

Latin America Consultation

Held by the Special Representative of the Secretary-General on Human Rights
and Transnational Corporations and Other Business Enterprises

Bogotá, January 18 & 19, 2007

Summary Report

Background

The mandate of the Special Representative was established to promote and protect human rights in relation to transnational corporations and other business enterprises. In carrying out his mandate, the SRSG has been particularly concerned that the voices of the global South be heard in the deliberations. At his initiative, he has held a series of 3 regional meetings aimed at (1) getting regional inputs and perspectives on the issues covered by the mandate from all relevant stakeholder groups; (2) contributing to the ongoing discussions in all regions about the responsibilities of business with regard to human rights; and, finally, (3) discussing issues within the mandate particularly relevant to specific regional contexts.

On January 18 and 19, 2007, the SRSG convened the third and final of these regional consultations in Bogotá, Colombia, for the Latin America region. It brought together more than 90 participants from 12 Latin American countries, representing 21 different companies, 41 civil society organizations, trade unions and representatives of indigenous people, and 9 public institutions (see Annex I: Invitee list). To allow for maximum interactivity, each session were introduced by brief presentations from speakers from various stakeholders group and followed by a 90 min. open discussion.

Each regional consultation has focused on a specific topic. In the context of Latin America, it seemed particularly relevant to focus on how companies can establish and maintain a social license to operate with regard to local communities, in particular indigenous peoples. The normative framework supporting this concept is more developed than most other areas of the business and human rights nexus, with principles and standards emanating from company policies (individual firms as well as industry-wide), national laws, international standards (IFC, OECD) and from human rights norms and instruments. Many tools and policies have been developed, but yet disputes still arise over the impact of business operations on human rights.

The consultation addressed various meanings of the concept of a “social license to operate;” it discussed the principles supporting its development; the role of states as primary duty-bearer as well as grantor of the legal licence to operate; successful policies, practices and tools permitting the establishment, development and sustainability of a social license to operate; and finally the remedies available both in soft/alternative and hard/traditional settlement mechanisms when the policies and practices fail to deliver a sustainable license to operate (see Annex II: Agenda).

The consultation was made possible thanks to the support of the Government of Canada and the Office of the High Commissioner for Human Rights. The Foundation Ideas Para La Paz also provided an essential logistical support.

Proceedings summary

The first session focused on the conditions required to gain and maintain a social license to operate, particularly in relation to indigenous peoples. It was agreed by all speakers that prior consultation, mutual

respect and transparent sharing of information constituted the basic parameters. Consensus emerged on the fact that the challenge of any company was to adjust to the political, economic, social and cultural context of the countries in which they operate, to respect that context, and to add value to societies through projects that are sustainable in the long run. But the extent of the consent of local communities that was required proved to be controversial. While all agreed that before making decisions and awarding licenses, companies and the authorities should carry out free and informed consultations and conduct impact assessments of the operations, views differed widely on the question of the extent to which actual consent had to be given. Some claimed that local community veto power should be recognized, while others insisted that consultation followed by appropriate mitigating measures should be enough to establish a social license to operate. The issue of the percentage of acceptance within a community was required was also raised but no consensus emerged.

The second session addressed the standards and norms that back the social license to operate. It emphasized that companies could not unilaterally define their obligations with respect to human rights. Nonetheless, there was agreement on the need to better specify the human rights standards to companies. Participants stressed the need for a serious commitment by company management, the importance of designing self-evaluation mechanisms regarding human rights compliance, and effective remedies to correct abuses.

Speakers underlined that governments award the formal license to operate, but that this decision could not be independent of communities' wishes because companies had to have the support of local stakeholders over the long term. Companies also had to understand that they could not operate in isolation; they have to establish ongoing and two-way consultation to build mutual confidence. Companies and the authorities had to learn about the concerns, aspirations, and needs of communities, and help communities to learn about and understand the scope of companies' projects.

