
Accountability for Sustainability

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Accountability from multinational corporations (MNCs) in developing countries is required for the countries' sustainability and growth. In the past, corporations have left a legacy of destruction in dozens of indigenous homelands, depriving people of their livelihood, land and health. The actions of such companies have also caused irreparable damage to the environment, with catastrophic effects. These actions suggest the need for a code of conduct prescribing guidelines and standards for U.S. multinational corporations to follow when operating in foreign countries.

The behavior of MNCs in developing countries is the product of a needy society and profit motivations. As described by Thomas Anderson (1991), author of *Multinational Investment in Developing Countries*, these developing societies "are faced with serious and acute problems requiring urgent investment such as hunger, illiteracy, unemployment, rural-urban imbalances, chronic poverty, etc. . ." (p. 82). Foreign corporations provide the necessary investments while taking all of the economic risk. Meanwhile, developing countries receive a sizable share of the profits. In the end, both the company and the nation benefit substantially.

Corporations are drawn toward development in these countries because of the abundance of opportunity: low operating costs, cheap labor, and lower production costs result in increased profits. Specifically, corporations focusing on natural resource extraction often discover that these countries have an abundance of untapped supplies in a market where availability is dwindling. Simultaneously, government officials in developing countries are looking for economic opportunities that allow for growth while enabling them to provide for a needy population. In both situations, the end usually justifies the means and the hidden risk

to host countries often results in the suffering of a few for the welfare of the many. The risk incurred by this development, however, must be and can be addressed.

The controversy over MNCs in developing countries stems from two general perspectives. Michel Ghertman and Margaret Allen (1984) clearly identify these perspectives in their book *An Introduction to the Multinationals*. The authors' first view MNCs through their enormous financial influence, which, in the host country, allows the few to consolidate political power, causing the majority to suffer. This view is based upon the theory that corporations can become so powerful that they have the ability to overthrow governments. Ghertman and Allen's conflicting view portrays MNCs as the most modern and efficient organizations in the world, with the ability to provide a vast amount of social and economic benefits.

Early scholars writing on the issue of multinational corporations in developing countries often portrayed MNCs as the "monsters" described in Ghertman and Allen's first perspective. In 1974, a survey administered by Attali, Holthus, Kebschull, Peninou, and Uri (1978), called *Who's Afraid of Multinationals?*, showed that the general image of multinationals is much more negative than positive. Isaiah Frank (1980) from the Committee for Economic Development supports these findings by arguing that the relationship between MNCs and developing countries is often grossly generalized. Due to their size, privatization, and foreign characteristics, multinational corporations are seen as outsiders who simply infringe upon and devastate indigenous cultures. Frank, however, believes that this grossly generalized view is largely accurate, that corporations are driven only by a dedication toward gains regardless of any effects on public welfare. Authors such as Frank contributed to the negative perceptions of MNCs that still exist today.

However, starting in the early 1980s, much of the public and numerous authors began to focus on the contradictory perspective, that multinational corporations have the ability to provide a vast amount of economic and social benefits. Sanjaya Lall (1993), author of *Transnational Corporations and Economic Development*, has found that the 1980s produced a "general warming of attitudes to foreign direct

investment, not just in development literature but also on the part of national governments that were traditionally strongly hostile to MNCs” (p. 1). She further argues that these attitude changes are the result of more experienced corporations and the growing capabilities of many developing countries to negotiate with MNCs. Unfortunately, the perspective shift allowed policy makers to simply forget many of their longstanding concerns about MNC operations.

Although public opinion has changed over the years toward a focus on MNC’s positive contributions, the reality of MNC operations in developing countries often tells a different story. Interest groups are flinging allegations of misconduct today more than ever before. Sweat shops in China, environmental degradation in the Amazon, and genocide in Nigeria—these are only a few of the current, negative impacts MNCs are having in developing countries.

Looking at the most developed country in the world today, the United States of America, makes evident the threat of corporations on unstable, underdeveloped populations and environments. As a young nation in 1776, America sought economic growth and sustainability to fulfill its perception of an ideal nation. The following decades produced an intrusive society that manipulated and destroyed numerous indigenous tribes for personal gain. It has taken over two centuries for the United States to realize its involvement in the near annihilation of Native Americans in North America, and yet, in the presence of similar situations, it chooses to ignore the probable consequences of similar actions by MNCs. Despite the warnings and threats of dire consequences on the part of interest groups both here and abroad, it has done nothing to halt the exploitation of many developing countries and their people. For some reason, America has isolated itself from the devastation confronting indigenous people in foreign countries. Perhaps the separation of America from other regions of the world has allowed it to be unaware or apathetic. Whatever the case, America must realize that it cannot make the same mistake twice.

As the most economically developed and powerful nation in the world, the United States is in a better position to address the exploitation and manipulation precipitated by the presence of, or perpetrated directly by, MNCs in developing countries. The survival of the Ameri-

can economy does not hinge on the financial loss or gain from U.S. corporations operating overseas. Even more to the point, the American government does not allow for this type of behavior in its own country. America protects its society and the environment with numerous laws and regulations that monitor and dictate the behavior of corporations operating in the U.S. Thus it seems absurd that American ideals would countenance the current practice of corporations going elsewhere and simply operating at lower standards.

Confronting the threat currently facing developing nations, the United States government must begin to hold corporations accountable for their behavior in other countries. Even if America refuses to act on the basis of its own moral standard, then it should act simply for the preservation of indigenous communities and environmental conservation. This study presents one possible solution that would help the United States fulfill its moral obligation to take action as well as its economic obligation to MNCs to develop and operate productively.

The study consists of two parts. To introduce and analyze the effects of U.S. multinational corporations on developing countries, the first part consists of a case study of Occidental Petroleum's controversial operations in the cloudforests of the Colombian Andes. Occidental has currently entered into a contract with the Colombian government to explore for oil in the eastern foothills of the Andes near the Venezuelan border. The area is home to over 5,000 members of the U'wa tribe, who have threatened mass suicide if drilling begins. Specifically, the case study will include an introduction to the region and the tribe, provide background on the conditions that encourage oil production in Colombia, examine the relevant Colombian and American laws, elaborate on the details of the conflict between the U'wa and Occidental, and offer observations on and solutions to the conflict. This part will also include a comparative case study of Occidental Petroleum's operations in Kern County, California.

The second part utilizes the conflict in Colombia as a forum to propose legislation that mandates a Code of Conduct for Multinational Corporations and holds them accountable for their actions in other countries. The proposed policy extracts guidelines and standards from current U.S. and international laws that address the following three

issues: indigenous peoples' rights, environmental quality, and labor rights. The policy objective is not to restrict foreign investment, but rather to mandate behavior based upon fundamental human rights, environmental protection, and labor principles.

Occidental Petroleum and the U'wa Tribe

The U'wa, an indigenous tribe of the Sierra Nevada del Cocuy Mountains in Colombia, is one example of a group in an environmentally sensitive region that is threatened by an American oil company's attempts to drill for oil. Assisted by the Colombian government, Occidental Petroleum began drilling its first exploratory well on November 3, 2000. The case study provides evidence to support the need for intervention by the United States to preserve both the tribe and its environment.

BACKGROUND: SIERRA NEVADA DEL COCUY MOUNTAINS AND THE U'WA

The U'wa territory, located in the Sierra Nevada del Cocuy Mountains, borders two of Colombia's most famous national parks, El Cocuy and Tama. These parks contain acres of Colombia's unique rainforests. The clearing of these rainforests would contribute to global warming through the emission of greenhouse gases such as carbon dioxide, methane, ozone and nitrous oxide. Deforestation also releases huge amounts of carbon into the atmosphere, destroying forests by removing carbon dioxide. More specifically, deforestation will lead to the destruction of one of Earth's only ways to absorb excess carbon dioxide, the chemical responsible for approximately half of global warming. The destruction of this area will contribute to Earth's diminished ability to stabilize the atmosphere (Rainforest Action Network, 2000b).

