centre for Environmental Law, A.C. (CEMDA); Information Centre of Business and Human Rights (CIEDH); Mountain Human Rights Center "Tlachinollan" (Tlachinollan); Committee for Integral Defence of Human Rights Gobixha A.C. (Código DH); The Economic, Social and Cultural Rights Project (ProDesc); AIDA; Project on Organization, Development, Education and Research (PODER); and International Peace Brigades (PBI)

<sup>24</sup> ICAR works to ensure reasonable safeguards against corporate abuse, protection for those who speak out against corporate abuse, and combats the rise of the corporate state (ICAR, 2019).

responsibility (Pillar I) but considered that the business sector plays a relevant role in complying with the governments regulations (Pillar II) not only through legislation but by encouraging a more proactive response through due diligence and supply chain monitoring among other things.

Figure 5.2 Timeline process Mexico



Source: Based on data of National Action Plan and Interviews.

As mentioned in the last section about Chile, framing can be affected by the actors involved and their dynamics (van Hulst and Yanow, 2016). For this reason, this section about Mexico also presents who was initially involved in the process to observe how this altered the definition of business and human rights. Additionally, I present the information available to the multi-stakeholder group to support the process of framing. Showing this information is relevant to understand the reasons for the Group's focus on certain aspects and ignoring others. Differently from Chile, framing business and human rights in Mexico was developed through a multi-stakeholder process and was aligned to the national context presented in the NBA, specifically the need to solve enforcement issues with legislation. While this still responds to the state's duty to protect human rights, the Mexican strategy tries to include the relevance of the business sector's participation in the implementation in their narrative

(Pillar 2). Therefore, the process in Mexico shows some more explicit influence of the UNGPs on the framing process than in Chile.

The Multi-stakeholder Group was formed by the Ministry of The Interior (SEGOB), the Secretary of Foreign Affairs, the Secretariat of Economy, the Secretary of Environment, the Secretary of Labour, the OECD Focal Point, the Danish Institute for Human Rights, UNICEF, Advisor ILO, the Regional Centre for the Global Compact in Latin America, the Universidad Autónoma Metropolitana, the American Chamber of Commerce of Mexico, IDEARSE, the Institute for Human Rights Mexico (CNDH), COPARMEX, PEMEX, the Electricity Federal Commission (CFE), and the Focal Group of civil society represented by International Peace Brigades, the Economic Social and Cultural Rights Project (PRODESC), the Project on Organization, Development, Education and Research (PODER) and the Business and Human Rights Resource Centre. This group became the actor that most influenced the process of framing business and human rights in the country, which allowed a more inclusive process due to the variety of ideas about business and human rights.

The Focal group was key to frame business and human rights in the country. The multi-stakeholder group generated a more inclusive process due to the variety of ideas around business and human rights. Diversity within the Multi-stakeholder Group also represented a challenge in achieving agreement as ‘problems can be perceived differently by different actors due to their roles, interest and perspectives’ (Schon, 1971 pp.220-211 in van Hulst and Yanow, 2016) which affects the interpretation of business and human rights (Entman in 1993: 52 in Hänggli and Kriesi, 2010). For example, the Focal Group aimed for a process that would agree responsibilities for the business sector, and at the same time, the business sector, represented by COPARMEX (business association), considered human rights was the state’s responsibility (Interview with Ombudsman for Business -OAS, 7 March 2018). According to van Hulst and Yanow (2016), confronting ideas and interests at early stages can prevent conflict which was the case when framing business and human rights in Mexico since the actors collaborated to define BHR through the lens of the UNGPs.

The latter is relevant because the Multi-stakeholder Group was considered ‘a group with a high level of interlocution’ (Interview with Regional Centre in support of the SDGs 13 January 2018) this suggests the Group’s capacity to interact in a dialogue in which actors develop an inclusive and participatory process to learn and to develop introspection. ‘A dialogue will always look for long-term solutions and promotes empathy and consideration of the other actors involved’ (UNDP, 2009), thus allowing more flexibility to discuss different interests and approaches. In this regard, the Focal Group was able to position the

UNGPs as the focus of the conversation, influence the other actors to align to the UNGPs, and promote the idea that ‘the Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure’ (UNGP, 2011). The diversity of ideas suggests that in the process of framing it was possible to put differences aside and develop a conversation about business and human rights which, as mentioned before, was aligned to the NBA outcomes, like enforcing the law and problems with corruption. Therefore, the UNGPs and the NBA were useful to give a structure to the discussions about BHR. The following paragraphs will present the findings of the NBA to show why the Multi-stakeholder Group focused on enforcement.

On the specific topics that emerged from the analysis of NBA there were similarities with Chile. For example, discrimination is observed again with the ILO Convention 169; the environment emerges due to the lack of consultation on development projects; and corruption is exemplified by the irregularities on human rights on procurement processes. Existing verification processes and limited enforcement of environmental legislation appear to be in violation of the ILO Convention 169. This Convention is relevant when dealing with development projects in Mexico – especially those that build infrastructure or produce energy - as these projects do not guarantee rights and free and prior consultation for Indigenous people as the Conventions suggests. The NBA identifies that these consultations are either not carried out at all or take place after the event when the decision has been already made (Grupo Focal and ICAR, NBA Mex, 2016). Like the Chilean experience, the government in Mexico committed to the Convention 169 but without clear governance structures to enforce the law, thus failing to prevent the systematic violation of human rights in Indigenous communities. This suggests that Mexico too committed to a framework to satisfy the international community but with no real implementation in the local context, what Simmons (2009) calls strategic behaviour. This is important because it shows how countries ‘commit’ and ‘implement’ other international frameworks, suggesting potential risks to the implementation of the UNGPs. This is despite the fact that the UNGPs are serious about the relevance of reflecting the local needs in the implementation of its principles in a country. The interesting aspect here is how the Focal Group seems to be drawing on the ‘implementation gap’ to shape its emphasis on enforcement.

Likewise, in terms of consultation, instruments like the Environmental Impact Assessment Procedure (PEIA) - of the Secretariat of Environment and Natural Resources (SEMARNAT) - has as its main purpose the assessment of the environmental impact of projects and activities in terms of their sustainability. But for a project to be sustainable it must consider,

in addition to being economically feasible, the social benefits and the reasonable use of natural resources (SEMARNAT, 2020). However, according to the NBA, the PEIA in Mexico does not fully reflect international standards in transparency, access to information and participation, thus raising concerns about corruption. In fact, citizens do not have the right to be consulted, but they have the right to request consultation. Coincidentally SEMARNAT has the power to reject this request (Grupo Focal and ICAR, NBA Mex, 2016). This is supported by Perevochtchikova and Andre (2013) who compared the PEIA in Mexico with the Canadian instrument and found that ‘consultation exist on paper, not in practice’ (p. 6).

On the other hand, considering the influence that the business sector has in the economic performance of the country, corruption and enforcement are relevant to improve business and human rights in Mexico. Chapter 4 showed that Mexico has issues regarding corruption and even considered a hollow democracy for its cases of impunity (Landman, 2005:169; Morris, 1999). In this regard, Public Procurement Law is relevant when discussing issues about corruption and enforcement of the law. In 2008, ‘70,230 federal procurement contracts were registered worth \$59 billion, about 18.4 percent of Mexico's GDP’ (Robinson, 2013). The high percentage of GDP involved shows how procurement is to Mexico's economy (Robinson, 2013). However, the NBA highlights that the Public Procurement law makes no reference to human rights in public purchases and excludes the monitoring of the value chain of participants in public tenders (Grupo Focal and ICAR, NBA Mex, 2016). This is relevant when framing business and human rights as it affects the perception of the state and its capacity in influencing its own supply chain about the relevance of human rights affairs in business.

The NBA showed that legislation in Mexico had gaps on enforcement and that corruption can aggravate the impact of business on human rights. Therefore, the framing of BHR focused on the need of using legislation as an instrument to make the business sector accountable for their impact. Therefore, the framing process concentrates first on Pillar I, the state's duty to protect human rights because they are looking into actions that the government can change internally (enforcement and corruption); and indirectly on Pillar II, business's responsibility to respect because the discussion considers that national law is one of the ways in which business can be held liable for their impact. However, the UNGPs are clear in establishing that the business commitment should ‘go beyond legislation’ for countries like Mexico with a poor ‘rule of law’. But for Mexico it is important to strengthen first law enforcement and then the voluntary practices. Therefore, it is so important to



understand context and to present the findings of the NBA when implementing an international framework as the results may vary but are not necessarily ‘wrong’. Nevertheless, the UNGPs are more than legislation, and the Focal Group tried to include aspects like due diligence and access to remedy in the process. Like Chile, the process focused heavily on the state’s performance, thus, UNGPs had little influence on the definition of BHR in Mexico.

The following section will bring together the actors involved in the process and the information available and explain how the Multi-stakeholder Group engaged with the NBA and the UNGPs, to show the extent to which the UNGPs affected the framing of business and human rights in Mexico.

### **5.3.1 How the actors engaged with the NBA and UNGPs in the framing process of business and human rights governance**

Under the close supervision of the Focal Group - who developed the assessment and had close relationship with the Danish Institute - the NBA and the UNGPs became the main guidance for framing business and human rights in Mexico. For this reason, the coordinators of the plan were encouraged to follow to some extent a firmer conversation on how the Business and Human Rights practice would reflect the Mexican context and the Pillars of the UNGPs. In this regard, the approach taken by the Working Group in Mexico seemed more grounded in the national context than the approach followed in Chile. The national context refers to the problems regarding enforcement and corruption that were identified in the NBA. These issues were confirmed in my interviewees. This is important to understanding the framing of BHR in Mexico because participants in the decision-making group engaged explicitly with the NBA and the UNGPs to define BHR, specifically around the importance of enforcement. This shows their focus on Pillar I. However, the Mexican case differs from the Chilean process, in that Mexico indirectly tried to include Pillar II of the UNGPs. The Mexican group mobilised the rhetoric of legislation as a way to getting closer to the business sectors’ accountability. I will discuss this further below, using examples from the interviews and the NBA collected in Mexico.

Firstly, the Focal Group represented an important contribution to the process of framing business and human rights in Mexico. Even though, they did not have ‘authority’ over the process they gained relevance due to their expertise and knowledge of the topic and influenced the actors that had more authority like SEGOB. Based on my interviews, the UNGPs first guided the Focal Group of civil society organisations, and through them the

framework was able to influence BHR governance in Mexico. This was explained by a member of the Focal Group who indicated that they were involved in the process from the beginning of the implementation (Interview with PODERa, 12 March, 2018). Therefore, the Focal Group managed to position themselves as relevant actors in the development of the UNGPs in Mexico. With their influence the discussion about business and human rights was aligned to the UNGPs. Also, this group was able to convince that the strategy -at least at this stage- should address topics like enforcement and corruption at the centre of the domestic governance.

Secondly, the assessment of the legislation highlighted the need for mechanisms that can enforce and monitor the law in order to improve the rule of law (Interview with UAM, 28 February 2018; Interview with Advisor ILO, 2 March, 2018; Interview with Business Ombudsman 7 March 2018). For this reason, building the governance that will sustain the law becomes a priority in the framing of business and human rights in Mexico, and to highlight the responsibility that business actors have for addressing these problems. The UNGPs, therefore, draw more attention to the way weak rule of law in Mexico and how this negatively impacts business and human rights. As well as highlighting the responsibility that business actors have for addressing these problems, thus focusing on Pillar II, the business responsibility to respect. Framing business and human rights in this way focuses on what the government needs to address to improve business behaviour (enforcement and corruption), therefore indirectly designating responsibility to the business sector for their actions around these topics. Nevertheless, this effort did not signify a relevant change in how BHR has been defined since it is still the state who is solely responsible for human rights.

The reason for focusing on legislation, and therefore on Pillar 1, is that the National Baseline Assessment indicates that legislation was not followed by appropriate public policy<sup>25</sup> [a framework] to guide the implementation of the law. In Mexico ‘public policy is not always expected when implementing international law’ (Interview UN Working Group Mexico on Business and Human Rights, 19 January 2018). In theory, legislation should always accompany public policy, to give structure to its enforcement (Interview with, Judge 37, Court of Justice 25 April 2019; Interview with Local Lawyer, 26 April 2019). However, in practice, in Mexico it is possible to see public policy without law and law without public policy. This is a challenge for the country when implementing international frameworks, as

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<sup>25</sup> Public policy is defined as intentionally coherent decisions or activities taken or carried out by different public – and sometimes – private actors, with a view to resolving a problem. This group of decisions and activities gives rise to formalised actions of a more or less restrictive nature to modify the behaviour of social groups to solve the problem (Knoepfel et al, 2006: 29 in Knoepfel, 2018)

the government do not build governance around the national law. However, what the UNGPs achieve is to highlight that in a country with a weak rule of law it is especially important to focus on eradicating enforcement problems. Moreover, enforcement could provide a baseline for companies to commit to respect human rights so they can later go ‘beyond the law’.

Moreover, in Mexico there is a strong sense that the context of permissiveness allows the business sector to behave without consequences. ‘When a company invests in Mexico the government ‘sets the table’ for them’ (Interview Friedrich-Ebert-Stiftung, 08 August 2017). Examples of this include giving certain advantages to companies, such as tax exemption<sup>26</sup>, land, control of the Unions<sup>27</sup> etc. There were claims -from the participants- that inspections are not done correctly and that national standards do not meet international standards because it is not convenient for investment. Regarding benefits for the business community, ‘within the NAFTA minimum wage was not discussed, because it gives us competitiveness. While in Europe or the United States companies have to comply to higher standards, in countries like Mexico the standards are lower and that is why we attract a certain type of investment’ (Interview with OECD National Focal Point, 17 August 2017). This evidence suggests the need to address permissiveness through stricter legislation, but it also raises challenges as making improvements in legislation could affect the business-state relationship.

Finally, what the conversations show is that states always matter in the implementation of transnational private governance schemes. The law may be imperfect, but it can still affect managers and workers’ expectations, and undergird cultures of production (Bartley, 2018 in Chapter 3). Therefore, the UNGPs in Mexico are facing rather complicated and crowded spaces (not empty spaces) of structural problems, lack of enforcement, impunity and corruption in the field where business is interacting with other actors, which allows for permissiveness and bad behaviour. Consequently, for Bartley this weak law still matters, and in this case affects the way in which participants understand legislation and enforcement to define business and human rights. This debate supports the argument of this chapter as

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<sup>26</sup> During the ‘Second meeting of the Forum of the Countries of Latin America and the Caribbean on Sustainable Development’, Alicia Barcenas, Executive Director of ECLAC, argued that to support developing economies, transnational companies and other private organisations must pay taxes and stop relying on free taxation to decide where they invest (ECLAC, 2018).

<sup>27</sup> For example, on paper, all confederations associated with the PRI seemed to have supported the neoliberal policies, including the NAFTA agreement in 1994 and consecutive pacts that entailed severe stabilization measures (de la Garza Toledo 2004 in Kus and Ozel, 2010). The acquiescence of the unions was only possible through union bosses’ party loyalties and their capacity to control their constituencies (Murillo 2001 in Kus and Ozel 2010).

framing BHR is considered a process closely related to the range of the actors involved in the implementation of the UNGPs and the use of the National Baseline Assessment to define business and human rights. Therefore, context becomes a main factor to be considered during implementation. However, this also shows the difficulties involved when changing the traditional lens where the state is the main actor responsible for human rights, as it is through the state's performance that the process in Mexico addresses business and human rights.

The following section will explain the main implications of the decisions taken around who would participate in the process to frame (the actors), the information from the NBA that was available and how the actors engaged with it to develop a conversation that would impact the domestic governance of business and human rights.

### **5.3.2 Implications of framing business and human rights on enforcement of the law**

Chile focused on how the government could help improve business behaviour towards human rights, suggesting their focus on the traditional view where the state is the only actor responsible for human rights. In Mexico, the Multi-stakeholder Group led by the Focal Group's guidance and the coordination of SEGOB intended to develop a more diverse and open conversation about the UNGPs, what they are and how to implement them that will make sense to the national needs regarding human rights in Mexico. However, the process concentrated on problems with legislation and enforcement (Pillar 1) and less in the business role to prevent abuse and respect HR (Pillar 2), thus there was little influence of the UNGPs on the definition of BHR.

The Multi-stakeholder Group developed a dialogue that incorporated the different actors' views and interests and developed consensus on using the UNGPs and NBA as guidelines for the framing process. Therefore, Mexico presented a more proactive stance on including the business sector in the framing of business and human rights and the responsibilities they should acquire (like due diligence). At the same time the actors were able to connect their own ideas with the UNGPs and the national context. However, the findings in the NBA indicated that through legislation it would be possible to make the business sector more accountable for their impacts. Although their attempt seemed to be more radical, they achieved only partial implementation since the process only touches indirectly Pillar 2 through legislation and less through the actual responsibilities of the business sector.

The difference with the Chilean case is that the Mexican process included different actors to frame BHR, allowing the consideration of more proactive participation of the business

community to prevent human rights violations. But more specifically, the Mexican process involved the active participation of civil society who led the development of the NAP. Thanks to this involvement, concepts like due diligence and access to remedy were actively present. The Mexican develop a based on the idea that the business sector had some responsibility on human rights issues, but it was open enough to include the interests of the business community when framing BHR for the country. Nevertheless, this was not enough to observe influence of the UNGPs in the process of framing BHR as the state continues to be the main actor.

The purpose of this section was to show that the NBA and in general some of the aspects promoted by the UNGPs were used as guidelines to frame business and human rights in Mexico. This was mainly due to the involvement of civil society in the development of the NBA and in general its active participation in the process, as they committed to use it as a guideline throughout the process. Therefore, this suggests that framing business and human rights in Mexico was influenced by the UNGPs in terms of appointing responsibility to the business sector with inclusion of aspects such as due diligence, but focused on issues with law enforcement in Mexico. While this was an attempt for a more radical implementation it perpetuates the idea that the state is the main actor in regard to human rights protection, therefore there is not a meaningful change in the definition of BHR.

#### **5.4 Comparison between Chile and Mexico**

The main aspects to compare between Chile and Mexico are the decision-making groups, how these groups used the information from the NBA and how these actions influenced the framing of BHR in each country. In Chile, the process developed was led by the government, where only Ministries were involved. This limited the scope of influence of the UNGPs because there were no other actors involved in the framing process. Moreover, the Inter-Ministerial Group decided to work with what ‘made sense’ to them: focusing on their own mandates to develop political coherence and changing the narrative within the government, to improve the way they could guide businesses and improve their behaviour. Therefore, the framing process focused on Pilar I, the state’s duty to protect human rights.

Despite the work put into the NBA in identifying key national issues related to BHR, Chile’s decision-making group decided not to engage with it in its deliberations. This side-lining of the NBA undermines the purpose of the UNGPs to respond explicitly to the national context and to include a variety of actors -especially the business sector- in framing BHR sin a specific country. In the Chilean case, I have argued that this has been shaped by narrowness

of the participants' mandates and the complexity of reforming legislation under the old Constitution that had been developed by an authoritarian government known for its subservience to business. An additional factor is that the narrow make-up of the working group was reluctant to engage seriously with criticisms of the government's performance as identified in the NBA. Therefore, I conclude that the influence of the UNGPs in the process of framing BHR in Chile was minimal as the government defines BHR as sole responsibility of the state (Pillar 1).

In the Mexican case the decision-making group was a multi-stakeholder group, guided by strong civil society organisations dedicated to issues of business and human rights. This Focal Group partnered with the Danish Institute, bringing skills and international influence to the process. Although, the process was coordinated by the government, the structure they accepted from the beginning of the process allowed civil society to become an influential actor in the process positioning the Mexican context (enforcement) and aspects of the UNGPs (Pillar II, due diligence and access to justice) on the discussion table. Risse and Sikkink (1999) suggest an active and empowered civil society is needed to translate international frameworks to domestic context, which is clearly the case of the Focal Group in Mexico.

The Focal Group promoted the UNGPs through the process of framing business and human rights and issues with enforcement of the law based on the findings of the NBA. The NBA showed legislations that attempts to address issues that are important to the business and human rights relationship, like environmental law, public procurement and consultation, but highlighted issues regarding law implementation, lack of governance and public policy of the existent law. Chapter 4 explained the problems with the rule of law in Mexico, thus focusing on enforcement issues make sense to the reality of the country. While the process shows a greater intention to assign certain responsibilities to the business sector, this is based on the state's role (Pillar I) - how legislation can make business accountable for their behaviour. Thus, the resultant framing is not so different from the Chilean case despite the differences I have highlighted in process: the participation of different actors, the way in which documents were used, and a policy-making style that was more inclusive and promoted dialogue.

In addition to the decision-making groups and the NBA, a crucial aspect that is relevant to mention - similar in both countries - is the lack of engagement from the business sector in the process. This sector was only represented by a handful of business associations when framing business and human rights which suggests there was little interest from companies

to get involved in the implementation of the UNGPs. This certainly shows that the UNGPs did not reach all the actors that are supposed to be involved in the process of implementation to be able to change the behaviour of the business sector regarding human rights. The absence of discussion on Pillar 2 and 3 suggests the UNGPs influence was limited, and they did not achieve their stated purpose of engaging *both* the state and business.

## 5.5 Conclusion

The main argument developed in this Chapter is that the way in which business and human rights is framed differs in the two countries due to their specific context. I also argue that, despite the process, the framing of BHR did not change considerably in either country and BHR remains a responsibility of the state. The differences in process are down to the actors involved and how they used the NBA. In Chile, the process was monopolized by government organisations, allowing a straightforward perception of BHR as a state's responsibility. Each Ministry needed to respond to their mandates and adapt the UNGPs to their priorities. Chile bypassed the discussion on their national context (for example the need for a new Constitution and the Mapuche Conflict) because it was beyond the authority that the actors involved in the development of the NAP had. However, it was also the context because of the issues with the conceptualisation of human rights which shifted the focus onto political coherence and changing the narrative, as this was needed as an initial step before fully implementing the UNGPs.

In Mexico, due to the early involvement of non-state actors, different views were involved forming dialogue and understanding, at this early stage. The organisations of civil society were able to use the UNGPs and the NBA as the main guidelines to structure the framing of business and human rights. The strategy aimed to include the business sector in the framing process acknowledging the business sector's responsibility to comply with the law. Context arises as a relevant characteristic because it shows that Mexico needed a first step, as there are significant issues regarding the rule of law. Nevertheless, the efforts shown in the process in Mexico did not allow moving beyond the traditional frame of the state as the only actor responsible for human rights.

In sum, in both countries there is only a minimal influence of the when framing of BHR, firstly because both countries focused on framing BHR as part of the state responsibility only, Chile within Ministries mandates and Mexico through legislation. Secondly, because the implementation of the UNGPs did not actively involve the business sector. In other

words, the little involvement from the business sector shows that the UNGPs were not influencing in the Pillar II as much as expected.



## **Chapter 6 The influence of the UNGPs in the agenda setting of business and human rights in Chile and Mexico**

### **6.1 Introduction**

Chapter 6 analyses the agenda setting process and observes the extent to which the UNGPs placed business and human rights higher on the agenda for each country than before their implementation. Agenda setting will be analysed across the three pillars, but specifically through the attention given to the business' role (in both the interviews and the NAP). As explained before, the innovative aspect of the UNGPs is the added responsibility of the business sector in respecting human rights. While framing is the process of defining, agenda setting is defined as political issues that deserve the attention of the polity (Cobb and Elder, 1971, 905 in Zahariadis, 2016). For Kingdon (2013) there are three streams for agenda setting: problem recognition, generation of policy proposals and political events. An issue becomes part of the governmental agenda when it attracts policymakers' attention and interests. The interpretation of these events and their understanding, as problems requiring action from several state and non-state actors, is what determines the success of an agenda issue. In the second stream are ideas related to solutions developed by experts, while some are discarded, others survive and are considered by government actors. The third stream covers public opinion, organised political forces and the government itself (the governmental structure or management changes) (in Beland and Howlett 2016; Niedhardt, 2016) Chapter 5 explained that the framing process of business and human rights in both countries focused mainly on Pillar I, thus, the UNGPs did not include the business sector's role when framing BHR. Moreover, the topics used to frame business and human rights in Ch. 5 are reflected in the agenda setting process, as the way in which these are addressed shows how the issues moved in the political, policy, and social agendas.

Chapter 6 examines the second way in which the UNGPs were expected to influence the BHR field in the agenda setting process. I will be addressing this as both political agenda of governmental organisations and social agenda of civil society organisations, IGOs and other associations. Topics like business and human rights, due diligence and remedy were moved higher in the national agendas with some variants and limitations in each country. In Chile, for example, the agenda was focused mainly on the government's actions, suggesting that the influence of the UNGPs concentrated on the political agenda, and thus there was less influence on the agenda of the business sector. Each Ministry had the purpose of aligning the UNGPs with their internal mandates paying less attention to Pillar II, the business responsibility to respect human rights. Moreover, the evidence found in the NAP does not

show involvement of the business sector, which limits the influence of the UNGPs on the agenda of the business community (See Table 6.1). The political agenda was advanced in the BHR issues, but the process does not reflect the purpose of the UNGPs which is to change both the state's and business' practice regarding HR. For example, The National Action Plan includes specific actions from the government to contribute to the improvement of BHR, but business responsibilities regarding the UNGPs are vague and mostly within the government. Moreover, the NAP contemplates other actors like business associations, Indigenous communities and civil society organisations as beneficiaries of the government's actions. However, being recipients of the NAP rather than partners does not invite actors to be proactive in positioning business and human rights higher in their agenda.