The third session explored the various roles local and national governments can play, and how those roles limit or expand the boundaries of

responsibilities for companies. Panelists emphasized the state duty to respect and promote human rights vis-à-vis companies operating within their jurisdiction, in particular their responsibilities when awarding concessions. There was consensus on the need for a more active stance by the authorities at all levels. It is often municipal and regional institutions that are most able to report potential corporate-related human rights abuses. Panelists also pointed out the roles states should play in preventing, investigating, punishing, and compensating victims when their rights are violated. They stressed that this function must be a constant state policy, not susceptible to varying fundamentally with political changes. Most speakers recognized that existing laws often provided sufficient protection but that lack of enforcement was a problem.

Companies agreed they had an important role related to social stability, security, and respect for human rights. But they stated that they neither could nor should assume the duties of states. Speakers highlighted the need to promote human rights training programs for public servants and armed forces.

The fourth session was divided into two panels. The first discussed the achievements and shortcomings of existing policies and practices aimed at making a positive contribution to local communities, such as revenue sharing, and tried to identify emerging good practices. The second panel examined various tools used to support and develop a social license to operate.

In terms of current practices, the point was made that engaging with companies was a learning process for communities, which often had no previous similar experiences and, therefore, often could not negotiate on equal footing. A call was made for increased collaboration by NGOs and states to contribute positively to such capacity development. Panelists agreed that communication and ongoing consultation between companies and communities were essential to the success or failure of corporate projects. One panelist even affirmed that this was the basic test upon which successful companies could be assessed.

It was highlighted that companies should take into account the projected impact of their planned operations, and also to manage the social expectations that their presence generated.

Most communities do not oppose the presence of companies in their territories but initial goodwill can dissipate if there is disappointment with respect to the benefits communities hoped for and were promised. Thus, companies had to be transparent with communities, demonstrate the positive as well as negative impacts that their activities could have, fulfill their promises, and make it clear what benefits the community would enjoy.

In the second panel, agreement emerged that the following steps would make positive contributions:

- Setting up an effective grievance management procedure at the operational level;
- Developing an accountability mechanism at headquarters and at local company levels;
- Developing an ongoing community engagement plan;
- Monitoring contractors and sub-contractors;
- Favoring local contracting and providing for local training;
- Having a sustainable exit strategy from the beginning and sharing it with local communities.

The fifth session addressed how to manage disputes that may still emerge despite the fact that companies may have tools and policies in place, and it explored what remedies are available when companies fail to establish a social license to operate. This session, too, was divided into two panels. The first focused on “soft” mechanisms, and the second on “hard” settlement mechanisms.

The first panel looked at various non-legal mechanisms, including procedures established at the company-level, ombudsman procedures and initiatives such as peoples’ tribunals. Panelists and participants discussed their effectiveness, as well as their potential contribution to the emergence of new norms in the field of business and human rights.

Panelist highlighted the importance of exploring different alternatives to conflict

resolution directly with the involved parties and to exhaust all possibilities before turning to legal mechanisms. They agreed on the need to seek creative solutions that integrate legal and non-legal mechanisms for the purposes of negotiation. While non-legal mechanisms were deemed to be useful and appropriate in many cases, many speakers regretted the lack of clarity on options available to the parties at the time a complaint was made, as well as inadequate responses by public institutions. It was noted that information gaps reinforced tensions and distrust, and could often undermine mediation. Speakers called for better engagement and better communication strategy from major institutions such as the World Bank.

Some speakers underlined the fact that significant contributions were made by various bodies, such as the Ombudsman Office of the IFC or the Permanent People’s Tribunal, but underlined the limited nature of each body and doubted that their decisions provided a solid base for new or emerging norms.

The second panel discussed the positive results and shortcomings of litigation and hard disputes settlement mechanisms.

While no one disputed the fact that some cases have to be adjudicated in courts, it was noted that approaching dispute resolution only as a legal issue had inherent weaknesses: it is confrontational; hinders the search for common elements and productive dialogue between the parties; and increases distrust. It was also mentioned that strictly legal measures harden the parties’ positions and make changes and improvements difficult because they may imply legal liability. Everyone agreed that legal proceedings had to be recourse of last resort. But most speakers focused on the deficiencies of existing legal remedies, such as the absence of strong legal systems accepting companies as a potential human rights violators; the lack of specialized prosecutors on human rights and business issues; the lack of impact analysis and systems of monitoring and regulation of companies in the area of human rights; limited economic sanctions for companies; the lack of attention to the issue of human rights and business enterprises on the political agendas of governments; and of clarity and standardization of the rights that companies must respect.