These regions also contain some of the highest levels of biodiversity in the world. Numerous rare and endangered species of plants and animals, including anacondas, jaguars, spectacled bears and toucans, inhabit the areas (Rainforest Action Network, 2000b). The U'wa people have protected all of these species and their habitats for thousands of years.

A tribe of 5,000, the U'wa are known as "the thinking people," because they have lived for thousands of years in peace with their neighbors. Although years of colonization and conquest have threatened the

U'wa's way of life, they have managed to maintain their traditional government, language and social structure. For the U'wa, the environment and their way of life are inextricably connected. Their agricultural practices are virtually undetectable. The tribe is very careful not to cut down trees and not to disturb the habitat because of its importance to both plant and animal species. The U'wa also let their fields lie fallow for ten to fifteen years to ensure full regrowth of native plant and animal species (Project Underground, 1998a).

Project Underground (1998a), a nonprofit environmental organization, describes the relationship between the U'wa and their environment in its publication, "Blood of Our Mother": "... [They] believe that there are two worlds, one above, where they live their physical lives, and one below, a parallel world that sustains spiritual life. The two worlds balance and sustain each other. Any actions taken in one world have resultant effects in the other. This belief guides the U'wa in their everyday life[,] [t]elling them how and where to gather plants, hunt, fish, and even how to interact with each other and the people from the outside world" (p. 4).

As the tribe currently faces the infringement of Occidental Petroleum, it is important to note that, during the sixteenth century, conquistadors attempted to enslave the tribe to extract a different natural resource, gold (Vidal, 1997). In order to escape slavery, the tribe retreated to the highest mountaintops of the Sierra Nevada del Cocuy Mountains. Their efforts to escape, however, were in vain. With the conquistadors close behind, the U'wa leader was faced with the decision to live a life of misery or to die with dignity. According to history, the leader maintained "that the very purpose of the life for the U'wa was conservation, that their role in this world was to maintain the equilibrium of the parallel worlds of the sky and the earth. If the U'wa were enslaved they would not be able to fulfill their promise." The leader eventually decided that death was the only answer. Thousands of U'wa trekked to the highest mountaintop, put their children in clay pots, and threw them off a 1,400 foot cliff, walking backwards off the edge after them. The U'wa who were left described the remains by saying "that so many bodies had piled up that it changed the course of the river below" (Project Underground, 1998a, p. 3).

Today, 400 years later, the tribe is faced with a similar repressive

force in the oil development plans of Occidental Petroleum and the Colombian government. Will the tribe have to make another life or death decision?

REGION IN TURMOIL

Over the past thirty-four years, fighting has ensued between the Colombian government and the communistic Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the Popular Liberation Army (EPL). The three paramilitary groups now control nearly half of Colombia's territory. Over 38,000 Colombians have been killed in the civil war and between 1 million and 2 million have been displaced (Sweeney, 1999).

The FARC was established in 1966 as the military wing of the Colombian Communist party. ELN had begun earlier in the 1960s, inspired by Fidel Castro's revolution in Cuba. Meanwhile, the EPL dates to the 1970s and has Maoist leanings. Most of EPL's members, however, returned to civilian life following the signing of a peace agreement in 1991 (Colombia Foreign Investment Guide, 1999). Regardless of peace attempts, the past three decades have been characterized by each group's attempts to establish a Marxist Colombian state through the use of force. Currently, FARC has grown to over 15,000 well-armed guerrillas and the ELN boasts of over 5,000 (Sweeney, 1999).

Since 1994, the two remaining paramilitary groups have intensified their efforts. In the past two years they have demonstrated their ability to confront and defeat Colombian army units all over Colombia. The following table is a catalog of recent rebel attacks.

The rebel attack on October 18, 1998 is emphasized in the table because it involves an attack on the Cano Limon oil development project. As noted, the project is a joint venture between Occidental Petroleum and Ecopetrol, the Colombian state oil company. Despite extensive security, this event is one of many. FARC and ELN have attacked the pipeline over 620 times (Occidental Oil and Gas Corporation, 2000). Ian Davis, Vice President of International Affairs for Occidental, feels that these guerrilla groups often target oil projects because they are the lifelines of Colombia's economic health since oil is the government's principal source of hard currency. Furthermore, the guer-

Table 2. Catalog of Recent Rebel Attacks

Date	Description
February 26, 1998	A Colombian army was ambushed by FARC guerrillas as they attempted to break up a concentration of 600 guerrillas ready to attack Cartagena del Chaira near the Caguan River. This was the first time the FARC defeated a large, elite Colombian army unit.
August 1998	The FARC and ELN launched 42 attacks in 14 different sectors. After two weeks of fighting, 104 military and police were dead and between 129 and 158 government troops had been taken prisoner; 143 guerrillas had been killed.
October 18, 1998	ELN sabotaged Colombia's main oil pipeline, causing a huge fire that destroyed the small village of Machuca; 45 people were burned to death, and another 26 died later from severe burns. The pipeline is operated by Occidental Petroleum in partnership with the Colombian State oil company, Ecopetrol.
November 2, 1998	A 120-man police detachment in Mitu (a city 400 miles from Bogota) was assaulted by 1,000 FARC guerrillas. About 80 police and 10 civilians were killed and 40 police were taken prisoner. FARC also ambushed about 500 soldiers and police approaching the besieged town by land.
March 4, 1999	The FARC viciously murdered three United States human rights workers, including two women, by shooting them execution-style in the face and chest.

*Source: Sweeney, John. (1999).

rilla groups benefit from Colombia's large drug trade (personal communication). In 1997, the Colombian government estimated that the FARC and ELN earned over \$900 million from drug trafficking and kidnapping (Sweeney, 1999). Therefore, as the Colombian government attempts to replace the drug trade in Colombia with other sources of economic opportunity, predominately oil production, these guerrilla groups have a lot at stake if the drug industry in Colombia suffers. For these reasons oil development projects in Colombia are often associated with violence. Therefore, it is inevitable that the proposed oil project on U'wa territory will stimulate attacks resulting in possible fatalities for tribe members and assuredly increasing the violence already plaguing the region.

ECONOMIC AND LEGAL CONDITIONS ENCOURAGING THE PRODUCTION OF OIL BY OCCIDENTAL PETROLEUM IN THE U'WA TERRITORY

The Colombian government is attempting to move away from the dominant drug trade in their country. However, this is a difficult objective considering the substantial debt hanging over the nation of Colombia. Through these economic pressures, the government has become reliant on foreign investments—particularly in the area of oil production. Reliance on oil production, however, often places an uneven balance of power in the hands of oil companies, resulting in a production-at-any-cost mentality.

Economic Conditions

The Colombian government currently finds itself under increased pressure from the United States and other international financial institutions to pay off debts. These debts were incurred primarily from 1992 to 1996, when Colombia obtained \$800 million in international project financing through a trade liberalization program and other international financial ventures. The primary strategy to relieve the resulting debt pressures has been to increase oil production (Project Underground, 1998a).