In contrast, the multi-stakeholder process in Mexico shows that the UNGPs influenced the agenda of a variety of actors rather than just the government, including organisations of civil society and business associations. The agenda setting process in Mexico prioritized structural problems like enforcement and corruption, but it included UNGP aspects like due diligence which is related to business responsibility, potentially liability and access to justice. Consequently, the process positions Pillar II, the business responsibility to respect in the agenda of the Multi-stakeholder Group, because it suggests that there is a role for the business sector to help the state achieve its duties. However, the commitments translated to the NAP rely heavily on the state's performance; in fact, many of the actions are only administrative changes. Although the NAP is more ambitious than in Chile, because of enforcement and legislation, it still suggests little influence of the UNGPs on the agenda of the business sector. Therefore, in the Mexican influence from the UNGPs on the political and social agendas was observed, but only slightly on the business sector agenda. In short, the UNGPs had a greater effect on the agenda setting process because it also influenced non state actors and because of the focus given to business responsibility. Nevertheless, in Mexico the Working Group was not able to achieve consensus on the NAP and the plan was never launched.

Table 6.1 Themes of NAP and interviews regarding agenda setting

	Chile	Mexico
Pillar 1	<ul style="list-style-type: none"> <li>• The interviews suggested that the agenda was an adaptation of the UNGPs to government's mandates.</li> <li>• The NAP focuses in 'promoting' actions or 'guiding' the business sector e.g., through training and strengthening the State-business relationship.</li> </ul>	<ul style="list-style-type: none"> <li>• The interviews suggested that the nature of the group positioned the UNGPs in the agenda of a variety of actors</li> <li>• The NAP included 'Actions regarding Enforcement'</li> </ul>
Pillar 2	<ul style="list-style-type: none"> <li>• The interviews suggested that due diligence was part of the agenda of the Ministries but considered the business sector as beneficiary of the NAP and not partner.</li> <li>• The NAP showed due diligence from the state's side <i>promoting</i> responsibility from the business sector, e.g., through seminars and workshops.</li> </ul>	<ul style="list-style-type: none"> <li>• The interviews showed that due diligence and prior consultation were analysed under the lens of hard law.</li> <li>• The NAP includes actions to <i>promote</i> due diligence in all companies, e.g. through due diligence processes in supply chains and activities of State.</li> </ul>
Pillar 3	<ul style="list-style-type: none"> <li>• The OECD National Focal Point (NFP) and the National Institute for human rights (NIHR) were considered part of the non-judiciary mechanisms, but these organisations lacked the authority to develop instruments to give access to remedy.</li> </ul>	<ul style="list-style-type: none"> <li>• NAP addressed remedy through the National Contact Point of Mexico (OECD); complaint mechanisms; and a protocol for victims of human rights (to prevent, investigate, punish and repair the damage).</li> </ul>

This chapter will be divided in two main sections for each country and a third one that will compare the two processes to highlight main findings and how they relate to the research question. The sections of the countries will be divided as follow: First, each section will present the dynamics that led the actors to prioritize the issues in the national agenda on business and human rights, and the topics that gained more attention as consequence of the capability of the actors involved. Second, the extent in which the process influenced the NAP to position business and human rights higher in the agenda of the public and private sector is discussed. Third, I will explore the implications of the process and priorities selected for the domestic governance.

## 6.2 The agenda setting process of business and human rights in Chile

The framing process, explained in Chapter 5, directly influenced the process of setting the agenda of business and human rights in Chile. For Chile this means that if the framing process concentrated on the state's duty to protect human rights, the agenda on business and

human rights should prioritize the traditional view where the state is the only actor responsible for human rights. The problems identified regarding human rights in the National Baseline Assessment like the Constitution, labour rights -gender equality and association- and Antidiscrimination Law were not included in the discussion of the business and human rights' broader agenda. In fact, these topics were not addressed or acknowledge in the National Action Plan (NAP) in Chile either since these were considered controversial topics by the government. Moreover, for this first plan, addressing complicated topics could have diverted their goal of delivering a NAP and complying with their international commitment to implement the UNGPs. Therefore, the extent to which the UNGPs influenced the process of setting the agenda of business and human rights was restricted by the narrow interests of the ministries that led the process. In other words, the UNGPs positioned BHR in the agenda of the government but did not move aspects linked to the business sector's performance higher in the agenda, such as due diligence and access to remedy. This was not enough to achieve a transformation of both the state and the business sector that could have been reflected in the NAP.

This section will show the effects of conducting a government-led process when implementing the UNGPs as it just partially influenced the course of the agenda on business and human rights in Chile. The government focused only on the actions that related to their mandate and level of authority to include some criteria of the UNGPs, focusing mainly on Pillar 1, the State's duty to protect. Also, the agenda on BHR was focused on the need to respond to the government's international commitment and to the need of having a plan, rather than looking internally into what the country needed for improving in the BHR field. However, the NAP while also focused on Pillar I to improve government's skills in terms of business and human rights, tried only slightly to address the role of the business sector.

### **6.2.1 The consequences of a government-led process on the agenda of business and human rights in Chile**

In Chile, the agenda setting of BHR was affected by the government-led process and the refusal from the ministries to address the findings identified in the NBA. These characteristics were also found in the framing process which suggest that framing and agenda setting processes are interconnected. Therefore, the influence and the decisions of the broader governance of business and human rights was concentrated on a small group of governmental offices with the specific goal of representing the government's interests. This is arguably the *political stream* in the agenda setting process, because the decision to develop a government-led process influenced the entire political body in terms of what should be

included in the agenda (Kingdon, 1984 in Béland & Howlett). Therefore, the process to develop an agenda for business and human rights in Chile was affected by the type of actors that participated in the process which were smaller units of the government representing the ministries<sup>28</sup>. The main contribution of the Inter-Ministerial group was positioning business and human rights higher in the government's agenda. Nevertheless, working on a top-down process led to an agenda that focused the priorities on government's activities rather than considering the public and private sector as the UNGPs recommend (UNGPs, 2011). This will consequently affect the policy agenda which will be reflected in the actions selected in the NAP.

As I will be explaining in the following Chapter (7), other groups engaged in the process, but their roles as technical advisors and observers kept them from influencing the final decisions. NGOs and international organisations were able to be a part of the process, which responds to Kingdon's policy stream, which is filled with the output of experts and analysts who examine problems and propose solutions. But according to the interviews, technical advisors and observers were kept from the decision-making processes. Therefore, these actors had an interest in influencing the BHR agenda but could not use the implementation of the UNGPs more effectively to raise the profile of these issues because the government limited the scope of their participation and influence. Moreover, in Chile's process - based on the interviews - there were no strong groups promoting and disseminating information about the BHR agenda. For example, the process in Chile did not have a civil society monitoring or guiding the process (Interview with Ministry of Foreign Affairs, 6 April 2018). Therefore, little information was available to be used by actors that were not involved in the process. The process in Chile was developed 'behind closed doors' in the sense that the government had the last word on the decisions surrounding the agenda.

The analysis of the national legislation raised several issues that could have been important for the political agenda - like reform regarding the indigenous communities and the Constitution - thus promoting a radical transformation of the business and human rights' domestic governance. However, the government was able to keep controversial issues such as the Constitution, anti-discrimination legislation, Indigenous rights off the agenda because of two specific situations. The first one was that after the development of the NBA in 2016 the government was informed about the findings but considered the results to be 'very accusative, and therefore, the actors refused to address them in the agenda' (Interview with

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<sup>28</sup> Chapter 7 will show that in the broader conversation other non-state actors were involved their roles were only as observers.

Ministry of Foreign Affairs, 6 April 2018). Accusative because the outcomes identified in the NBA, according to the interviews, directly blamed the government's inactions or inappropriate commitments to address human rights. This suggests that the government in turn did not want to take responsibility for past mistakes and for more complex processes that pointed to issues regarding transitional justice.

The second situation was that the level of authority did not allow the Inter-Ministerial Group to address the legislation assessed in the NBA. The Ministry of Foreign Affairs, for example, 'could not force anyone to participate or force ministries to accept particular actions as part of their commitments' (Schönsteiner, J. et al, NBA Chile, 2016: 166; Interview Ministry of Foreign Affairs). This evidence poor skills in 'discursive power' (van Hulst and Yanow 101) since the coordinators did not develop a 'story' about the UNGPs that was acceptable for all the sectors and that could have been used to persuade the dissenting actors in the process. Moreover, the government was attached to a narrow state-based approach in which the state is the only one responsible for human rights, but they also had a restricted mandate limiting the political attention (Zahariadis, 2016). For example, the Ministry of Foreign Affairs was leading a project whose impact relies on domestic governance bodies, which highlights that they are acting under a restricted mandate of foreign affairs and *not* internal affairs.

Furthermore, having a government-led process affected their connection with the country's context as they operated only at high levels and did not consider the frontline for policy implementation (Hudson et al, 2019). While the UNGPs focused on implementation rather than on legislation, the policy design style that Chile implemented, that of narrow elite consensus and top-down strategies, suggests that the government was interested in 'pushing through policies as quickly as possible, rather than getting involved in the messy, protracted and frustrating details of how things might work out in practice' (Hudson et al, 2019). According to Chapter 4, Governments in Chile have searched for stability by aiming for consensus at decision-making levels of the government, where decisions are made without public debate and only by a handful of leaders (Weeks and Borzutsky, 2012). Moreover, the government could be thinking 'about the short term' (Interview with UNWG, 10 April 2018) and fast delivery of the policy, rather than trying to develop a solid agenda with issues that deserve attention. Some scholars consider that this phenomenon is present because politicians tend not to be held accountable for the failure of the policies they design (Hudson et al, 2019).

Furthermore, while elite consensus style could include the business elite, in this specific case the evidence suggests that they search for consensus within the government only. Chile also characterises for the strong relationship between the government and the business sector which could imply that the government evaded the inclusion of the business sector's role to avoid conflict and ensure the delivery of the NAP through a more friendly policy. Chapter 4 explained the close relationship between the business sector and the government in economic and political issues. Moreover, it explained that there has been a constant lack of trust in the Chilean society since the coup of 1973, when the business sector supported the military to overthrow the socialist government of Allende.

As mentioned above, the agenda of business and human rights in Chile concentrated on an institutional process focused on delivering a plan. The interviewees agreed to the idea that developing a first version of the NAP to 'bring up' the topic about business and human rights among the different actors in society (Interview with Ministry of Foreign Affairs, 6 April 2018) or to 'mixing these two worlds – economic activities and human rights' (Interview with National Institute for Human Rights Chile, 25 April 2018); which previously had not been connected in the Chilean context. Therefore, the Chilean process is characterized by the idea that having a first version of a NAP was crucial for the development of the topic in the country rather than taking the time to address the issues identified in the NBA. 'It [was] better to have a second improved version with all the lessons gained [from the first version], rather than be without a plan' (Interview with representative of ILO, 11 April 2018.). In other words, their process of setting an agenda of BHR might be incomplete or imperfect but it would allow a positioning of the UNGPs in the government's mindset. As a result, the process of implementing the UNGPs' in Chile did not manage to position the business responsibility in the agenda of BHR because the process itself focused only on the state's commitment to comply, to have a National Action Plan. In effect this suggests that Pillar II of the UNGPs is not widely addressed in the process of setting the BHR agenda in Chile.

However, another emerging topic among the interviewees was that in Chile 'business and human rights' practice was still considered to be in its initial stages of definition during the UNGPs' implementation and development of the NAP (2014- 2017) by the main groups involved, the state and the business sector. 'While there is some interests and progress, the topic is unknown' (Interview with National Institute for Human Rights, 25 April 2018). The interviewee argued that 'the political and business sectors continue to promote transformations that do not follow a human rights perspective' (Interview with Observatorio,

25 May 2018). This explains the common perception that there is a lack of experience in the topic regarding business and human rights, which could produce misalignment between what the country needs and what the institutions can deliver as part of business and human rights' agenda-setting in Chile. Chile's limited consideration of the national context and knowledge in the field of business and human rights suggests the development of faulty policy (Hudson et al 2019). This is another reason the government was able to keep controversial issues such as the Constitution, anti-discrimination legislation, Indigenous rights off the agenda, as they claim there is a lack of experience to make the connection between legislation and BHR. Nevertheless, this also suggest low political will to challenge the state-business relationship (and status quo).

Without the political will of relevant political and economic actors, things do not happen. For these standards [like the UNGPs and other international frameworks] to be successful in our countries, they must necessarily be associated with global governance. For example, if there had been a government mandate regarding state companies, public purchases or export credits, or criteria for attracting investments and rejecting investments and for monitoring investments made abroad (from Chile or Mexico). But there was none of that, not one attempt of our governments to connect international standards with those activities that are large and have a gigantic multiplier effect, none. (Interview with UN Working Group on Business and Human Rights, April 19, 2018).

The motivation, therefore, to have a plan was not based on responding to the national context based on the NBA, but to learn about the UNGPs and to respond to an international commitment, which makes sense as the Ministry of Foreign Affairs was the office in charge of the implementation. This is one of the reasons the process seems to be a tactical concession rather than a sincere translation of the international framework (Risse and Sikkink, 1999). There was little effort to develop a bottom-up strategy around the UNGPs and thus a lack of interest on the context and findings in the NBA. However, having 'something solid, serious, to monitor [supervise the implementation] the commitments' (Interview with Acción Empresas, 25 Mayo 2018), could have shown political will to prioritize the topic of business and human rights to all sectors in society. In other words, what the process in Chile failed to do was to see beyond the interests of the government with regards to the international community and represent the real needs of the country. Arguably, this is a story of missed opportunity in which they could have used this process to develop



more inclusive processes, and, more importantly, as an opportunity to collaborate with a business sector that needs to be proactive in preventing any impact on human rights in Chile.

In sum, I have argued that the UNGPs managed to contribute to positioning the topic in the agenda of the government but were not able to move BHR higher in the agenda of both the state and the business sector. My analysis shows that the UNGPs were not able to push through local dynamics and government's interests/skills. I suggest that the priorities of the government respond to external commitments rather than national needs. This is clear through the clear mismatch between the NBA and the agenda. Nevertheless, in the framing process the Chilean government discussed that changing the narrative was needed before having a full implementation of the UNGPs. It would appear that the government settled for the first version of the NAP as a tool to raise awareness about the UNGPs and position BHR in the mindset of non-state actors. I argue that this first version stays in a merely framing stage than an agenda setting process. The following section will explore further the misalignment between the purpose of UNGPs and the NAP which culminated in an incomplete agenda for Chile's BHR's broader governance.

### **6.2.2 The influence of the UNGPs on the National Action Plan in Chile**

Chile's National Action Plan on business and human rights was launched in 2017 after three years of work and debate on the BHR aspects that gained the attention of the government. In a departure from the discussions of the government's agenda, the NAP integrated the UNGPs by attempting to address issues like due diligence, training regarding business and human rights, legislation, building skills and access to remedy. However, it was just an attempt, a first version, where the UNGPs were not totally represented as the actions in the plan focuses mostly on the state's duty to protect human rights. This section draws on an analysis of interview data and shows that the NAP follows the priorities and interests set in the government's agenda that complies with the ministries' mandates and international commitment rather than responding to the national context. As argued above, the UNGPs influence the business and human rights' domestic governance as far as positioning due diligence and access to remedy as priorities within the government but fewer commitments are observed in the NAP from other actors. For example, the NAP addresses Pillar II but from only from the perspective of the state's actions, which is not what the UNGPs requires, as Pillar II focuses on the actions that the business sector can take to respect human rights and prevent abuses. This composition of the NAP does not represent a meaningful change on the BHR's domestic governance, but it does present limited progress in terms of

disseminating what the UNGPs are. I will discuss these below using examples from the National Action Plan.

First it is important to highlight that the evidence from the NAP shows a consistent characteristic regarding the language and the selection of words. For example, the actions identified in the NAP are only those assigned to the government, but they never change their narrative from ‘promoting’ or ‘guiding’ to practical actions that the business sector can implement to improve their behaviour. A close analysis of the text shows there is a careful choice of words to guide the NAP to administrative actions and when addressing the business sector. The language is specifically gentle or subtle and not prescriptive. The NAP, therefore, is an instrument of the government’s political narrative to establish the traditional view that it is the state’s duty to protect human rights. The NAP is used as a form of constituting preferences about the business and human rights field. The authors led the audience to the position they wanted for the establishment of the meaning of the words (Del Castillo, 2018). Therefore, the language used in the National Action Plan can influence or limit the scope and impact of the UNGPs but serves the same discourse followed by the agenda setting process.

Secondly, differently from what the framing and the discussions around the agenda presented, the NAP (2017) in Chile did include the concept of due diligence as one of the main aspects to implement the UNGPs. However, when referring to due diligence in the text it is only from the state’s side *promoting* greater responsibility from the business sector. This differs to what the UNGPs states in Principle 15 which considers that to meet their responsibility to respect human rights, companies are expected to include policy commitment on human rights and due diligence processes (UNGPs, 2011). This does not mean the state should demand due diligence as mandatory but could guide the business sector with active and stricter measures. For example, ‘the Ministry for Social Development will conduct a Seminar/ workshop to *promote* due diligence within the private sector’; ‘the Ministry for Energy will develop a *guide* about the impact of the energy projects that includes good practices on due diligence processes’ (NAP Chile, 2016). The NAP evidences their actions are planned from and for the state rather than include commitments from and for the business sector missing the purpose of the UNGPs (to influence the public and the private sectors).

The last section showed the government’s interest in differentiation concerning concepts like sustainability, CSR and BHR. Nevertheless, the actions presented in the NAP are similar to

corporate social responsibility (Chapter 2), which suggests that business and human rights in Chile will still rely on voluntary actions, although due diligence is supposed to focus more on compliance than CSR codes. Key here is the method by which governments encourage the business sector to become more proactive. The NAP, rather than functioning as a guideline to prevent human rights abuse or promote compliance to the local laws (McPhail and Adams, 2016) presents ‘a list of actions like a brochure that will be performed by the government to encourage business accountability’ (Interview with OHCHR, 26 April 2018). Therefore, the NAP assumes that how businesses behave regarding human rights is the state’s responsibility. Although due diligences checks are meant to promote the compliance to the local laws, the absence of a proactive business sector in the development of the NAP shows little political will to implement the UNGPs.

Regarding actions related to the need for training, these suggest there is lack of experience and knowledge and a need to create political coherence inside the government. The actions rely mainly on organising ‘Seminars/workshop on Public Incentives for Social Development for Companies and Public-private cooperation according to the Guiding Principles and 2030 Agenda, strengthening the State-business link and promoting due diligence on human rights (NAP Chile, 2016:42). However, by only promoting due diligence the government will not reach the core elements of the UNGPs: ‘due diligence should include assessing actual and potential human rights impact, integrating and acting upon the findings, tracking responses, and communicating how impact is addressed’ (UNGPs, 2011: 16). Therefore, the proposed actions are not entirely aligned to the criteria of the UNGPs. Despite the fact that due diligence and remedy are explicitly mentioned in some of the examples, there is no explanation on how the activities will improve companies’ behaviour or even the state’s obligations regarding human rights. In addition, the form in which the NAP addresses the UNGPs undermines aspects like due diligence as it is not a plan that includes business sector commitments. Therefore, the actions prioritized in the NAP do not suggest a change in the business sector’s behaviour (Pillar 2).

Interestingly, the NAP tries to address some actions regarding legislation in Subtopic 8 in Pillar 1 but does not include actors that are important for dealing with law (legislative chamber). The actions from the Ministry of Economy are ‘to support a legal measure to develop a judicial framework’; from the Ministry of Energy ‘to identify, promote and develop mechanisms to implement policies’; and from the Ministry of Labour ‘to promote labour inclusion’. Yet the examples presented show that none of the actions really provide commitment on legislation, i.e., building a new law, reforming current law or even about

strengthening the current national framework on the topics identified in the NBA which could guide the plan to a more context focused agenda. ‘The plan does not include any legislative change, none, therefore, it is a plan that stays within the administrative field of the state (...) that points to filling institutional gaps’ (Interview with UNGW, 10 April 2018). This quotation reinforces the idea that the NAP was basically for improving the government in the BHR field and that it remained mostly focussed on voluntary actions. The efforts in the NAP show political will to pay attention to some issues about legislation, but the contribution to a change in the human rights situation in the country is minimal. What this tells us about the agenda setting process of the government in Chile is that it remained as an internal issue, a process the government needed to comply with, but with little commitment to produce change regarding the business’ practice.

Regarding Pilar III, the NAP addressed the mechanisms to deliver access to justice and remedy. However, the actions are far from developing deep changes even at the administrative level, which suggests the government could be hesitant to influence the business and human rights’ agenda on these matters. Although organisations like the OECD National Focal Point (NFP) and the National Institute for human rights (NIHR) were considered to be part of the non-judiciary mechanisms, at the moment of the fieldwork in 2018, these organisations did not have the mandate to develop instruments to give access to remedy (Interview with NIHR 25 April 2018). Additionally, the NAP presents actions focused on the need for institutional strengthening of the NFP and the NIHR (p. 80 – 82). Furthermore, action 2.5 promotes grievance mechanisms for both companies and communities (NAP Chile, 2016: 82). Presenting an option for both sectors can be misleading, as there are already other mechanisms for negotiating with a country when the community rejects a project. These actions could misguide the business and human rights’ domestic governance as it should be focused only on protecting human rights, and companies are not victims of human rights abuse. This could question the political coherence the agenda setting process was aiming for, as there is no clarity as to whom the governance of business and human rights should be protecting.

In brief, the NAP reflects the discussion of the agenda setting process, closely tied to the government’s responsibilities, and this reflects the discussions in the framing process and shows an interconnection and coherence between framing and agenda setting. Nevertheless, for this study, this means that the UNGPs were not able to influence the broader agenda of BHR in Chile beyond loose guidance. I have argued that the UNGPs positioned BHR in the government’s agenda and worked to include aspects regarding the business sector (due

diligence and access to remedy), but the NAP fails to integrate commitments from the business sector to improve/change its behaviour. The following section will explain the main implications of the BHR's agenda development and the agreements the NAP had on Chile's business and human rights' broader domestic governance.

### **6.2.3 Implications of the agenda-setting process on the business and human rights' domestic governance**

The government-led process developed in Chile had several consequences for the domestic governance of business and human rights. First, having a process led entirely by the government had allowed for consensus among similar actors to develop a national plan, which is positive as it established a political statement about the relevance of promoting Business and human rights. However, delivering a plan in the circumstances that Chile did, shows the government reliance on top-down strategies. I have argued that this indicates a lack of interest in developing a more democratic and inclusive process and shows the government's interest in having the approval of the international community rather than gaining the support of the people they represent. Moreover, my analysis of the NAP itself demonstrates that the UNGPs were adapted to the government mandates and/or programmes, rather than being used as an instrument to change and improve governmental actions that relate to business and human rights. In addition, the government's approach also leaves the business community agenda out of the process of implementing the UNGPs because there are no incentives or actions to include them in the plan. In this regard, the government also refused to address the outcomes identified in the NBA, undermining the urgency of addressing current situation on human rights abuse. Thus, the government is building a policy that does not respond to the local reality, and which produces a misalignment that has less effect on the NAP's impact (Pinto and Puppim, 2008). What this means for the agenda setting process in Chile is that the government did not follow the spirit of the UNGPs with the unilateral decision of the NAP. The UNGPs is a hybrid initiative that calls for multi-sectoral participation which is not what the Chilean government achieved in their agenda setting process as the business role is missing.

Moreover, having a government led process focused on administrative actions affected the role that the business sector could have had in the NAP. The process did not invite the private sector to be proactive or commit to actions that were relevant for the implementation of the UNGPs. For example, the business sector could have agreed to implement due diligence as part of their responsibilities to respect human rights. However, due diligence and access to remedy were aspects only promoted by the government but did not gain a relevant enough

position to change the business sector's behaviour. For this reason, the agenda setting process stagnates in Pillar I, the state's duty to protect and affects how non-state actors will assume responsibilities towards human rights. In other words, non-state actors can keep considering they do not own a responsibility in terms of human rights, which is a concern given the conceptualisation of human rights in Chile and the process needed for change (this was explained in Chapter 5). However, it is clear that the process did not reach the business sector which raises concerns about the articulation of an agenda which explicitly connects the business sector with the field of human rights.

To summarise, the agenda in Chile is based on first delivering a plan that made sense to their mandates and at the same time to include some actions that appear to represent the UNGPs, but only from the state's role. Consequently, the agenda of business and human rights in Chile concentrated on developing strategies that were needed before a proper implementation of the UNGPs, which, after a trial period, could involve all the sectors in society. Nevertheless, the entire process of implementing the UNGPs was only helpful to position business and human rights higher in the government's agenda, thus the UNGPs only partially influence the broader agenda of BHR.

### **6.3 The Agenda Setting process of business and human rights in Mexico**

The diversity within the Multi-stakeholder Group (decision-making group) of the National Action Plan (NAP) is one of the main differences with the Chilean case and the one that marks also key features in the process of agenda setting BHR. As mentioned in Chapter 5, the process for framing business and human rights was highly influenced by the diversity and the inclusion of civil society organisations, also called the Focal Group, who guided the process based on the UNGPs and the outcomes that were identified in the NBA. The process of setting the agenda followed the same line of action, was very tied to the UNGPs and responded to national concerns from the NBA. The variety of actors facilitated a more tolerant process when regarding topics that responded to the National Baseline Assessment prioritisation of the domestic agenda on business and human rights topics like enforcement, corruption, due diligence and access to justice. The Multi-stakeholder group also needed the guidance to structure and organise the work of the group.

