CORPORATE RESPONSIBILITY FOR FUNDAMENTAL LABOUR STANDARDS AND RIGHTS
A Field Study on the Labour Conditions of Sugarcane Workers on Grupo Pellas’ Plantations in Western Nicaragua

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I have chosen this way of study because I believe in the goodwill of companies and their positive contribution to the society and environment. However, the other side of the coin shows the picture of negative business impacts that need to be turned around in order to create a sustainable world. This goal can be approached through transnational collaboration between economic, political and social actors. The United Nations’ resolution inspired my ambition to test global theory in practice. During an intensive research of corporate-related adverse impacts in Latin America, a specific case has aroused my attention for conducting a field study with the support of a local non-governmental organisation.

Located in the Western Nicaraguan city of León, the inter-American nonprofit organisation is named after the small community of La Isla, where the majority of the population is affected by a health epidemic of chronic kidney disease. The foundation was established in 2008 by the documentary filmmaker Jason Glaser and the former sugarcane worker Juan Salgado with the vision to protect workers’ health in Nicaragua and elsewhere. The institution has the strength that the five organisational units – public health, legal and human rights, community development, donations, and media and communications – adequately provide the necessary diversity to address the beneficiaries’ needs and bridge the gap between involved stakeholders. In conjunction with the facilitation of medical studies, the legal office conducted a pilot study to find evidence on the hypothesis that relates working conditions and chronic kidney disease. The research team was supervised by the department’s senior director, and consisted of a few law-educated volunteer interns, and me, with a background in business and development. The experience is of high significance to my master’s programme and future career. Doing research in one of the poorest countries in Latin America has taught me what barriers people face when defending their basic rights, and how social development is impeded through economic preference and cultural norms. My selected research focus supports the foundation’s mission in enhancing the responsibility of case-related private and public sector stakeholders as well as fostering sustainable policy changes. Beneficiaries shall be empowered for self-advocacy, and the international community’s awareness be increased. The thesis’ theoretical aspect shall contribute to the global debate on how to persuade businesses to create corporate cultures, in which all actors benefit.
II ACKNOWLEDGEMENTS

I want to thank my family and friends for their encouragement and endless inspirations throughout my life and along this journey of study. For this, I am very grateful. I thank my parents for the values they have given me and teaching me what really matters in life, which spurs me to develop myself and strive for a fulfilling profession. Thanks to my sister Sarah for the design of this paper.

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This thesis is dedicated to the sugarcane workers and their families who bravely participated in this study, despite all the associated risks. I went to Nicaragua to do research and left with the mission to give these people a voice. I want to thank the readers of my thesis for their interest in this topic and its specific case. I appreciate comments, discussion, and forwarding and would be happy to reach a large audience.
III  ABSTRACT

Increasingly, adverse business impacts on societies and environments have been addressed by the international community. To define a transnational umbrella model for business responsibilities, the United Nations introduced the framework named Protect, Respect and Remedy in 2008, which was complemented by the Guiding Principles on Business and Human Rights in 2011. Its concepts impose certain obligations to governments and corporations and point to several mechanisms, to which these actors can be held accountable on the local and global level. The framework’s implementation phase was determined for a period of three years that ends simultaneously with the thesis’ release. The significance of these transnational guidelines has been assessed by means of a practical case.

In Western Nicaragua, economic activities have been related to a health epidemic of chronic kidney disease among sugarcane labourers. Due to the latest research findings on possible causes, the local research partner organisation La Isla Foundation conducted a pilot study on the human rights situation, in which a small confidential group of former and current sugarcane workers was selected as the study population. The goal was to collect evidence on labour conditions and give recommendations that mitigate adverse impacts. To best contribute to the research team’s knowledge, the thesis’ study focus was laid on corporate responsibility for the most universally recognised labour standards and rights. The local environment was observed and informants consulted in order to best understand collected data. A comparative case study was additionally conducted to evaluate regional trends. Severe rights violations by employing businesses, a lack of enforcement for corporate responsibilities, and the provision of adequate access to remedies through governance mechanisms were identified.

The conclusions drawn from all study findings are attributed to the theoretical frameworks’ concepts to discuss its effectiveness and to give advancing recommendations. The thesis’ overall objective is to incentivise policy changes in favour of vulnerable groups around the globe that are adversely affected by business activities. While the field study approach may limit interpretations to other cases or the chosen theory, the thesis points out the necessity to establish international instruments that directly sanction corporations for non-compliance with fundamental standards – regardless of their national origin.
IV GLOSSARY

ACTA .......... Alien Tort Claims Act
ASOCHIVIDA .......... Chichigalpa Association for Life (in Spanish: La Asociación Chichigalpa por la Vida)
BHRRC .......... Business and Human Rights Resource Centre
BU .......... Boston University
CAFTA .......... Central American Free Trade Agreement
CAO .......... Office of the Compliance Advisor/Ombudsman
CENIDH .......... Nicaraguan Human Rights Center (in Spanish: Centro Nicaragüense de Derechos Humanos)
CEPAD .......... Council of Protestant Churches of Nicaragua (in Spanish: Consejo Nacional Evangélico de Nicaragua)
CISTA .......... Research Centre of Health, Work, and Environment (in Spanish: Centro en Investigación en Salud, Trabajo y Ambiente)
CKDu .......... Chronic Kidney Disease of uncertain Aetiology
CNPA .......... National Committee of Sugar Producers (In Spanish: Comité Nacional de Productores de Azúcar)
CR .......... Corporate Responsibility
ESCR-Net .......... International Network for Economic, Social and Cultural Rights
FLS .......... Fundamental Labour Standards
FPRW .......... Fundamental Principles and Rights at Work
HR .......... Human Rights
ILO .......... International Labour Organisation
ILRF .......... International Labour Rights Fund
ISA .......... San Antonio Sugar Mill (in Spanish: Ingenio San Antonio)
LA .......... Latin America
LIF .......... La Isla Foundation
LR .......... Labour Rights
MINSA .......... Ministry of Health (in Spanish: Ministerio de Salud)
MITRAB .......... Ministry of Labour (in Spanish: Ministerio de Trabajo)
MNE .......... Multi-national Enterprise
NGO .......... Non-governmental Organisation
NIC .......... Nicaraguan Córdoba
NSEL .......... Nicaragua Sugar Estates Limited
OECD .......... Organisation for Economic Co-operation and Development
OHCHR .......... Human Rights Office of the High Commissioner
PAHO .......... Pan American Health Organisation
PIRM .......... Pacific Institute of Resource Management
RBA .......... Rights-based Approach
RV .......... Rights Violation
SRSG .......... Special Representative of the Secretary-General
STR .......... Specialised Technology Resources
TNC .......... Transnational Corporation
UDHR .......... Universal Declaration of Human Rights
UN .......... United Nations
UNAN .......... National Autonomous University of Nicaragua-León (in Spanish: Universidad Nacional Autónoma)
USD .......... United States Dollars
WHO .......... World Health Organisation
V  READER’S GUIDELINE

The first section provides an introduction into the topic of business and fundamental rights at work. The second chapter demonstrates the most recognised theories within this field, leading to the problem formulation and research question. The main study variables are presented and circumstantiated with applicable normative principles. Objectives of the study complete this section.

In the third chapter, the methodology for the secondary and primary data collection is described. In the fourth section, the practical study is framed by providing research background. The findings of the primary data gathering are outlined in the fifth chapter, in accordance with the selected research variables. In the sixth section, the research question is discussed by combining the theoretical framework and the practical study findings.