The Colombian government views oil, therefore, as its most important commodity. However, it lacks the necessary capital and technology to extract oil on its own and so looks toward foreign investors for

assistance. Consequently, the \$800 million referenced above has been used primarily for the development of roads and pipelines to assist the oil industry in its production efforts. With the resulting foreign assistance, the country has experienced a substantial increase in oil production over the last few decades. Oil production grew from 46 million barrels in 1980 to 138 million barrels in 1997. As of 1995, Colombia was the fourth largest and fastest-growing major exporter of oil in South America (Occidental Gas and Oil, 2000). In that same year, the country increased oil production by 30% with a proven amount of reserves at 2.8 billion barrels, an amount which does not even include the 1.5 billion barrels estimated to be lying within the U'wa territory (Rainforest Action Network, 2000b). As a result, in 1997 exports of oil and by-products reached \$2.7 billion, representing 43.5% of traditional exports (Foreign Investment Guide, 1999). According to Project Underground (1998a) the nation's daily oil production is 620,000 barrels, of which 300,000 are exported. Oil generates approximately one quarter of Colombia's official export revenue and in 1996 became Colombia's largest legal export commodity. The United States alone daily imports some 215,000 barrels of oil from Colombia—65 percent of the country's total exports. Colombia also holds significant gas reserves and has the largest reserves of coal in South America (Project Underground, 1998a).

Although Colombia has taken steps to attract foreign oil companies, its ongoing civil war and associated human rights violations have acted as a deterrent for foreign oil investors. In 1998, several oil companies, including Royal Dutch/Shell and British Petroleum, announced intentions to scale back operations and even sell off their interests and leave (Project Underground, 1998a). The reduced exploration and extraction of Colombia's most important commodity has increased the pressure to capitalize on existing oil investments. These investments include Occidental's Cano Limon oil field and the proposed oil drilling in the Colombian cloudforests.

Many factors facilitate Colombia's increased oil production. The most evident of these are the legal frameworks of Colombia and the United States.

The Laws of Colombia

The economic pressures described in the previous section have influenced foreign investment and tax laws to support the production of oil in Colombia. Meanwhile, the Colombian government has developed environmental laws and inserted indigenous rights into their constitution to combat any negative effects resulting from an increase in foreign investment. However, the environmental and indigenous rights standards are loosely enforced and often influenced by government officials. The outcome is that the laws tend to accommodate MNCs.

Colombian legislation encourages oil production by foreign companies through favorable foreign investment and tax laws. In 1991 the Colombian government liberalized its foreign investment laws, a move resulting in the doubling of foreign investments from 33% in the 1980s to 61% during a period between 1991 and 1997 (Colombian Foreign Investment Guide, 1999). The growth was accomplished through the implementation of measures that facilitated investment in export-oriented activities. These measures are described in Colombia's Foreign Investment Guide as "the setting up of duty-free zones that offer tax incentives to export production" (Colombia Foreign Investment Guide, p. 14). These tax incentives include an exemption of working capital tax on the capital invested in and used for operations in the petroleum industry and an exemption from custom taxes for imports of equipment, machinery, implements and other items necessary for exploration and extraction (Colombia Foreign Investment Guide).

The increased growth from foreign investments has placed a greater burden on other legal statutes designed to protect indigenous rights and the environment. These statutes provide a strong foundation of protection, but are often susceptible to influence and abuse.

Principles for environmental protection in Colombia are contained in the Renewable Natural Resources and Environmental Protection Code (CRN) enacted in 1974. In addition to CRN, there are a number of other decrees that contain rules on the use and management of natural resources. Colombian environmental laws are founded on the distribution of permits and licenses that accept or reject project proposals and that regulate discharges and emissions from approved projects. Autonomous Regional Corporations (ARCs) regulate the per-

mit process according to specific jurisdictions. ARCs are corporate entities comprised of partners that have a common link with an ecosystem or biogeographic unit. These corporations are responsible for managing renewable resources and promoting sustainable development in their jurisdictions. Specifically, they issue permits for water concessions, discharge permits and air, noise, solid waste, and odor emissions. Meanwhile, the Ministry of Environmental Affairs, the ARCs and some municipal governments issue environmental licenses, approving development projects. For large-scale projects, the Ministry of Environmental Affairs is the sole authority (Lewin and Willis Abogados, 2000).

The primary reason for the ineffectiveness of Colombia's environmental laws is these entities' susceptibility to influence and lack of enforcement. The Colombian government has the ability to influence the two permitting and licensing authorities to allow for projects that may substantially relieve some of its economic pressures. For example, under recommendation by the Colombian government, the Ministry of Environmental Affairs, in 1999, simplified the procedure for granting licenses for the hydrocarbon sector. The purpose, as described by the Ministry, was to "reduce evaluation procedures, in order to give major importance to the development of the projects during their construction and operation" (Lewin and Willis Abogados, 2000, p. 113).

Meanwhile, the regulations and guidelines administered under environmental permits and leases are not adequately enforced. For example, Occidental Petroleum acquired a license to build an oil pipeline from Covenas to Arauca. Throughout its existence, the pipeline has suffered numerous spills and leaks resulting from an assortment of activities. There is no record, however, of Occidental having taken substantial action to remedy any negative effects resulting from the release of oil into the surrounding environment. Under the CRN, individuals and organizations may bring legal actions to protect the environment. However, Colombia's judicial system is neither accessible nor very receptive to the general public.

Colombia's inaccessible and unreceptive judicial system is also an issue for indigenous tribes attempting to reaffirm their rights. Under the Colombian Constitution (articles 1, 2, 3, 63, 70, 286 and 330 of the National Constitution, Agreement 179 of the ILA, law 21 of 1921),

communal indigenous and ethnic territories cannot be seized and are unassailable (Amazon Watch, 2000a). The constitution also mandates that tribes be consulted when an action may have significant impacts on their well-being. However, as this case study continues, it will become apparent that Colombia's judicial system does not always protect these rights.

Colombian laws regarding foreign investments, the environment, and indigenous peoples' rights are only a few of the laws applicable to oil operations in Colombia. These as well as other Colombian laws suffer from government influence, insufficient enforcement, and an ineffective judicial system. For these reasons, individuals and organizations in Colombia, as in other developing countries, often look to alternative legal institutions that may more fairly address these issues. The United States is one such alternative.

The Laws of the United States

Oil companies operating in the United States face extensive environmental, labor, and civil rights legislation. However, this legislation does not apply to operations in other countries. Victoria Arthaud (1994), author of the legal article, "Environmental Destruction in the Amazon: Can U.S. Courts Provide a Forum for the Claims of Indigenous People?", describes the boundaries of U.S. law: "[I]t is a longstanding principle of American law that legislation of Congress, unless a contrary intent appears[,] is meant to apply only within the territorial jurisdiction of the United States" (p. 195).

In the past, different groups and organizations have brought charges against U.S. oil companies for misconduct in foreign countries. When cases are brought to U.S. courts, however, they are either dismissed or accepted according to the legal doctrine of *forum non conveniens*, found in 28 U.S.C. § 1404(a), which states: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it may be brought" (Arthaud, 1994). For a foreign plaintiff, considerations against stripping the plaintiff of an American forum are even weaker. The usual presumption that the plaintiff has chosen a convenient forum is not applicable when a foreign plaintiff has selected the

United States forum (Emanuel, 2000). Legal commentators have overwhelmingly concluded that this doctrine has resulted in widespread dismissal of cases brought by foreign plaintiffs against domestic defendants.