The process in Mexico focuses on the state's duty to protect while suggesting that by improving these structural problems business behaviour could also improve. This approach could include positioning these topics (enforcement, corruption, due diligence and access to justice) in the agenda of the business sector as in this case the involvement of business associations in the discussions about the agenda was observed. In other words, the UNGPs

had a greater impact on the agenda setting process because it influenced also non-state actors and because of the attention given to business responsibility. In contrast to Chile, the Mexican process for setting the agenda appears to develop a ‘sincere translation’ of the international commitment to address the business and human rights situation in Mexico (Risse and Sikkink, 1999: 26), as the main focus is the national context rather than only complying with the international commitment.

This section will show that the agenda in Mexico benefited from prioritising business and human rights on topics regarding the national context and some of the criteria from the UNGPs (law enforcement, corruption, due diligence and access to remedy). As argued in Chapter 5, the diversity of actors permitted a more accepting conversation about the content of the agenda and the need to address the business sector’s role. Moreover, this diversity allowed BHR to be positioned higher in the agendas of different actors; not only the government but also organisations of civil society, academia and business associations were actively involved. The process also focused on a wider range of topics that were orientated to giving a responsibility to the state and the business sector. These two aspects are the main differences with the Chilean process, where the only actors influenced by the UNGPs are the Ministries and the fact they focused mostly on topics that made sense to their own mandates. However, the NAP, while also focused on the three Pillars, addresses the UNGPs with vague and sometimes ambiguous language.

### **6.3.1 The multi-stakeholder group’s influence on the business and human rights’ agenda-setting process**

In Mexico, the development of an agenda on business and human rights was influenced by a multi-stakeholder decision-making group. This group matches the description of what the political stream of Kingdon mentions as factors that influence the politic body such as interest group advocacy campaigns (Kingdon, 1984 in Béland & Howlett); influencing the agenda of business and human rights. Additionally, the Focal Group of civil society developed an intense campaign to position the UNGPs as main priorities but also had the challenge to converge different interests (from different actors). The Secretaría de Gobernación (SEGOB equivalent to the Ministry of The Interior) coordinated the development of the NAP and was in charge of drafting the final document. But it was guided by a strong group of civil society organisations that formed the Focal Group and together they also influenced the development of the business and human rights broader agenda. Additionally, the other actors involved in the process were ILO, the Metropolitan University, the Ombudsman for Human Rights, the Secretary of Foreign Affairs, the Secretary of

Labour, the OECD National Contact Point, the Secretary of Economy and the business associations (Interview with PODER<sup>29</sup>b, 5 March 2018). The interest group advocacy campaign impacted the process for promoting and establishing an agenda for business and human rights' domestic governance by developing a closer bottom-up approach (Lipsky 1980 in Hudson et al, 2019) through the awareness and sensitivity of the national context (Pinto and Puppim, 2008) the consideration of the NBA gave in the process. Conducting a multi-stakeholder process was a promising approach for the development of the NAP and set 'good practice' standards for the development of inclusive public policy in Mexico.

One of the first topics that emerged from the interviews was the influence of the Danish Institute and its role in guiding the Focal Group. The Focal Group used the legitimacy gained by developing the NBA and their network development with the Danish Institute to position their demands on the agenda, showing that networks in Mexico created a structure to pressure the agenda from the bottom, which is crucial to translate and sustain international norms (Risse and Sikkink, 2011; Zimmermann, 2017). For example, a representative from PODER commented 'The Focal Group encouraged the government to develop the NAP; we had the support and guidance from the Danish Institute. We established presentations and workshops to develop skills in all the members of the Multi-stakeholder Group' (Interview with PODERa, 12 March, 2018). The Focal Group, once empowered, considered it was the Working Group's responsibility to question, adapt and build an agenda that would represent the different interests from the actors involved. This could allow the Multi-stakeholder Group to build an agenda based on the local reality, rather than imposing a framework that does not represent the local needs. In addition, this case represents an example where legitimization from domestic actors was embedded within a wider social network and relationships mainly due to their role as the 'experts' in the process.

While the NBA was useful to establish the content of the discussions regarding business and human rights, the different points of view on the Working Group challenged the development of a unified agenda as the actors did not reach an agreement on the priorities that could be realistic, functional, and implementable in the short term. In this regard, the private sector presented their own concerns and [the coordinators] tried to adjust [to their interests] (Interview with Secretariat of Foreign Affairs, 22 February 2018). The business associations that represented the companies' interests like Consejo Coordinador Empresarial (CCE), Cámara Nacional de la Industria de Transformación (CANACINTRA) and Cámara

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<sup>29</sup> It is a Project on Organization, Development, Education and Research, main actor in the Focal Group of civil society in Mexico.



Nacional de Comercio (CANACO) showed inconformity with the process by sending their lawyers to the meetings to observe and discuss what should be relevant for the business sector (Interview with Ombudsman, 07 March 2018). Based on the interviews, the topics that were analysed as part of the agenda that responded to the national context like enforcement and corruption caused the private sector's disagreement (Interview with representative of PODERa 12 March 2018). In addition to the context, the agenda setting process also involved due diligence and access to remedy. The evidence shows that the Mexican process implemented these topics more successfully as they were included in the process to set the agenda, while the Chilean case decided to ignore them from their framing and agenda setting processes. I argue that these topics were placed higher in the Mexican agenda because they were acknowledged as relevant to the context and were part of the conversation. It was also generally accepted in the Multi-stakeholder Group that the business and human rights field would benefit from the improvement of these issues in Mexico. The following paragraphs will explain how context, due diligence and legislations were included in the agenda setting process.

First, a topic that emerged from the interviews is the relevance for establishing clear obligations for the business sector with the UNGPs criteria like due diligence and legislation. For example, the Focal Group aimed to establish the business sector to guarantee the respect of human rights of individuals and communities, and they positioned topics like due diligence issues and consultation in the business sector's agenda (Interview with CNDH, 18 July 2018). This was different from Chile as there was no response from the business community regarding the implementation of the UNGPs. Chapter 5 showed that Business Associations were informed about the discussions to frame BHR and disagreed with the approach. But this meant they knew about the process and show some interest in influencing the outcomes. The Focal Group centred its discursive power on topics like 'conducting prior, free, informed, and culturally appropriate and good faith consultations that may affect the environment and the rights of Indigenous, rural and comparable communities' (Proceso, 2017). This represents an effort to promote the ILO Convention 169 and develop political coherence with other international instruments, something that the Chilean process ignored. Reforming legislation was expected to develop clear standards for the business sector to improve their behaviour<sup>30</sup>. This responds specifically to the context in Mexico, which has significant issues regarding enforcement and legislation (as explained in Ch 5). For a country

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<sup>30</sup> The participant believes that another international treaty could be helpful, but it would be better to change the national framework; the best example of this is the French Duty of Vigilance Law, which forces companies to have due diligence plans in their supply chain' (ECCJ, 2019).

like Mexico, ‘the plan should have included legal reforms regarding business and human rights that the Judiciary department could have used for these Principles in court; and remedy (...) through non- state mechanisms that already exist, like the Executive Committee for Victims’ (UN Working Group Mexico Business and Human Rights, 19 January 2018).

According to the interviews, addressing law enforcement was clearly - to some of the participants - one of the first steps to take in order to improve the situation concerning human rights in the country. Although this is focused on the state’s responsibility, it also presents the need for stricter rules and norms for the private sector to comply as a way of regulating their behaviour. Problems regarding impunity and corruption discussed in Chapter 4 include that of forcing the discussion about enforcement to be a priority for the participants. So, although the UNGPs are not promoting binding instruments, the national context in Mexico has the challenge of providing instruments to enforce the law. Legislation was a goal mainly from civil society and the UN Working Group in Mexico, and these interests were firmly grounded in the NBA. However, the UNGPs do not expect changes in legislation; in fact, the UNGPs were developed considering the issue of implementation rather than developing new legal obligations. The Mexican process discusses the need to improve mechanisms to enforce the law. In contrast, while the NAP in Chile attempts to include some issues regarding legislation, it did not develop new legal obligations as it was considered problematic when framing BHR.

In brief, the UNGPs were able to position in the agenda both the national context and especially due diligence which evidences the influence of the UNGPs on Mexico’s business and human rights’ domestic governance. Therefore, the agenda is focused on the state’s duty to protect human rights, while highlighting the responsibility of the business sector, through the emphasis given to complying with the national law and law enforcement. The main difference with the Chilean approach is that Chile avoids assigning any responsibility to the private sector. They concentrate on the state’s actions that can help the companies’ increase their respect for human rights. But also, with the more homogenous decision-making group in Chile it was probably easier to reach the consensus on what should be included in the National Action Plan. Therefore, the diversity of the group in Mexico could have affected reaching an agreement.

The following section will present the analysis from the National Action Plan, to observe the topics that were prioritised and the extent to which the plan makes it possible for other actors to place business and human rights higher in their agenda.

### 6.3.2 The influence of the UNGPs in the National Action Plan in Mexico

The final draft of the NAP, developed by 2017, attempted to position due diligence, access to remedy, corruption, and legislation as priorities for all the sectors of society. In contrast to the Chilean NAP, which only mentions discrimination as a human rights issue, avoiding other findings from the NBA (like the Constitution or the Mapuche conflict), the document for Mexico acknowledges the national context and emergency for human rights. The final draft of the Plan presents a diagnosis of the human rights situation in the country, highlighting the main topics in Mexico regarding human rights, which are inequality and gender issues; migrant workers; people with disabilities; people with AIDS; LGBT+ rights; indigenous communities; human rights defenders; child labour; modern slavery; health and safety issues at work; unions and labour rights; environment; corruption and private security. This indicates that human rights violations were already part of the political and national agenda during the time that the UNGPs were introduced and first implemented.

My analysis of the interviews shows that the Focal Group conducted the process to develop the NAP drawing explicitly from the outcomes of the NBA. That this group considers that issues like enforcement, corruption and justice as fundamental for implementing the UNGPs demonstrates an explicit interconnection between the framing process and the agenda setting process by responding to the national context (Interview with PODERa 12 March 2018; PODERb 5 March 2018). The knowledge and sensitivity about the context are present in the Mexican NAP (Pinto and Puppim, 2008), which suggests a policy agenda in BHR that draws from an analysis of the countries' national needs. Therefore, the key difference between the two countries is the focus on the need to improve the impact of business on substantive rights in the Mexican BHR and NAP's broader agenda. In Chile substantive rights were present in the NBA as something that the government should address, but throughout the process they did not engage with impacts on rights in the agenda or the NAP.

Therefore, the overall conversation about the business and human rights field in Mexico considered that legislations were a way in which the state could encourage the business sector to be more responsible for its impact. In the Mexican NAP's draft, the Multi-stakeholder Group attempted to influence legislation and specifically enforcement, which is why the participant from the Danish Institute called it a 'more ambitious plan' [than the Chilean and the Colombian plans which were the only plans developed in the region] (Interview with Danish Institute for Human Rights, 9 January 2018). The strategies and actions listed under Actions regarding Enforcement (NAP Mex, 2016: 24) include Objective 4 that promotes that the legislation that regulates the companies' guarantees to respect human

rights includes three strategies: Strategy 4.1. Strengthen and promote harmonization of the regulatory framework applicable to companies in accordance with international human rights standards; Strategy 4.2. Review and strengthen the regulatory framework for environmental protection and the human rights of the population in private sector operations; and Strategy 4.3. Review the criteria for tenders, permits, contracts and public concessions so that these processes include human rights safeguards (Nap Mex, 2016: 24-25). This evidence suggests that the UNGPs implementation process raised awareness and positioned the lack of enforcement as a priority to be considered by the state and the business sector in the NAP. The inclusion of these issues illustrates that the influence of the UNGPs (and efforts of the local actors) and they were positioned as part of the priority list that deserved the attention of the polity (Zahariadis, 2016).

The analysis shows that due diligence is to some extent addressed by the NAP in Mexico. Like Chile, the language used in the NAP shows that most of the lines of actions are vague and without a real commitment to transforming the environment for business's respect for human rights. SEGOB oversaw drafting the final document of the NAP which explains the language used to prioritize the business-state relationship. The type of language selected makes a big impact on the NAP's definitions regarding their preferences and the meaning of their actions, manipulating their commitment to where it is only convenient for the government and not so much for the business and human rights field. It also has implications for monitoring and evaluation. Political narratives can influence the scope of public policy represented in the NAP (Del Castillo, 2018). For example, the NAP includes actions like *promote* that all companies with activities in Mexico and Mexican companies abroad should have a mechanism for due diligence processes. The NAP includes the *promotion* of due diligence processes in the supply chain and activities of State Enterprises. The document states that the Mexican government will *promote* the importance of reporting on their due diligence mechanisms within the private sector. Like Chile, the use of superficial and ambiguous language shows a lack of commitment to invite the business community to commit to these criteria. The UNGPs position due diligence on the discussion table but could hardly place it higher in the agenda of the business sector with actions that do not invite them to have a preventive and proactive response to the agenda.

Additionally, the NAP in Mexico included the topic of mechanisms to access justice or remedy, suggesting the influence of the UNGPs in the final draft and one aspect that the Focal Group considered relevant to include in the agenda. Actions that mention remedy are:

1.3.1 Promote the National Contact Point of Mexico (OECD) to prevent or, where

appropriate, give remedy; 1.3.2. Establish processes and mechanisms that allow complaints about human rights to impact the activities of public and private companies; 1.3.3 Create a protocol for victims of human rights violations related to business activity, which includes appropriate measures to prevent, investigate, punish and repair the damage. This last example presents a bolder action regarding remedy, which states what should be done by the business, thus raising this aspect in the agenda of the business sector. However, it does not explain who will be responsible for creating a protocol, which affects how seriously the agenda should be taken. In this regard, policies reflect not only the preferences and power of those groups whose problems have been addressed but also the ability of the same groups to limit subsequent attention to only those issues that reinforce or augment the status quo (Zahariadis, 2016). In other words, while 1.3.3 Create a Protocol, is innovative, it is presented in an incomplete form in the NAP so diluting its importance and the attention given. This suggests that political will would only back the actions that support the groups in power, like the business elites.

In sum, the actors in Mexico appear to have struggled with their differences which probably took over the process of designing a NAP, perpetuating the current situation regarding human rights. Therefore, what seemed to be a more ambitious process, ended up being a strategic document that could satisfy all the actors involved and it was not approved. The failure to launch a NAP in Mexico had an impact on business and human rights' domestic governance because it left the country without guidance that could attempt to improve human rights conditions in the arena of business activity. While the Mexican process for agenda-setting was more beneficial to placing BHR in a broader political agenda than Chile's process, the analysis of the NAP shows that the NAP still focuses on enforcement and legislation, suggesting the little influence the UNGPs had on the agenda of the business sector. In other words, there was more commitment shown in the debate and discussions, but it was too complex to represent all the ideas and interests in one sole document. Therefore, the UNGPs influenced the agenda of a diversity of actors but were not able to influence them substantially enough to develop one national agenda (the NAP).

### **6.3.3 Implications of the agenda setting process on the domestic governance of business and human rights**

The agenda setting process was based on the UNGPs and the national context, which represents Pilar I 'The state's duty to protect', Pilar II 'The business responsibility to respect' and Pilar III 'Remedy Mechanisms'. The background presented by the NBA predisposed the agenda of business and human rights in Mexico in aspects like the lack of

enforcement of the existent legislation, and corruption. Therefore, the agenda was focused on the State's duty to protect. However, the discussion also focused on how the legislation should work to make business accountable. For this reason, the process indirectly focuses on Pillar II the business responsibility to respect human rights. Chapter 5 explained that BHR was defined in Mexico as a combination of Pillar I and, in small part, of Pillar II. In small part because it was only indirectly that the framing process could include some involvement of the business sector. Through consideration of law enforcement that the Multi-stakeholder Group considered some responsibilities for the companies, emphasising the business responsibility to respect human rights first through the national law and thus positioning Pillar II slightly higher on the agenda. However, the UNGPs do not aim to produce more binding mechanisms for the corporations, so there is a discrepancy between what the process of implementing the UNGPs achieved and the UNGPs.

Focusing on the NBA implies that the actors would focus on aspects that were relevant to their context for the agenda of business and human rights. In terms of the UNGPs the Focal Group played a significant role here in aligning the agenda to the aspects promoted by the principles such as due diligence and access to remedy. The Focal Groups conceived due diligence as the mechanisms to prevent abuse by developing risk assessment throughout the supply chain of a company. The Focal groups suggested that more elements of due diligence should be included as part of the existent law. Although interviewees did not mention that due diligence had to be a law, they did suggest due diligence needed to be treated more like an obligation and less like a voluntary mechanism (Interview with PODERa, 12 March 2018 and PODER b 5 March 2018). The reason to consider this is that voluntary mechanisms imply that the business sector may or may not decide to implement them. This participant considered that human rights and the mechanisms to protect them (like due diligence) should not be considered 'voluntary' for any sector. Moreover, what this tells us about the agenda setting process is that a multi-stakeholder agenda tends to be stricter in following the guidelines (UNGP and context) due to the differences in interests of the actors involved. The guidelines give more structure to the agenda and to their purpose. However, this does not guarantee a successful outcome of the agenda or its implementation.

The agenda of the multi-stakeholder group influenced greatly the development of the NAP. The Focal Group of civil society looked for a NAP that was very strictly aligned to the UNGPs and one that could establish a guideline where the business sector was placed as an actor responsible for respecting human rights. This is because the actors considered that one of the first ways to make business responsible is by enforcing the national legislation (or at

least improving it). These differences had an impact on the broader agenda, as civil society was able to make a statement about the importance of including aspects like due diligence, prior consultation, access to remedy, and enforcement as part of the business and human rights' agenda. In contrast, the business sector represented by business associations and lawyers looked for a NAP that could be more flexible and that would not affect Mexico's efforts to do business. This controversy put the development and culmination of the NAP in Mexico at risk as the plan was never launched to deliver a guideline that could support the initial stages of the UNGPs' implementation in the country. This leaves the agenda setting process in Mexico as a process that position topics in the interest of national actors but without an obligation to make the agenda actually work.

#### **6.4 Comparison between Chile and Mexico**

The agenda setting process on both countries was influenced by the framing process, therefore some characteristics are shared in both processes. Nevertheless, the relevance of studying the agenda setting process relies on observing the way in which the UNGPs moved higher in the political, and social agendas of the groups involved in the process (Inter-Ministerial Group and the Multistakeholder group in Mexico). This was analysed by the attention given by each group to the three Pillars of the UNGPs and the extent to which different sectors were influenced by the process. The agenda setting process in Chile was influenced by the actors involved and their interests (mandates), thus the main discussions regarding the national priorities were developed around delivering a plan that positioned BHR in the national conversation. This plan in addition had to make sense to the ministries' mandates, and it was not responding to the NBA outcomes as most of the governmental actors involved had no authority to address issues regarding legislation. Therefore, the agenda setting process was focused on Pillar I, the State's duty to protect, and did not include the role of the business sector in respecting human rights as relevant to change the domestic governance of business and human rights. For this reason, the Chilean process appears to be more of a tactical concession to respond to its international commitment rather than a sincere translation as it does not address the national context and needs of the country (disregarding the NBA).

The agenda-setting process revealed a very narrow discussion regarding BHR, where the national context, legislation and aspects related to the UNGPs (like access to justice) were not considered as priorities. Therefore, the process of implementing the UNGPs did not place higher in the agenda aspects that are relevant for changing the situation on business and human rights in the country; specifically, those actions that could give more responsibilities

to the business sector. The NAP, however, did try to include the main aspects of the UNGPs like due diligence and remedy but it was drafted in a way in which the government is the actor responsible for ensuring that these actions will be promoted and known by other actors. In other words, the NAP avoids also giving the business sector the responsibilities that the UNGPs designate for them. Therefore, the agenda and the NAP are attached to what the Ministries involved can do to improve the business and human rights issues.

The Mexican case developed a process aligned to both the UNGPs and the outcomes from the NBA, similar to the discussion in the framing process. The Focal Group guided the process to respond to the national context, especially in terms of law enforcement, corruption, prior consultation and access to remedy. The process of implementing the UNGPs was more or less able to position issues in the agenda of the Multi-stakeholder Group that were important to improve Mexico's business and human rights' domestic governance. This means that state and non-state actors moved higher in their agendas BHR through the implementation of the UNGPs. The process included as priority the business sector as a relevant actor that should be accountable for their actions. Nevertheless, the business sector was able to influence their interests and concerns thus creating some tension at the negotiation table. Therefore, the NAP, which could be considered the formalization of the priorities, attempted to place the UNGPs and NBA's topics higher in the public and private sectors' agenda. However, the process failed to achieve consensus on the importance of placing the business sector at the front and centre of the NAP. The reason I considered that the business sector is not at the centre of the NAP is because the commitments selected for the NAP, similar to the Chilean case, are focused on what the government needs to improve to help the companies respect human rights, rather than have the business sector commit to specific changes to improve their behaviour. Therefore, the Mexican case is slightly more successful in discussing a broader national agenda due to the diversity of actors involved and their commitment to push UNGPs topics like due diligence and access to remedy. However, the scope in which the UNGPs were able to influence those agendas was not as expected because there was lack of consensus over the commitments. As a result, Mexico ended up with an agenda similar to the Chilean, one that responded mainly to Pillar I. Moreover, being unable to develop consensus affected the domestic governance in terms of having or not having a guideline to begin the business and human rights' work in Mexico.

## **6.5 Conclusion**

Chapter 6 analyses the agenda setting process and observes the extent to which the UNGPs placed business and human rights higher on the agenda for the main actors that formed the



Working Group in each country, than before their implementation. Although the UNGPs were set up so that this respect is different from, and in some cases beyond, what states are doing to uphold legally binding mandates, the cases presented here failed to do this. Both cases have their own reasons for not going beyond the state, but the reasons are based on their context. Chile developed the implementation process by governmental offices, which paid attention to their own priorities rather than responding to the national problems identified in the NBA. They decided to do this to comply with the international commitment, but to achieve this they had to leave commitment and its proactive participation out of the business sector. In Mexico, the government developed a multi-stakeholder process that included a very active group of civil society organisations, the Focal Group. This group guided the process into a more bottom-up process that attempted to go beyond the state's interests. The broader agenda in Mexico on BHR included the consideration that the business sector needed to be more proactive and committed. Business associations had an interesting role because they did not reject greater responsibility in the broader agenda of BHR but did show some disagreements with the ideas presented for the NAP. This explains why the NAP was not able to fully develop Pillar II and why it is treated in a very light manner. Therefore, the agenda setting process in Mexico included more aspects of the UNGPs placing them slightly higher in the policy agenda, nevertheless, the actors were not able to build consensus for a national plan.

## **Chapter 7 The influence of the UNGPs in multi-stakeholder participation in the process to develop the NAP in Chile and Mexico**

### **7.1 Introduction**

Chapter 7 analyses the influence of the UNGPs on multi-stakeholder participation in the process to develop the NAP in Chile and Mexico and compares the differences in both countries. The UNGPs consider that multi-sectoral participation is relevant to develop inclusive processes. Therefore, this Chapter will examine the nature of participation and range of actors involved. Hybrid governance, like the one proposed by the UNGPs, is tied to multi-stakeholder participation where there is a combination of the state, markets, and civil society in actions like co-management, public–private partnerships and private–social partnerships (Armitage et al, 2012). As explained in previous Chapters, Chile developed a government-led process to frame and set an agenda focused mainly on the state’s duty to protect human rights. In the Mexican case, they developed an inclusive process giving the multi-stakeholder structures for the Multi-stakeholder Group (decision-making group) which included, among other actors, a self-organised civil society. The Mexican process focused on structural problems like corruption and law enforcement, but also placed businesses’ responsibility to prevent human rights violations higher in their agenda than Chile. However, like Chile, the inclusion of this topic was vague, and Mexico was not able to move from the state-centred view in which only states can be responsible for protecting human rights.

The main argument of this chapter is that the explicitly inclusive approach of the UNGPs encouraged the countries to involve multi-stakeholder participation to develop the NAP. I argue that this has produced a double effect. On the one hand, multi-stakeholder participation developed skills which have an empowering effect on participants and on the other hand, the participants were able to influence, to some degree, the process. Nevertheless, we can see some variances in the two countries due to contextual factors. While both countries designed relevant spaces for the participation of non-state actors, the main difference is that Mexico had a civil society group monitoring the process at the decision-making table. In the case of Mexico, the engagement with UNGPs helped develop skills to lobby for more presence at the table, so developing a recursive relationship. The civil society organisations involved in the process motivated the government to begin the process of implementation. They had a relationship with the UNGPs before the government’s involvement. Chile, in contrast, opened special spaces for observation and technical assistance only, thus developing a closed decision-making process. However, Chile included a training session contributing to the

participants' (civil society organisations, Indigenous groups, business associations, and unions) knowledge and experience and included a feedback session with comments to be considered in the NAP's development. The Inter-ministerial group took from the feedback the main structure to develop the document and the rest of the contributions were dismissed from the NAP due to the top-down policy style of the Chilean government. What changed with the UNGPs is the inclusion and spaces' organisation for non-state actors to collaborate in the process, which promoted knowledge regarding the UNGPs. However, Chile's approach excluded relevant actors from the decision-making spaces; thus, affecting the legitimacy of the process and the opportunities to develop more context-based policies (see Table 7.1).