The most significant conclusions of the study as well as policy recommendations and suggestions for future research finish the last chapter of the thesis.
1 INTRODUCTION

There are cases of rural communities in developing countries that are hampered in their social and economic development, due to being adversely affected by business activities. Poor living and working conditions, environmental contamination of people’s land, and damage to people’s health are some examples of negative business impacts that are denounced as a violation of people’s fundamental rights. Victims of alleged corporate rights violations (RV) face enormous obstacles during the long process of claiming for remedies. These cases\(^2\) raise the question how corporate responsibilities (CR) are defined and can be enforced. Particularly, they challenge the effectiveness of established instruments and related grievance mechanisms. The international community has been recognizing the necessity to develop adequate approaches towards CR with regard to fundamental rights at work, which will be presented in the next section.

2 THEORETICAL FRAMEWORK

The labour rights (LR) standard-setting process was institutionalised in 1919 with the foundation of the International Labour Organisation (ILO), later integrated into the United Nations (UN). Since 1948, human rights (HR) have become universally protected through the adoption of the Universal Declaration of Human Rights (UDHR) and a series of continuative UN Conventions. With regard to labour, Article 23 and Article 24 of the UDHR address the right to work, non-discrimination, favourable working conditions, equal and fair remuneration, limited working hours, trade unions defending workers’ interests, and social protection (UN 2014). While governments all over the world have incurred the liability to respect fundamental rights under international law, the agenda about the responsibility to respect these liberties has shifted towards another international stakeholder, namely: corporations. The Organisation for Economic Co-Operation and Development (OECD), of which mostly advanced developed states are members, first adopted Guidelines for Multinational Enterprises (OECD Guidelines) in 1967\(^3\). The ILO subsequently

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1 Official statement of the Nicaraguan HR Center (in Spanish: Centro Nicaragüense de Derechos Humanos CENIDH)
2 For a comparative case study please find appendix I
3 The OECD Guidelines were revised the latest in 2011 and adapted to the guidelines of the UN framework. Nicaragua is not member of the OECD and has not adopted the declaration.
introduced regulations with regard to labour- and social policy-related issues in 1977 by launching the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). Two decades later, the former UN Secretary-General Kofi Annan laid the cornerstone for a business and HR framework by requesting cross-border guidelines for corporations, which increasingly gained in influence in the course of globalisation. The ILO Declaration on Fundamental Principles and Rights at Work (FPRW) from 1998 and the UN Global Compact introduced in 2000 were counted as the first universal achievements, which address the increased demand for clarification of CR with regard to labour-related HR. (J. Ruggie 2008, 3,27; L. Roseberry and et al. 2010, 3–4)

The UN awarded a six-year mandate in 2005 to further develop the initial voluntary and legally non-binding approach towards a normative HR model for businesses. The mandated former Special Representative of the Secretary-General (SRSG) on HR and transnational corporations (TNCs) and other business enterprises, Prof. John Ruggie, launched the framework named Protect, Respect and Remedy in 2008, which was complemented in 2011 by the Guiding Principles on Business and HR (both referred to as UN framework following) (J. Ruggie 2008; OHCHR 2011). The subsequent mandate of the UN working group, which is assigned with the processing of the implementation phase, officially ends in 2014 (CIDSE 2013, 3, 11). The new guidelines are built on existing international laws and clarify the rights and duties of all stakeholders involved in business activities. The UN framework seeks to create a socially sustainable business environment by bridging the gaps of governance systems that have been increasing through emerging globalisation. This latest contribution counts as the most common global business and HR framework, for which reason it is used as the thesis’ theoretical framework and will be explained in more detail in the following pages.

The UN framework consists of three pillars tailored to three interrelated stakeholders, namely: governments, TNCs and other corporations, and individuals or groups whose HR are adversely affected.

4 The forum of tripartite committees includes employers, workers and governments
5 Used synonyms for framework are: approach, model, and guide
The state duty to protect

The first pillar of the policy framework embraces the state’s duty to guard against HR violations by a third party, through the implementation of appropriate legislative processes. The legal mechanisms of the UN treaty bodies directly require signatory states to enforce international HR laws through national jurisdiction. This constellation reveals that the international community of states imposes the responsibility to shelter people’s rights vis-à-vis corporate acts on national governments. It is the state’s legal obligation to guarantee compliance with adopted international laws and regulations by all kinds of corporations, and to hold them accountable under domestic law. Accordingly, states need to investigate alleged RV that occur within their area of authority, penalise guilty parties, and compensate victims. (J. Ruggie 2008, 7; OHCHR 2011, 3)

The corporate responsibility to respect

The second central principle of the UN approach imposes the responsibility on corporations to respect HR, beyond the obligation to comply with national laws. Businesses need to adhere to all rights they may impact, regardless of whether they are LR⁶ or non-LR⁷ – that both are universally recognised by UN and ILO Core Conventions. Corporations have to guarantee their abidance of the laws, and accept the UN norms as a regulatory framework for corporate HR responsibilities. Businesses are advised to implement impact assessment mechanisms and respective policies in order to avoid causing harm, and to address adverse HR impacts – regardless of being directly involved or complicit. (J. Ruggie 2008, 4, 15, 16; OHCHR 2011, 13–21)

In this regard, Ruggie clarifies that corporations can be held legally accountable directly under domestic law. A country-specific analysis of relevant applicable international regulations would be necessary to define the indirect obligation to comply with these laws. Although alleged HR violations need to be prosecuted by the respective national court in the first place, it is emphasised that corporate compliance with HR laws is mandatory, even if there might be a lack of enforcement on the part of the national state for whatever reason. (J. Ruggie 2007, 19–21) Adjacent to courts, alleged abuse of

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⁶ Respectively, LR include: “freedom of association, right to organise and participate in collective bargaining, right to non-discrimination, abolition of slavery and forced labour, abolition of child labour, right to work, right to equal pay for equal work, right to equality at work, right to just and favourable remuneration, right to a safe work environment, right to rest and leisure, right to family life” (J. Ruggie 2008, 15)

⁷ Non-LR are HR that corporations might impact. These refer to individual, social and political rights, including but not limited to: “Right to peaceful assembly, right to social security, right to privacy, right to life, liberty and security of the person, right to physical and mental health, access to medical services” (J. Ruggie 2008, 16)
HR can also be judged by "the courts of public opinion" (J. Ruggie 2008, 16). The UN framework clarifies that compliance with international HR laws is not a voluntary business practice but an obligation. This corporate code of conduct is seen as the civil society’s minimum demand on businesses.

Access to remedies
The third pillar focuses on the accessibility of remedial procedures to those whose HR are adversely affected through a third party, such as a corporation. The complaint process for alleged breach of regulations provides a construct of several legal and non-legal instruments. While the first step towards legal action is the country where the alleged RV occurred, the UN framework is also concerned with obstacles plaintiffs face in incapable national systems of justice. In case the respective state is unable to enforce corporate accountability, an appeal under international jurisdiction might be claimable. But the barriers to access remedy through so-called international hard-laws are considered to be even higher because the nation’s duty to protect needs to be compelled first. For this reason, soft-law grievance mechanisms, whose standards are defined by state or non-state institutions, are assigned an important role in regulating business responsibilities. (J. Ruggie 2008, 22–27; OHCHR 2011, 27–32)

Hence, CR is still internationally understood as a demand to comply with international laws, but does not contain direct liability. The approach has been criticised for being insufficient by arguing that while the state is imposed a duty, corporations are only assigned a responsibility. Ruggie expressed awareness of this weakness and referred to the necessity to apply the UN framework to the case-related country context. The relevance of international regulations depends on respective agreements that are adopted by the government. (J. Ruggie 2007, 11) As a stricter definition of CR is desired for this thesis, Ruggie’s emphasis to go beyond the limitation of voluntariness will be followed, and the UN framework applied. To that end, the term CR is conceptualised synonymously with liability, seeking to define with which regulations a corporation theoretically is obliged to comply.