In her article, Arthaud (1994) applies the doctrine of *forum non conveniens* to the case of *Maria Aguinda v. Texaco*, which exhibits characteristics similar to those found in the conflict in Colombia. The case of *Maria Aguinda v. Texaco* was brought by indigenous groups of the Amazon of Ecuador to the U.S. District Court for the Southern District of New York. The defendant, Texaco, was charged with spilling an estimated 71 barrels of oil a day while pumping up to 250,000 barrels a day during the 20 year span from 1972 to 1992. As a result, plaintiffs claim they had suffered property damage, personal damage, personal injuries, increased risk of cancer and other diseases, and the degradation and destruction of the environment in which they live. Specific allegations include the following: “Texaco’s pipelines have repeatedly ruptured, leaked and discharged; Texaco placed wastes in rudimentary landfills, resulting in leaks of toxins; and Texaco failed to clean up spills from the pipelines” (p. 103). Applying the doctrine of *forum non conveniens* to the case, the court dismissed the case. Arthaud concludes that “the barriers to adjudication in the U.S. district courts may be too high for all but the most egregious actions” (p. 120). The implication is that the doctrine of *forum non conveniens* makes it very difficult to prosecute multinational corporations for their actions in foreign countries.

The U’wa are confronted with similar environmental and public health hazards in view of the proposed oil project. Just as the indigenous people of Ecuador sought relief in the United States, the U’wa will eventually look to America for relief. The probable result, however, will be the same fate suffered by the Ecuadorians: their case will ultimately be dismissed.

In order that cases might be adjudicated more fairly in United States courts and in order to provide a sense of accountability and justice, legislation must be passed that allows such cases to stay in the courts. If not, the injustices and despair introduced in the next section will go unpunished, resulting in potentially fatal consequences for both the U’wa tribe and their environment.

OPERATIONS BY OCCIDENTAL PETROLEUM IN U'WA TERRITORY

In 1983, Occidental Petroleum discovered a major petroleum reserve in the Cano Limon region of northeastern Colombia's Arauca Province (Ian Davis, personal communication). To extract the oil, Occidental became partners with Shell/Dutch Petroleum and Ecopetrol, the Colombian State oil company. Together, the three corporations built a pipeline from Covenas to Arauca. To date, the pipeline has produced 855 million barrels from the estimated 1 billion barrel oil reserve. Production, however, has dropped from an average of 208,000 barrels in 1990 to a current production of 136,800 barrels. Despite the decline, the pipeline accounts for nearly one-third of Colombia's total petroleum production. The Colombian government receives 85% of net revenues from the 483-mile pipeline from Cano Limon to Covenas on the Caribbean coast (Occidental Oil and Gas Corporation, 1999).

In the early 1990s, Occidental began investigating additional reserves in an area known as the Samore block. The Samore block was once filled with different clans of the U'wa tribe and their migratory relatives. However, years of colonization and civil war have repressed the U'wa people and resulted in their displacement from and dispersion throughout the region. Although dispersed, the tribe still considers the entire Samore block to be their sacred homeland.

In April of 1992, Occidental acquired exploration rights to much of the U'wa territory. The results of its exploratory studies revealed no traces of oil in or around the region. However, geologic studies have estimated an oil field holding about 1.5 billion barrels of oil (Ian Davis, personal communication).

In 1993 and 1994, Occidental claims that on thirty-three different occasions, it met with isolated groups of the tribe who held the authority of the tribe. Despite these meetings, Occidental did not recognize the Traditional U'wa Authority, the official name of the traditional U'wa government. These meetings also failed to satisfy Occidental's burden under Colombian law, which requires informed consent involving a full presentation of environmental and social impacts of the proposed activities. The U'wa who attended these meetings state that these impacts were not addressed. Instead, Occidental

spoke to them about the education and health projects that would result from oil development (Project Underground, 1998a).

On January 10 and 11, 1995, under a direct order from the Colombian Ministry of the Environment, Occidental met with representatives from the U'wa Authority. At one of these meetings, Occidental claims that U'wa representatives signed a memorandum agreeing to seismic work. However, U'wa leaders, who cannot read, have contended that they thought they were signing an attendance sheet. The next month, the Ministry of the Environment issued an environmental license to Occidental allowing them to proceed with drilling. In response to the continuous disregard for their rights, the U'wa threatened mass suicide if the project moved forward (Project Underground, 1998a).

The stalemate between Occidental and the U'wa quickly found its way into Colombia's judicial system. Project Underground (1998a) describes the legal actions and the court decisions in its publication, "Blood of our Mother." In August 1995 the Public Defender of Colombia filed two actions attempting to revoke Occidental's environmental license. The first suit was filed against the Environmental Ministry in Bogota Superior Court under a claim that the U'wa's constitutional rights were violated. On September 14, the Superior court ruled in favor of the U'wa, stating that their basic rights had been violated and that a proper process of consultation must be established. Occidental appealed to the Supreme Court of Justice. One month later, the Supreme Court reversed the previous decision and sent the case to the Colombian Constitutional Court of Justice. After agreeing to review the Supreme Court decision in January 1996, the Constitutional Court of Justice held proceedings one year later. On February 3, 1997, the Court ruled in favor of the U'wa, holding that consultation efforts had been inadequate and that the presence of an environmental license in this case severely "threatened their ethnic, cultural, social, and economic integrity." The Court further ordered that appropriate consultation be completed within thirty days (Project Underground, 1998a).

The second suit, filed in Colombia's administrative court, alleged that Occidental failed to fulfill the legal requirements for consultation with the U'wa, and that, therefore, its environmental permit should be ruled invalid. The administrative court, otherwise known as the Coun-

cil of State, ruled 14 to 7 that a valid consultation with the U'wa had been done and therefore dismissed the Public Defender's administrative appeal against Occidental's environmental license. Council magistrates further concluded that their ruling superseded the Constitutional Court's decision; thus, Occidental's environmental license was reinstated (Project Underground, 1998a).

After the court rulings in 1997, there was no more contact between Occidental and the U'wa until January 25, 2000, when the tribe was evicted from their lands by the Colombian military in coordination with Occidental (Rainforest Action Network, 1999a). Roughly two weeks later, on February 11, 2000, combined Colombian military and police forces arrived on the proposed oil site. Without warning the public forces violently evicted the U'wa members using heavy machinery and tear gas. As a result, three U'wa children died, other children and women were wounded, and still other U'wa are missing (Amazon Watch, 2000a). Finally, in November 2000, Occidental spent approximately \$40 million for an exploratory well on the U'wa territory. According to estimates, the well has only a 10% chance of discovering oil (Ian Davis, personal communication).

DIFFERING PERSPECTIVES: THE COLOMBIAN GOVERNMENT, COLOMBIA'S GENERAL POPULATION, THE U'WA TRIBE AND OCCIDENTAL PETROLEUM

To further illuminate the conflict between Occidental and the U'wa, this section will explore the differing perspectives of the four groups who are most involved and affected: the Colombian government, Colombia's general population, the U'wa tribe, and Occidental Petroleum.

The Colombian government is currently stuck in a difficult position. It needs to remedy the economic pressures it faces both nationally and internationally, while attempting to move away from Colombia's dependence on the drug trade. Oil projects have the opportunity to do just that while strengthening a government that can hopefully bring peace to the civil war-ridden country. John Vidal (1997), an English scholar, wrote about the government's situation in his publication, *Cliffhanger*. He quotes Rodrigo Villamizar, a disgraced former Minister of Mines and Petrol, as stating "[F]or the government, the U'wa's deci-

sion is a 'philosophical dilemma' that is threatening to become an international incident." Villamizar also describes the concerns of a horrified society: "My son asks me, 'Daddy, are you going to make the Indians jump off the cliff?'" (p. 3). Other environmental and human rights groups also portray a society in distress. Laureen Sullivan of the Rainforest Action Network stated that most Colombians are aware of the relationship between oil projects and violence. Thus, indigenous peoples from both South America and abroad have attempted to come together in support of the U'wa. She concludes, however, that "there is no chance Occidental's license will be revoked" (personal communication).