In Mexico, the decision-making group was formed as a multi-stakeholder space and included the Focal Group for civil society, governmental organisations, international organisations, business associations and academia. The Multi-stakeholder Group organised three main spaces, open to the public, where different non-state actors were able to comment on the draft developed for the NAP. Given that civil society organisations followed the process from the beginning, feedback from the activities was included in the discussions during the NAP's final draft. What changed with the UNGPs in Mexico is that organisations of civil society (mainly the Focal Group) were empowered and developed a network to promote the discussion and lobby for business and human rights' (See Table 7.1). I argue in this thesis that Mexico's approach was more effective in improving business and human rights governance, as there was guidance and monitoring of the process from organisations of the civil society at all stages. However, as it will be presented below, this also negatively affected the access of other actors in the process and can also explain why there is no clarity on how other non-state actors (such as civil society organisations, Indigenous groups, or the business sector) influenced the process through the participation in large seminars.

Table 7.1 Themes of multi-stakeholder participation from document analysis and interviews

Type of Participation	Chile	Mexico
Participation in the decision-making group	<ul style="list-style-type: none"> <li>• The decision-making group was formed by governmental offices (for the implementation of the UNGPs and development of the NAP).</li> <li>• Role as technical advisors and observers had little influence in the decision-making process.</li> </ul>	<ul style="list-style-type: none"> <li>• The decision-making group was multi-stakeholder</li> <li>• Diversity of actors set good practice for participation mechanisms, especially for organisations of civil society with expertise in business and human rights (Focal Group)</li> </ul>
Participation in the NBA	<ul style="list-style-type: none"> <li>• A non-state actor developed the NBA: The Centre for Human Rights of the University of Chile (Academia)</li> </ul>	<ul style="list-style-type: none"> <li>• An organisation of civil society, PODER, developed the NBA. This organisation also led the Focal Group.</li> </ul>
Participation in the NAP	<ul style="list-style-type: none"> <li>• Activities in Chile focused on training and collecting recommendations on what to address in the NAP.</li> <li>• The report of the seminars highlighted the need for monitoring and transparency of the business sector in due diligence and human rights reports; and the need to develop policy regarding access to justice.</li> </ul>	<ul style="list-style-type: none"> <li>• Activities in Mexico focused on collecting opinions and feedback of the draft of the NAP.</li> <li>• The report of the seminars included recommendations about incentives for the development of due diligence and the right to consultation. Strengthen the Focal Point of the OECD and inform about mechanisms (public and private).</li> <li>• The Focal Group monitored these activities.</li> </ul>

This chapter will follow the same structure as the last two empirical chapters. Therefore, it includes two main sections, one for each country and a third section that will show a comparison of the two processes to highlight main findings and how they relate to the research question. The section for each country includes firstly the forms of participation or spaces where non-state actors participated; secondly, the influence of the UNGPs on the groups that participated in the process of implementation and specifically on civil society organisations; thirdly, it mentions the implications of these conditions for the business and human rights' domestic governance.

## **7.2 Participation during the development of the NAP in Chile**

Chile is one of the region's most consolidated and stable democracies; however, the country still faces a deficit in participative governance. Chile performs worse in terms of citizen participation (48.4%) initiatives on comparison to other countries of South America, like Peru and Ecuador - whose levels of participation were 74.5% and 72.1% respectively. Although almost every comparative index of democratic quality scores Chile higher than Peru or Ecuador, the data presented above is only for participation. The relevance of presenting these numbers is that they suggest that even though Chile has managed an important level of democratization, there are some areas where they can still improve, namely participation. Chile's limited tradition of public participation is slowly becoming a priority for the government, but it still has some way to go to ensure that consultation mechanisms are efficiently used (OECD Public Governance Review, 2017). During the implementation of the UNGPs, the limited tradition of public participation is observable in the complicated interaction between state and non-state actors. Additionally, the limited tradition of public participation promotes their traditional top -down style, which, as explained in Ch. 4, characterises Chile's style for policy making as an elite consensual style (Blake, 2008), a strategy that looks to 'work together, compromise and avoid serious conflict' (Weeks and Borzutsky, 2012). In this case, it was an elite consensual style because the decision-making group only included governmental organisations.

This section explores how non- state actors participated in the development of the NAP. I argue that decisions were limited to governmental organisations, hindering the chances for non-state actors (the business sector, unions, organisations and Indigenous communities) to influence final decisions. Therefore, civil society could not access the process as a 'guardian and a guidance for the UNGPs' implementation'. The only form in which civil society influenced the NAP appears to be in the structure of the document, which was taken from the seminars organised by the government. Chile's traditional form of developing public policy suggests the government acknowledged civil society's feedback but it was not mandatory for them to include it in the plan.

### **7.2.1 Participation Activities in the development of the NAP in Chile: the actors involved and public consultation**

Previous Chapters have shown that the Chilean government developed an exclusive process in the NAP's decision making, where only ministries had the final authority. This situation limited the scope of influence from any other actors, as there was no real access or

opportunity to influence the mind-sets of the government. Chapter 5 and 6 showed that the government had to align their work mainly to their mandates rather than investigate the national context and the guidelines from the UNGPs. These instruments were considered but were not central to the discussion about the NAP and the business and human rights governance. Therefore, Chile continues to replicate their traditional methods of doing politics, top-down and narrow elite consensual style, as explained in Chapter 4. Chapter 6 also explained that each Ministry decided on the commitments for the plan and its implementation. The limited participation at this stage affected the diffusion process and therefore limited the impact that the interaction between local and international actors have on the hybrid initiative implementation. The groups excluded from this part of the process were international organisations, autonomous organisations like the Human Rights Institute, civil society organisations and Indigenous communities.

However, there were other roles created by the government to allow non-state actors to participate, like those of technical advisors and process observers. These roles suggest a commitment from the Inter-ministerial group to include external guidance in the development of the NAP. How they were invited to participate affected the way in which non-state actors were able to influence the process and learn from the process itself. The technical advisor and observer group included the Danish Institute, the United Nations Office High Commissioner for Human Rights, National Human Rights Institute, the Contact Point of the OECD, the International Labour Organisation and the Council for Social Responsibility and Sustainability (Interview with Ministry of Foreign Affairs, 6 April 2018; Interview with ILO, 11 April 2018) and two civil society organisations, Casa de la Paz and Observatorio. These two organisations will be discussed in the following section as they are the only two organisations from civil society that participated closer to the Inter-ministerial Group and not only through public consultation. A topic that emerged from the interviews, regarding the technical advisor and observers' group, is that it was able to follow the process and present some ideas, but it had no authority to change the approach that the government had taken to develop the NAP (interview with ILO, 11 April 2018; Interview with OHCHR 26 April 2018). Therefore, the influence they had on the process was arguably very limited.

Additionally, the only company that participated on the process was Codelco, which is a state company and 'advanced in human rights issues' (Interview with Local Network Global Compact, 31 May 2018). Being advanced in human rights issues means that this company has developed internal policies and practices on human rights to prevent negative impacts. Codelco is a member of The Global Compact since 2016 and its Sustainability Report 2019

mentions its commitment with the UNGPs (Reporte CODELCO, 2019). Due to the significance of the mining industry in the country (Codelco, 2019) Codelco's participation influenced other companies and industries through their value chain as they are able to pass on its human right's commitment with valuable stakeholder like communities, employees, suppliers, competitors, etc. and thus, improving the business and human rights' domestic governance. Yet, having only one company in the process to develop the NAP suggests the limited influence of the UNGPs on the wider business community. Chapter 2 argued that 'companies will only engage in a partnership if there will be a positive return on their investment' (Binder et al, 2007 in Buckup, 2012). In other words, the business sector may not understand the relevance of human rights for doing business and how it is unsustainable to keep avoiding this issue. This raises a concern about the time that it is taking to make businesses engage with human rights affairs and leaves as a main strategy that of getting business associations to convince companies of the positive return of addressing human rights issues.

Another topic that emerged from the interviews is that the process included limited participation of civil society organisations and other non-state actors. The process to develop the National Action Plan 'did not have the constant presence of the civil society to guide the process. This did not happen in the Chilean process' (Interview with Ministry of Foreign Affairs, 6 April 2018). Additionally, it was the government who was consulting with the Danish Institute and civil society organisations were not involved in a meaningful way. This lack of networking limited the pressure that civil society could have applied to the government to include their concerns (Keck and Sikkink, 1999; Shor, 2008); but also hindered the pressure that domestic actors can apply on other international actors, like transnational companies (Thomas and Mitra, 2017). Therefore, without civil society being actively involved in the process, Chile could have missed influencing other countries or international actors involved in the issues regarding business and human rights in Chile.

In line with Ch. 5 and 6, the evidence above shows that, 'the process in Chile was basically as it is in traditional politics, that of decision-making by the Government' (Interview UN Working Group Mexico, 19 January 2018). This means there were limitations for other actors, which characterises the Chilean style of developing public policy. This example implies that in terms of effectiveness and decision-making, the government aimed at delivering policy rather than adopting more inclusive strategies. However, to gain legitimacy and validation the government needed to receive information from different perspectives and actors (Hanberger, 2003; Interview Ministry of Foreign Affairs, 6 April 2018). For this

reason, the Inter-ministerial Group developed the ‘Dialogues’ – different from the decision-making group- where civil society (business, Indigenous communities, unions and organisations) could participate in the process. The purpose was to strengthen civil society actors (Oxhorn, 2006) by training them, and making them aware of the process. However, empowering civil society was observed by the Inter-ministerial Group as something that would be produced by NAP as the activities in it aimed to ‘prepare civil society for other processes in the future’ (Interview with Ministry of Foreign Affairs, 6 April 2018) rather than by the sole implementation and presence of the UNGPs in Chile. What this meant for the actors of civil society is that their existent knowledge and expertise was not included in the process for the first NAP, and their current roles and experiences were thus overlooked.

Nine ‘Dialogues’ were organised by the Human Rights Department of the Ministry of Foreign Affairs in July 2016. The dialogues or consultations were held in Antofagasta, San Pedro de Atacama, Santiago and Temuco with companies and unions, civil society and Indigenous people. ‘The government formed bilateral participation spaces, government with business organizations and government with unions. Civil society organizations participated as well, to some extent’ (Interview with ILO; Interview with Danish Institute for Human Rights). The main objective was to collect opinions, input and recommendations that will contribute to the content of the first National Plan. ‘The recommendations were taken into consideration and the document is structured around the themes originating from the ‘dialogues’ (Interview Ministry of Foreign Affairs, 6 April 2018). However, there was not a space- in terms of a place- in which all actors converged and sat down to discuss and negotiate to develop compromises on the most important issues regarding business and human rights. Table 7.2 shows the groups that participated in the Dialogues and supports the idea explained in the previous sections where business and civil society are observed as different types of organisations, perhaps because they represent different sectors. The separation of the groups highlights the existent tension and lack of inter-sectoral dialogue which can perpetuate any conflict between the business sector and the rest of society. However, numbers in the Table 7.2 also show a relevant amount of people participating in the activities (420 in total) which suggest a big scope of influence of the UNGPs on non-state actors.



Table 7.2 Distribution of participation by region and Dialogues groups

Group	Participants
Civil Society Organisations	118
Business and Unions	120
Indigenous Communities	121
Total	420

Source: Cordero, et al, 2016

A second part of the participation was the public consultation of the final draft in March 2017. However, there was less transparency in the information of who participated in this consultation and how the participation was included in the NAP. The draft had 13 observations via the web (platform enabled for sending comments) and 7 observations by the Oficialía de Partes (organisation in charge of receiving any communication regarding the consultation) and email, which shows low levels of participation and engagement in comparison with the participants involved in the Dialogues, so questioning the impact of this last consultation. A multi-stakeholder workshop to discuss the text was also held on April 10 at the Ministry of Foreign Affairs, with the presence of the Undersecretaries for Foreign Affairs, Economy and Social Development, as well as representatives of the public institutions that participated in the elaboration of the text. Around 65 people participated in the event, distributed at 3 discussion tables (Respuesta al Proceso de Consulta, n.d.) Given that this workshop was for governmental institutions and the characteristic of ‘top- down style’ of policy making it can be suggested that the outcomes of this event were included in the NAP.

### 7.2.2 Tracing civil society organisations and its influence in the process

Previous sections showed that there were different groups from civil society that participated in the Dialogues; however, the information gathered does not show the specific organisations, companies or communities that participated in the process. According to the interviews, only two civil society organisations were able to follow the process from beginning to end to develop the NAP as observers, which could possibly mean they did not have an influential role but gave some sense of the presence of civil society organisations in order to validate the process. Factors like knowledge and experience could have affected the engagement of more civil society organisations in the process. Also, civil society

organisations tend to follow specific interests, for example, transparency, LGBT+, and women's rights, and they have limited resources to focus their efforts only on one topic at a time. Thus, according to the interviews, organisations do not necessarily see the connection between their daily work and business and human rights (Interview with Ministry of Foreign Affairs, 6 April 2018; Observatorio Ciudadano, 25 May 2018; ILO, 11 April 2018). This can be related to Chapter 5 where the connotation of human rights is that of a transformational process in Chile where different rights (cultural, economic, and social) are included in the concept of human rights rather than political rights only. This suggests that many civil society organisations missed the learning process for creating a political coherence discussed in Ch. 5 and were not influenced by this process.

Another topic that emerged in the interviews is the lack of experience and expertise of civil society on business and human rights which can be explained by Chile's economic stability and lack of support from the government. 'At a comparative level in the region, civil society went through a very difficult moment as Chile stopped receiving international cooperation, financial aid and the state is not funded' (Interview with UNDP, 17 May 2018; Interview with National Institute for Human Rights Chile, 25 April 2018). One reason for this is that Chile became a high-income economy ranked by the World Bank (World Bank, 2019) and received less support from International Cooperation, as the organisations no longer qualify for overseas development assistance. Another reason could be the lack of trust dating from the period of authoritarian government, which might be hindering the interaction between government and civil society. Chapter 4 explained that civil society in Chile was not entirely supported by the Concertación Coalition after the dictatorship, and that the government deactivated important social movements. Nevertheless, a rigid separation of the state and civil society ignores the fact that many civil society actors also need the state to secure the passage of laws and regulations favourable to their interests (Oxhorn, 2006:67) and ignores the need for achieving legitimization for their decisions. Therefore, in practice, civil society cannot be completely autonomous, as the concept of civil society would indicate, because sometimes it needs the state to exist and work properly.

Moreover, only two organisations were actively involved in the process: Observatorio Ciudadano and Casa de la Paz. Casa de la Paz and Observatorio were able to reach more exclusive participation spaces as they were also involved as observers rather than only as consultants, and thus they became the most important organisations of civil society for the process of developing the NAP. Observatorio Ciudadano (Citizens' Rights Watch) is a non-governmental organization devoted to the advocacy, promotion and documentation of

human rights. Their work is guided by international instruments of human rights and Indigenous people (Observatorio Ciudadano, 2019a). Observatorio participated in the process as they work in communities affected by large mining investment projects in the north, and deforestation and salmon farming in the south, three very important industries in Chile. The Observatorio was influenced by the UNGPs even before the national implementation ‘through international forums and through lobbying to develop an agenda closer to the needs of the Indigenous people’ (Interview with Observatorio). However, they recognised that their ‘input was not considered in the National Plan’ (Interview with Observatorio Ciudadano, 25 May 2018). For example, ‘the Plan did not include mitigation and prevention of human rights abuse in the value chain or domestic law enforcement’ (Aylwin, 2017). Nevertheless, the organisation continued its work on the UNGPs by developing a critical assessment of the plan, collecting lessons learned to improve the protection of Human Rights in America (Observatorio, 2019a), and developing documents to guide affected communities (DAR et al. 2019).

Casa de la Paz is an organisation expert in citizen participation, social dialogue, and education for sustainable development (Casa de la Paz, 2019a). Casa de la Paz was contacted to ask for an interview to get to know their perception of the process to develop the NAP, however the organisation never replied. This could support the idea that they have limited resources and that sharing its experience was not a priority. Nevertheless, in 2019 Casa de la Paz developed a set of guidelines within the framework of the National Action Plan (which are presented in the NAP “Guides for Chile”). These guidelines contain practical and voluntary recommendations for the UNGPs’ implementation of the companies. The organisation recently delivered -with the funding from the European Union - two guides, one for "Elderly People" and the other for "Migrants". These guidelines address the impact that business activities have on these vulnerable groups and promote business impact management from a human rights approach (Casa de la Paz, 2020a). Nonetheless, Casa de la Paz focuses a part of their work on providing training in business and human rights and strategies for implementation of international standards.

The analysis identifies substantive natures of the participation and the range of actors involved, both suggesting limited participation. Observatorio and Casa de la Paz could be legitimate for the government due to their relationships with international actors like the European Union, but not by other organisations or social movements, so undermining the organisation’s legitimacy in the eyes of others (Poppellwell, 2018). However, having only two organisations of civil society involved in the process raises concerns about legitimacy

as they represent ‘some’ in the process but clearly many others are missing (Popplewell, 2018). The limited consideration of some groups, and lack of participation in decision-making processes, could indicate poor acceptance from the civil society, grassroots organisations or victims in the broader process. Finally, Consequently, there is a need to have more participation from other organisations and victims at the same level during the process (at least as Observers).

### **7.2.3 Implications of the multi- stakeholder participation in Chile’s NAP for business and human rights’ domestic governance**

The entire process lasted three years, from 2014 to 2017, a period of time where the Inter-Ministerial group benefited the most from the learning process, as the Inter-Ministerial Group (the decision-making group) was exclusive, and they were the ones in charge of framing and setting the agenda for business and human rights in Chile. At the same time, the Inter-Ministerial Group affected the other actors who collaborate closely with them (technical advisors or other governmental offices) began to perceive business and human rights. Therefore, this group excluded civil society, (NGOs, Indigenous communities and the business sector) from the learning process and final decisions concerning the NAP. This prevented an opportunity for capacity building and empowerment for these stakeholders. What the UNGPs changed in terms of multi-stakeholder participation is that the government was encouraged to at least create some activities to communicate and promote participation and interest in business and human rights, which is not normally seen in its elite consensus style for delivering public policy.

The government planned several spaces for training on the UNGPs for civil society; however, the multi-stakeholder participation was flawed due to the weak approach to capacity building. The Dialogues organised during July 2016 offered short periods of training but did not allow the real dialogue and interaction between the different actors from civil society that were participating in the process. As mentioned before, having separate groups for the conversations hindered collaborations and understanding of different points of view. Consequently, the process had little impact on developing skills and empowerment for the different groups and on their possibilities to influence the business and human rights’ domestic governance. Collaborative arrangements are expected to forge more efficient, effective, and inclusive responses to policy problems (Pattberg and Widerberg, 2016). The collection of the information was based on ‘impact, challenges and recommendations regarding business and human rights’ that should be considered in the NAP’ (Cordero, et al, 2016). In other words, it was ‘hoped’ that the report would be able to transmit various

messages to the Working Group to be ‘considered’ in the process of preparing the National Action Plan (Cordero, et al, 2016). Due to the top-down style implemented by the government to deliver policy, the feedback was not included in the NAP, as they were also reluctant to consider the findings in the National Baseline Assessment. Therefore, the ‘Dialogues’ contributed to the NAP only with the topics selected to structure the plan, rather than with relevant content that could respond to the participants’ needs and realities.

The organisations from civil society that participated more actively, like Casa de la Paz and Observatorio, were influenced by the process because they reached spaces as observers rather than through the Dialogues. These two organisations had a special relationship with the process due to their work, experience, and relationship with other international actors. For example, the European Union have funded both organisations to develop projects on BHR in the country.<sup>31</sup> These organisations had a broader influence on the business and human rights’ domestic governance because they were able to follow the process more closely and potentially indicate where the flaws and/or problems would be in the NAP. This does not make them automatically influential, but it was the highest-level group from civil society that could get involved in this process, and thus, it deserves to be highlighted. The participation from these organisations exemplifies where the opportunities are and who are able to benefit from these opportunities. More importantly, the evidence shows that the process was not able to develop the expected influential participation of a critical mass of civil society as guardian and guide for the implementation. Acknowledging is not the same as empowering; the process to develop the NAP did not empower civil society to have an impact on the final document.

Nevertheless, in the case of the business sector, just one company participated and that was a state-owned enterprise which suggests little interest from the business sector in the field of Business and Human Rights. However, this sector was represented by other organisations in the Inter-Ministerial group like the Ministry of Economy, or as technical advisors with the ILO or the Social Responsibility Council, which involved business associations, thus creating some disadvantage in terms of representation in the decision-making process. In other words, the process included more organisations representing the interests of the business sector or the economic activities, without giving the same access to actors that represented human rights. Thus, the evidence suggests that the process did not assure equal participation or representation, especially of the victims that do not seem to appear in any of

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<sup>31</sup> The websites of Observatorio Ciudadano (2019b) and Casa de la Paz (2019b) shows the projects that have been funded by the European Union.

the spaces. For these reasons, participation was considered irregular due to the limited involvement of civil society in the decision-making process to develop the Plan.

The following section will present first the participatory processes in Mexico involved in developing the National Action Plans. Then the section will show the actors that were part of the process, how they participated and the capacity they built to influence the agenda.

### **7.3 Participation for the development of the NAP in Mexico**

Mexico has faced changes in recent decades that point to the creation and strengthening of endless councils, committees, and other collegial instances of participation in the legislative, executive and judicial powers of government (Hevia, Vergara – Lope and Avila, 2011). Additionally, Mexico develops public forums of deliberation which are socio-state interfaces (where governmental and non-governmental agents meet) and where the interactions have the purpose of informing, analysing, proposing, criticizing, deciding, evaluating and reorienting the Government's actions with co-participation (Cunill, 1997; Rabotnikof, 2005 in Hevia, Vergara – Lope and Avila, 2011). Therefore, Mexico is looking to develop procedures that are open to non-state actors thus creating spaces of collaboration different from the case in Chile, which follows an elite consensus policy style where top-down strategies predominate in decision-making. Therefore, the Working group for the UNGPs in Mexico attempted to gain legitimacy during the process by including different actors in the negotiation. In this regard, it is imperative to highlight the importance of a government that is open to these kinds of activities.

This section will show that multi-stakeholder participation was included in early stages of the process and in the decision-making to develop the NAP. As mentioned before, developing a multi-stakeholder process from initial stages gave the Mexican process a wider capacity for dialogue while learning from the different actors' interactions. Also, having a variety of actors involved allowed an influence of the UNGPs on different sectors of society. Moreover, what the UNGPs changed was that civil society organisations affected the domestic governance in Mexico by self-organising as the Focal Group, proposing themselves to be part of the Multi-stakeholder Group, and guiding the process aligned to the national context and to the UNGPs. The Focal Group was able to influence the framing process and the agenda-setting in addressing the outcomes from the NBA, like law enforcement and corruption. Also, they had the previous knowledge about connecting the NBA with the purpose of the UNGPs and were able to influence the relevance of including due diligence in the process. In other words, they were able to influence the process by

guiding the other actors involved to what the Focal Group believed were the priorities for the UNGPs' implementation. These actions gave them the authority needed to guide and challenge the government to improve the content of the NAP, setting a precedent on 'good practice' for developing multi-stakeholder mechanisms to build policy.

Additionally, Mexico planned other activities to promote business and human rights and three Forums of Socialization to collect observations for the NAP's draft. However, while these activities represent a huge accomplishment, the decision-making table missed, similarly to Chile, the presence of important groups like Indigenous communities, or victims of corporate human rights violations, so raising a concern about the legitimization of the Focal Group.

### **7.3.1 Multi-stakeholder participation in Mexico's NAP's process: the actors involved and the participatory activities**

The process for developing the NAP in Mexico was conceived as a multi-stakeholder process as the Multi-stakeholder Group (decision-making group) was formed by representatives of 'public administration units, the executive, judicial and legislative powers, civil society, the business Sector including state companies, the academic sector, international organizations representing some unions, indigenous communities, and the National Human Rights Commission' (Interview with Secretariat of Foreign Affairs, 22 February, 2018). This group was formed in September 2015 just a year after the government's commitment to developing a NAP. This is one of the main differences in Chile's case, as the decision-making group in Chile excluded non-state actors and used public consultations to achieve some validation for the process. In Mexico, the validation of the process was gained by involving different actors in the decision-making process. The validation started with civil society organisations that organised within the business and human rights' field led by PODER<sup>32</sup> (Interview with UN Working Group Mexico Business and Human Rights, 19 January 2018) and supported the process from the beginning. These organisations formed the Focal Group of civil society organisations to support the implementation of the UNGPs in Mexico. This is another difference from Chile, as the process in Mexico was able to empower civil society organisations from early stages, without excluding non-state actors from the decision-making processes.

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<sup>32</sup> The Project on Organizing, Development, Education, and Research (PODER) ® is a regional not-for-profit, non-governmental organization with the mission to improve corporate transparency and accountability in Latin America -from a human rights perspective- and to strengthen civil society corporation's stakeholders as long-term accountability guarantors (PODER, 2020a).