To sum up, international mechanisms are committed to address business responsibilities and have further developed their approaches towards a valuable HR framework. The UN framework is the latest contribution and currently in the implementation phase.

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8 See for example L. Roseberry and et al. (2010, 122–24) for a critical examination
According to Ruggie, the most challenging task is to narrow and eventually close the gaps between the widespread obligations and the persisting non-compliance with international HR standards. The UN model serves as a global guidance instrument that can be used by all kinds of stakeholders involved in business environments. For further elaboration of the framework, the evaluation of its practicability is required. (J. Ruggie 2008, 3-6, 27–28) To that end, the thesis aims to answer the overall research question:

How effectively does the UN framework promote the enforcement of corporate responsibility for fundamental labour standards and rights?

The theoretical goal of this paper is to test the applicability of the UN framework in a developing country context and attribute the lessons learnt to its three pillars. The current public discussion on CR mostly focuses on TNCs from developed countries, presumably because they are more likely confronted with consumer pressure. In the course of globalisation, the number of TNCs whose origin is in developing countries has been increasing in the last two decades as well. But there seems to be a lack of attention with respect to these businesses being in charge to respect core principles at work. The study is significant in bringing to the fore this particular concern in the global debate on CR.

As study variables, the four Fundamental Labour Standards (FLS) imposed by the UN’s labour organisation ILO were chosen, which are the most deeply-rooted and universally recognised principles at work. They are reflected by international HR and LR laws and serve as ruling guidelines for all forms of businesses. These are:

1) Freedom of association and the effective recognition of the right to collective bargaining

According to the UDHR (1948) Article 22, and ILO Declaration on FPRW (1998) Article 2, the HR freedom of association comprises two FLS, namely: the right of workers to organise and to collectively bargain. The right to organise is the prerequisite

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8 The ILO Declaration on the FPRW (1998) declares in Article 2 that “all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the organisation to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights, which are the subject of those Conventions”. The term universally recognised implicates that states do not sign these core Conventions as they apply to all member states. This resolution defines the constitutional character of these FLS, which are also known as: core labour standards, minimum labour standards, fair labour standards, international labour standards, and FPRW.
for solid joint bargaining and social dialogue. The absolute recognition of freedom of association enables the workers to use to full capacity their negotiation power to advocate for increased protection of other LR and better working conditions. The right to strike provides labourers with the opportunity to stop work in case the employer does not respect their rights, or was not willing to engage in negotiations.

2) Elimination of all forms of forced or compulsory labour
Under the ILO Convention No. 29 (1930) Article 2(1), forced labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Two key factors, namely the threat of punishment and involuntary work, are covered by this determination.

3) Effective abolition of child labour
According to the International Convenant on Economic, Social, and Cultural Rights (1976) Article 10 (3) and literally to the Convention of the Rights of the Child (1990) Article 32, child labour covers all work practices that deprive amongst others: “the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”. The understanding of the worst form of child labour encompasses all forms of hazardous work that, according to the ILO Convention No. 138 (1973) Article 3 (1), and literally to No. 182 (1999) Article 3(d): “[…] by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”. Both conventions determine in this regard that all human beings below the age of 18 count as children.

4) Elimination of discrimination in respect of employment and occupation
Through its Convention No. 111 (1958) Article 1 (a), the ILO denounces the discrimination at the workplace by “[…] race, colour, sex, religion, political opinion, national extraction or social origin […].” This article further regulates that all workers enjoy equality of conditions of work. The ILO Convention No. 100 (1951) Article 1 and 2 (1) determines the non-discrimination with regard to gender and payment by the rule “[…] equal remuneration for men and women workers for work of equal value”.

In addition to these, national laws were considered as study variables to fulfil the requirements of the theoretical framework.9

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9 Please find appendix III for an overview of the developed legal framework in the context of research.
The main theory of this paper was clarified above, which applicability and relevance will be tested and discussed with the help of practical evidence. The model’s strength and weaknesses will be deliberated, and suggestions for improvement to close identified gaps given. The concepts of this thesis that encompass the research question are demonstrated in the following paragraphs.

A field study approach was selected as a tool to measure the effectiveness of the UN framework by qualitative means.\textsuperscript{10} The practical aspect of this thesis covers the three pillars of the theoretical framework by addressing the stakeholders of one specific business case, namely: the Grupo Pellas corporations (in English: “Pellas Group”), the Nicaraguan government, and sugarcane workers adversely affected by economic activities.

Firstly, data delivers evidence on how business practices conflict with FLS. The thesis discusses the adverse impact of worker rights abuses with a special focus on the employees’ state of physical and mental health. The findings shall serve to enhance CR by constituting the business’ social license to operate and what is expected from society, politics and marketplace in order to mitigate negative and maximise positive impacts on the surrounding environment. Secondly, collected data shall substantiate to which extent the state fulfils its duty to protect individuals against RV by third parties. Thirdly, the thesis discusses the scope of current accountability mechanisms to provide adequate access to remedies, and which major barriers claimants face when demanding rights protection and compensation.

It is the desired goal to provide necessary study results that may incentivise private and public sector endeavour to better protect workers from occupational risks. The newly gained information shall empower workers and grassroots-organisations to assert their rights through fact-based communication with relevant stakeholders.

\textsuperscript{10} The figure in appendix II illustrates how the three pillars of the theoretical framework are assessed by applicable practical means.
3 RESEARCH METHODOLOGY

This section presents the applied methodology towards the answering of the research question. The thesis’ study, which is overall called CR study, is divided into theoretical and practical research. The latter is named field study and mainly involves a systematic pilot investigation of the research partner organisation. The study conducted exclusively in collaboration is named LIF study, which pursued the goal to initially assess the beneficiary's needs and suggest further studies\(^\text{11}\). The results of the LIF study will be presented to observe the business case through a CR perspective. The framework of the LIF study was pre-determined and the thesis’ research scope was developed accordingly to best benefit from researchers’ knowledge and interests. Proficiency in the field of LA business, language and culture could ideally be contributed to LIF, which was well grounded in legal expertise and possessed local familiarity. Accordingly, the research processes of the LIF and CR study partly overlap with each other.

3.1 Timeline of CR and LIF Study Processes

Participation on the ground with the LIF research team began on 11 February and ended on 22 July 2013. The preparation for both – the CR and LIF – studies, including secondary data research and contemporaneous field site investigation, was completed on 28 June. Between 29 June and 14 July, the questionnaire was designed by the entire LIF legal team and a confidential study population selected by the LIF community leader. Training for interviewees with regard to the interview process was given by the study director on 12 July. The LIF study in the field was conducted between 15 and 22 July. The collected primary data was processed until 8 August by the LIF legal team. In the subsequent months, the primary data was analysed individually to present and discuss the findings in this paper. A travel grant offered the opportunity of continuous research activities among the study site with support of LIF. Independent consultation with informants and field site observation was undertaken to best interpret collected data. This final research phase began on 15 January and was completed by 31 March 2014.

3.2 Theoretical Methods

This section is divided into research approaches, which define the foundation of the developed research strategies, and ultimately of the practical methods.