Occidental Petroleum has suffered substantially from the negative attention regarding its behavior in Colombia. Ian Davis, Occidental's Vice President of International Affairs, argues that the negative publicity has not always been based on accurate information. He emphasizes that consultation with indigenous tribes is a priority when Occidental attempts to operate in foreign countries. He cites as an example Occidental's operations in Ecuador where the company is developing directly on tribal land and has established an agreement with the inhabiting tribe. Claiming the same objectives, Occidental holds to its position that "innumerable meetings" were held with the U'wa. Davis cites the favorable court decision of 1997 as further evidence of Occidental's lack of legal and ethical culpability (personal communication).

In an attempt to broaden the perspective on the situation, Occidental is quick to point out that the oil industry is much more complex than most other industries. There is an array of issues that oil companies must deal with that other corporations do not. For example, extensive environmental and social impacts can occur from simple business practices. These impacts include air pollution and hazardous waste contamination. However, when operating in developing countries, these impacts are often exacerbated. In Colombia, there is a severe security problem. The two guerilla groups, FARC and the ELN, have bombed Occidental's operations over 700 times. Despite its use of "shut-off" valves throughout the pipeline to minimize the amount of oil released, the surrounding areas, Occidental concedes, are still inevitably affected (Ian Davis, personal communication).

Occidental believes that oil operations are a target for guerrilla

groups because of the relationship these groups have with drug traffickers. The groups rely on the income from the sale and distribution of drugs. Meanwhile, as the Colombian government attempts to replace the drug trade with an alternative form of income such as that generated by oil production, these groups often view the oil industry as a threat to their cause and well being, thus making oil company operations a target.

Davis elaborates on the threat that Occidental may represent to drug traffickers in Colombia by asserting that, before his company enters a region, many of the areas in which it operates often have had very little State or military presence. When it enters a region, it brings with it military protection provided by the State, and that force constitutes a threat to the usual operations of guerrilla groups. Occidental believes that guerrilla groups often combat these threats by coercing indigenous tribes into protesting oil projects in their region. In the case of the U'wa, Occidental believes that the tribe is driven by sincere environmental concerns, but that their lives have also been threatened by the ELN if they do not cooperate. These violent threats are viewed by Occidental as the driving force behind the U'wa's opposition to the oil project on its territory (Ian Davis, personal communication).

Finally, Occidental argues that indigenous tribes, and environmental and human rights groups, while valiant in their cause, often overlook the benefits that oil companies may bring to a developing country (Ian Davis, personal communication). Oil companies provide technology and capital to a government and society that cannot provide such assets for themselves. The monetary result, in this particular case, is that the Colombian government receives 85% of net revenues from the 483-mile pipeline from Cano Limon to Covenas on the Caribbean coast (Occidental Oil and Gas Corporation, 1999). Occidental has also contributed to the health and education of the Cano Limon region. Occidental's publication (1999), "Working to be a Good Neighbor," documents a three-principle approach to strengthening local self-sufficiency: strengthening local institutions to improve their capacity to address community needs, developing an economy in local communities independent of the oil industry, and promoting self-sufficiency through training programs in planning, developing and operating community

programs in such areas as transportation, health care, and education. Specific projects in the U'wa territory have included a road from Arauca connecting Cano Limon to the country's electric system and a bridge crossing the Cano de Agua Limon River, both of which allow for an expanded market place for local people. Other projects include a health clinic at the Cano Limon oil production facility to serve surrounding communities, a network of twelve rural "health posts" built from materials and equipment provided by Occidental, and the development of thirty-one schools located in the Cano Limon region. Beyond improvements to the infrastructure, Occidental also claims to have assisted in the sustainability of the environment and the development of improved farming techniques.

While Occidental portrays a relatively positive picture of its operations in Colombia, the Association of Traditional U'wa Authorities on numerous occasions has publicly denounced the actions of Occidental and the Colombian government. In its communiqués, the Association addresses the ongoing repression of its people, outlines its stance on specific issues, and describes a number of demands directed towards Occidental and the Colombian Government that have been ignored.

On January 31, 2000, the Association made a statement to the national and international public summarizing its position. First, it denounced the Revolutionary Armed Forces of Colombia (FARC) for various actions they have carried out against the tribe and for the continued armed intimidation against indigenous groups within the region. Second, it condemned all support from Colombians for Occidental. Specifically, it rejected the collusion of FARC and the subcontracting company, Rocas del Llano, which protects and safeguards vehicles and equipment belonging to Occidental. Third, it described and decried the death threats and intimidation made against civil officials to persuade them to act against the tribe's constitutional and legal rights. Finally, it reiterated its struggle for peace and denounced the National Liberation Army's (ELN) attempts to destroy Occidental's pipeline, machinery, and equipment (Amazon Watch, 2000a).

The U'wa's outcry to the international community has resulted in repressive behavior by the Colombian government in conjunction with Occidental. Repression, as reported by the U'wa in their communiqué

of April 3, 2000, has included arbitrary seizures of lodging and encampments; detention of indigenous persons because of lack of identification documents, even though the constitution states that they are not required to carry such documents; the detention of civilians assembling for more than two hours; and verbal intimidation by soldiers (Amazon Watch, 2000d).

In response, the tribe has made three general demands. First is that the President and Republic of Colombia immediately withdraws the army and police from the region. The tribe wants the abuses and violation of rights in the region to stop. Second is that Occidental immediately stop all activity on U'wa land. Third is that Occidental and other individuals in the media retract their allegations that the U'wa are guerrilla sympathizers. The U'wa feel that these accusations endanger the lives of their people and of those who support them (Amazon Watch, 2000b).

The U'wa people are adamant about their demands and will not yield. The U'wa Authority, in a communiqué on January 20, 2000, stated that "we U'wa will not cede our cultural, historic, and ancient rights. We prefer genocide sponsored by the Colombian government rather than handing over our mother earth to oil companies" (Amazon Watch, 2000a).

Although the perspective of these four groups may differ in specific ways, the primary objective seems to be the same—to provide for a stable nation with sustainable communities that may protect and remedy any negative effects arising from oil production and other development projects. In this commonality lies the hope for an eventual resolution to the existing problems. Occidental's Ian Davis specifically states that a positive relationship with foreign governments is crucial and important, which is why Occidental focuses on becoming a "beneficial factor" in local communities (personal communication). The underlying question is how to provide and facilitate a working and constructive relationship between developers and communities in foreign countries. Fortunately, the United States has already established a system of regulations and enforcement that has successfully provided for such a relationship in the U.S. By exploring the outcome of a similar oil project in Kern County, California, the following section makes it apparent that a

solution to the underlying problems of oil production in foreign countries is closer than most people realize.

Comparative Case Study: Occidental's Operations in Kern County, California

In December 1997, Occidental Petroleum purchased the Naval Petroleum Reserve No. 1 (NPR-1), located in Kern County, California, from the United States government. As in Colombia, the host country owns, or in Colombia's case, *claims* to own, the property in question. However, when Occidental operates in the United States, regulations are much more stringent.

The conveyance of NPR-1 to Occidental was governed by two statutes: the National Defense Authorization Act for Fiscal Year 1996 (hereafter referred to as the Elk Hills Sales Statute) and the California Environmental Quality Act (CEQA). The Elk Hills Sales Statute requires the appropriate government agency, which in this case is the Department of Energy (DOE), to undertake a process to sell NPR-1 in a manner consistent with commercial practices that maximize proceeds to the Federal government (Department of Energy, 1997). More specifically, the statute mandates that, unless another course of action would bring greater benefit to the United States, the government sells the land for a sale price reflecting full market value. On October 3, 1997, Occidental's bid exceeded both the minimum sales price established under the Elk Hills Statute and all other offers, finalizing the conveyance. Similarly, the Colombian government also secured an equitable amount for the proposed oil project in the Colombian cloudforests, its share being estimated at 85% of all profits (Ian Davis, personal communication). Although both arrangements may be equitable, the legal requirements and, consequently, the negative effects, are substantially different.