The Multi-stakeholder Group became a defined and formal space of interaction, as well as plural and participative. It was considered ‘a quite eclectic group with a high level of interlocution’ (Interview with Regional Centre in support of the SDGs, 13 January 2018). In other words, the contribution from civil society organisations and the business sector in the process was their ability to develop a conversation regarding business and human rights. In fact, ‘building a dialogue’ is one of the most important achievements of the process to develop the NAP and has significant findings in this study. My analysis of the dialogues in each country reveals differences between the Mexican and the Chilean processes and experiences. For example, in Mexico, the dialogue facilitated the interaction between different actors, which led to a dialogue that ‘invites participants to learn not only to speak, but to develop introspection. A dialogue will always look for long-term solutions and promotes empathy and consideration of the other actors involved’ (UNDP, 2009).

In other words, while framing and setting the agenda, the actors that participated in the decision-making group were able to build the skills needed to have a conversation that led to affecting the business and human rights’ governance. In the Mexican case, the Focal Group was actively involved, together with actors like academia and unions, calling ‘the attention at the international level for sitting the main actors at the same table’ (Interview with Coordinator of National Action Plan, 06 March, 2018). The Multi-stakeholder Group committed ‘to a plan that would represent all the groups, ensuring participation of all the actors. And if not, they would not have a National Action Plan, and that [was the] challenge’ (Interview with Danish Institute for Human Rights, 9 January 2018). Therefore, the Multi-stakeholder Group in Mexico shows that the process aimed for legitimacy, having different actors in the negotiation table gave a bigger range of representation. However, representing all the voices involved in a document was a difficult task.

The Focal Group recommended developing the plan under the Danish Institute guidelines. (Interview with Danish Institute for Human Rights, 9 January 2018). Therefore, the Danish Institute was able to work as an advisor on the process since the beginning but from the side of the Focal Group. The relationship between the Danish Institute and the Focal Group is different from the Chilean case where the partnership was between the Institute and the government. In Mexico, this partnership benefited the process as civil society organisations found international allies that pressured the state from outside (Keck and Sikkink, 1998; Keck and Sikkink, 1999; Shor, 2008; Thomas and Mitra, 2017) influencing the Mexican government on issues regarding business and human rights. The process in Mexico had several international actors like the Swiss government, Spain’s International Cooperation



Agency, and the Japanese Embassy which were involved in the process through financing meetings and arranging activities, which suggests some influence was exerted by external actors (Foro de Socialización y Consulta, 2017; Interview with Alondra Mendoza, 22 February 2018). In practice, the relationship between the Danish Institute and Focal Group allowed the construction of a stronger and more organized civil society on business and human rights' matters, which encouraged the government to place business and human rights on their agenda.

In terms of which actors were invited to participate and how, the methodology followed to create the Multi-stakeholder Group was a very informal process, 'literally a very unscientific mapping, then we were introduced to the Focal Group (...), we already knew some groups like CEMEFI, the American Chambers and The Global Compact (...) and even other organisations asked to be a part of this group' (Interview with Coordinator of National Action Plan, SEGOB). Moreover, a topic that emerged in the interviews was that the methodology was imperfect, and it never considered consultation with the Indigenous Communities, the local communities, or the victims. They were not open to including more organisations like the Unions (Interview, representative of PODERb 5 March 2018; Interview with representative of PODERa 12 March 2018; Interview with Secretariat of Foreign Affairs, 22 February, 2018) leaving several relevant groups outside the decision-making process and raising some questions about legitimacy and inclusion. The Focal Group comprised nine organisations 'that claim to represent labour issues in Mexico while positioning themselves as *civil society organisations* (Interview with Advisor ILO, 2 March, 2018). The purpose of presenting these examples is to show that even though the Mexican process included organisations of civil society more actively, the process in Mexico excluded some groups, thus the participation was still only available for the elites.

For organisations to be considered legitimate, the actors need to be appropriate and accepted, and their activities must be justified in terms of the values and expectations of their social contexts (Brown 2008: 2 in Popplewell, 2018). Most importantly, they would need to 'enjoy the support of an identifiable community' (Edwards 1999: 258 in Popplewell, 2018) which seems to be missing from the process as there was little involvement from communities or grassroots' organisations. Following the same line of thought, the OECD National Focal Point considered that the organisations in Mexico are fragmented 'very polarized, where all the effort made is in the hands of the small groups (Interview with OECD National Focal Point, 17 August 2017). This shows that although the process represents an attempt to be more inclusive, there are still areas of improvement. However, the process sets a good

precedent for future experiences regarding participation of non-state actors (multi sectorial), specifically in controversial issues like business and human rights.

Mexico organised four extraordinary meetings to promote the topic of business and human rights: the Social Inclusion Strategy of Petróleos Mexicanos and the NMX-R-025-SCFI-2015 Standard on Labour equality and Non-discrimination in June 2015; the visit of the United Nations Working Group on human rights and transnational companies in September 2015; training workshops held for the Working Group on Guiding Principles and examples of good practice were shared based on trilateral cooperation between Mexico's Government, Switzerland's Government and the Danish Institute for Human Rights (DIHR) in October 2015; and the "Business Sustainability Forum in Mexico: International Good Practices in Human Rights" held in October 2015, to inform the business community the importance of the principles of due diligence established in the Guiding Principles (SEGOB, 2020a). These events show a relevant commitment to promote and inform about business and human rights in Mexico, and to developing knowledge and building skills among the different groups of civil society, specifically about business and organisations.

Furthermore, the Ministry of the Interior, the Ministry of Foreign Affairs, the Mexican Agency for International Development Cooperation (AMEXCID), the Cooperation of the European Union, and the Danish Institute for Human Rights organised a two-day activity in February 2017 to complete a draft of the National Action Plan. The participants in this meeting were representatives of the Chambers of Commerce, civil society organizations (the Focal Group), members of the academy, government officials, representatives of the National Commission on Human Rights, Indigenous communities, unions and international cooperation organizations (SEGOB, 2020b). Then the document was sent to the Multi-stakeholder Group for validation. The importance of this meeting is that the participants who took part participated in a learning process, where debates and discussions took place in order to agree on the actions that would be included in the NAP (SEGOB, 2020b). The activity is also one where the participants could really influence the NAP by agreeing on its structure and the topics that were needed to respond to the national context and the UNGPs. Additionally, in this stage the actors involved were also influenced by the process and the discussion of the business and human rights' agenda.

Like Chile, the Mexican process also held consultations during March and June 2017 which were organised into 3 regions: the north, south and centre of the country. The 'Forums of socialization' functioned as consultations to collect observations and recommendations for the NAP's final draft. The reports of the Forums presented a thorough collection of

observations for each one of the objectives that the NAP included (Foro de Socialización y Consulta, 2017). These activities showed a commitment from the government and the Working Group to share the progress and develop interactions between the different actors. In Mexico these activities were developed to provide feedback for the NAP's draft, as they had more chance to provide opinions about something tangible. The Chilean consultations, although large and inclusive, were established before the development of the NAP, so they could not comment on what the final draft would look like. This is precisely how civil society organisations were better incorporated into the process in Mexico than in Chile, by having an 'autonomous' group that guided and monitored the process through all its stages.

The following section will present the further influence that civil society had on the process to develop the NAP and its effects on the broader business and human rights' domestic governance.

### **7.3.2 Tracing Civil Society's influence in the process**

The main way in which the influence of civil society can be identified is through the Focal Group's active participation in the decision-making process. The influence of this group on the process is a positive characteristic in the Mexican case and differs from the Chilean experience where civil society organisations were excluded from the decision-making process. In Mexico, the Focal Group's work and their impact can be observed from the early stages in the process, by influencing the framing and agenda of business and human rights of the country, but also by setting precedents for new methods of participation. However, it is not only through their guidance that they influenced domestic governance on business and human rights, but also by how they were positioned as key actors and empowered themselves through the process of developing the NAP. This last achievement can be observed in their capacity to pressure the government by quitting when the results of the drafts were not favourable to their purpose and that of the UNGPs. By doing this, they set 'an example of good participation, which has been a good example of how these things should work' (Interview with Danish Institute for Human Rights, 9 January 2018).

Another situation that is relevant to flag up is that according to a SEGOB employee, 'civil society was always considered in all the processes and programs, and the National Action Plan was not the exception' (Interview Coordinator of National Action Plan, 06 March, 2018). Chapter 4 presented the evolution of a strong and active civil society in Mexico, which has grown in its influence with the use of participation mechanisms that the government has been promoting since 2000. The participation of the Focal Group in Mexico

is clearer than in Chile, as Mexico had already included it as part of the Working Group and it had some influence on the process. While the evidence showed that other non-state actors participated on the Forums of Socialization, the evidence reveals a lack of clarity as to how these external groups of civil society influenced the domestic governance on business and human rights and the process of developing the NAP. Furthermore, ‘civil society [Focal Group] warned that the plan does not contemplate a clear methodology for integrating the comments that emerged in the forums and online consultation, nor a mechanism to support its implementation, monitoring and evaluation’ (Proceso, 2017).

Moreover, the Mexican case shows that developing a plan through a process involving multi-actors is one thing, but reaching consensus is another. This was the main issue with the Mexican draft, as actors were not able to reach an agreement for the NAP that represented everyone in the Multi-stakeholder Group. The difficulties were the interests that were at stake. ‘Companies simply do not want the same things that civil society wants and vice versa’ (Interview with Danish Institute for Human Rights, 9 January 2018). However, others acknowledge that it was the interaction that clearly could enrich the business and human rights governance and that ‘it is a matter of winning and giving’ (Interview with Human Rights Commission, 18 July 2018) rather than just searching for consensus. Additionally, while Chile’s government decided the agenda more unilaterally to complete the NAP, in the case of Mexico ‘this search for consensus resulted in not having a Plan’ (Interview with Danish Institute for Human Rights, 9 January 2018). The Focal Group decided to quit because the government’s draft of the NAP did not include aspects that were priorities for them such as due diligence and access to justice.

The Focal Group was ‘disappointed with the process because they said it was not a serious job as there were many deficiencies, many gaps left in the final draft’ (Interview with UN Working Group Mexico Business and Human Rights, 19 January 2018). Additionally, members of the Focal Group considered that ‘after having all the resources to develop a good quality plan with the highest standards, producing an average plan, just for the sake of having one, was not enough for business and human rights in Mexico’ (Interview with PODERb, 5 March 2018). This opinion also differs from what was observed in the Chilean case in Chapter 5 and 6, as delivering the plan became the highest priority rather than assuring the content of the plan. Instead, the Focal Group showed a commitment to the national context and the UNGPs until the end, when no plan for Mexico to guide the business and human rights governance materialised. The purpose of showing their inconformity by quitting contributed by creating even more awareness of the aspects that were missing and

encouraged the government to develop more discussions, assess the final document and improve it before launching it as the NAP.

### **7.3.3 Implications of the multi- stakeholder participation in the NAP and on domestic governance of business and human rights in Mexico**

Chapter 7 presents how the UNGPs influenced actors through participation and how these actors were able to impact and offer guidance to the process. The most obvious implication could be the impact in terms of experience and knowledge that the process had on the decision-making group (the Multi-stakeholder Group), as most of the decisions and discussions (learning process) were undertaken by this selected group. The decision-making group learnt about the relevance of conducting and participating in multi-stakeholder processes in the first place. As was mentioned before, these experiences set precedents for other processes. The members of the group were also able to get more familiarized with the problematics that business and human rights consist of in the country and what the UNGPs' implementation meant for Mexico.

Also, the Focal Group, as a coalition of civil society organisations that partnered with the Danish Institute, organised itself around business and human rights, thus positioning itself as the main actor in terms of knowledge and expertise, and influencing other actors domestically. This group was able to guide the process and influence the government and other non-state actors in framing and setting the agenda. Additionally, they contributed through their interactions with the international community, and the relationship they built to balance power in the negotiations and pressure the government to change the final draft. As argued in Chapter 6, the process allowed the positioning of the business sector as an actor that should be accountable for its impact, something learnt also by all the members, though probably not welcomed by the business sector itself.

In Mexico, the government was open to develop participation spaces for non-state actors thereby showing their commitment to socialize a national process. The process was able to raise the awareness of not only the governmental organisations but also of different groups, which were able to pressure the government to complete the process and to monitor the implementation. However, the lack of transparency as to who participated in the regional consultation raised concerns about the real impact and scope of these activities. Academia was actively involved in the process; the UN Working Group of the business and human rights in Mexico was also part of the Multi-stakeholder Group, giving them more scope to activate a new process and demand new lines of action. PODER, one of the main

organisations in the Focal Group, has continued its work around the UNGPs by developing new strategies to encourage the new government to start new negotiations. Moreover, the process produced the National Baseline Assessment, and recommendations from international organisations that influenced the actors involved and also the data they produced, which is public and can be used by anyone to reactivate the process.

The active participation of the Focal Group allowed to some extent for a more inclusive process. Additionally, it is possible to observe a government that was open to creating participation spaces and even to sharing the ‘power’ somewhat in the decision-making process by forming a multi-stakeholder group. Although the multi-stakeholder participation in the decision-making group could have affected the development of the NAP, as it was difficult to reach consensus, the final decision from the Focal Group added more tension instead of promoting further negotiation to achieve a compromise between the actors rather than a consensus.

The following section will present a comparison between the two cases to observe similarities and differences in the process to help draw some conclusions over the implications that each process had on the domestic governance of each country.

#### **7.4 Comparison between Chile and Mexico: The influence of the UNGPs on civil society and participation mechanisms**

The influence of the UNGPs on civil society and the participation mechanisms was more evident than in the framing and agenda setting process for both countries. However, each country developed a strategy according to its background and policy design methods. Chile showed less experience of participation mechanisms and more dependence on ‘top to bottom’ strategies. In some way, building the NAP without the participation of civil society could have been a strategy to deliver the National Action Plan on time in ‘a traditional decision-making’ process (elite consensual style). The UNGPs in Chile encouraged the creation of multi-stakeholder participation spaces; at the same time these activities influenced the knowledge and interest of non-state actors in the business and human rights field. Nevertheless, the organisations were not able to deliver substantial feedback to the process because they were very new to the topic. For this reason, the only way in which these activities influenced the NAP was in the document structure given but not in the content itself. Mexico, on the other hand, has been actively designing participation spaces since the presidential alternation in 2000. Although it is still behind in several democratic areas, it shows commitment to include non-state actors in the processes for policy making. In

Mexico, the UNGPs changed the business and human rights' governance as the process included an active and strong civil society organisation experienced in related business and human rights issues that had emerged. Another positive factor in Mexico is that public consultation was designed to assess the draft rather than giving recommendations about a topic that still had more possibilities to directly impact the plan.

The Danish Institute played a relevant guiding role in both cases; however, the organisation that was partnering with the Institute seemed to impact on how the process developed. In the Chilean case the relationship created a very involved government, which focused on delivering a first NAP. This situation affected the influence the UNGPs could have in the business and human rights' domestic governance, specifically, in terms of the involvement of non-state actors in monitoring the implementation of the plan. Only two organisations from civil society, Observatorio Ciudadano and Casa de la Paz, were engaged with the process because they reached the level of observers, while other participants from civil society organisations only provided general feedback. Additionally, it is because of the top-down decision-making process in Chile that I considered the contributions from external actors might have been considered but not included, as they do not have the tradition of including others in their processes. This contributed to the perception that the process did not have enough guidance from civil society.

On the other hand, in Mexico, civil society was the actor that received most support from the Danish Institute. From the beginning, Civil society -through the Focal Group- was able to influence the development of a multi-stakeholder group that could make the decisions concerning the NAP. The presence of the Focal Group suggests more sensibility and leadership from this group towards including other actor's concerns. These non-state actors also participated in the public consultations but were not part of the Working Group, therefore their influence in the process was more limited. However, it was the Focal Groups empowerment and capacity to be present at every stage of the process which positions this case as more successful in terms of participation. The way this affected the domestic governance is in terms of establishing examples of good practices, in other words, the current participation is a precedent for future processes on business and human rights.

## **7.5 Conclusion**

The purpose of Chapter 7 was to analyse the influence of the UNGPs on multi-stakeholder participation in the process to develop the NAP in Chile and Mexico and to compare the differences in both countries. The analysis identified the nature of participation and range of

actors involved. Also, it identifies the influence the UNGPs had on the participants, and how the participants influenced NAP's development along with business and human rights' governance. It argues the influence of UNGPs on multi-stakeholder processes and related learning processes has been greater than its effects on agenda setting or business and human rights framing. Yet, who was invited to participate and the nature of the participation spaces themselves hindered the democratic inclusion of the process and the capacity of civil society to influence policy outputs. The chapter shows that Chile's process contributed to the knowledge and experience of the participants and a recommendation session with comments to be considered in the development of the NAP. However, little influence from the consultations was identified in the National Action Plan. Nevertheless, the main implication of this process is that the influence was limited because there was less access to non-state actors in the decision-making group.

In Mexico the decision-making group was formed as a multi-stakeholder space and included the Focal Group for civil society, governmental organisations, international organisations, business associations and academia. In addition, the decision-making group organised three main spaces opened to the public where different non-state actors were able to comment on the NAP's developed draft. In this case, civil society organisations followed the process from the beginning, monitoring the process and allowing it to be more receptive to the recommendations from other non-state actors. The main implications in this case were that participation at early stages of the process allowed organisations of the civil society (mainly the Focal Group) to empower and develop a network for the national governance of business and human rights issues. I consider that Mexico's approach was more effective in improving business and human rights governance, as it counted on civil society organisations for guidance and monitoring throughout every stage of the process. Nevertheless, in both countries it is possible to observe the influence on participation processes, which although not perfect, established the good experiences, practice and new knowledge for developing and improving these kinds of processes.



## Chapter 8 Conclusions

### 8.1 Introduction

The purpose of this research is to contribute to an understanding of the influence that hybrid initiatives of business and human rights' and mechanisms of soft law have on national context. Considerable research has been devoted to human rights as an international priority when abuse is committed by the state, however, regarding business and human rights, the field is considered to be still emergent. In the specific case of the UNGPs- is that the implementation of the UNGPs is new to the region as only two countries have developed a National Action Plan, and some others are still in planning stages. This thesis thus examined the implementation of the UNGPs in Chile and Mexico through the analysis of the National Action Plans' developing process. This research is focused on the relevance of context within the implementation processes and the extent in which hybrid initiatives can influence the countries' domestic sphere like framing, agenda setting and MSP. The topics that emerged from the literature and where the UNGPs could influence national context were regarding framing business and human rights, the agenda setting and the process of multi-stakeholders' participation. These themes, alongside with the context, provided the structure for the thesis. Moreover, the thematic analysis for framing and agenda setting observed the influence across the three UNGPs' Pillars, specifically how they were addressed and included in the processes. My findings indicate that the implementation of the UNGPs had little influence on the BHR field on the framing and agenda setting processes in Chile and Mexico because both countries rely mainly in the state's role to protect human rights and thus give less attention to the role of the business sector. In the case of the multi-stakeholder participation, it is possible to observe in the analysis a greater influence here than on the first two processes because both countries developed inclusive participatory mechanisms like seminars and NAP consultation processes. The main difference between the countries is that Mexico developed a remarkable multi-stakeholder process as it included a variety of sectors in the decision-making and civil society organisations monitored the process. Chile developed a process 'behind doors' where non-state actors had little influence on the decision-making process.

Therefore, Chapter 8 has the main purpose of reviewing the findings discussed in the empirical chapters and the implications for domestic processes in both countries. Additionally, this chapter also concludes the thesis by setting out the contribution made by this research. It illustrates the ways in which our understanding of hybrid initiatives' implementation can influence domestic processes. In other words, it highlights that context

does matter and that therefore should be considered firstly in the design of transnational BHR regulation and then in its implementation. Sometimes, ‘top to bottom’ programmes’ tropicalization fail to consider the different dynamics, diversity, and actors with traditions that exist at national levels, all which can hinder or facilitate the international frameworks’ implementation. Finally, the chapter outlines the limitation of this study and presents avenues for further research. While this work presents an important contribution to the transnational regulation for business and human right’ - because it presents one of the first in depth studies comparing the implementation of the UNGPs of countries in the same regions- further research and comparisons with other Latin American countries and other regions would add considerable value to this field.

## **8.2 Key findings and implications for hybrid governance of business and human rights**

The UNGPs are currently the most innovative guidance in the business and human rights’ field. The UNGPs are a hybrid initiative that establishes clear roles and actions for both public and the private actors. For example, Pillar 1 focuses on the state’s duty to protect human rights, while Pillar 2 focuses on the business responsibility to respect human rights. Although the UNGPs were designed as a malleable instrument that should be adapted to each country’s priorities, this research showed that the context affects how deep this kind of initiative can actually be implemented. Therefore, to answer the question: *To what extent did the UNGPs and NAPs guidance influence the processes of framing, agenda setting and multi-stakeholder participation in Business and Human Rights (BHR) in Chile and Mexico?* this research compares the implementation of the UNGPs in two countries from the Global South that were developing (in the same period 2016 – 2018) a National Action Plan. However, each country was influenced differently by the framework as elements like the actors involved, the countries’ background on legislation and CSR, and the business relationships were able to determine a variance in the influence. The case studies selected (Chile and Mexico) show that the UNGPs’ influence did not develop considerable change in the domestic governance of business and human rights.

The literature about the UNGPs, emphasise framing, agenda setting and multi-stakeholder participation as the processes in which the UNGPs might have effects. This is significant because the literature and main authors of the UNGPs (like John Ruggie) expected the UNGPs to have influence in these key processes. However, my findings show that in fact the UNGPs (to date) induced only little change (or influence) despite these expectations. This result is mainly due to the little participation and commitments from the business

community in the processes to develop the NAPs. My findings indicate that the implementation of the UNGPs have some effect on the BHR field on the framing and agenda setting processes in Chile and Mexico because they rely mainly in the state's role to protect human rights and give less attention to the role of the business sector. In Chile this is observed by the government-led process that focused in developing political coherence and changing the narrative about human rights. In Mexico, the process focused in using legislation as the main mechanism to make business accountable. Although this seems like an attempt to appoint responsibility to the business sector, this was not enough influence to change the traditional view that establishes the state as the only actor responsible for HR. Regarding the agenda setting process, the UNGPs placed business and human rights higher in the government's agenda in Chile whilst Mexico's process shows a bigger scope of influence as it involved different sectors like NGOs, academia, government, and business associations. Moreover, while Chile focused on responding to the government's mandates, Mexico tried to develop a more ambitious plan focusing on the outcomes of the NBA, due diligence and access to remedy. However, both countries ended up drafting NAPs that concentrated on administrative actions of the government and less commitments for the business sector. Finally, regarding the multi-stakeholder participation, it is possible to observe greater influence than in the first two processes (framing and agenda setting) because both countries developed inclusive participatory mechanisms. Nevertheless, Mexico's process differentiates from the Chilean process as it presented a remarkable multi-stakeholder process as it included a variety of sectors in the decision-making process and civil society organisations monitored the process.

Firstly, is important to recall that the implementation processes were profoundly affected by the kind of decision-making group that led the UNGPs implementation. Chile formed an Inter-Ministerial group to make the decisions about the process, thus the process was government-led, and their objective was to synchronise the UNGPs with the government's agenda rather than using the UNGPs to improve the broader agenda on business and human rights (one that included the business sector's agenda). Mexico, in contrast, formed a multi-stakeholder group for the decision-making and was led by a Focal Group of civil society with expertise in business and human rights. Having a multi-stakeholder group as the decision-making group allowed an exploration of the UNGPs through a range of different possibilities -given the diversity of interest- of making the business sector more proactive in terms of respecting and preventing any human rights abuse. Moreover, the multi-stakeholder group used the UNGPs and NBA as guidelines to give a structure to the discussions and the work of the group.

Accordingly, it seems important to highlight that each country approached the topic of business and human rights from different perspectives. The responsibility of implementing the UNGPs in Chile was given to the Ministry of Foreign Affairs, which suggests that the country considered the business and human rights' topic as an external issue rather than a domestic one. In other words, their response to the implementation had to do more with their international commitment and possibly to their international reputation. Chile's relationship with the international community was important during the authoritarian government and in achieving the democratic transition to restore its democratic reputation. This suggests that Chile has built an international reputation that is important to maintain (Angell, 2003; González Pizarro, 2019), not only in terms of democracy and human rights, but in terms of its economic stability. Meanwhile, in Mexico the responsibility of implementing the UNGPs was given to the Ministry of The Interior, which suggests that for Mexico, business and human rights was an internal issue rather than an external one. The foreign policy of Mexico was designed fundamentally for the defence of national interests (Ojeda, 1984) and as protection of its sovereignty. For this reason, the process in Mexico was conducted to respond to Mexico's internal affairs which is supported by the relevance of conducting a multi-stakeholder process for the UNGPs' implementation.

As to the framing process, both countries experienced difficulties in framing BHR according to the Principles promoted by the UNGPs, specifically in the inclusion of the responsibility of the business sector in respecting human rights as this is the innovative aspect of the UNGP. My analysis argues that these difficulties were determined by each country's recent history and contemporary context. For example, given the history of authoritarian government in Chile to define business and human rights, it was first important to agree on what human rights means to the country in a contemporary sense. Participants during the interviews made it clear that human rights should include economic, cultural and social rights, and that companies' activities can impact on those types of rights. For this reason, the Inter-Ministerial Group concentrated on looking for political coherence and changing the narrative within the governmental offices, rather than extending this exercise to other actors. Therefore, the Inter-Ministerial Group centred its attention on a state-centred approach, focusing on the narrative and political coherence within the government regarding BHR rather than on giving a specific definition to business and human rights. In other words, through the process of implementing the UNGPs, the government was not able to assign a specific role to the business sector. Moreover, the Inter-Ministerial group evaded the difficult path that the UNGPs were opening for the country regarding issues related to historical conflicts (e.g., the Mapuche Conflict) or changing legislation (namely the

Constitution). In terms of domestic governance, they missed the opportunity to initiate changes that would be relevant for the social cohesion and stability of the country. Therefore, the UNGPs help initiate a conversation about business and human rights but did not substantially influence the framing process of BHR in Chile.