\(^\text{11}\) After the data of the LIF pilot study was analysed by the legal department, a broader study on the working conditions was conducted with a larger study population. A child labour study with a small sample size was launched as well. The three reports will be published within the following month after the thesis’s release, and will be available at: www.laislafoundation.org. The pilot study report will be found under: Hutchinson, Y-Vonne. 2013. “Sickly Sweet. Human Rights Conditions for Sugarcane Workers in Western Nicaragua.” La Isla Foundation.
3.2.1 Research Approaches

Existing theory will be tested and discussed by means of a field study to further develop the theoretical concepts. To that end, the selected research approach is a combination of deduction and induction. As the major attention of this thesis belongs to the private sector, the theoretical perspective of this study only includes the most internationally recognised theory within the field of business responsibilities for labour-related HR, namely the UN framework. The selected study focus intends to make the distinction between the corporate obligation to comply with national laws and universal standards, and the more comprehensive concept of corporate social responsibility or philanthropy. The present CR study will not make use of the whole debate of a company’s moral obligation to voluntarily address deficits within its area of influence. The enhancement of honorary business action should not be underestimated, as it might prevent negative HR impacts more effectively and rapidly than advocacy strategies based on violated rights. However, the selected approach shall benefit local interest groups to defend their rights, and it seeks to inform the multi-stakeholder community within and beyond national boundaries, whose attention might only be caught through rights-based evidence.

The foundation of the thesis’ study is a rights-based approach (RBA), which is a systematic analytical instrument often used by non-governmental organisations (NGOs) to effectively protect the rights of vulnerable groups. The collaborating legal department chose this method for the conduction of the LIF study. In section 2 it was outlined that the UN framework requires the adaption of its concepts to the respective case context to be best applicable. The broad research of LIF, in which hard- and soft-law instruments relevant to the national context were considered, provided the perfect fit to fulfil the theoretical framework’s requisite. The extensive research was necessary to prepare a study tool that best addresses the business case. On the one hand, the RBA is based on a context-specific set of international and regional legal obligations that the government has agreed on, as well as national laws. On the other hand, the RBA entails non-legal measures such as global standards, which are defined by international institutions on the basis of laws. The RBA is a valuable tool because it demands the application of grievance mechanisms that come along with the legitimacy of relevant laws and regulations.12 (Based on: P. Hunt and G. MacNaughton 2006, 33–34)

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12 Appendix III provides a list of reviewed legal and non-legal principles, which were used for the LIF study. The RBA concept also considers the interrelation of rights. For example, child labour might impact the child’s right to health or education. Another example is the interference on worker’s organisations by the employer which violates the right to organise and the right of collective bargaining.
3.2.2 Research Strategies

For the design of the thesis’ theoretical framework, the historical development of the standard-setting procedure with regard to business and HR was reviewed. The most recent and recognised contribution on the international level, the UN framework, was selected as the main theory. Relevant official SRSG documents and addendums that were presented to the HR Council were used to present the framework. To complement the umbrella model, secondary data of the LIF study framework was used, which included a comprehensive analysis of national, regional and international HR and LR laws. Nicaraguan constitutional, labour, and health laws have been analysed. UN and ILO conventions as well as the related recommendations and appendices, which are universal or to which Nicaragua is a signatory have been reviewed entirely. Global business standards were revised through published reports by the standard-setting organisation. Only norms that were considered to be relevant for the selected case were chosen as research variables. While being aware that a broader range of rights might be violated, the limitation was necessary to narrow down the scope of the LIF study. For the thesis’ practical study, the ILO Core Principles were selected as the primary study variables due to their universal character. The remaining variables of the LIF study were selected as secondary variables to show the whole picture of the case realities.

The collected secondary data until this point of research provided case-specific information for the first two pillars of the UN framework. Remedial procedures that come along with the applicability of principles, and provide victims of corporate RV with access to remedies, were analysed as well in order to address the third pillar of the UN framework. Relevant enforcement mechanisms on the national and international level were identified and the conditions of access evaluated.

3.3 Practical Methods

The philosophy and approach that underlie the study of the thesis are presented in the following pages. The research strategies as well as the development and design processes of the LIF study tool are explained. Then, the selection of the study population and the procedure of the questioning are outlined. The management and analysis processes of the collected data are described as well as its reliability and validity. Study delimitations follow and ethical considerations complete this section.

The next sub-sections are based on the LIF research plan and legal team consultation.
In addition, the work of Saunders and et al. (2009) was used as a handbook for the development of the thesis’ practical research methods, which application will be itemised.

### 3.3.1 Research Philosophy of CR Study

The thesis’ research question will be answered by deliberating several angles of prospects of a practical case study. The field study is circumstantiated by a research philosophy that enables the understanding of the observed happenings and the cultural structure behind it. As stated in Saunders and et al., such philosophy is called pragmatism. In this regard, a high value is set on the surrounding and influencing economic, social, and political environment of the identified phenomena. The intention is to draw patterns among occurring events by studying these on an in-depth basis; this is known as social constructionism or subjectivism. (M. Saunders and et al. 2009, 109-111, 119)

### 3.3.2 Research Approach of CR Study

A mixed-method approach, which is also called triangulation, was chosen to conduct the field study. Different research angles help to gain a true impression of the case realities. The utilization of several study methods is specifically necessary for case studies to fairly understand the collected primary data and draw conclusions. The practical research approach also relies on a combination of deduction and induction. Through secondary data research and consultations with informants from several areas, the field study was prepared in accordance with the top-down approach. The collected data is then compared with the exploratory data and transferred back to the broader picture in terms of a bottom-up approach. (M. Saunders and et al. 2009, 124-128, 146, 602)

### 3.3.3 Exploratory CR Study

In advance of the study among the field site, secondary data was analysed to gain a broad picture of HR abuse in LA economies generally and the sugar industry specifically. Due to the novelty of the theoretical framework, only cases that were heard since the beginning of the last decade were selected. Special focus was laid on comparative HR violation cases, in which the victim’s physical or mental health was affected. Relevant survey reports, scholarly, and journalistic materials were collected and reviewed. Meaningful corporate claims showing similar patterns than the field study case were selected for theoretical and practical reasons. The insight into other cases was a useful
practice to analyse the applicable legal basis, proceedings, and findings. Theoretically, further conclusions to answer the research question could be drawn by identifying trends in adverse corporate HR impacts.

Former research results on the labour conditions of sugarcane harvesters in LA and the selected field site were perused, as well as studies with regard to the health epidemic, which identified suggested causes of the kidney disease and related risk factors. For this purpose, medical and legal research papers were used. Company reports, government publications, and national media reports were read to evaluate the current position towards the study population and identify dilemmas. The whole processed data might be useful at a later point to be able to fairly evaluate collected primary data and transfer findings beyond the field study’s context. (Based on: M. Saunders and et al. 2009, 69)

3.3.4 Field Site Investigation for CR and LIF Study

Both – LIF and CR – studies were supplemented with field site observation and informant knowledge. Visits among the region of investigation were undertaken individually or together with LIF. The area was observed to understand the case relations and stakeholder characteristics.

Medical, political, juridical, economic, and civil society informants were interviewed on a loosely formatted basis to gain context-specific knowledge. Experts from local interest groups13, who conducted studies among the selected study site, were consulted to learn from their experience.

One focus group was organised to discuss the chosen LIF study elements and proceedings. For this, a small sugarcane community other than the selected field site was selected, due to confidentiality reasons. This group, to which LIF had built a trustful relationship, was led by three women who were not dependent on the sugarcane industry. This reduced their risk of study involvement. The women organised confidential group meetings, in which also men could participate.