In California, to prevent negative environmental effects from development, the state legislature passed the California Environmental Quality Act (CEQA), a more stringent version of the National Environmental Policy Act (NEPA) of 1970. CEQA required Occidental to produce an Environmental Impact Report (EIR) identifying significant effects on the environment from its proposed oil project and indicating

how these effects might be mitigated or avoided. An EIR must include nine specific criteria: a project description, a description of the environmental setting, the identification of significant effects that are both avoidable and unavoidable, any significant irreversible environmental changes, mitigation measures, alternatives, the relationship between short term and long term productivity, growth inducing impacts, cumulative impacts, and economic and social effects.

Occidental's EIR for the NPR-1 site included three alternatives: (1) sale of all right, title, and interest of the Federal government in NPR-1 in accordance with the Act; (2) continued DOE ownership and operation of NPR-1; and (3) withdrawal of DOE from direct petroleum production activities at NPR-1 but continued Federal ownership (Department of Energy, 1997). The environmentally preferable alternative was identified as the no-action alternative. This alternative was not selected, however, because the Elk Hills Sales Statute mandated that the DOE comply with a Congressional directive that the Federal government divest itself of all right, title, and interest in NPR-1 (Department of Energy, 1997).

The EIR also included numerous significant environmental impacts which might result from the proposed project. The most significant of these impacts was the effect on biological resources. NPR-1 serves as an important habitat for a number of threatened and endangered species. The proposed oil and gas development could alter the habitat and possibly destroy or injure animals from the designated species. To mitigate against these effects, Occidental agreed to accept the transfer of a Biological Opinion and Incidental Take Permit issued by the U.S. Fish and Wildlife Service (FWS) to the DOE. The Biological Opinion and Incidental Take Permit together identify terms and conditions that the DOE followed in its operations on the site. These measures, which aimed at mitigating negative effects, include a 7,075 acre conservation and habitat agreement and the installation of research, monitoring, and biological survey programs. This is just one example of the identification of impacts and associated mitigation measures required and produced under CEQA (Department of Energy, 1997).

The EIR also includes an evaluation of possible social and economic impacts of the project on surrounding communities. However,

since the area in question has so few inhabitants, it was determined that the potential effects would be so minimal that they did not have to be addressed (Department of Energy, 1997).

Regulations require not only that the EIR identify alternatives, impacts, and mitigation measures, but also that a draft EIR be presented to the public for a commenting period of ninety days. The public thus has the ability to suggest changes and identify inadequate areas of the EIR analysis. An example of such a comment is the Pacific Environmental Advocacy Center's letter of November 26, 1997, identifying the DOE's failure to initiate consultation with the FWS as required under section 7(a)(2) of the Endangered Species Act. After extensive discussions, the DOE concluded that the pertinent sections of the Elk Hills Sales Statute did not require that new consultation be conducted (Department of Energy, 1997).

This brief overview of the EIR reveals the significant differences between oil projects developed in foreign countries and those developed in the United States. In contrast to Occidental's operations in Colombia, the initiation of its domestic project was preceded by an extensive analysis of environmental, social, and economic impacts of the proposed operations in Kern County. As mandated by law, anything less would be unacceptable in America and Occidental's project would not be approved. Furthermore, if operations began without the proper government approval, the company could suffer criminal charges in U.S. courts. These charges could also be brought should there be any allegations of violence towards local communities. Just as American corporations operating in U.S. territory are forbidden by law to behave in a manner that is illegal, threatening to local communities, or environmentally negligent, so U.S. corporations such as Occidental that happen to operate in foreign countries should be held to the same standard. Occidental's behavior should not be ignored simply because it does not directly affect the American public.

Need for Standards and Guidelines

The human rights, labor, and environmental violations by MNCs operating in developing countries often follow a similar pattern: (1) displacement of local people is followed by (2) development resulting in a

pattern of environmental degradation and labor abuses, and then (3) the corporation leaves, having ravished the area and left it vacant, environmentally depleted, and publicly unhealthy, thereby creating the need for the host country to undertake remediation efforts that place people at risk and inflict a huge financial burden. The initial displacement of the U'wa tribe on January 25, 2000 marks the beginning of this process in Colombia. Although the initial stages of the oil project have predominately involved indigenous rights violations, the indirect effects of the project on the region's delicate environment are soon to be felt. The U'wa themselves have a close relationship with their environment and oppose the project primarily because of environmental concerns. Once the U'wa are completely displaced, Occidental will be given the freedom to develop the site intensively and quickly, probably at the expense of the surrounding environment. The project then becomes contingent upon Occidental's sustaining of a suitable workforce. Corporations developing in foreign countries often use workers in the region because they represent cheap and accessible labor. It is also very likely that Occidental will place great demands on the local work force, possibly endangering the lives and welfare of the employees. Finally, oil companies tend to prioritize the need to get in and out of countries as quickly as possible. In Occidental's situation in Colombia, this will definitely be a priority, because the government and country as a whole are very unstable. Therefore, it is very likely that Occidental will abandon the region immediately after the oil is extracted, leaving the tribe and the Colombian government to deal with any negative effects.

At this stage, however, the cycle described above has yet to be completed, and only Occidental or a regulatory agency can ensure that it is not. Although Occidental possesses the ability to undertake activities that are sensitive to indigenous rights, labor and the environment—its operations in Kern County, California testify to this ability—the corporation enters this project with serious allegations of misconduct in two other countries, Ecuador and Peru. Thus, its track record in foreign countries suggests that mistakes, manipulation, and abuses will continue to occur unless an authority intervenes. Oil companies often argue that the responsibility should be given to them, and Occidental is no exception. However, long records of misconduct, not only by Occi-

dental but by other oil companies as well, reveal an inability or an unwillingness to adequately live up to corporate responsibilities.

Therefore, an authority must intervene with the ability to administer standards and oversee these standards. As is evident in Colombia, developing countries are in a difficult position that does not allow them to be this authority. The alternative of taking an international approach, in which numerous companies and organizations attempt to coordinate, develop standards, and designate oversight authority, would move a difficult problem into an even more complex arena. At this stage the international world is not ready for this type of responsibility. The United States, however, a country that is ultimately represented by U.S. oil companies and other U.S. multinational corporations, already has standards in existing laws and regulations. The following section will use these standards, and international standards where applicable, to propose a comprehensive piece of legislation that would provide protection for indigenous people, the environment and the work force by extending authority and oversight to U.S. governmental agencies.

United States Code of Conduct for American MNCs

The objective of a foreign policy mandating a Code of Conduct for U.S. Multinational Corporations is not to restrict production but to allow such production in a manner that protects indigenous peoples' rights, preserves the environment, and adheres to accepted labor practices. To accomplish this objective, the Code of Conduct extracts standards from the following legislative bodies: the International Labour Organisation's Convention concerning Indigenous and Tribal People in Independent Countries, the United States Labor Standards, and the California Environmental Quality Act. If implemented in its entirety, a comprehensive policy assimilating all of these standards could severely reduce or even eliminate negative effects inflicted on developing countries from multinational corporations.