The Inter-American Court was examined as a

possible means to adjudicate disputes related to business activities. It was specified that this Court could focus only on the responsibility of states in relation to human rights violations, and thus was a limited tool. Nonetheless, it was mentioned that although states are the main duty bearers of human rights, their obligations could be affected by the actions of third parties such as companies, especially when the state controlled or was tolerant of their action.

The last session was an opportunity for all participants to exchange advice, ideas and recommendations with the SRSG with regard to his mandate. The basis for the discussion was a declaration submitted by many civil society organizations present at the meeting (see annex 3). In responding to it, the SRSG took the opportunity to thank the signatories of the declaration and all participants for their openness and respect over the 2 days of his consultations. He recalled that he started his mandate without any answers but with questions, an open mind, and the basic principle of achieving effectiveness on the ground. While acknowledging his commitment to wide consultations, he reminded all that his role was not merely as a messenger for any specific stakeholders groups. He was exploring all combinations of tools, initiatives and instruments that might have a real result. And he did not see a dichotomy between voluntary and mandatory options: every human community is governed by a combination of the two. He reminded the participants that the international enforcement regime is quite weak and warned against what might appear as an easy solution on paper, but one that would lead to few concrete results.

Annex 1: List of Participants

Juan Salvador Aguilera, Technical Cooperation Officer, Oficina del Alto Comisionado de Naciones Unidas para los Derechos Humanos, Colombia

Rafael Alfonso Roa, General Manager, Kedahda, Colombia

Luis A. Alvarez Salcedo, Mayor Alcalde, Municipalidad Provincial De Espinar, Peru

Lucy Amis, Program Manager, International Business Leaders Forum, UK

Cecilia Anicama, Andean Commission Of Jurists, Peru

Dora Lucy Arias, Colectivo De Abogados Jose Alvear Restrepo, Colombia

Christine Bader, Manager, Policy Development, Bp, USA

Victor Baéz, Confederacion Sindical, Colombia

Alvaro Bello, Observatorio De Derechos De Pueblos Indigenas, Chile

Amada Benavides, Chairperson, Un Working Group On The Use Of Mercenaries, Colombia

Edward Bickham, Executive Vice President, External Affairs, Anglo American Plc, UK

David Brown, Director of Global Employee Relations Strategy, Coca-Cola, USA

Edgar Hernán Castañeda Cubillos, Financial and logistical assistant, Oficina del Alto Comisionado de Naciones Unidas para los Derechos Humanos, Colombia

Sergido Manuel Castillo Heredia, Sindicalista, Confederacion Nacional De Unidad Sindical, República Dominicana

Alexandra Castro, Analista, Fundación Ideas Para La Paz, Colombia

Alyne Castro, Csr Manager, Petrobras, Brasil

Karla Co Ethical Standards Regional Manager For Latin America, Wal-Mart, USA

Juan Pablo Corlazzoli, Director, Oficina del Alto Comisionado de Naciones Unidas para los Derechos Humanos, Colombia

Alcides Daza, Sintracarbon, Colombia

Luis Fernando De Angulo, Director Corporate Social Responsibility, Occidental Petroleum Corporation, USA

Nelson De Leon Kantule, Presidente, Asociacion Kunas Unidos Por Nappuana, Panama

Jaime Deluquet, Presidente, Sintracarbon, Colombia

Andres Franco, Gerente Regional, Fondo De Las Naciones Unidas Para La Infancia, Peru

Homero Fuentes, Executive Director, Commission For The Verification Of Corporate Codes Of Conduct, Guatemala

Carlos Gaio, International Relations Director, Justiça Global, Brasil

Ronaldo Galenao, Experto Asistente, Unidad De Mecanismos E Instrumentos Internacionales, Procuraduría De Los Derechos Humanos, Guatemala

Susy Garbay, Coordinator, Centro De Derechos Económicos Y Sociales, Ecuador

Leila Garro Valverde, Coordinadora General, Kus-Kura S.C., Costa Rica

María Giraldo, ESCR Focal point, Oficina del Alto Comisionado de Naciones Unidas para los Derechos Humanos, Colombia