With support of local LIF community organisers and legal experts, community outreach activities were undertaken to build trust and gain access to the local population among the research site. The presence at meetings organised by grassroots-organisations was

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13 Between February and April 2013, consultations were undertaken with: the clinical research institute at UNAN-León, the social organisation called Council of Protestant Churches of Nicaragua (in Spanish: Consejo Nacional Evangélico de Nicaragua CEPAD), the union named Labour Confederation of Workers (in Spanish: Confederación Sindical de Trabajadores CST-JBE), and the environmental and HR department at Centro Humboldt, that builds an alliance with two governmental HR institutions.
advantageous to discover alleged RV and challenges such as the accessing of remedies. Home 
visits of families, who are adversely affected by economic activities, were good opportunities 
to learn more about the problems and needs of the workers and their families.
LIF legal counseling was offered to local informants. This was an additional way to display 
credibility and to follow the field study’s ethical norms explained below. While informants 
were acquainted with the purpose of consultations, the study population was not informed 
about the preparation of the LIF study to maintain secrecy.
Records of the gained information as well as any kind of incident relevant to the case were 
kept on the same day. Pictures, voice recordings, and video footage were only taken where 
appropriate and with consent of the persons involved14. The names and photos of informants 
are only outlined by agreement, and if there is no conflict with the ethical study protocol 
described below.

3.3.5 Descripto–Explanatory LIF Study
Primary data is used to determine the nature of corporate compliance with labour 
protection laws and standards and to discuss adverse impacts on a worker, which is 
known as a descripto-explanatory investigation (according to: M. Saunders and et al. 
2009, 139–140, 320, 322, 375, 387, 394). Found on the entire research findings, the 
LIF study was prepared to obtain quantitative and qualitative data on working and 
living conditions among the research site. Study variables of interests were selected in 
accordance with identified relevant regulations. Based on these, codes of conduct15 for 
the local private and public sector were defined. With help on these principles, 
consultations within the LIF legal team, and input from other LIF staff members and 
local community informants, a set of questions was formulated.

3.3.5.1 Questionnaire Design
The data collection instrument of the LIF study was designed in form of a questionnaire 
to conduct structured interviews that have a maximum duration of three hours. 
Questions were framed to be open questions or list questions, which can be answered 
with ‘yes, no, don’t know’, or offer other possible answers with regard to a specific topic.

14 Photographs or video footages were taken in person, by LIF staff members, or supporting journalists that accompanied the field site visits.
15To give some illustrative examples of the codes with regard to the main study variables – FLS: "[1] All workers shall be able to participate fully, without fear, abuse, or intimidation, in all union affairs [2] No company under any circumstances should engage in the use of forced labour. [3] Children younger than 18 years may not carry out any type of employment which by its nature or the circumstances harmful to their health, safety or development. The employment of persons under the age of 14 is prohibited Companies shall ensure that subcontractors don’t make use of child labour. [4] All workers enjoy equality of conditions of work.
16Please note that due to the length of the questionnaire, it was not attached to the thesis but could be provided on request.
Filter questions were utilised to ensure the fast flow of the questioning and avoid questions that could not be answered by the respondent. The questionnaire was developed in English language. Then, it was translated into Spanish and back-translated into English to verify the questions. The wording was reviewed and adopted to the local context with the support of native speakers.

3.3.5.2 Study Population

Representative cluster sampling was used as the best suitable technique to achieve the LIF study goals (as also stated in: M. Saunders and et al. 2009, 214, 230). As study instruments, 30 current and former sugarcane labourers who were or had been employed at the Grupo Pellas’ owned ISA sugar mill were selected. The study population only involved sugarcane labourers who were directly employed or indirectly through subcontractors. Participants could work on the plantation or in the factory. Possible study respondents included males and females of all ages. Due to associated risk factors of negative health impacts, which will be presented in section 4.3, male sugarcane workers younger than 55 years of age were of particular interest. Selected individuals live in the town of Chichigalpa or the surrounding rural communities.

The defined sample size accounts for up to one percent (%) of workers who are employed every harvest season. Although a comprehensive monitoring of labour conditions would include the systematic investigation of a large study sample of the working population, the situation at the time of research did not allow for further outreach. Recent experience has suggested that the risks for participants in studies regarding the cause of the health epidemic have increased. Such risks include but are not limited to: shortening of benefits, dismissal, and intimidation. For these reasons, the study population was restricted to a small confidential group organised by the community contact person. Visits to the sugarcane fields would have been advantageous to gain access to the working population and observe the working place; however, entrance to the sugarcane plantations was refrained due to the above-mentioned risks for study participants.

An extensive research of labour conditions would have further included qualitative interviews with other stakeholders involved in the Nicaraguan sugar industry. These may include: plant managers and supervisors employed at Grupo Pellas and the subcontracting corporation, as well as labour union leaders and governmental labour
inspectors, who work among the studied business environment. Such information could have been valuable to identify major challenges within this industry and how the worker’s conditions could be addressed effectively. However, the inclusion of some stakeholder groups was also evaluated as a potential risk factor towards the secrecy of the study. Consultations with the key informants mentioned in section 3.3.4 were deemed to be adequate for the scope of the present study.

3.3.5.3 Procedure of the Questioning

Three test interviews were undertaken prior to the launch of the LIF study to assess the practicability of the questionnaire and improve the tool respectively as well as to provide a tutorial for interviewers.

To ensure the highest level of confidentiality, a range of measures had to be considered. The conduction of the study was held officially confidential. One LIF community leader, who is trusted by workers at the selected field site, identified interested respondents a few days before the beginning of the study. Respondents received an identification number that they brought to the interview. The number was used to codify the questionnaire. The interview teams were not informed about the names of respondents. Only the community leader and the research director had knowledge about the identity and were able to verify it afterwards. In this way the participation of unknown persons was avoided and the respondent’s anonymity guaranteed.

Structured interviews administered by the interview teams were conducted with the selected study population. Three interviewer teams consisting of one foreign and one local researcher conducted the questioning. The teams were composed of one male and one female questioner. In accordance with the interview protocol, one interviewer asked the question while the other wrote down the answer. Both were allowed to ask questions for clarification.

The Spanish-language interviews were conducted in person at three different locations, two of which were outside of the field site. It was the intention to provide respondents with the opportunity to participate in the study at a place other than their hometown. Charges were prepaid and free food and drinks were provided. The timetable allowed a maximum of three interviews per team and per day with a break of at least one hour.

17 Our team did in total seven interviews. The interview was conducted in person while the interview partner was filling in the questionnaire. Our team decided independently on this role allocation to maximise the collection of data, and minimise language barriers.
between the interviews to prevent encounter of respondents. Interviews were arranged in the morning starting between 8 and 9, during the day between 1 and 2, and in the evening between 5 and 7. Respondents were able to choose one of the available locations and the time of the interview. Depending on the interviewee’s information, the duration of the questioning lasted between one and three hours. Four hours were scheduled per interview considering the time of the survey, breaks and extra time.

3.3.5.4 Management of Survey Data
After each interview day, the filled questionnaires were collected by the research director and stored away from unauthorised. Electronic copies of the surveys were made and saved with the HR bulletin system called Martus to guarantee a secure storage in electronic format. The interviews were translated into English, the data was codified\(^\text{18}\), and entered into Excel format by the LIF legal team. Then, the data was provided for the analysis process.

3.3.6 Data Analysis
The data was analysed individually with the goal to gain an overall picture of the actual CR situation. Single respondent information of the LIF study is only cited if it is of significant importance to undermine an argument and represents the other respondent’s given reports. Informant knowledge and field site observations provide background information. The findings are presented in accordance with the questionnaire structure.