In the Mexican case, like Chile, the UNGPs did not achieve changes in the traditional view where the state is the only actor responsible for HR. Mexico frames BHR as an issue of enforcement and legislation, focusing on the state's performance. As mentioned before, a sole focus on the state duty goes against the principles of the UNGPs as it misses a bigger participation of the business community. The Focal group made a special effort to explain that is through these law mechanisms that the state can begin promoting respect for human rights in the business sector. This makes sense to the Mexican reality as Ch. 4 explained the country has issues with the rule of law. This differs from Chile because throughout the process legislation is not considered as a mechanism to promote business responsibility. Therefore, for the Multi-stakeholder Group in Mexico there was an understanding of the business sector's role and the need for a more proactive commitment from the business community. This meant a small change in the traditional view, where non state actors have a role in respecting human rights.

The findings regarding the agenda setting process showed that it also responded to the national dynamics similarly to the framing process— the people involved in the decision-making group and the countries' political traditions - rather than to the UNGPs. The analysis showed that the focus of the agenda is Pillar 1 and that less attention was paid to the responsibility of the business sector in respecting human rights which is the innovative aspect of the UNGP. First, the agenda built in Chile was mainly by governmental actors and did not include non-state actors in the decision-making process. This was intentional as Chile has a tradition of narrow elite consensus style and top to bottom strategies in policy making. In this case consensus style meant that it was a process developed purely by governmental organisations and 'behind closed doors'. Consequently, the agenda is focused on administrative actions appointing little responsibilities to the business sector. While this could respond to a lack of experience in business and human rights –something that participants argued existed in the country- it also shows low political will to modify or challenge the state-business relationship (and status quo).

When analysing the NAP, the agenda discussed by the Inter-Ministerial Group was portrayed in the plan, as most of the responsibilities are based on training and promoting aspects of the UNGPs. Even though the process raised awareness about the framework and international

expectation of the private sector's behaviours, the NAP's development was not able to Pillar 2 of the business role to respect human rights. The NAP in Chile is an informative programme about the government's business and human rights' agenda. Therefore some of the participants considered that the NAP was more of a 'checklist' than a functional plan. Therefore, in the Chilean case an attempt to develop a national agenda on BHR is seen, but it is not rooted in the UNGPs. Thus, the influence of the UNGPs was not meaningful in the Chilean process.

In the case of Mexico, once business and human rights were defined, the government's actions could improve in terms of legislation, and the nature of the decision-making group positioned this topic higher in several actors' agenda. This means that, in contrast to Chile, in the Mexican process the UNGPs were able to influence actors like organisations of civil society and business associations thus creating an awareness of the business and human rights field. In addition, the participation of the Focal Group promoted due diligence to be positioned higher in the business and human rights' agenda. Consequently, the process indirectly positions Pillar II, the business responsibility to respect, among the actors' involved in the agenda process. This occurred in Mexico but not in Chile given the characteristic of the decision-making group, which in Mexico was a multi-stakeholder group. Therefore, the participation of different sectors in the process allowed a greater engagement with Pillar 2. However, when comparing with the NAP, the actions selected to form the plan did not represent the bold agenda discussed by the decision-making group, as the actions were addressed in a subtle way in administrative changes. The actor in charge of drafting the NAP was SEGOB, so, even though the process of framing and agenda-setting seemed more independent and open than the Chilean process, in the end, the business-state relationship was prioritized. In Mexico, the Multi-stakeholder group, helped raise national awareness and knowledge about the business and human rights' topic. The influence in Mexico has been slightly greater than in Chile due to the diversity of the actors involved and the promotion of business' responsibility throughout the process. However, the influence of the UNGPs was not enough to create a change in the agenda related to the business role.

The last empirical chapter discussed the multi-stakeholder participation in the implementation of the UNGPs. The analysis focused on the nature of participation and range of actors involved; and identifies the influence the UNGPs had on the participants, and how the participants influenced NAP's development along with business and human rights' governance. This chapter argues that the influence of the UNGPs was greater in participation mechanisms than in framing and agenda-setting. The reason for this is that both (in Chile

and Mexico) implementation processes acknowledged the relevance of producing participation spaces for non-state actors and for other actors that were not part of the decision-making process. There was a bigger influence in participation because both countries developed strategies to disseminate the UNGPs among non-state actors; and both countries developed activities to train about the UNGPs and to receive feedback. However, this element of analysis (multi-stakeholder participation) was also different in each country, which supported the idea that each country had the liberty to decide on which aspects of the UNGPs they would concentrate. This liberty is also aligned to the resources of each country, purposes and policy making styles. Firstly, Chile considered multi-stakeholder participation as something beyond the Inter-Ministerial Group, possibly due to its narrow elite consensus style of policy making. In contrast, Mexico considered an inclusive process from the beginning of the process by forming a multi-stakeholder decision-making group. Nevertheless, this marked considerable differences in the framing and agenda-setting processes of the countries, but also in the participation they achieved for the NAP's development.

In the case of Chile the participation of non-state actors took two forms. First, a group that could offer technical advice like NGOs (Casa de la Paz, Observatorio) and IGOs (ILO, OHCHR), but with little influence in the decision making for the NAP's development. Second, seminars that allowed the involvement of the business sector, Indigenous communities and NGOs. But these were organised before the development of the NAP. Therefore, the input could have been limited by the lack of knowledge and experience the invited actors had in the business and human rights field. In the business and human rights' domestic governance, it appears that the government is interested in building participation which is positive, but the formats and the lack of participation online shows that the actions were strategic rather than a serious commitment to allowing significant participation in this matter. Consequently, while the UNGPs influenced the development of participatory spaces, the actors that participated were not able to influence the NAP as much as it was envisioned by the UNGPs. Nevertheless, the influence of the UNGPs is clear in the empowerment of some organisations, businesses and communities through the implementation and development of the NAP. Their participation created a meaningful change in the non-state actors involved in the process and thus affected the domestic governance of BHR in Chile.

I have argued that in Mexico a group from civil society guided the process and followed the progress and discussions regarding the structure that business and human rights would have in the country. In this way civil society was able to influence other actors and work the

discussion towards a more sensible process aligned to the UNGPs. Consequently, more aspects of the UNGPs were discussed and acknowledged by the actors involved, thus placing the themes and concepts at least on the agenda or in the same actors' mind-set. This process was a good opportunity to share and teach about the business and human rights field to different actors/ sectors in society. Even though it looked like the UNGPs empowered the Focal Group only, the fact is other non- state actors benefited from this experience and knowledge as well. For example, the Business Ombudsman, who has actively participated in seminars regarding the relevance of 'business and human rights' to improve the development of the country (Ombudsman Empresarial, 2020). Also, Academia has been actively developing research in the business and human rights field, the NAPs and the binding mechanism that could eventually affect the country and the business sector. For example, Dr. Humberto Cantu, professor at the University of Monterrey has developed a series of articles regarding business and human rights, and the UNGPs. The involvement of these two actors have been beneficial to the establishment of 'business and human rights' field in the country. Meaning that the process continues to have an impact on new actors that come across the articles or the seminars. It therefore influences the position of Mexico regarding business and human rights.

Additionally, like in Chile, Mexico organised activities for actors outside the decision-making group. The evidence showed that the input from these actors was about the NAP's draft, having more chance to change or influence the final decision. Therefore, the Mexican process seemed to be more participative than the Chilean process. Nevertheless, the type of participation employed and the 'openness' of the process, according to the interviews, hindered the adoption of the NAP as it did not allow consensus. The actors involved (mainly the Focal Group) would not commit to anything less than the main requirements from the UNGPs. It could be claimed that this lack of consensus showed a lack of effectiveness in the process to develop the NAP, because it slows the dissemination and understanding of 'business and human rights' as a field. However, the analysis and background of the country shows more maturity and commitment of the non-state actors to work on a guide that can change the future of business and human rights in Mexico. Consequently, having a Focal Group guiding the process -from beginning to end- and installing the Multi-stakeholder Group suggests a greater influence from the actors into a broader 'business and human rights field' in Mexico. In this case, the UNGPs' influence is observed in the well organised civil society on business and human right that created Focal Group. PODER the civil society organisation that led the Focal Group continues to work on BHR and has been promoting



the development of the NAP aligned to the main aspects that the UNGPs promote like the business community's responsibility.

The main theoretical contribution of this research is to the literature of hybrid governance and implementation of business and human rights, specifically in terms of how context can affect the adoption of hybrid initiatives. I have argued that hybrid initiatives include an interaction and interdependence of state and private authority and that therefore hybrid initiatives are also tied to multi-stakeholder participation (Bair, 2017; Pacheco et al, 2020; Armitage et al, 2012; and Johnson, 2022). Moreover, this research maintains the work of Bartley (2018) in the sense that it recognises that countries are not 'empty spaces' first because of the role of the government and second because places of implementation are crowded with a variety of actors, agendas, and rules that need to be acknowledged before any implementation. In fact, Bartley (2011) recommends examining the intersection between the private initiatives and domestic orders which can shape the implementation process. Also, this research maintains Pinto and Puppim's (2008) work as I show that local actors and processes are affected by the background of the country, the actors involved (stakeholders and authorities), political traditions and policy making, quality of democracy, economic development and even the type of business system (national and international aims). A thorough analysis of the processes of implementation have demonstrated that in an implementation process it is important to study more deeply the context of each country to align to the local motivations, interests and practices of the local groups and consequently influence their decisions. There are two examples that can illustrate that context matter in the implementation of hybrid initiatives, one is the actors that were involved and its traditional form of doing politics and a second one is the type of influence NAPs had on Chile and Mexico (which differs from the influence on other regions). First, in the case of Chile, the traditional form of doing politics – elite consensual style- affected which actors participated in the process to develop the NAP and consequently, which topics would be prioritized in the agenda of business and human rights. This is the reason why the Chilean process and NAP concentrates in administrative actions which influenced learning process about BHR and developed political coherence but only within the government. Therefore, the NAP shows little input from other actors external to the government. In the case of Mexico, a big effort was done to develop a decision-making group that would be inclusive and participatory. What the evidence shows is that the civil society associated to BHR was well organised and empowered and was able to influence the process by positioning the UNGPs priorities rather than only those of the government. Therefore, context matter because domestic order, in terms of domestic politics, type of engagement with state and the

interests of domestic stakeholders and government officials, can affect the process of implementation and the outcomes (Amengual and Chirot, 2016; Bair, 2017). Therefore, NAPs can have different shapes and content and this can delay what is expected in the literature and guidance of the implementation of the UNGPs.

Secondly, we can see the different influence of NAPs in different regions of the world. We know that NAPs in Europe have been able to encourage the development of legislation regarding due diligence processes, risk assessments and prevention of human rights abuses. However, this was not the same in the cases studied in my research. The reason for this is what has been argued above which is that the implementation of UNGPs does not take place in an ‘empty space’ (Bartley, 2018). Through my exploration of these two case studies, I have argued throughout that context matters because implementation can be affected by the state capacity of the country. In Latin America, state capacity for processing and adapting human rights has been weak, especially in terms of enforcement. A detailed analysis of the National Baseline Assessments showed a relevant list of legislation related to business and human rights for both countries. Moreover, in the analysis of the interviews I also found that some of this legislation was incomplete or did not have a framework that could help in the enforcement of the law. In the case of Mexico, the interviewees commented that it is possible to find law regarding business and human rights without public policy which points to the argument that state capacity is important to implement hybrid initiatives and to enforce national law. In the case of Chile legislation exists but sometimes does not meet the criteria required by international law or international initiatives. This shows that context may affect the architecture needed for a proper implementation of a hybrid initiative or any other international initiative in these two countries.

Regarding the literature and guidance on NAPs, this research maintains Felice and Graf’s (2015) argument that it is more useful to observe not only the NAPs but the process that developed the NAPs to learn about implementation of the UNGPs. Cantú (2019), also suggests that analysing the process can be equally important that only looking at the results because the process includes other relevant actions like the horizontal cooperation and coherence among the different ministries which is detrimental for the implementation of any framework as they will be sharing the same message and objective. A thorough analysis of the interviews show that in Mexico, although the NAP was never launched, the discussions and learning process influenced a variety of actors which included not only the government but civil society, academia, and business associations. Some of these actors (like PODER and academia) are still working towards making the government comply to the international

commitment of implementing the UNGPs. In Chile, most of the influence of the learning process is observed within the government. However, the type of policy making-elite consensual style- around the development of the NAP encouraged other actors to observe more closely the implementation of the NAP and monitor governments actions. This study contributes to research about NAPs highlighting the relevance of the processes of implementation. NAPs are useful, but other kind of influence may be difficult to include and register in a document because they are not tangible like the empowerment, the debates, and the learning processes.

Moreover, this research contributes to the discussion of the implementation of mechanisms of soft law in the business and human rights field. Methven O'Brien et al 2015 and Ahmad (2021) suggest in their studies that NAPs are mechanisms of soft law for business and human rights. Through a detailed analysis of the NAPs and interviews with stakeholders involved in the process, this research argues that governments are using these documents to promote the UNGPs without creating additional binding mechanisms which is actually how soft law works. However, in Chile and Mexico, the NAPs are guidelines focused mainly on Pillar 1, the State Responsibility to protect with little direct encouragement for the business sector. This research shows that the NAPs' content is based on administrative recommendations for the government which is not the sole purpose of the UNGPs. The case studies show two processes that are not giving more responsibilities to the business sector to improve their behaviour and prevent human rights abuses. Therefore, although soft law is useful to introduce business and human rights locally and develop skills, this research shows that there is still a need to create mechanisms that would include the business sector more actively.

### **8.3 Limitations of this study and future research projects**

This thesis has contributed to the literature with the comparison between two countries of Latin America that developed a NAP from 2014 to 2017. Due to the 'recent' UNGPs promotion and implementation through NAPs, there are only few studies that share the same characteristics as this one. In other words, few studies have been able to follow in depth the processes of UNGPs implementation, the actors involved and the different ways in which the UNGPs can influence the business and human rights' domestic governance. Nevertheless, this thesis also has some limitations that will be discussed in the following paragraphs.

First, this research presents a two-case study, and case studies have been deeply criticized for their difficulties in developing generalisations (Yin, 2003; Gerring, 2009). Chapter 3 explained the reasons behind the selection of a two case-study, where CSR experienced

similarities and differences with the countries' backgrounds, and how both countries were developing NAPs simultaneously, which created an opportunity to study both their processes in depth while being able to compare the experiences of the actors involved. Additionally, my research aimed to go beyond generalizations by finding clarification regarding the implementation of these international frameworks for business and human rights in these Latin American countries, whilst being able to inform further research on these topics. Also, the thesis argues that context matters to the implementation of any international framework, therefore, each case has to be studied as a unique case because every country may have different contexts (not empty spaces) and possibly different results as well. It would be difficult to believe that the exact same research could produce the same results when analysing other countries. The second limitation identified is the topics that were not addressed in this research. The analysis of the data through a manual and NVivo coding raised several topics that were of interest to provide an answer for the research's question. However, it was important to develop a coherent argument throughout the thesis and to form a 'line of thought' through the empirical chapters. For this reason, the topics like Decision-making groups, Outcomes from the NBA, Priorities, National context, Pillars, Actors, Participation and Influence; were able to tell Chile and Mexico's 'story' regarding the NAP's development in a coherent way. The third limitation is that the research focuses on how the governments in the two countries implemented the UNGPs and in particular on the NBA and NAP processes. While I did not exclude the business sector in the study it was too early to focus on the practices of individual businesses.

The first limitations found in this research were the possibility of generalising the findings with other countries' experiences within the implementation of business and human rights' international frameworks. Firstly, the research is based on two countries that exemplify very contrasting realities, and at the same time do not work as representatives of the situation in the Latin American countries. While they share with other countries some characteristics, the cultural diversity and background in each country differs. For instance, both countries are open economies though some countries in their region, while open, can still be slightly more conservative than the Chilean and Mexican economies. It is also important to recall that a wave of leftist governments has come over South America and has been, in their own ways, resisting globalization and economic liberalization. For example, Venezuela, Bolivia, and Ecuador whose approach to business and human rights issues are different to the Chilean and the Mexican experiences. In fact, these countries have been strong promoters of the binding treaties for business and human rights because they consider the need for a

mechanism that can force the business sector to be accountable for its actions (Ruggie, 2018).

The Mexican case characterises for developing a multi-stakeholder decision making group, however the same diversity of the group affected finding the consensus on a NAP. However, it is not possible to generalize that a similar group in future processes in Mexico or even in a different country can affect (hinder) the delivery of the NAP or the public policy development. The type of actors involved in the process and the amount and quality of participation can also be elements that influence the effectiveness of the group. Another example in the Chilean case is their democracy which is consider stable (since 1990s and even before the Coup) with strong institutions. This characteristic is not representative in the Latin American, therefore it is not possible to expect that every country will be able to manage the implementation as smoothly and as effectively as Chile.

However, the selection of the cases and the findings set precedents for the implementation of international frameworks with countries that share aspects like structural problems and democratic governments. For example, with countries that share with Mexico problems regarding corruption or law enforcement (specifically in Central America) this research can be useful for them when framing business and human rights to consider hybrid strategies as better form of regulation. Another example is the problem that is present in Chile regarding the conceptualization of human rights which could mean that in other countries who face military regimes will face the same problem. Therefore, developing a process that searches for political coherence and in building understanding of the concept of human rights could be helpful for other countries in the region. (It would be interesting to compare the process of countries like Argentina).

Despite considering that in terms of the findings it would be difficult to generalize over other countries' experiences, regarding the methodology, several steps can be adapted to other countries, not only from the Latin American region. For example, some of the elements that could be generalized are the use of the Danish Institute guidelines and how it affected the process and the actors involved; how the decision-making groups decided to use the findings of the National Baseline Assessment; the role of non-state actors who can influence civil society; and the way in which the NAP presents their commitment for the state and the business roles in protecting and respecting. In other words, the structure of the research and key elements of analysis and themes can be shared to develop further research.

On the other hand, an additional limitation of this research is the themes that have not been considered for the analysis. As explained in the methodology, elements for framing, agenda-setting and multi-stakeholder participation emerged from the literature. These three key themes were able to build one explanation for the UNGPs' implementation. However, due to resources and time, this research was not able to explore other equally interesting and important topics. Also, it was important to capture certain topics for this research to build an appropriate and coherent argument throughout the empirical chapters. For example, one of the topics that emerged from the interviews and the documents was the National Institutes role for Human Rights, and the Focal Point of the OECD regarding the UNGPs. IGOs have been discussing how these two organisations could potentially aid in the provision of remedy and pursuit of justice for the victims (OECD, 2020). During the interviews, the participants made it clear that these organisations had a natural and genuine role to support the work of the UNGPs locally. Both Mexico and Chile have NIHR and as members of the OECD, they have supported the OECD's focal point to mediate in conflicts between companies and communities. The OECD has become one of the main promoters in favour of UNGPs. However, addressing this topic would have taken the attention away from the discussions about the UNGPs' implementation.

Moreover, one limitation that is important to acknowledge and highlight is the limited of participation of the business sector during the UNGPs' implementation in both countries, and consequently my research missed the participation of private companies. This sector was well represented by business associations, CSR initiatives and the secretary of economy. However, I did not include individual companies in the research because they did not play a key role in the drafting of the NBA / NAP. But moving forward researchers should examine how the implementation process and the drafting of the NAP in Mexico and Chile has affected business practice. On the other hand, this topic was developed in both countries with some sensibility towards the business sector's interests and fears. Chapter 6 suggests that the main reason the NAP does not implement the UNGPs in both countries correctly is the relevance given to the business-state relationship.

Finally, the main contribution of this thesis is the consideration of context as a main component when discussing hybrid initiatives. At the same time, this research raises questions about the prominence and continuity of top-down implementation and highlights the need for more local and sectoral participation when working with mechanisms for improvement in the business and human rights field. This research also adds to the discussion the relevance of considering different aspects when adapting hybrid initiatives and that

context always matters for any implementation attempt. It also contributes by discussing the need for considering that soft-law mechanisms, while important to raise issues and position topics in the agenda, need to be supported by more rigid instruments that can promote change in the behaviour of companies around the world.

## Appendices

### Appendix 1 – Sample information sheet for participants (in Spanish)

#### Hoja de información para participante

Título: La influencia de los regímenes internacionales en la gobernanza domestica: Los Principios Rectores de Naciones Unidas sobre Empresas y Derechos Humanos en México y Chile

Investigador: Evelyn I. Uribe Navarrete

#### Párrafo de invitación

Usted está siendo invitado a participar en un estudio de investigación. Antes de decidir, es importante que comprenda por qué se está realizando la investigación y qué implicará. Por favor tómese el tiempo para leer la siguiente información cuidadosamente y discutirla con otros si lo desea. Pregúntenos si hay algo que no está claro o si desea obtener más información. Tómese el tiempo para decidir si desea o no participar. Gracias por leer esto.

#### Introducción al proyecto

Esta investigación busca específicamente abordar la relación entre la RSE y los Derechos Humanos, ya que las formas en que las empresas utilizan la RSC como un mecanismo para abordar asuntos sociales no han sido estudiadas a profundidad.

Los métodos que se han seleccionado para realizar esta investigación son entrevistas semiestructuradas y análisis de documentos. La participación en las entrevistas es voluntaria y los participantes tienen derecho a retirarse en cualquier momento sin prejuicios. Las entrevistas se llevarán a cabo en sesiones de aproximadamente 40-60 minutos y se grabarán con el permiso explícito del participante. Los datos se usarán para completar la Tesis Doctoral, participar en artículos de revistas, libros y documentos de conferencias.

Los datos personales del participante se mantendrán confidenciales, todos los nombres y otros materiales que puedan identificar a las personas se anonimizarán, a menos que el participante otorgue un permiso explícito para usar su nombre o el nombre de la organización que representan. El material también se tratará como confidencial y se mantendrá en un lugar seguro de almacenamiento en todo momento. Todos los datos personales se destruirán un año después de que finalice el proyecto. Los datos de la investigación se conservarán durante al menos 10 años después de la finalización del proyecto según las pautas emitidas por la Universidad de Glasgow. La confidencialidad será respetada sujeta a restricciones legales y pautas profesionales.

Este proyecto ha sido considerado y aprobado por el Comité de Ética de Investigación Universitaria.

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\*\*\* Cualquier persona con inquietudes respecto al manejo del proyecto debe contactar al Oficial de Ética de la Universidad: Dr. Muir Houston, correo electrónico: Muir.Houston@glasgow.ac.uk

\_\_\_\_\_ Fecha de información del participante \_\_\_\_\_

## Appendix 2- Sample Consent Form for participants (in Spanish)

### Formulario de consentimiento

Título del proyecto: La influencia de los regímenes internacionales en la gobernanza doméstica: Los Principios Rectores de Naciones Unidas sobre Empresas y Derechos Humanos en México y Chile

Nombre del investigador: Evelyn I. Uribe Navarrete

Confirmando que he leído y comprendido la Hoja de información del participante para el estudio y que he tenido la oportunidad de hacer preguntas. Entiendo que mi participación es voluntaria y que soy libre de retirarme en cualquier momento, sin dar ninguna razón. Doy mi consentimiento para que las entrevistas sean grabadas en audio. Reconozco que el participante se mantendrá anónimo como medida de confidencialidad. Reconozco que no habrá ningún efecto en mi empleo que surja de mi participación o no participación en esta investigación.

Cláusulas relacionadas con el uso y almacenamiento de datos:

- Todos los nombres y otros materiales que puedan identificar a las personas serán anonimizados.
- El material se tratará como confidencial y se mantendrá en un lugar seguro de almacenamiento en todo momento.
- Los datos personales se destruirán una vez que el proyecto esté completo.
- El material se conservará en almacenamiento seguro para su uso en futuras investigaciones académicas solo por el investigador designado.
- El material puede ser utilizado en publicaciones futuras, tanto impresas como en línea.
- Acuerdo renunciar a mis derechos de autor sobre cualquier información recopilada como parte de este proyecto.

Acepto tomar parte en este estudio de investigación (elija una de las siguientes opciones):

Doy permiso para citarme por nombre o nombre de la organización que represento

Doy permiso para parafrasear mis comentarios sin nombre

Toda la información es fuera de registro “off the record” y no se puede publicar

No estoy de acuerdo en formar parte de este estudio de investigación

Nombre del participante:

Nombre del investigador:

### **Appendix 3 – Sample of questionnaire for the interviews**

1. What has been the work of your organization regarding Human Rights? What are the main challenges for Chile/Mexico in matters of Business and Human Rights?
2. There are some initiatives that promote the protection of Human Rights from the business community, such as the Global Compact, the OECD Guidelines, ISO 26000 (this is perhaps more a private initiative) from your experience: How have these initiatives been implemented, have they met their objectives? Is there a general acceptance or knowledge of these initiatives in the private sector, government, or even Indigenous communities etc.?
3. What is the purpose of the various attempts to create international initiatives in relation to business and human rights? What do these attempts tell us?
4. Can the legal vacuum that exists to regulate companies be made up of voluntary international initiatives? What kind of challenges exist when translating these international initiatives into national realities?
5. What is it that the Guiding Principles are changing or what is their potential to change for HR? And how would it be possible to measure the success or failure of an initiative like this? (It will be possible that it serves to fill the legal gaps).
6. The Guiding Principles in Chile/ Mexico are being implemented through the National Plan. How does your organisation got involved with this process? What is your opinion about the process that took place? What do you think of the methods, but especially the results?
7. How effective has the implementation been so far in Chile/Mexico? What does a successful implementation of the Plan depend on?
8. What were the obstacles that you faced during the process to adopt the National Plan? What are the achievements that could already be highlighted from this process?
9. What are the weaknesses of the National Action Plan? Why? And if the initiative has managed (or is focused on achieving) meeting Chilean/Mexican priorities in matters of business and human rights?
10. What was the role of government institutions when developing the Plan? What could they have done better as government institutions?
11. What was the role of civil society in the development of the plan? Was there sufficient participation and representation of vulnerable groups? Or about issues such as Indigenous communities or unions?
12. Is it possible to generate a saturation on these issues that in the end hinders the work and contribution of the companies?