Alexandra Guáqueta, Academic Director, Fundación Ideas Para La Paz, Colombia

Ana Paula Hernández, Subdirectora, Centro De Derechos Humanos De La Montaña Tlachinollan, Mexico

Barbara Hinterman, Head of Delegation, International Committee of the Red Cross, Colombia

Amar Inamdar, Compliance Advisor/Ombudsman, International Finance Corporation, Office Of The Compliance Advisor/Ombudsman, USA

Mauricio Jimenez, Corporate Affairs Management, Bp, Colombia

Lily La Torre, Grupo De Trabajo Racimos De Ungurahui, Peru

Jean-Pierre Labbé, Senior Vp, Public Affairs, Total, France

Pablo Largacha, Director, Public Affairs And Communications, Coca-Cola, USA

Mauricio Lazala, Senior Researcher, Business And Human Rights Resource Center, UK

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María Victoria Llorente, Fundación Ideas Para La Paz, Colombia

Chris Lodder, Kedahda, Colombia

Olivier Loubière, Corporate Business Ethic Advisor, Areva, France

Nicholas Lusiani, Centro De Derechos Economicos Y Sociales, Ecuador

Otilia Lux De Coti, Permanent Forum For Indigenous Issues, Guatemala

Luis Eduardo Maldonado Ruíz, Political Coordinator, Corporación Empresarial Indígena Del Ecuador, Ecuador

Yaneth Mantilla Perez, Coordinator, Safety, Environment And Social Responsibility, Nexen, Colombia

Felipe Márquez Robledo, Gerente Legal y de Asuntos Corporativos, Coca-Cola, Colombia

Juan Carlos Marroquin, Presidente, Nestlé, Colombia

José Cesar Martin Figueroa, Responsable area MASC, Repsol Ypf, Spain

David Martinez, Coordinador Observatorio De Ddhh Y

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Kathryn Mcphail, Principal, International Council On Mining & Metals, United Kingdom

Mario Miranda, Communication Director, Nestlé, Colombia

Jonas Moberg, Advisor to the Chairman, Extractive Industries Transparency Initiative, Sweden

Tomasz Nadrowsky, Social issues Manager, Kedahda, Colombia

María Gabriela Pacheco Arias, Abogada, Corte Interamericana De Derechos Humanos, Costa Rica

Gerald Pachoud, Special Adviser To The Srsq,

Edgar Paez, Observatorio Social De Empresas Transnacionales, Megaproyectos Y Derechos Humanos, Colombia

Adriana Peña, Communication Manager, Nestlé, Colombia

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Adriana Pestana, Coordinación de Colombia E.E.U.U., Colombia

Humberto Piaguaje, subccordinator, Frente De Defensa De La Amazonía, Ecuador

Jaime Polivio Perez, Presidente, Consejo De Comunidades, Ecuador

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Francisco Ramirez, Presidente, Sintraminercol, Colombia

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John Ruggie, Special Representative Of The Un Secretary General On Business And Human Rights,

Cristina Santacruz, Advisor, Fundación Pachmama, Ecuador

Marlon Rene Santi Gualinga, Coord .Derechos

Humanos Sarayaku, Pueblo Kichwa De Sarayaku, Ecuador

Leandro Scalabrin, National Co-Coordinator, Movimento Dos Atingidos Por Barragens, brasil

James Santiago Schenk, Gerente Para El Desarrollo Sostenible, Goldcorp, Guatemala

Felipe Silva, Presidente, Nestlé, Colombia

Jana Silverman, Investigadora, Escuela Nacional Sindical, Colombia

Daniel Taillant, Executive Director, Centro De Derechos Humanos Y Ambiente, Argentina

Salil Tripathi, Senior Policy Adviser, International Alert, UK

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Carlos Velasco, Bp, Colombia

Diana Carolina Vilera Diaz, Sustainable Development Manager, Total Venezuela, Venezuela

Jorge Villegas, Social Development Specialist, International Finance Corporation, USA

Mena Virgilio, director de relaciones laborales y desarrollo social, FEMSA, Mexico

Lene Wendland, Ohchr Advisor On Business And Human Rights,

Ian Wood, Director, Sustainable Management, Bhp Billiton / Minera Escondida, Australia