3.3.7 Reliability and Validity
There might be some errors or biases caused by the observer or the respondent. The risk of drawing false interpretations during the collective or individual research phases cannot be completely eliminated. Influencing factors could be language barriers, cultural differences, and personal perceptions.

The broad research prior to the LIF study was undertaken to maximise the validity of primary data collection. Although the questionnaire was developed with the help of local researchers, the formulation of the questions and vocabulary used might be incomprehensible, leading to ambiguous data. Respondents were informed about the importance of truthful answers; however, they might give biased answers for whatever reason. For example, intimidation by opposing organisations or individuals was

\(^{18}\) 1=Yes, 2=No, 3=Do not know, 4=No Answer, 5=Always, 6=Sometimes, 7=Never. Qualitative answers were adopted.
identified to be a possible influencing factor. To minimise the threat to reliability due to intimidation, the utmost secrecy of the study with regard to its realization in general, the time of conduction, and the selection of a confidential group of respondents was highly important.

The effectual value of the selected theory for the CR study has not been proved yet due to the novelty of the UN approach. The intellectual father, John Ruggie, had been conducting a broad study to define global guidelines that represent a majority opinion; however, its local value was not analysed in advance of the study. Applicable legal regulations were additionally considered to achieve a stricter definition of CR. The study's interpretation of the term CR may not reflect the moral concepts of others. The institutional context is unique, which influences the understanding and expectations among the area of research. The pragmatic and triangular research approach of the thesis shall enable the understanding of the case realities from several perspectives. The gained picture depends on collected primary and secondary data, which may not represent the view of majority.

It cannot be predicted in early stages of the research process if the collected data can be generalised beyond the LIF or CR study, as there might be measurement bias compared to other studied cases. The study findings provide at least a real example that possibly discovers and helps bridge gaps between theoretical and practical perspectives with regard to business responsibilities for worker rights. (Based on: M. Saunders and et al. 2009, 156–158, 297)

3.3.8 Delimitations

Based on the requirements towards the implementation of the UN model, a framework adapted to the selected case by the LIF legal department was utilised, being aware of the fact that the application to a specific country context restricts the transferability to the umbrella theory and other cases to a certain degree.

The primary study findings are for information only and are not directed to be used as evidence for a complaint. The assessment variables were for the major part defined through global standards, to which the studied corporation is not directly liable. Identified violation of the determined norms does neither guarantee subsequent compliance of the studied business, nor enforcement through responsible authorities.
This field study only focuses on a single corporation excluding all other forms of organisations. The study outreach is delimited to the area that is exclusively operated by the local business. The research only evaluates direct corporate acts and resulting impacts among the sphere of responsibility. These restraints may limit the interpretation of study findings to other business cases and areas that are affected by the health epidemic.

While this range of facts highly limits the scope of CR and the achievement of the study goals, the research strategy follows the conditions of an implementable UN framework.

### 3.3.9 Ethical Considerations

During all stages of the individual and collaborative research process, ethical issues had to be considered, in which the guarantee of confidentiality and anonymity was of highest importance. Due the context in which the research was conducted, the primary ethical concern was the security and well-being of the study population: respondents should not suffer any form of harm as a consequence of their participation. Principles seeking to ensure the security of study participants and researchers were defined to regulate interview processes and minimise associated risks. Prior to the LIF questioning, participants were consulted about possible risks and consequences. Respondents were further informed about the idea behind the study as well as the storage and usage of collected data. The voluntary participation and the opportunity to stop the questioning at any time or not answer specific questions were also clarified prior to the questioning. At the end of the interview, respondents had the opportunity to express any concerns and also received contact information of LIF’s local lawyer in case of any subsequent issues. Promises regarding any prospects of positive changes of local conditions were refrained and the role as an independent observer was emphasised.

Names of the LIF study respondents are unknown. Informants’ names will only be stated upon approval. However, informants may not be aware of consequent risks for which reason identifying information will only be outlined if security is undoubtedly ensured. (Based on: M. Saunders and et al. 2009, 183–202)
4 THE CONTEXTUAL BACKGROUND OF THE FIELD STUDY IN NICARAGUA

Based on secondary data research and enriching primary knowledge, this section presents the field study context by providing several angles of research backgrounds. Informant’s knowledge and observations are outlined separately. Accordingly to the theoretical framework, the studied industry and its social environment, the Nicaraguan institutional context, and former applied grievances are presented.

4.1 Presentation of the Observed Field Study Site

The city of Chichigalpa is located around 50 kilometres north of the city of León. A huge advertisement of the locally produced rum and an election poster of the acting Nicaraguan President Daniel Ortega labels the entrance of the town. Along the road towards the centre, the sugarcane production fabric outstands through its massive surrounding white walls and wooden gate. A few meters ahead, a small monument built in honour of the workers’ loyalty for the company’s 100th anniversary is hidden beyond a small black metal fence.

The paved main road leads past colourful solid houses. There is one major supermarket but also residents, who are called Chichigalpeños, sell basic products on the street market. A few driving minutes later begins the dirt road into the town’s extreme impoverished outskirts. Guanacastal Sur consists of five smaller communities. One of these is La Isla (in English: “the island”) which can only be reached by crossing a river that surrounds the village. A few years ago, a bridge was built to guarantee the villagers access, especially during the raining season. There is one little kiosk that sells staple foods and soft drinks, but no water. While some houses are smaller brick homes others are built out of wood and plastic foil. Rusty metal roofs heat up the inside of the houses. The furniture encompasses the absolutely necessary such as a bed that is covered with a mosquito net, a closet and some plastic chairs. Family portraits decorate the walls. Light bulbs are available and usable at night if energy is available. Toilets are found

(Photos: Anita Aufrecht)
outside of the house. Small cooking areas and fireplaces as well as shallow wells are located in the yards. Beautiful flowers and some few fruits like bananas grow in the gardens. While vegetables are not cultivated in these gardens, one or two pigs and chickens belong to people’s stock. Despite the river, sugarcane plantations encircle the community, which provide almost the only income resource for residents. During the day, mostly women are seen around the houses as their husbands and sons are either working on the fields or have already passed away. The community is internationally known as the Island of the Widows, due to the high number of men who have fallen victim to kidney failure.19

The informant Maria lost her husband and two young-aged sons, who she had to send to work to support the family. Then, she went working by her own on the sugarcane fields and got sick as well. She had to move far out of Chichigalpa where she lives in extreme poverty (interviewed on 22 April 2013). Paula is a widow living in La Isla with her daughter and granddaughter. Alternative employment opportunities for women are almost non-existing, she complains. Current sugarcane worker Angelo, who lives in La Isla, worries to get diagnosed with kidney disease, but mentioned the necessity to continue working. (both interviewed on 29 January 2014). The family of Lino, who passed away on 18 February 2013, reported about the health impacts of working conditions, poor medical attention, and consequences of the health epidemic for the family and community as a whole. Lino’s son Jimmy, who is aged in the mid-twenties, is also sick and fears the same fate as his father. (Note: full names are confidential)

The cultural impressions received appear slightly humble-minded and paralised. People expressed contentedness with very little. The desire for a big change, especially with regard to social development, was rarely expressed. Discontent seems to be often associated with unfair treatment, or the incapability to address the needs of society by public officials or businessman. The voice of the CKDu-affected population unitarily speaks against corporate acts. While demands are mostly ignored, also opinions about solutions in the community itself differ: some go to streets to demand compensation or are expectant that their neighbours make achievements that count for everybody, others abandon to their fate, and yet others take sides with the corporation for their own benefit. Many seem to surrender the dependence to the major employer and its economic predominance. The achievement of better conditions is often connected to economic migration to a developed country.