## Appendix 4- List of participants

### Chile

1. Veronica Zubia, Ministry of Foreign Affairs, 6 April 2018
2. Patricia Roa, ILO, 11 April 2018.
3. Paloma Muñoz, Representative Danish Institute of Human Rights, 9 January 2018
4. Alejandra Parra, Consultant ESCR, OHCHR, 26 April 2018.
5. José Aylwin, Observatorio Ciudadano, 25 May 2018
6. Rodrigo Herrera, UNDP, 17 May 2018.
7. Mariela Infante, National Institute for Human Rights Chile, 25 April 2018
8. Humberto Cantú, UN Working Group Mexico Business and Human Rights, 19 January 2018
9. Karin Eggers, Acción Empresas, 25 May 2018
10. Mikel Berraondo López, Consultant, 28 August 2018
11. Dante Pesce, UN Working Group on Business and Human Rights, 10 April 2018
12. Carolina Ibañez, National Contact Point OECD, 13 April 2018
13. Margarita Ducci, Local Network Global Compact Chile, 31 May 2018
14. Veronica Aguirre, Manager of Human Rights, ENAP, 11 June 2018.

### Mexico

15. Paloma Muñoz, representative Danish Institute of Human Rights, 9 January 2018
16. Humberto Cantú, UN Working Group Mexico on Business and Human Rights, 19 January 2018
17. Diana Chavez, Regional Centre in support of the SDGs, 13 January 2018.
18. Alejandra Abad, Coordinator of National Action Plan, 06 March 2018
19. Eugenia Lopez, representative of PODERb, 5 March 2018
20. Fernanda Hopenhaym, representative of PODERa, 12 March 2018
21. Alondra Mendoza, Human Right Office, Secretariat of Foreign Affairs, 22 February 2018
22. Ancelmo García, Advisor ILO, 2 March 2018
23. Miguel Angel Galindo, OECD National Focal Point, 17 August 2017
24. Laura Treviño, Human Rights Commission Mexico, 18 July 2018
25. Salvador Ortega, Ombudsman Empresarial, 7 March 2018
26. Lilia Granillo, UAM, 28 Febrero 2018.
27. Mikel Berraondo López, Consultant, 28 August 2018
28. Dante Pesce, UN Working Group on Business and Human Rights, 10 April 2018

29. Ines González, Researcher in Friedrich-Ebert-Stiftung, 8 August 2017
30. Felipe Cajiga, Former Director of Corporate Social Responsibility in Cemefi, 02 August 2017

**Appendix 5- List of Documents**

- NBA Chile
- NAP Chile
- Participation Report
- Online consultation
- NBA Mexico
- NAP Mexico
- Report on Participation

## List of references

Abbott, K.W. & Snidal, D. 2000, "Hard and Soft Law in International Governance", *International organization*, vol. 54, no. 3, pp. 421-456.

Acción Empresarial (2003) El ABC de la Responsabilidad Social Empresarial en Chile y en el mundo, Santiago de Chile, Acción Empresarial.

Acción Empresas, 2019. [online] Available at: <http://accionempresas.cl/> [Accessed 12 June 2019]

Ai Camp, R. (1996). *Politics in Mexico*. Oxford University Press, Oxford.

Anderson, J., & Murdie, A. (2017). What helps protect human rights: Human rights theory and evidence. In *Oxford Research Encyclopaedia of Politics*.

Amengual, M. (2010). Complementary labor regulation: The uncoordinated combination of state and private regulators in the Dominican Republic. *World Development*, 38(3), 405-414.

Amengual, M., & Chirot, L. (2016). Reinforcing The State: Transnational And State Labor Regulation In Indonesia. *Ilr Review*, 69(5), 1056–1080. <https://www.jstor.org/stable/26753690>

Amengual, M., Distelhorst, G. and Tobin, D., (2020). Global purchasing as labor regulation: the missing middle. *Ilr Review*, 73(4), pp.817-840.

Amnesty, (2015). Chile: Amnesty law keeps Pinochet's legacy alive [Online] Available through: <https://www.amnesty.org/en/latest/news/2015/09/chile-amnesty-law-keeps-pinochet-s-legacy-alive/> [Accessed 26 October 2019]

Angell, A. (2013). Las dimensiones internacionales del golpe de estado chileno. *Política. Revista de Ciencia Política*, 51(2), 57-78.

Arriagada, G., 2015. Chile's successful transition: From intense polarization to stable democracy. *Democratic transitions. Conversations with world leaders*, pp.50-58.

Armitage, D., De Loë, R., & Plummer, R. (2012). Environmental governance and its implications for conservation practice. *Conservation Letters*, 5(4), 245-255. Arriagada, G., 2015. Chile. In: S. Bitar and A. Lowenthal, ed. 2015 *Democratic Transitions*. Maryland: John Hopkins University Press.

Augenstein, D. 2018, "Negotiating the Hard/Soft Law Divide in Business and Human Rights: The Implementation of the UNGPs in the European Union", *Global policy*, vol. 9, no. 2, pp. 254-263.

AUGENSTEIN, D., DAWSON, M. & THIELBÖRGER, P. 2018, "The UNGPs in the European Union: The Open Coordination of Business and Human Rights?", *Business and human rights journal*, vol. 3, no. 1, pp. 1-22.

Avritzer, L. (2006). Civil society in Latin America in the twenty-first century: between democratic deepening, social fragmentation, and state crisis. In *Civil society and democracy in Latin America* (pp. 35-57). Palgrave Macmillan, New York.

- Aylwin, J. 2017. Plan de Acción Nacional de Derechos Humanos y Empresas de Chile. Los esfuerzos en la implementación de los Principios Rectores de Empresas y DDHH en A Latina. FORO EMPRESAS Y DERECHOS GINEBRA. [Word]
- Bair, J. 2017 Contextualising compliance: hybrid governance in global value chains, *New Political Economy*, 22:2, 169-185, DOI: 10.1080/13563467.2016.1273340
- Barros, R. (2003). Dictatorship and the rule of law: rules and military power in Pinochet's Chile. *Democracy and the Rule of Law*, 5.
- Bartley, T. 2011, "Transnational Governance as the Layering of Rules: Intersections of Public and Private Standards", *Theoretical inquiries in law*, vol. 12, no. 2, pp. 517-542.
- Bartley, T., 2018. A substantive Theory of Transnational Governance in Rules without Rights: Land, Labour, and Private Authority in the Global Economy. Oxford University Press, Oxford.
- Beckman, T., Colwell, A., & Cunningham, P. H. (2009). The emergence of corporate social responsibility in Chile: The importance of authenticity and social networks. *Journal of Business Ethics*, 86(2), 191-206.
- Béland, D., & Howlett, M. (2016). The role and impact of the multiple-streams approach in comparative policy analysis. *Journal of Comparative Policy Analysis: Research and Practice*, 18:3, 221-227.
- Benería, L. (2000). Structural adjustment policies. *The Elgar Companion to Feminist Economics*, 687-95.
- Bennett, A., & Elman, C. (2007). Case Study Methods in the International Relations Subfield. *Comparative Political Studies*, 40(2), 170–195.
- Bergeron, S. (2001). Political economy discourses of globalization and feminist politics. *Signs: Journal of women in culture and society*, 26(4), 983-1006.
- Biblioteca del Congreso, 2018. Available at: <https://www.leychile.cl/Navegar?idNorma=1086063>
- Bizberg, I. (2014). Types of capitalism in Latin America. *Revue Interventions économiques. Papers in Political Economy*, (49).
- Blake, Ch., 2008. Politics in Latin America. Wadsworth, Cengage Learning.
- Blasco, M., & Zølner, M. (2010). Corporate social responsibility in Mexico and France: Exploring the role of normative institutions. *Business & Society*, 49(2), 216-251.
- Blowfield, M., & Frynas, J. G. (2005). Editorial Setting new agendas: critical perspectives on Corporate Social Responsibility in the developing world. *International affairs*, 81(3), 499-513.
- BMV, n.d. [online] Available at: [https://www.bmv.com.mx/docs-pub/SERVICIOS\\_EMITORAS/di7k28u7rwg3\\_n01dgdru.pdf](https://www.bmv.com.mx/docs-pub/SERVICIOS_EMITORAS/di7k28u7rwg3_n01dgdru.pdf) [Accessed June 2019]
- Boeije, H. 2010. Analysis in Qualitative Research. London: Sage Publications Ltd
- Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative research journal*.



Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative research in psychology*, 3(2), 77-101.

Bryman, A. 2012. *Social Research Methods*. United States: Oxford University Press

Buckup, S. (2012). *Building Successful Partnerships: A Production Theory of Global Multi-Stakeholder Collaboration*. Springer Science & Business Media.

Bugueño, F., De Los R, I., & Casta, R. (2017). Responsible Land Governance and Project Management Competences for Sustainable Social Development. The Chilean-Mapuche Conflict. *International Journal of Economics and Financial Issues*, 7(6), 202.

Bull, B. (2008). Policy networks and business participation in free trade negotiations in Chile. *Journal of Latin American Studies*, 195-224.

Business & Human Rights Resource Centre. 2021 'German parliament passes mandatory human rights due diligence law' Available at: <https://www.business-humanrights.org/en/latest-news/german-due-diligence-law/> [Accessed 15 April 2022]

Escudero, J. C. (2019). La responsabilidad social empresarial: aportes del padre Alberto Hurtado en Chile. *El Futuro del Pasado: revista electrónica de historia*, (10), 551-567.

Cantú, H., 2016. Planes de acción nacional sobre empresas y derechos humanos: sobre la instrumentalización del derecho internacional en el ámbito interno. *Anuario Mexicano de Derecho Internacional*, vol. XVII, 2017, pp. 113-144, México, D. F

Cantú, H. (2017). Negotiating a treaty on business and human rights: The early stages. *UNSWLJ*, 40, 1200.

Cantú, H. 2019, "National Action Plans on Business and Human Rights: Progress or Mirage?", *Business and human rights journal*, vol. 4, no. 2, pp. 213-237.

Cárdenas, S. (2010), *Human rights in Latin America: a politics of terror and hope*, University of Pennsylvania Press, Philadelphia.

Casa de la Paz, 2019a. [online] Available at: <https://www.casadelapaz.cl/> [Accessed April 2019].

Casa de la Paz, 2019b. [online] Available at: <https://www.casadelapaz.cl/derechoshumanosyempresas/> [Accessed April 2019].

Cattan, N. 2019. 'El Cambio Toca a los Sindicatos'. *El Financiero*. [Online] Available at: <https://www.elfinanciero.com.mx/bloomberg-businessweek/el-cambio-toca-a-los-sindicatos/>

CEMDA (2018) Available at: <https://www.cemda.org.mx/en-2018-fueron-asesinadas-21-personas-en-mexico-por-defender-la-tierra-el-medio-ambiente-y-el-territorio/> [Accessed July 2021].

Centro Mexicano para la Filantropía. (n.d.a). *La filantropía y la investigación en México*. CEMEFI: México

Chandler, G. 2003. The evolution of the business and human rights debate. In: *Business and Human Rights Dilemmas and Solutions*. Edited By Rory Sullivan, Mary Robinson (2017) London: Routledge

Chenail, R. 2009. Bringing Method to the Madness: Sandelowski and Barroso's Handbook for Synthesizing Qualitative Research. *The Weekly Qualitative Report*, Vol. 2 Number 2.

Choudhury, B. 2018, "Balancing Soft and Hard Law for Business and Human Rights", *The International and comparative law quarterly*, vol. 67, no. 4, pp. 961-986.

Chowdhury, M. F. (2015). Coding, sorting and sifting of qualitative data analysis: Debates and discussion. *Quality & Quantity*, 49(3), 1135-1143.

Clark, T. (2010). Gaining and Maintaining Access Exploring the Mechanisms that Support and Challenge the Relationship. *Qualitative Social Work*. Vol. 10(4): 485–502.

Codelco, 2019. [online] Available at: [https://www.codelco.com/prontus\\_codelco/site/edic/base/port/nosotros\\_2015.html](https://www.codelco.com/prontus_codelco/site/edic/base/port/nosotros_2015.html) [Accessed April 2020]

Collins, C. 2010. Post-Transitional Justice. The Pennsylvania State University Press. United States of America.

Consejo Minero (2004). Reporte Anual. Available at: <https://consejominero.cl/wp-content/uploads/2019/01/Reporte-Anual-CM-2004.pdf> [Accessed July 2021]

Cordero, et al, 2016. Informe sobre Diálogos Participativos sobre Empresas y Derechos Humanos en Chile. [PDF] Available through: [https://www.business-humanrights.org/sites/default/files/documents/informe\\_final\\_conjunto\\_de\\_talleres\\_dialogo\\_chile\\_julio\\_2016\\_1.pdf](https://www.business-humanrights.org/sites/default/files/documents/informe_final_conjunto_de_talleres_dialogo_chile_julio_2016_1.pdf) [Accessed March 2020]

Cragg, W. (2012) Ethics, Enlightened Self-Interest, and the Corporate Responsibility to Respect Human Rights: A Critical Look at the Justificatory Foundations of the UN Framework. *Business Ethics Quarterly*, 22:1.

Creswell, J. and Creswell, D. 2017. RESEARCH DESIGN Qualitative, Quantitative, and Mixed Methods Approaches. SAGE. Fifth Edition. [eBook] Available through: <https://app.talis.com/glasgow/player#/modules/5f55ffaa3f2b343bc876562b/resources/5f5606ce6d79536ec4fbb951#page-39> [Accessed October 2020]

DAR et al. 2019. Remediación de los impactos en los derechos humanos relacionados con las empresas. [PDF] Available at: <https://observatorio.cl/wp-content/uploads/2019/09/1er-boletin-ppr.pdf> [Accessed 26 April 2020].

de Felice, D. & Graf, A. 2015, "The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights", *Journal of human rights practice*, vol. 7, no. 1, pp. 40-71.

de Laine, Marlene. Fieldwork, Participation and Practice : Ethics and Dilemmas in Qualitative Research, SAGE Publications, 2000. ProQuest eBook Central, Available through: <https://ebookcentral.proquest.com/lib/gla/detail.action?docID=254668>.

De Leon, P. & Hernández-Quezada, J. (2001) The Case Of The National Solidarity Program In Mexico: A Study In Comparative Policy Termination, *International Journal of Public Administration*, 24:3, 289-309, DOI: [10.1081/PAD-100000449](https://doi.org/10.1081/PAD-100000449)

Del Castillo Alemán, G., & Nedelcu, D. (2018). Políticas públicas: Nuevos enfoques para la investigación. México: FLACSO-México.

Della Porta, D. (2008) Comparative analysis: case-oriented versus variable-oriented research. In: Keaton, M. and della Porta, D. ed. 2008. *Approaches and methodologies in the Social Sciences*. Cambridge, pp.198-222.

Deva, S. (2013). Corporate human rights violations: a case for extraterritorial regulation. *Handbook of the philosophical foundations of business ethics*, 1077-1090.

DIHR, 2014. 'National Action Plans on Business and Human Rights A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks' [PDF] Available through: <https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelses/DIHR%20-%20ICAR%20National%20Action%20Plans%20%28NAPs%29%20Report.pdf> [Accessed 15 June 2019]

Doyle, K., 2002. "Mexico's New Freedom of Information Law. *George Washington University, Mexico Project, National Security Archive (June 2002)*.

Dow Jones CLP, 2019. [online] Available at: <https://israel.spindices.com/indices/equity/dow-jones-sustainability-chile-index-clp> [Accessed 12 June 2019]

ECCJ, 2019. The first year of implementation of the French duty of vigilance law [online] Available at: <https://corporatejustice.org/eccj-publications/16326-the-first-year-of-implementation-of-the-french-duty-of-vigilance-law> [Accessed February 2020].

ECLAC, 2018. 'Second annual report on regional progress and challenges in relation to the 2030 Agenda for Sustainable Development in Latin America and the Caribbean'. [online] Available at: <https://foroalc2030.cepal.org/2018/en/documents/second-annual-report-regional-progress-and-challenges-relation-2030-agenda-sustainable> [Accessed 05 January 2019]

Etikan, I., Musa, S.A. and Alkassim, R.S., 2016. Comparison of convenience sampling and purposive sampling. *American journal of theoretical and applied statistics*, 5(1), pp.1-4.

European Commission, 2017. Corporate Social Responsibility. [online] Available at: [http://ec.europa.eu/growth/industry/corporate-social-responsibility\\_en](http://ec.europa.eu/growth/industry/corporate-social-responsibility_en) [Accessed 10 March 2017]

Faal, E. (2005) GDP Growth, Potential Output, and Output Gaps in Mexico. IMF Working Paper. Available through: <https://www.imf.org/external/pubs/ft/wp/2005/wp0593.pdf> [Accessed July 2021]

Ferguson, Methven O'Brien, McVey and Morris (2018) "Securing Sustainable and Accountable Business in Europe: the role of National Action Plans (NAPs), Workshop Report", Edinburgh, 5 June 2018.

Fernández, V. R., & Alfaro, M. B. (2011). Ideas y políticas del desarrollo regional bajo variedades de capitalismo: contribuciones desde la periferia. *Revista Paranaense de Desenvolvimento*, (120), 57-99.

Foreign Trade Information System, 2018. MERCOSUR [online] Available at: [http://www.sice.oas.org/TPD/MER\\_MEX/MER\\_MEX54\\_e.ASP](http://www.sice.oas.org/TPD/MER_MEX/MER_MEX54_e.ASP) [Accessed 16 January 2018].

Foro de Socialización y Consulta Region Centro, 2017. SEGOB. [PDF]

Foro de Socialización y Consulta Region Norte, 2017. SEGOB. [PDF]

Foro de Socialización y Consulta Region Sur, 2017. SEGOB. [PDF]

Freedom House (2021a) [online] Available at: <https://freedomhouse.org/country/chile/freedom-world/2021> [Accessed 28 July 2021].

Freedom House (2021b) [online] Available at: <https://freedomhouse.org/country/mexico/freedom-world/2021> [Accessed 28 July 2021].

Garcés, M. (2004). Los movimientos sociales populares en el siglo XX: Balance y perspectivas. *Política. Revista de Ciencia Política*, 43, 13-33.

George, A. and Bennett, A., (2005). Case Studies and Theory Development in the Social Sciences. The Belfer Center for Science and International Affairs, John F. Kennedy School of Government, Harvard University. [PDF].

Gerring, J. (2008) Case Selection for Case- Study Analysis: Qualitative and Quantitative Techniques. In: The Oxford Handbook of Political Methodology. Edited by Janet M. Box-Steffensmeier, Henry E. Brady, and David Collier. Available through: 10.1093/oxfordhb/9780199286546.003.0028 [Accessed October 2020]

Gibson, W. J. & Brown, A. (2009). Identifying themes, codes and hypotheses. In Gibson, W. J., & Brown, A. *Working with qualitative data* (pp. 127-144). London: SAGE Publications, Ltd [e-journal] Available through: <http://methods.sagepub.com.ezproxy.lib.gla.ac.uk/book/working-with-qualitative-data/d111.xml> [Accessed July 2020]

Gilbert, A. (2002) Power, Ideology and the Washington Consensus: The Development and Spread of Chilean Housing Policy. *Housing Studies*. 17:2, 305-324. [

Giménez, L. 2017. Para Una Evaluación Del Estado De La Democracia Mexicana. In Informe Sobre La Democracia Mexicana En Una Época De Expectativas Rotas. Ed. By Ricardo Becerra. Siglo Veintiuno Editores. México.

Global Security, 2019. Mexico Economy. {online} Available at: <https://www.globalsecurity.org/military/world/mexico/economy.htm> [Accessed July 2020]

González Pizarro, S. 2019. La política exterior de Chile y su ideología desde 1990. *Papel Político*, 2019, 24(1)

Hall, P. H., & Soskice, D. (2006). A propósito de los capitalismos contemporáneos: Variedades de capitalismo: Algunos aspectos fundamentales. *Desarrollo económico*, 573-590.

Hanberger, A. (2003). Public Policy and Legitimacy: A Historical Policy Analysis of the Interplay of Public Policy and Legitimacy. *Policy Sciences*, Vol. 36, No. 3/4, pp. 257-278.

Hänggli, R. & Kriesi, H. (2010) Political Framing Strategies and Their Impact on Media Framing in a Swiss Direct-Democratic Campaign. *Political Communication*. 27:2, 141-157

Harris, R. L. (2000). The effects of globalization and neoliberalism in Latin America at the beginning of the millennium. *Journal of Developing Societies*, 16(1), 139-162.

Hay, W. (2006) What Is Democracy? Liberal Institutions and Stability in Changing Societies. *Orbis* Volume 50, Issue 1, Winter, Pages 133-151.

Héritier, A., & Eckert, S. (2008). New modes of governance in the shadow of hierarchy: Self-regulation by industry in Europe. *Journal of Public Policy*, 113-138.

Hevia, F., Vergara-Lope, S., & Ávila Landa, H. (2011). Participación ciudadana en México: consejos consultivos e instancias públicas de deliberación en el gobierno federal. *Perfiles latinoamericanos*, 19(38), 65-88.

Hillebrecht, C. (2014). Compliance as a Signal of States' Human Rights Commitments: Uribe's Colombia. In *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance* (Cambridge Studies in International and Comparative Law, pp. 66-81). Cambridge: Cambridge University Press. doi:10.1017/CBO9781139628747.005

Hillemanns, C. (2003). UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights. *German Law Journal*, 4(10), 1065-1080. doi:10.1017/S2071832200016643

Hirschland, M. (2006). *Corporate Social Responsibility and the Shaping of Global Public Policy*. New York: Palgrave Macmillan.

Hudson et al. (2019) Policy failure and the policy-implementation gap: can policy support programs help?, *Policy Design and Practice*, 2:1, 1-14

I/A Court of Human Rights, 2022. Available at: <https://www.corteidh.or.cr/index.cfm?lang=en>

ICAR, 2019. [Online] Available at: <https://www.icar.ngo/our-work-overview/> [Accessed 20 February 2020]

IDDH and INDH, 2013. Country Guide. [PDF]

IFC, 2016 . [online] Available at: <https://www.ifc.org/wps/wcm/connect/6285ad53-0f92-48f1-ac6e-0e939952e1f3/IFC-History-Book-Second-Edition.pdf?MOD=AJPERES> [Accessed 12 June 2019]

Iglesias, M. (2017). Social Movements in Chile (1983–2013): Four Theoretical and Historical Moments. *Latin American Perspectives*, 44(4), 99-113.

ILO (2017). Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). Available at: <https://www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm> [Accessed July 2020].

Johnson, A. 2022, "The Roundtable on Sustainable Palm Oil (RSPO) and transnational hybrid governance in Ecuador's palm oil industry", *World development*, vol. 149, pp. 105710.

Keck, M.E. & Sikkink, K. (1998) *Activists beyond borders: advocacy networks in international politics*, Cornell University Press, Ithaca, New York.

Kingdon, John W. (2013). *Agendas, Alternatives, and Public Policies*, Update Edition, with an Epilogue on Health Care: Pearson New International Edition, Pearson Education Limited. [eBook] Available through: <https://ebookcentral.proquest.com/lib/gla/detail.action?docID=5150696>.

Knoepfel, P., (2018). *Public policy resources*. Bristol: Policy Press.

Knoema. 2021. *Death in Major Episodes of Political Violence 1946-2019* - [knoema.com](http://knoema.com). [online] Available at: <http://knoema.com/xzmbnbd/death-in-major-episodes-of-political-violence-1946-2019> [Accessed 27 June 2021].

Kurtz, M. (2001). State developmentalism without a Developmental State: The public foundations of the “Free Market Miracle” in Chile. *Latin American Politics and Society*, 43(2), 1-26.

Kus, B., & Ozel, I. (2010). United we restrain, divided we rule: Neoliberal Reforms and Labor Unions in Turkey and Mexico. *European Journal of Turkish Studies. Social Sciences on Contemporary Turkey*, (11).

Lagoutte, S. (2015). New Challenges Facing States within the Field of Human Rights and Business, *Nordic Journal of Human Rights*, 33:2, 158-180.

Landman, T. (2005), *Protecting human rights: a comparative study*, Georgetown University Press, Washington, D.C.

Landman, T., 2018. Democracy and human rights: Concepts, measures, and relationships. *Politics and Governance*, 6(1), pp.48-59.

Leeuwis, C. & Wageningen Univ. (Netherlands) 2000, "Reconceptualizing participation for sustainable rural development: towards a negotiation approach", *Development and change*, vol. 31, no. 5, pp. 931-959.