Luc Zandvliet, Project Director, Corporate Engagement Project, Collaborative For Development Action, Canada

Eduardo Zuain, Consejero, Secretaría de Relaciones Exteriores, Dirección de Derechos Humanos, Argentina

Thursday 18 January**900-920 Welcome and introduction**

- Pr John Ruggie, Representante Especial del Secretario General de Naciones Unidas para Derechos Humanos, Empresas Transnacionales y Otras Empresas

920-1100 Session I: Defining a social license to operate

- Ms Otilia Lux De Coti, Permanent Forum For Indigenous Issues, Guatemala
- Mr Juan Carlos Marroquin, Presidente, Nestlé, Colombia
- Mr Marlon Rene Santi Gualinga, Coord .Derechos Humanos Sarayaku, Pueblo Kichwa De Sarayaku, Ecuador

1130-1300 Session II: Backing the social license to operate: standards and norms

- Ms Cecilia Anicama, Andean Commission Of Jurists, Peru
- Mr Ian Wood, Director, Sustainable Management, Bhp Billiton / Minera Escondida, Australia
- Mr Jorge Villegas, Department For Environment And Social Development, International Finance Corporation

1400-1530 Session III: Understanding state responsibilities

- Mr Eduardo Zuain, Consejero, Secretaría De Relaciones Exteriores, Dirección De Derechos Humanos, Argentina
- Ms Susy Garbay, Coordinator, Centro De Derechos Económicos Y Sociales, Ecuador
- Mr Mauricio Jimenez, Corporate Affairs Management, Bp, Colombia
- Ms Francis Rivera Rivas, Community Relations Coordinator, Conocophillips, Venezuela

1600-1800 Session IV: Promoting Successful Community Engagement**1600-1800 Panel I: Practices ...**

- Mr Luis A. Alvarez Salcedo, Mayor Alcalde, Municipalidad Provincial De Espinar, Peru
- Mr Luc Zandvliet, Project Director, Corporate Engagement Project, Collaborative For Development Action, Canada
- Ms Diana Carolina Vilera Diaz, Sustainable Development Manager, Total, Venezuela

1800-1815 Wrap-up**Friday 19 January****915-1045 Panel II: ... and Tools**

- Mr Homero Fuentes, Executive Director, Commission For The Verification Of Corporate Codes Of Conduct, Guatemala
- Ms Alexandra Guáqueta, Academic Director, Fundación Ideas Para La Paz, Colombia & Mr Salil Tripathi, Senior Policy Adviser, International Alert, UK
- Mr Luis Fernando De Angulo, Director Corporate Social Responsibility, Occidental Petroleum Corporation, USA

1115-1300 Session V: Adjudicating disputes**1115-1300 Panel I: Non-legal schemes ...**

- Mr Amar Inamdar, Compliance Advisor/Ombudsman, International Finance Corporation, Office Of The Compliance Advisor/Ombudsman
- Mr Edgar Paez, Observatorio Social De Empresas Transnacionales, Megaproyectos Y Derechos Humanos, Colombia
- Mr James Schenck, Gerente Para El Desarrollo Sostenible, Goldcorp, Guatemala

1400-1600 Panel II: ... And legal redresses

- Mr Pablo Lagarcha, Coca-Cola, Director, Public Affairs And Communications, USA
- Mr Daniel Taillant, Centro De Derechos Humanos Y Ambiente, Argentina
- Ms María Gabriela Pacheco Arias, Abogada, Corte Interamericana De Derechos Humanos, Costa Rica
- Mr Humberto Piaguaje, Subccordinator, Frente De Defensa De La Amazonía, Ecuador

1630-1700 Closing remarks

- Mr Juan Pablo Corlazzoli, Director, Office of the High Commissioner for Human Rights in Colombia

1700-1830 Open forum: the contributions of the SRSG's mandate

Declaration of the Social, Non-Governmental and Union Organizations and Indigenous and Affected Communities Convened at

The Regional Consultation of the Special Representative of the Secretary General of the UN on the issue of Human Rights and Transnational and other Businesses Enterprises Bogotá, Colombia, January 18-19, 2007

The neo-liberal economic model resurging in recent decades has weakened the State, limiting its ability to provide and guarantee social well-being. The substitution of various state functions by private actors has resulted in new threats to the realization of human rights, resulting from the actions or omissions of transnational corporations.