19 Similar conditions are found in the small indigenous village Goyena, which is further confronted with another grave adversity. The community is located a few kilometres outside of León and accessible via an unpaved road. Due to its isolation and geographical distance to the field study site, Goyena was selected for consultancy with a focus group.
4.2 The Sugarcane Business in Chichigalpa

Sugarcane has an agricultural output of around five million metric tons on average and is by far the most important cultivation in Nicaragua. (J. Bolaños 2011; FAOSTAT 2014) The monocultural production and commercialization for external and internal markets is controlled by four main sugarcane refineries. The primary producer is Nicaragua Sugar Estates Limited (NSEL), owner of the San Antonio Sugar Mill (in Spanish: Ingenio San Antonio (ISA)), and fully-owned subsidiary of Grupo Pellas. NSEL was established in 1890 by Francisco Alfredo Pellas. Nicaragua’s oldest sugar mill ISA was founded two years later and taken over shortly after by NSEL. Today, the business is led by the family’s fifth generation under the direction of Carlos Pellas Chamorro. Grupo Pellas and the subsidiaries NSEL and ISA (in the following only referred to Grupo Pellas), exclusively operate the sugarcane plantations in Chichigalpa.

![Photo: Anita Aufrecht]

**Political Background**

<table>
<thead>
<tr>
<th>Ricardo Esteban Lopez is a guide in the revolutionary museum in León, sharing the history of his country.</th>
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<tbody>
<tr>
<td>Next to bananas and coffee, sugarcane has been of major importance to the Nicaraguan economy, he says. Since the beginning of the 20th century, American political rulers were fighting over the control of its production and trade. While Augusto César Sandino wanted to keep its profits within the internal market, Anastasio Somoza García had his eye on the northern American policymakers. With the murder of Sandino in 1934 through Somoza, a 45-year dictatorship had begun. Somoza himself was killed by a Sandino supporter but gave his political heritage to his sons that continued to rule his empire. Although the private sector had not been supporting the political elite to the major extent, businesses obeyed the rulers. With increasing dissatisfaction of the Nicaraguan population, the rebellion originated in the streets of León, where Lopez fought as a 17-year old boy.</td>
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<td>Armed conflicts spilled over to other regions, and the Somoza family regime collapsed in 1979. The persisting contra-revolution was declared terminated after the UN intervened successfully. In 1990, free elections were held, ushering in a new political and economic era. After 16 years, the revolutionary party Sandinista National Liberation Front (in Spanish: Frente Sandinista de Liberación Nacional (FSLN)) won the elections for the first time. Since 2006, the socialist democratic FSLN party has been led by the office-holding president of Nicaragua, Daniel Ortega. His relation to one of the country’s most important businessman, Carlos Pellas, is said to be close and friendly, according to Lopez. (31 March 2014)</td>
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28 According to the J. Bolaños (2011), the major purchasers of Nicaraguan sugar in 2010 were the USA followed by India, Venezuela, Russia, and Mexico.
With the termination of nationalisation and the beginning of privatisation in the 1990s, the Pellas family business has developed into a diversified conglomerate operating in all three economic sectors. The cultivation of sugarcane serves for the fabrication of raw sugar and the country’s internationally recognised and awarded rum with the brand name Flor de Caña (in English: “sugarcane flower”). The output of the sugarcane plant is also used for the production of ethanol, biofuel, and energy. Next to agricultural products, the corporation’s business activities include insurance, healthcare, telecommunication, tourism, banking, automotive marketing, and the distribution of computers and software. Grupo Pellas is the parent group of 25 subsidiaries and invests in the US as well as Central America and the Caribbean. ISA is one of these divisions, having the highest capacity among Nicaragua’s producers, with around 20,000 tons of cut cane per day. (NSEL 2009; Grupo Pellas 2013; CNPA 2014; Flor de Cana; STR 2009)

ISA is not only the major producer but also the principal customer of the around 650 independent producers that additionally supply the major sugar mills\(^{21}\) with sugarcane. The Pellas’ sugar business is the principal employer in the town of Chichigalpa and its surrounding small communities with a workforce of approximately 3,500 permanent administrative labourers and 3,000 temporary workers who do field work during the sugarcane harvest period from November through May. (PASE and ILRF 2005, 10–12)

4.3 CKDu Epidemic: An Occupational Disease
Sugarcane plantations offer the only accessible work for the majority of local population in the region of Chichigalpa; however, generations of sugarcane harvesters in these fields suffer from an epidemic\(^{22}\) of Chronic Kidney Disease of uncertain Aetiology\(^{23}\) (CKDu). CKDu occurs along the pacific coast of Central America where already around 20,000 people have fallen victim to the disease over the last two decades (S. Chavkin 2014). The prevalence number of CKDu affection in rural agricultural areas has been increasing during the last years (M. Almaguer and et al. 2014). Nicaragua records one of the highest CKDu mortality rate in the region, with more than 3,000 estimated death cases between 2005 and 2009 according to PAHO/WHO (2013) and C. Salinas Maldonado (2013). In Chichigalpa, the health epidemic is the major cause

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\(^{21}\) The other refineries are Mill Monte Rosa, Mill Benjamín Zeledón and Mill Montelimar which are situated in other lowland regions along the Nicaraguan pacific coast.

\(^{22}\) The term epidemic shall be understood as a disease that occurs at an unusually high rate.

\(^{23}\) Interviewed medical experts acknowledged that CKDu is an epidemic on the rise. While CKD is associated with obesity, diabetes, and hypertension; CKDu is associated with harsh agricultural work in hot lowland climates. Both diseases lead to the deterioration of kidney function to filter waste. The damage is irreversible in advanced stages where only a kidney transplant would save the patient’s life. In the given context this option is not given due to the high treatment costs.
of death among the male population, where 46% of male deaths between 2002 and 2012 were from CKDu and 70 to 75% of these men were between 35 and 55 years old, as reported by J. Meléndez (2012) and J. Glaser and I. Weiss (2014). A representative study within the small communities La Isla and Candelaria, which are located near Chichigalpa, found that 68% of the male population is sick from CKDu and about every third between the age of 20 and 29 suffers from end stage renal failure (C. Torres and et al. 2008, 24). These numbers demonstrate the high disease risk among young male agricultural workers.

<table>
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<tr>
<th>The fight of Juan Salgado against CKDu</th>
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<tr>
<td><strong>Juan Salgado</strong> had been cutting cane for 36 years in the ISA sugarcane fields. He has seen many of his colleagues falling victim to kidney failure. He remembers that the disease first occurred in the 1980s. While the exact number of death cases cannot be determined due to a lack of past recording, he believes that several hundred residents, who had been working at ISA, died of CKDu. In his hometown of Chichigalpa, there are around two funerals each day that are said to be due to the epidemic. In 2001, Salgado was diagnosed with CKDu at the age of 53. He was immediately fired. Since then, he has demanded compensation. As he fulfilled the legal requirements of the social security law, he receives a small pension. Salgado is also financially supported by his family. With the new law that had passed in 2004, he received the right of an indemnification, which the corporation had not paid until today. To protect future generations from CKDu, Salgado has been advocating for better working conditions, and co-founded LIF.</td>
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Recent studies indicate that the high rates of CKDu in Western Nicaragua are linked to the poor working conditions of agricultural labourers. A specific cause has not been determined yet; however, study findings suggest causality between CKDu and occupational or environmental risk. Accordingly, multiple factors have been identified as a likely cause for CKDu and might be responsible for the escalating prevalence of this disease. These factors are: long working hours and lack of rest, heat stress, toxic poisoning through the exposure to pesticides, chronic dehydration, and excessive consumption of sugar. (C. Torres and et al. 2010, 494; O. Ramírez Rubio and M. Kangsen Scammell 2011; Richard J. Johnson and et al. 2014; N. Raines and et al. 2014)
In addition to the above-mentioned study findings on the cause of CKDu, studies allege that corporate non-compliance with regulations, in conjunction with a lack of enforcement through the state, has had adverse impacts on the conditions of work, posing additional risk to the health of sugarcane workers and their surrounding communities. (PASE and ILRF 2005, 62-63; STR 2009, 9ff.)