LII (2020). Alien Tort Statute. [Online] Available at: [https://www.law.cornell.edu/wex/alien\\_tort\\_statute](https://www.law.cornell.edu/wex/alien_tort_statute) [Accessed December 2020]

Lijphart, A. (2010). Democratic Quality in Stable Democracies. *Soc* (2011) 48:17–18

Lim, A. and Tsutsui, K. (2015). The social regulation of the economy in the global context. In: Tsutsui, K. and Lim, A., ed. 2015. *Corporate Social Responsibility in a Globalizing World*: Cambridge University Press. Ch. 1.

Loaeza, S. (2015). Mexico's Gradual Democratization: From Above and from Below. In: S. Bitar and A. Lowenthal, ed. 2015 *Democratic Transitions*. Maryland: John Hopkins University Press.

Locke, R.M., Rissing, B.A. and Pal, T., 2013. Complements or substitutes? Private codes, state regulation and the enforcement of labour standards in global supply chains. *British Journal of Industrial Relations*, 51(3), pp.519-552.

Martner, G. (2016). *Discusión constitucional: el veto permanente de la minoría*. [online] Available at: <https://www.elmostrador.cl/noticias/opinion/2016/05/30/discusion-constitucional-el-veto-permanente-de-la-minoria/> [Accessed 18 February 2020]



McPhail, K. and Adams, C.A. (2016), "Corporate respect for human rights: meaning, scope, and the shifting order of discourse", *Accounting, Auditing & Accountability Journal*, Vol. 29 No. 4, pp. 650-678.

Memoria Chilena, 2019. La Vicaría de la Solidaridad (1973-1992). [Online] Available through: <http://www.memoriachilena.gob.cl/602/w3-article-3547.html> [Accessed 20 October 2019]

Mercosur, 2021. What is Mercosur? [Online] Available at: <https://www.mercosur.int/en/about-mercursosur/mercursosur-in-brief/>

Meschkat, K. (2000). Una crítica a la ideología de la "sociedad civil". *Nómaditas. Critical Journal of Social and Juridical Sciences*, (1).

Methven O'Brien, C.M. and Dhanarajan, S., 2016. The corporate responsibility to respect human rights: A status review. *Accounting, Auditing & Accountability Journal*. Vol. 29 No. 4, pp. 542-567

Methven O'Brien, C., Mehra, A., Blackwell, s. & Poulsen Hansen, C.B. 2016, "National Action Plans: Current Status and Future Prospects for a New Business and Human Rights Governance Tool", *Business and human rights journal*, vol. 1, no. 1, pp. 117-126.

Methven O'Brien, C. 2020, "Transcending the Binary: Linking Hard and Soft Law Through a UNGPS-Based Framework Convention", *AJIL unbound*, vol. 114, pp. 186-191.

Minutes, 2016. Segunda Sesión Ordinaria del Grupo de Trabajo sobre Empresas y Derechos Humanos. SEGOB. [PDF] Available at: [https://www.gob.mx/cms/uploads/attachment/file/200972/3\\_Minuta\\_Segunda\\_Sesion\\_GT\\_Empresas\\_y\\_Derechos\\_Humanos.pdf](https://www.gob.mx/cms/uploads/attachment/file/200972/3_Minuta_Segunda_Sesion_GT_Empresas_y_Derechos_Humanos.pdf) [Accessed 25 April 2020]

Morris, S. (1999). Corruption and the Mexican Political System: Continuity and Change. *Third World Quarterly*. Vol. 20, No. 3, The New Politics of Corruption pp. 623-643.

Moser, C. & Leipold, S. 2021;2019;, "Toward "hardened" accountability? Analyzing the European Union's hybrid transnational governance in timber and biofuel supply chains", *Regulation & governance*, vol. 15, no. 1, pp. 115-132.

NAP Chile, (2017). [PDF]

NAP Mexico (last draft) [PDF]

NAP toolkit (2017) [online] Available at [https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd\\_2017/dihr\\_icar\\_nap\\_toolkit\\_2017\\_edition.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd_2017/dihr_icar_nap_toolkit_2017_edition.pdf) [Accessed December 2019]

NAPs on business and human rights, (2020). Available at: <https://globalnaps.org/about/>

Navia,P., (2010). Living in Actually Existing Democracies: Democracy to the Extent Possible in Chile. *Latin American Research Review* Vol. 45, Special Issue: Living in Actually Existing Democracies, pp. 298-328.

Nazmi, N., 1996. Economic Policy and Stabilization in Latin America. New York: M.E. Sharpe, Inc.

Grupo Focal and ICAR (NBA Mex), (2016) Diagnostico de Línea Base para la implementación de los Principios Rectores México [PDF]

Niedhardt, A. (2016) Agenda setting: strategies and agenda denial mechanisms. *Organ. Soc.* vol.23 no.79

Obara, L.J. & Peattie, K. 2018, "Bridging the great divide? Making sense of the human rights-CSR relationship in UK multinational companies", *Journal of world business : JWB*, vol. 53, no. 6, pp. 781-793.

Observatorio Ciudadano (2019a). [online] Available at: [observatorio.cl](http://observatorio.cl) [Accessed 23 March 2020].

Observatorio Ciudadano (2019b) [online] Available at: <https://observatorio.cl/nuestros-proyectos/> [Accessed July 2021]

OECD (2010). Chile signs up as first OECD member in South America <https://www.oecd.org/chile/chilesignsupasfirstoecdmemberinsouthamerica.htm>

OECD, (2011). OECD Guidelines for Multinational Enterprises, OECD Publishing. [online] Available at: <http://dx.doi.org/10.1787/9789264115415-en> [Accessed 21 March 2018]

OECD (2015a). [online] Available at: <http://www.oecd.org/gender/data/labour-force-participation-by-sex-age.htm> [Accessed 10 April 2017]

OECD (2015b) [online] Available at: <http://www.oecd.org/social/income-distribution-database.htm> [Accessed 15 November 2017]

OECD Public Governance Review (2017). 'Scan Report On The Citizen Participation In The Constitutional Process' [PDF] Available through: <https://www.oecd.org/gov/public-governance-review-chile-2017.pdf> [Accessed 15 April 2020]

OECD (2017a). DAC List of ODA Recipients. Available at: [http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC\\_List\\_ODA\\_Recipients2014to2017\\_flows\\_En.pdf](http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC_List_ODA_Recipients2014to2017_flows_En.pdf) [Accessed October 2020]

OECD (2017b). Income inequality (indicator). [online] Available at: doi: 10.1787/459aa7f1-en (Accessed on 17 November 2017)

OECD (2018) [Online] Available through: [https://www.oecd-ilibrary.org/development/latin-american-economic-outlook-2018/chile\\_leo-2018-12-en](https://www.oecd-ilibrary.org/development/latin-american-economic-outlook-2018/chile_leo-2018-12-en) [Accessed 20 October 2019]

OECD (2019) Latin America and the Caribbean 2019: Policies for Competitive SMEs in the Pacific Alliance and Participating South American countries. [Online] Available through: [https://read.oecd-ilibrary.org/development/latin-america-and-the-caribbean-2019\\_d9e1e5f0-en#page266](https://read.oecd-ilibrary.org/development/latin-america-and-the-caribbean-2019_d9e1e5f0-en#page266) [Accessed 20 October 2019]

OECD (2020). WORKING TOGETHER: National Human Rights Institutions and the OECD Guidelines for Multinational Enterprises [online] Available at: <http://mneguidelines.oecd.org/factsheet-working-together-national-human-rights-institutions-and-OECD-guidelines-for-MNEs.pdf> [Accessed 01 December 2020]



Ojeda, M. (1984). La Política Exterior De México: Objetivos, Principios E Instrumentos. *Revista Mexicana de Política Exterior* Vol. 1 No. 2.

Olavarria, M. (2003). Protected neoliberalism: perverse institutionalization and the crisis of representation in postdictatorship Chile. *Latin American Perspectives*, 30(6), 10-38.]

Ombudsman Empresarial (2020). Available at: <https://www.derechoshumanoseconomicos.com/?Ancho=1920&Alto=1080> [Accessed 24 November 2020]

Oxhorn (2006) 'Conceptualizing Civil society From the Bottom Up: A Political Economy Perspective' in ed. Feinberg, Waisman and Zamosc. *Civil Society and Democracy in Latin America*. England: Palgrave Macmillan. 59-84.

Pacheco, P., Schoneveld, G., Dermawan, A., Komarudin, H., & Djama, M. (2020). Governing sustainable palm oil supply: Disconnects, complementarities, and antagonisms between state regulations and private standards. *Regulation & Governance*, 14(3), 568–598. <https://doi.org/10.1111/rego.v14.310.1111/rego.12220>

Palmer, C. (2016). What can Post-Democracy tell us about TNC s and Extraterritorial Violations of Human Rights? *The Political Quarterly*, 87(1), 76-80.

Pattberg, P. and Widerberg, O (2016) Transnational multistakeholder partnerships for sustainable development: Conditions for success. *Ambio* 45, 42–51.

Perevochtchikova and Andre (2013). Environmental Impact Assessment in Mexico and Canada: Comparative Analysis at National and Regional Levels of Federal District and Quebec. *International Journal of Environmental Protection* Vol. 3 Iss. 8, PP. 1-12

Pérez-Liñán, A. and Mainwaring, S., 2013. Regime legacies and levels of democracy: evidence from Latin America. *Comparative Politics*, 45(4), pp.379-397.

Pinto, R. and Puppim de Oliveira, J. (2008). Implementation challenges in protecting the global environmental commons: The case of climate change policies in Brazil *Public Administration and Development*. Volume 28, Issue 5.

PODER, 2020a. [Online] Available at: <https://www.projectpoder.org/about-us/> [Accessed 27 April 2020]

Ponte, S., & Daugbjerg, C. (2015). Biofuel sustainability and the formation of transnational hybrid governance. *Environmental Politics*, 24(1), 96-114.

Popplewell, R. (2018). Civil society, legitimacy and political space: Why some organisations are more vulnerable to restrictions than others in violent and divided contexts. *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations*, 29(2), 388-403.

Prakash, S. and Schepers, D. (2014). United Nations Global Compact: The Promise-Performance Gap *Journal of Business Ethics*, Vol. 122, No. 2, pp. 193-208.

Proceso (2017) 'Piden a la Segob replantear el texto del Programa Nacional de Empresas y Derechos Humanos'[online] Available at: <https://www.proceso.com.mx/492969/piden-a-la-segob-replantear-el-texto-del-programa-nacional-de-empresas-y-derechos-humanos> [Accessed May 2020].

Prohumana (2019) [Online] Available at: <https://prohumana.cl/historia-e-iniciativas/que-es/> [Accessed July 2020]

Rasche, A. and Waddock, S., 2021. The UN Guiding Principles on Business and Human Rights: Implications for Corporate Social Responsibility Research. *Business and Human Rights Journal*, pp.1-14.

Reporte Codelco, 2019 [PDF]

Respuesta al Proceso de Consulta, (n.d) [PDF]

Responsible Mining Foundation. (2020) [Online] Available at: <https://www.responsibleminingfoundation.org/msat/> [Accessed November 2020]

Richards, D. (1996) Elite Interviewing: Approaches and pitfalls. *Politics* 16(3) pp. 199-204.

Risse, T. and Sikkink, K., 1999. "The socialization of international human rights norms into domestic practices: introduction," in Risse, T., Ropp, S. C., and Sikkink, K. (eds) *The Power of Human Rights: International Norms and Domestic Change*. Cambridge: Cambridge University Press (Cambridge Studies in International Relations), pp. 1–38.

Robinson, A. S. (2013). Developments in anti-Corruption Law in Mexico: Ley Federal Anticorrupciones en Contrataciones Publicas. *Law & Bus. Rev. Am.*, 19, 81.

Rothman, S. (2009) EXPLAINING THE INTERNATIONAL AGENDA: FRAMES AND POWER IN POLITICS. University of Oregon Graduate School. [Doctoral Dissertation] Available through: [https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/10353/Rothman\\_Sтивен\\_Barry\\_phd2009su.pdf;sequence=1](https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/10353/Rothman_Sтивен_Barry_phd2009su.pdf;sequence=1) [Accessed 25 June 2020]

Royo, S. (2008). Globalization and varieties of capitalism: Lessons for Latin America. *Jean Monnet/Robert Schuman Paper Series*, 8(18).

Ruggie, J., 2013. *Just Business: Multinational Corporations and Human Rights*. W. W. Norton & Company.

Ruggie, J. (2014) Global Governance and "New Governance Theory": Lessons from Business and Human Rights. *Global Governance* 20, pp. 5–17.

Ruggie, J. and Sherman, J. (2017). The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale. *The European Journal of International Law* Vol. 28 no. 3.

Ruggie, J. (2018) ¿Jerarquía o ecosistema? La regulación de los riesgos relativos a los derechos humanos provenientes de las empresas multinacionales. In: *Empresas y derechos humanos en el siglo XXI La actividad corporativa bajo la lupa, entre las regulaciones internacionales y la acción de la sociedad civil*. Siglo XXI Editores[Ebook] Available at: <https://www.dejusticia.org/wp-content/uploads/2018/03/Empresas-y-Derechos-humanos-Versio%CC%81n-final-para-WEB.pdf> [Accessed November 2020]

Ruggie, J. G. (2018b). Multinationals as global institution: Power, authority and relative autonomy. *Regulation & Governance*, 12(3), 317-333.

Samstad, J. (2002). Corporatism and Democratic Transition: State and Labor during the Salinas and Zedillo Administrations. *Latin American Politics and Society*, Winter, 2002, Vol. 44, No. 4, pp. 1-28.

Sánchez, M.I.C., 2019. The war on drugs in Mexico and transnational corporate control. *Perspectives on global development and technology*, 18(1-2), pp.175-185.

Santander Trade (2019) Chilean Foreign Trade In Figures. [Online] Available through: [https://en.portal.santandertrade.com/analyse-markets/chile/foreign-trade-in-figures#classification\\_by\\_country](https://en.portal.santandertrade.com/analyse-markets/chile/foreign-trade-in-figures#classification_by_country) [Accessed 28 October 2019]

Santander Trade (2019) Mexico Foreign Trade In Figures [Online] Available through: [https://en.portal.santandertrade.com/analyse-markets/mexico/foreign-trade-in-figures#classification\\_by\\_country](https://en.portal.santandertrade.com/analyse-markets/mexico/foreign-trade-in-figures#classification_by_country) [Accessed 28 October 2019]

Sartas, M., van Asten, P., Schut, M., McCampbell, M., Awori, M., Muchunguzi, P., Tenywa, M., Namazzi, S., Sole Amat, A., Thiele, G., Proietti, C., Devaux, A. & Leeuwis, C. 2019, "Factors influencing participation dynamics in research for development interventions with multi-stakeholder platforms: A metric approach to studying stakeholder participation", *PloS one*, vol. 14, no. 11, pp. e0223044-e0223044.

Saucedo, E. et al. (2015). Hierarchical capitalism in Latin America: Comparative analysis with other economies". *International Journal of Business and Economic Sciences Applied Research (IJBESAR)* 3:69-82.

Schmidt, Vivien A. (1995) The New World Order, Incorporated: The Rise of Business and the Decline of the Nation-State. *Daedalus*, 124:2, 75–106.

Schneider, A. and Scherer, A. (2019) State Governance Beyond the ‘Shadow of Hierarchy’: A social mechanisms perspective on governmental CSR policies. *Organization Studies* [ejournal] Vol. 40(8) 1147–1168.

Schönsteiner, J. et al (NBA Chile) (2016), Estudio Línea Base Chile, 2016. [PDF]

Schönsteiner, J., (2016). Brechas de cumplimiento: El Estado, empresas y derechos humanos. In *Informe anual sobre derechos humanos en Chile 2016* (pp. 123-172). Universidad Diego Portales.

SEGOB (2020a) [Online] Available at: <https://www.gob.mx/segob/articulos/abordar-los-derechos-humanos-en-todos-los-espacios-y-entornos-grupo-de-trabajo-sobre-empresas-y-ddhh> [Accessed 25 April 2020]

SEGOB (2020b) [Online] Available at: <https://www.gob.mx/segob/articulos/nician-las-mesas-de-trabajo-que-culminaran-en-el-borrador-del-programa-nacional-de-empresas-y-derechos-humanos?idiom=es> [Accessed 25 April 2020]

SEMARNAT (2020). Definición de Impacto Ambiental. [Online] Available at: <https://www.gob.mx/semarnat/acciones-y-programas/definicion-y-objetivo-de-la-evaluacion-del-impacto-ambiental> [Accessed December 2020].

Senate Chile (2020) [online] Available at: <https://www.senado.cl/capitulo-iii-de-los-derechos-y-deberes-constitucionales/senado/2012-01-16/093413.html> [Accessed February 2020]

Serna, G. (n.d.) El concepto de Responsabilidad Social Empresarial y su aceptación en las Empresas Mexicana. Instituto de investigaciones jurídicas UNAM.

Shor, E. (2008) Conflict, Terrorism, and the Socialization of Human Rights Norms: The Spiral Model Revisited (Oxford Journals) *Social Problems* , Vol. 55, No. 1, pp. 117-138.

Simmons, B. (2009). Conclusion. In Mobilizing for Human Rights: International Law in Domestic Politics (pp.349-380). Cambridge: Cambridge University Press. Doi:10.1017/CBO9780511811340.009

Soh, C., & Nam, S. (2018). Business and human rights case study of Korean companies operating overseas: Challenges and a new national action plan. *Hum. Rts. Q.*, 40, 287.

Solimano (2012). Chile's Neoliberal Trap. The Post Pinochet Era. Cambridge University Press [eBook] Available through: <https://www-cambridge-org.ezproxy.lib.gla.ac.uk/core/books/chile-and-the-neoliberal-trap/9062901CB6F62A8D4CDAFCB1F49AFDBD> [Accessed July 2020]

STPS, (2019). Distintivos. [online] Available at: <https://www.gob.mx/stps/documentos/distintivos-de-la-stps-2018> [Accessed 12 June 2019]

Taylor, M. B. (2020). "Chapter 5: Human rights due diligence in theory and practice". In Research Handbook on Human Rights and Business . Cheltenham, UK: Edward Elgar Publishing. Retrieved May 6, 2022, from [https://www.elgaronline.com/view/edcoll/9781786436399/978178643TheEconomistIntelligenceUnit\(2019\)DemocracyIndex2019.Ayearofdemocraticsetbacksandpopularprotest.\[PDF\]](https://www.elgaronline.com/view/edcoll/9781786436399/978178643TheEconomistIntelligenceUnit(2019)DemocracyIndex2019.Ayearofdemocraticsetbacksandpopularprotest.[PDF])

Thomas, D. and Mitra, S. (2017). Global civil society and resistance to Canadian mining abroad: building and enhancing the boomerang model, *Studies in Political Economy*, 98:1, 48-70.

Torres, F., & Rojas, A. (2015). Política económica y política social en México: desequilibrio y saldos. *Problemas del desarrollo*, 46(182), 41-66.

UDHR (2020) Available at: <https://www.un.org/en/universal-declaration-human-rights/index.html>[Accessed November 2020]

UN Working Group (2016) Guidance on National Action Plans on Business and Human Rights. [PDF]

UNDP (2009) Importancia del diálogo para la prevención de conflictos y la construcción de paz [PDF] Available through: [http://www.undp.org/content/dam/undp/library/crisis%20prevention/Spanish/dialogue\\_conflict\\_spanish.pdf](http://www.undp.org/content/dam/undp/library/crisis%20prevention/Spanish/dialogue_conflict_spanish.pdf) [Accessed 25 April 2020]

UNGP (2011) United Nations Human Right Office of the High Commissioner. [online] Available at: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf) [Accessed May 2020]

United Nation (2014) Human Rights Council. Twenty-sixth session. [online] Available at: <https://documents-dds->

[ny.un.org/doc/UNDOC/GEN/G14/083/82/PDF/G1408382.pdf?OpenElement](https://ny.un.org/doc/UNDOC/GEN/G14/083/82/PDF/G1408382.pdf?OpenElement) [Accessed 16 January 2018]

Uribe, E. (2011). El Pacto Global Y La Responsabilidad Social Empresarial Herramientas De Cooperación Internacional: El Caso De Chile. (Maestria) Insituto Jose Maria Luis Mora, Ciudad de Mexico, Mexico.

Vaismoradi, et al. (2013) Content analysis and thematic analysis: Implications for conducting a qualitative descriptive study. *Nursing and Health Sciences* (2013), 15, 398–405.

van Hulst, M.J. & Yanow, D. (2016) "From Policy "Frames" to "Framing": Theorizing a More Dynamic, Political Approach", *The American Review of Public Administration*, vol. 46, no. 1, pp. 92-112.

Voegtlin, C., & Pless, N. M. (2014). Global governance: CSR and the role of the UN Global Compact. *Journal of Business Ethics*, 122(2), 179-191.

Weeks and Borzutsky (2012) Michelle Bachelet's Government: The Paradoxes of a Chilean President. *Journal of Politics in Latin America*, 4, 3, 97-121.

Weisbrot, et. al., 2014. Did NAFTA Help Mexico? An Assessment After 20 Years. Centre for Economic and Policy Research. [online] Available at: <https://cepr.net/documents/nafta-20-years-2014-02.pdf> [Accessed July 2020].

Wettstein, et al. (2019) International business and human rights: A research agenda. *Journal of World Business* Volume 54, Issue 1. Pages 54-65.

Wettstein, F. (2012) CSR and the Debate on Business and Human Rights: Bridging the Great Divide *Business Ethics Quarterly*, Vol. 22, No. 4.

Wettstein, F., 2015. Normativity, ethics, and the UN guiding principles on business and human rights: A critical assessment. *Journal of Human Rights*, 14(2), pp.162-182.

Weyzig, F. (2006) Local and global dimensions of corporate social responsibility in Mexico. *The Journal of Corporate Citizenship*. 24: p69.

Willis, J. 2012. History and Foundations of Interpretivist Research. In: Foundations of Qualitative Research: Interpretive and Critical Approaches. SAGE Publications, Inc. [eBook] Available through:

<https://dx.doi.org/10.4135/9781452230108> [Accessed October 2020].

Win, P. (2004) Pinochet Era. Edited By Peter Winn. Duke University Press Books Chapter 1 pp. 14 – 70 [eBook] Availabe at: <https://www.dawsonera.com/readonline/9780822385851>

Witt, M. A., Kabbach de Castro, L. R., Amaeshi, K., Mahroum, S., Bohle, D., & Saez, L. (2018). Mapping the business systems of 61 major economies: a taxonomy and implications for varieties of capitalism and business systems research. *Socio-Economic Review*, 16(1), 5-38.

World Bank (2018) World Bank Country and Lending Groups. [Online] Available at: <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519> [Accessed 10 March 2018]

World bank (2019) 'Country Profile Chile' [Online] Available through: [https://databank.worldbank.org/views/reports/reportwidget.aspx?Report\\_Name=CountryPr](https://databank.worldbank.org/views/reports/reportwidget.aspx?Report_Name=CountryPr)

[ofile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=CHL](#) [Accessed 20 October 2019]

World Bank (2019) 'Country Profile Mexico [Online] Available through: 'Country Profile Chile' [Online] Available through: <https://data.worldbank.org/country/mexico?view=chart> [Accessed 20 October 2019]

World Bank Indicators, 2021a. Gini Index Chile. [Online] Available at: <https://data.worldbank.org/indicator/SI.POV.GINI?contextual=default&end=2017&locations=CL&start=1987&view=chart>

World Bank Indicators, 2021b. Gini Index Mexico. [Online] Available at: <https://data.worldbank.org/indicator/SI.POV.GINI?contextual=default&end=2017&locations=CL-MX&start=1987&view=chart>

World Factbook. (2017) Chile[online] Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ci.html> [Accessed 10 March 2018]

World Factbook. (2017) Mexico [online] Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html> [Accessed 10 March 2018]

Worstell, T. (2015) Poverty And Inequality Are Not The Same Thing So Let's Try Not To Confuse Them [online] Available at: <https://www.forbes.com/sites/timworstell/2015/03/19/poverty-and-inequality-are-not-the-same-thing-so-lets-try-not-to-confuse-them/#5f6e5dec483f> [Accessed June 2020]

Yin, R. (2003) Case Study Research. Design and Methods. United States of America: Sage Publications, Inc.

Zahariadis, (2016). Setting the agenda on agenda setting: definitions, concepts, and controversies. In: Handbook of Public Policy Agenda Setting. Edward Elgar Publishing Limited [eBook] Available through: <https://ebookcentral.proquest.com/lib/gla/detail.action?docID=4731311>. [Accessed 26 Feb. 2020]

Zimmermann, L. (2017) Introduction: Between Global Norms and Local Translation. In Global Norms with a Local Face: Rule-of-Law Promotion and Norm Translation (Cambridge Studies in International Relations, pp. 1-22). Cambridge: Cambridge University Press. [eBook] Available through: doi:10.1017/9781316771341.001 [Accessed 19 February 2020].

Zurn, (2018) The Rise of the Global Governance System: A Historical-Institutionalist Account in A Theory of Global Governance: Authority, Legitimacy, and Contestation, First ed., Oxford University Press, Oxford. [eBook] Available through: <https://www-oxfordscholarship-com.ezproxy.lib.gla.ac.uk/view/10.1093/oso/9780198819974.001.0001/oso-9780198819974-chapter-6> [Accessed June 2020]