As discussed in the first part of this paper, the development process usually follows a pattern of displacement, environmental degradation, and abusive labor practices. Stopping this pattern is the primary aim of introducing and implementing this policy. First, the policy will develop

standards for the treatment of indigenous people that will combat displacement and the violence that often accompanies these actions. These standards will set the foundations for MNC behavior when addressing the other two issues. Second, the policy will provide environmental guidelines to regulate the actual development and operation of specific projects. Finally, labor standards will provide security and safety for both U.S. and foreign workers.

STANDARDS FOR THE TREATMENT OF INDIGENOUS PEOPLE

Standards for the treatment of indigenous people are extracted from the International Labour Organisation's convention concerning indigenous peoples in independent countries. Recognizing that in many parts of the world indigenous people are unable to enjoy their fundamental human rights to the same degree as other members of the population, the ILO, in conjunction with the United Nations, developed a framework of principles to protect indigenous people within their own countries. These principles, slightly modified, provide guidelines for MNCs to follow when operating in regions inhabited by indigenous people.

The Treatment of Indigenous People

These guidelines apply to tribal peoples in an independent country whose social, cultural, and economic conditions distinguish them from other sections of the national community as well as from people in independent countries who are regarded as indigenous due to their descent from indigenous populations that once were the exclusive inhabitants of the country or of particular geographical regions within it.

GENERAL POLICY

- Indigenous people will enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.
- The society, culture, and religion shall be recognized and protected.

- The integrity of the values, practices, and institutions of these people will be respected.
- Corporations will have the responsibility, with the participation of the concerned indigenous people, to take action to (1) ensure that members of the tribe benefit from the rights and opportunities granted to similar groups in the United States, and (2) promote the full realization of the social, economic, and cultural rights of these people.
- Corporations must develop policies aimed at mitigating the difficulties experienced by indigenous people when facing new conditions of life and work.

CONSULTATION

- Corporations must consult with indigenous people affected or concerned with a development project. Consultation must be done through appropriate procedures—specifically, through their representative institutions.
- Consultation must be carried out in good faith and in a form appropriate to the circumstances.
- The indigenous people concerned will “have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions, and spiritual well-being and the lands they occupy or otherwise use, and to exercise control to the extent possible, over their own economic, social and cultural development.”

LAND

- Corporations will respect the special importance of the cultural and spiritual values of indigenous people regarding their relationship with the land and territory.
- The rights of ownership and possession of the indigenous people concerned over the lands which they traditionally occupy will be recognized. Corporations must also take measures to ensure that indigenous people retain the rights of access and of use to lands which, even if not exclusively

occupied by them, have traditionally been utilized by them for subsistence and traditional activities.

- In cases where corporations have received rights from the State, they must consult with indigenous people, with the objective of ascertaining whether and to what degree the State's interests might be prejudiced. This consultation must be done before undertaking the exploration or extraction of such resources pertaining to such lands.
- When the relocation of indigenous people is considered necessary, the Corporation must facilitate the relocation of indigenous people, with their free and informed consent. When possible these people will have the right to return to their traditional lands. If return is not possible, Corporations must facilitate the permanent relocation to areas at least equal to that of the lands previously occupied by the indigenous people.

CONDITIONS OF EMPLOYMENT

- Corporations will abide by the labor standards developed in the relevant section of this comprehensive accountability policy. Corporations will also develop additional measures to ensure the effective protection of workers belonging to an indigenous tribe.
- Corporations must do everything possible to prevent any discrimination between workers belonging to the indigenous tribes and other workers.

LEGAL RIGHTS

- Indigenous people will be safeguarded against abuse of their rights by the United States government. These people will have the ability to undertake legal proceedings in the United States, either individually or collectively, for effective protection of their rights.

ENVIRONMENTAL STANDARDS

Environmental Standards are extracted from the principles and guidelines administered in the California Environmental Quality Act (CEQA). CEQA was established by California's legislature in 1970 to give state agencies the authority to regulate activities that are conducted by private individuals, corporations, and public agencies and that might affect the quality of the environment. CEQA gives major consideration to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian (CEQA, 21000 [g]). This balance among the environmental, social, and economic realms is achieved from using environmental reporting standards that assess the impact of a project in terms of each of the three areas. The report, classified as an Environmental Impact Report (EIR), attempts to identify insignificant, significant, unavoidable, and cumulative impacts to the environment, while attempting to mitigate significant effects, and also includes a discussion of possible alternatives to the proposed project. In addition, the report includes a section devoted to economic and social impacts. The process as prescribed by CEQA delegates responsibility to two parties, the private or government entity attempting to initiate a project and the designated lead agency that must oversee the environmental impact report. The classification of a lead agency is contingent upon the type of project being proposed. For example, in the case of Occidental's operations in Kern County, California, their oil project was given the general categorization of energy production, and thus fell under the jurisdiction of the Department of Energy.

California's environmental reporting program is one of the most intensive and comprehensive programs of its kind in the world. The positive influence it has had on California's environmental conservation efforts is evidence of its effectiveness. The comprehensive accountability policy will mandate the completion of Environmental Impact Reports as required by CEQA.

Environmental Reporting Standards

U.S. multinational corporations must provide an Environmental Impact Report to the relevant national agency for oversight. The reporting requirements include:

DESCRIPTION OF THE PROJECT

- Statement of the project's objective.
- Cost-benefit analysis.
- Discussion of the project's usefulness.
- Description of the project's technical, economic, and environmental characteristics.

ENVIRONMENTAL SETTING

- Description of rare and unique environmental resources.
- Discussion of inconsistencies with other general land use plans (including maps and photographs).

ENVIRONMENTAL IMPACTS

- Identification and description of significant environmental effects, unavoidable significant environmental effects, and significant irreversible environmental changes.

MITIGATION MEASURES

- A discussion of feasible mitigation measures in response to any significant environmental effects previously identified, in order to avoid otherwise significant adverse environmental impacts.

ALTERNATIVES

- A report must include an "exhaustive" discussion (as defined in *Residents Ad Hoc Stadium Committee v. Board of Trustees* [1979]) of reasonable alternatives for a project or its location, which would obtain the same objectives as the initial project, while avoiding or minimizing any of the significant environmental effects.

CUMULATIVE IMPACTS

- Two or more individual effects which, when together, are considerable or which compound or increase environmental impacts (as defined under CEQA, section 15355).

ECONOMIC AND SOCIAL EFFECTS

- When appropriate, the report should contain a discussion of the economic and social impacts of a project. However, the impacts themselves should not be treated as significant effects on the environment (Guidelines, section 1531 [a]).

CONSULTATION

- After a draft EIR has been completed and approved by the lead agency, the report will be submitted for public review and comments for no less than three months (90 days) from the date approved by the lead agency.

Source: The California Environmental Resource Service (CERES). (2000).

Labor Standards

Labor standards are divided into two categories: (1) Safety and Health Requirements, and (2) wage, hour and other workplace standards. In the United States safety and health standards are developed and administered by the Occupational Safety and Health Administration (OSHA). Under the accountability policy in this proposal, OSHA will be given extended authority to enforce the Occupational Safety and Health Act (OSH Act) and the Fair Labor Standards Act (FLSA) on corporate operations outside the United States. The OSH Act promulgates safety standards including regulations covering hazards such as falls, explosions, electricity, fires and cave-ins as well as accidents caused by machinery and vehicle operations. Health standards regulate exposure to health hazards through engineering controls, the use of personal protective gear, and work practices (Small Business Handbook, 2000). Furthermore, employers are responsible for complying with the OSH Act's "general duty" clause, which states that each employer "shall furnish . . . a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees" (OSH Act, section 5[a][1]).