While transnational and other corporations have benefited from recent developments in private international law, ensuring that their interests and rights are protected through investment treaties, international dispute resolution and compensation mechanisms to name but a few, the responsibilities of these companies to respect internationally recognized human rights has been all but ignored.

Today, many companies are more powerful than nation states, operating with total freedom when facing the inexistence of national and international mechanisms to hold them accountable. The fact that voluntary standards and non-binding mechanisms are the only recourse for affected persons and communities to protect their rights highlights the fragility of current regulation mechanisms and emphasizes the liberty in which these companies operate.

This is an extremely unequal situation, one in which indigenous people, children, women, small farmers, workers, afro-descendents and local communities must confront large corporations, at a great disadvantage. The current challenge for humanity is to insure the implementation of an economic development policy that is socially just, environmentally sustainable, and founded on the precepts of human rights.

Voluntary initiatives such as the Global Compact, the Equator Principles, the various safeguards of international financial institutions, the debate over “social license to operate,” voluntary codes of conduct, and certification programs are not sufficient to assure the integral protection of human rights. A normative framework solely based on the goodwill of business enterprises is simply not enough.

In response to this situation, the role of the United Nations is to help promote the adoption of a binding normative framework which guarantees the protection, respect and fulfillment of the human rights of all persons and communities affected by those corporate abuses we have untiringly denounced during this consultation.

We call on the Secretary General and the Human Rights Council of the United Nations to adopt the following measures:

- ❖ Create and adopt a human rights normative framework which is obligatory for companies, as the best way to respect and guarantee the human rights of persons and communities who have been affected by the actions or omissions of business enterprises;
- ❖ Promote adequate and effective access to judicial recourses and protections in cases where companies threaten or negatively impact human rights;
- ❖ Exhort States to establish mechanisms to prevent, investigate, sanction, and compensate for abuses committed by companies;
- ❖ Establish vigilance mechanisms to monitor the compliance of companies to the human rights normative framework afore mentioned;

- ❖ Measure the impact that the actions or omissions of companies, financial groups, and the international finance system in general have on the enjoyment of human rights;
- ❖ Continue to promote the active participation of civil society, prioritizing the involvement of directly affected communities, both in the Special Representative's mandate as well as in the discussion and drafting process of new international standards related to human rights and companies;
- ❖ Recognize, respect, and enforce the collective rights of indigenous peoples, in conformity with the norms established by Convention 169 of the International Labor Organization.

Bogotá, Colombia, January 19, 2007

Signed, 1. Centro de Derechos Humanos y Ambiente, Argentina 2. Justicia Global, Brazil 3. Terra de Direitos, Brazil 4. Movimento dos Atingidos por Barragens, Brazil 5. FASE, Brazil 6. Observatorio de Derechos de los Pueblos Indígenas, Chile 7. Colectivo de abogados José Alvear Restrepo, Colombia 8. Escuela Nacional Sindical, Colombia 9. Observatorio Social de Empresas Transnacionales, Megaproyectos y Derechos Humanos, Colombia 10. Comisión Colombiana de Juristas, Colombia 11. Coordinación Colombia-Europa-Estados Unidos, Colombia 12. Kuskura, SC, Costa Rica 13. Ecodesarrollo Kantán, Costa Rica 14. Centro de Derechos Económicos y Sociales, Ecuador 15. Fundación Pachamama, Ecuador 16. Pueblo Kichwa de Sarayaku, Ecuador 17. Asamblea de afectados por el caso Texaco, Ecuador 18. Consejo de Comunidades de Intag, Ecuador 19. Asamblea de Unidad Cantonal de Cotacachi, Ecuador 20. Foro Permanente de Asuntos Indígenas, Guatemala 21. Red Nacional de Organismos Civiles de Derechos Humanos 'Todos los derechos para todos y todas', Mexico 22. Asociación Napguana, Panamá 23. Grupo de Trabajo Racimos de Ungurahui, Perú 24. Confederación Nacional de Unidad Sindical, Dominican Republic 25. Organización Regional Interamericana de Trabajadores (CIOSL-ORIT) ***