The Fair Labor Standards Act (FLSA) prescribes conditions under which minors may work, reporting standards, and minimum wage and overtime standards. Child labor provisions under FLSA include "restrictions on the hours of work and occupations for youths under age 16, and set forth 17 hazardous occupations orders for jobs declared by the

Secretary of Labor to be too dangerous for minors under the age of 18” (Small Business Handbook, 2000, p. 6). Minimum wage and overtime standards include a minimum wage of not less than \$5.15 an hour for adults, and \$4.25 an hour for youths under the age of 20, and overtime pay of not less than one and one-half times an employee’s regular rate of pay for all hours worked in excess of 40 in a workweek. Employers are also barred from displacing workers to hire youth at the lower minimum wage (Small Business Handbook).

By extending OSHA’s authority to oversee fundamental workplace, health, and safety regulations in foreign countries, this legislation would provide inhabitants of such countries with the security of knowing that their rights are protected. Furthermore, United States corporations will set the standard for other corporations to follow. The establishment of higher standards will attract the most qualified employees, which may contribute to increased production and ultimately higher profits. Meanwhile, other corporations wishing to compete in the same labor field will eventually be forced to increase their standards or suffer the consequences of diminishing returns.

Health and Safety Standards

The following health and safety standards for multinational corporations operating in developing countries will apply to employers and employees in such varied fields “as manufacturing, construction, long shoring, agriculture, law and medicine, charity and disaster relief, organized labor and private education.” The health and safety standards include:

ACCESS TO MEDICAL RECORDS

- Employers must grant employees access to any of their medical records or toxic substance exposure records maintained by the employer.

PERSONAL PROTECTION EQUIPMENT

- Requires employers to provide employees, at no cost to employees, with personal protection equipment that is designed to protect them against hazards.

HAZARD CONTAMINATION

- Manufacturers and importers of hazardous materials must conduct a hazard evaluation.
- If the product is hazardous, it must be labeled accordingly and employers must train their employees to recognize, avoid, and handle hazardous materials that may be present in their work environment.

RECORD KEEPING

- Any employer with over ten employees must maintain records of job-related injuries and illnesses.

REPORTING

- Each employer, regardless of the number of employees, must report to OSHA within eight hours of any accident that results in one or more fatalities or hospitalization of three or more employees.

EMPLOYER RIGHTS

- Employers have the right to (1) complain to OSHA about safety and health conditions, anonymously, (2) refute the time period OSHA allows for correcting standard violations, and (3) participate in OSHA inspections.

TYPES OF VIOLATIONS

- “Other Than Serious” Violations—injuries that do not cause death or serious physical harm.
- “Serious” Violations—when death or serious injury could result from a violation that the employer knew, or should have known, was a danger.
- “Willful” Violation—the employer intentionally and knowingly commits a violation
- Repeated Violation—similar violations are repeatedly found upon re-inspection.
- Failure to Correct Prior Violations may result in a civil penalty of up to \$7,000.

- Falsifying Records may result in a fine of \$10,000 or a sentence of up to 6 months in jail, or both.

*Source: United States Department of Labor (2000).

Fair Labor Standards

U.S. Multinational corporations must abide by the following fair labor standards:

ELIGIBILITY

- For an employee to fall under the jurisdiction of these standards, he or she must be engaged in “commerce or in the production of goods for commerce” (29 U.S.C. 201, et.seq.§ 6 [a] [1]).

MINIMUM WAGE

- Every employer will pay to each of its employees a wage of no less than \$5.15 per hour (29 U.S.C. 201, et.seq. § 6 [a] [1]).

MAXIMUM HOURS

- No employer shall employ any of its employees, in any work week (seven days), for longer than forty hours unless such employees receive compensation for their employment in excess of the hours above specified, at a rate not less than one and one-half times the regular rate at which they are employed (§7[a][1]).

CHILD LABOR PROVISIONS

- No employer will employ any oppressive child labor in any enterprise engaged in commerce or the production of goods for commerce.
- No corporation will ship or deliver for shipment in commerce any goods produced from an entity in which any oppressive child labor has been employed (§12[a]).
- The authorized representative shall make all investigation and inspections with respect to the employment of minors (§12[a]).

- Designated representatives may investigate and gather data regarding the wages, hours, and other conditions of employment in any industry. These representatives reserve the ability to inspect these industries, question employees and investigate such facts, conditions, practices or matters, as they may deem necessary (§ 11[a]).
- Exemptions to these standards will be made in a case sensitive manner, with approval and oversight authority given to the designated representative.

*Source: United States Department of Labor (2000).

IMPLEMENTATION AND CONSTRAINTS

Unfortunately, the hard truth is that the preceding standards, or any standards attempting to hold MNCs accountable for their actions in other countries, would never survive Congressional attack in either chamber. This opinion is echoed by John Freemont, Legislative Aide to Congresswoman Cynthia McKinney, who has taken an interest in the conflict between Occidental and the U'wa. Personally, and as a representative of the Congresswoman, Freemont feels that the best solution to the violations of MNCs is an accountability policy. He also stated that his office is in the process of developing its own standards and offering a policy on the House floor sometime within the year. Despite this action, he and Congresswoman McKinney recognize that the policy will not be passed or implemented for reasons that include, but are not limited to, its possible infringement upon individual freedoms, the increased burden on U.S. courts, lack of resources, the argument that the U.S. is overstepping the authority of foreign governments, the substantial role that these corporations play in many countries' national economy, and the influence these companies have on our politicians. Freemont argues, as does this study, however, that the purpose of offering such a policy to Congress is not to immediately overhaul existing regulations, but rather to provide a framework for debate that also increases awareness of the issues involved and of the need to address them in some manner in the future (personal communication). The goal is to someday implement an enforceable policy based on fundamental human, labor and environmental principles.

Conclusion

The movement towards economic globalization is characterized by the dominance of multinational corporations in developing countries. These countries are unable to keep up with the rest of the world's economic progress, making them susceptible to manipulation and abuse by MNCs who are able to develop and operate in these regions with few restrictions. Many U.S. officials feel that a policy solution should come from developing countries. However, the case study of Occidental in Colombia suggests that these countries are not capable of regulating these corporations.

In the absence of self-regulation by developing countries, U.S. officials look for an international approach. One institution in particular, the World Trade Organization (WTO), has become the dominant organization for trade and related issues. However, the WTO does not address human rights and environmental violations nor is it an effective place for these issues to be addressed. The problem with allowing trade officials from the WTO to incorporate such standards into a trade agreement is their lack of expertise regarding human rights and environmental problems. Accordingly, such standards might not be equitable or effective. Other international institutions face similar problems when attempting to incorporate human rights, labor and environmental principles into international economic agreements. Furthermore, establishing standards at the international level is very complex, with numerous companies and organizations attempting to coordinate and develop regulations and to agree on an appropriate entity that has oversight authority.

A more effective approach is for larger nations to regulate the misconduct at its source. Considering that the abuse and manipulation by U.S. multinational corporations is more extensive than that by corporations from other countries, the U.S. should monitor the behavior of these companies to hold them accountable for any misconduct. Furthermore, the lack of intervention by the U.S. will validate the label of hypocrite that has been given to the U.S. by many foreign entities. These groups feel that American ideals and ethics within the country are unrepresentative of its behavior outside its boundaries. The lack of standards for MNCs operating in developing countries has exacerbated

these attitudes. The U.S. must gain the confidence of these critics and of their countries by ensuring that the behavior of U.S. multinational corporations promotes the *sustainable* development of under-developed countries.

Developing countries rely on the intervention of larger nations, such as the United States, that have the power to combat the abuses of economically driven MNCs. If the U.S. does not step forward and effectively take a stand, then who will?



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