4.4 LR Violations on Sugarcane Harvesters in Nicaragua

Former studies, publicised by several research organisations, describe harsh working conditions on the sugarcane plantations. Non-compliance with FLS by the Nicaraguan sugar industry was reported to some extent, such as the violation of the rights to unionise and the abolition of child labour. The common business practices of illegal and subcontracted employment for the mostly seasonal work are accompanied by the violation of working hour restrictions, and neither minimum wage nor salary protection laws are said to be respected. According to several statistical findings, between 70 and 90%24 of the 135,000 harvesting workers, employed in the Nicaraguan sugar industry, are indirectly recruited. The manual labourers work ten to twelve hours a day with a maximum of two resting days per month, which adds up to 84 hours of work a week.25

Labour conditions for directly and indirectly employed manual workers are not identical. Inequalities are identified with regard to wage levels; however, both worker

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24 According to two independent studies of STA as well as the Campaña Regional contra la Flexibilididad, more than 70% of Nicaraguan sugarcane workers are indirectly recruited. The PASE and the ILRF identified 85% of subcontracted working population. The PIRM estimates that even around 90% are subcontracted.

25 The schedule clearly exceeds the limitation of working hours for agricultural harvesters which is regulated by the Nicaraguan Labour Code No. 185, Article 51, 53 and 58.
groups are predominantly paid below the national minimum wage of eight USD. Subcontracted labourers are further, for the most part, denied access to socio-economic benefits that are offered by the plant operators to contracted labourers. Poor protection from work-related dangers and diseases jeopardise the worker’s safety and health, compounding their already poor economic and social situation. Occupational hazards, such as the exposure to pesticides and work-related illnesses like cancer and kidney disease, are main risk factors for workers. The latter even developed into a health epidemic with an alarming high number of affected communities in Western Nicaragua, for which reason it was selected as one of the main research focuses and LIF advocacy efforts. (PASE and ILRF 2005, 25; 34-36; 47-64; PIRM 2009; STR 2009, 7; Campaña Regional contra la Flexibilidad26 2010, 23)

4.5 Claims and Grievances Against The Studied Corporation
This section presents past, current and possible future mechanisms available to hold the sugar-producing corporation accountable and enforce compliance with existing laws and standards.

Research on former filed claims against the Grupo Pellas corporations found only one major case in which a market-related instrument has been used to enforce CR. In the name of CKDu-affected communities, the Center for International Environmental Law filed complaint to the Compliance Advisor Ombudsman (CAO) in March 2008. CAO is the complaint mechanism for projects that were financed by private investors of the World Bank Group27 and are alleged to adversely affect communities. In 2006, a 55 million USD loan was granted to the Grupo Pellas’ subsidiary NSEL to facilitate production expansion. An agreement to address this claim was closed between CAO, NSEL and the grassroots-organisation called Chichigalpa Association for Life (in Spanish: La Asociación Chichigalpa por la Vida (ASOCHIVIDA)).

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26 This paper particularly outlines labour rights violations among subcontracted workforce in the Nicaraguan sugar industry as well as other industries.

27 Informants acknowledged that in the studied case, the International Finance Corporation was the sponsoring body. The German Entrepreneurial Development Cooperation KfW/DEG was also part of this investment to increase sugarcane production in Nicaragua and accordingly bio-ethanol imports for the German market. The foreign investor and NSEL committed to an additional grant of 320,000 USD for a clinic that would treat CKDu patients in Chichigalpa. By the end of 2013, the Nicaraguan ministry of health rejected the donation. To get more information about this event and the CR status of international stakeholders, a direct inquiry was sent personally via email to the vice president of the KfW/DEG (name is treated confidential as the permission of usage was not requested). In the reply on 28 February 2014, the rejection was confirmed but the circumstances were also unclear to the bank. The investor showed interest in the happenings on the ground and declared the intention to fulfil its corporate codes of conduct. Consultations between the involved parties were pending during the time of research. This example provides evidence on the difficulty for collaborative efforts in addressing adverse HR impacts.
ASOCHIVIDA was formed by ex-sugarcane harvesters affected by CKDu, of whom the informant Juan Salgado was one. According to him, the organisation first filed a complaint at the court in Chinandega, which is the next major city near Chichigalpa. The case was denied in 2005, but the plaintiffs appealed on points of law in the court of León. The claim is still pending due to a lack of appearance. Salgado also signed the complaint to CAO.

With the beginning of the CAO process, he was denied membership to ASOCHIVIDA due to his involvement with LIF and the international media, he was told. He believes that the organisation does not represent the interests of the workers anymore. To his knowledge, other major or individual lawsuits against Grupo Pellas do not exist, what he associates with a lack of access and high corruption within the system of justice.

As a result of the filed complaint to CAO, the corporation launched a study to research the cause of kidney disease. The study was conducted by Boston University School of Public Health (BU). The cause of the disease could not be determined, nor was causality between working conditions and CKDu proved. A relation to business practices was concluded as unlikely, although the majority of interviewed medical experts and study findings by BU researchers suspect a CKDu-work-relation. Grupo Pellas relies on the BU conclusions and rejects any responsibility in public. The BU study did not investigate a large sample of the working population and mostly relied on the company’s statement about the working conditions on the sugarcane fields. The research institution has recommended further studies but argues that an implementation would be too time-consuming and contravene the involved parties’ desire to find a fast solution.28 After three years of direct involvement, CAO handed over further negotiations to the two local parties and has continuously fulfilled a monitoring role. The proceeding is pending and will be closed if compliance with the agreement will be achieved. (CAO 2009) This process was identified as the major promising instrument of international nature.

28 This argument is based on the review several CAO and BU documents: D. Brooks and M. McClean (2012, 4); A. Aschengrau, and et al. (2012, 19ff.); O. Ramírez Rubio and M. Kangsen Scammell (2011, 11–12). It is worth noting that also some informants mentioned contradictions to some extent between the study findings and its conclusions. Informants acknowledged that BU has launched another study period of three years with a first investigation team coming to Nicaragua in February 2014.
Carmen Rios founded the social organisation called ANARIC\textsuperscript{29} to defend the rights of sugarcane communities. She lost her husband and several family members to CKDu. For years, the widow has been living in a protest camp on the edge of a busy road near the Grupo Pellas' headquarters in Managua. ANARIC has been demanding a pension for workers who became too sick to work and have been trying to engage in a dialogue with the corporation and the government. Due to her experience, it is extremely difficult to gain access to fair proceedings that provide compensation for CKDu-affected communities. One of the major mentioned challenges is the power inequality between members of society and the private and public sector. In her opinion, the Nicaraguan government acts on behalf of the corporation and neglects people's demands. ANARIC also seeks support from the international community to overcome local obstacles. (03 April 2014)

A grievance mechanism, which could possibly be used in the near future, is the European Union / Latin American Free Trade Agreement. It is the first treaty that directly relates market access and the compliance with FLS through Article 42(f). In case of abuse, market access could be sanctioned; however, the effectiveness of the treaty may be questioned.\textsuperscript{30} As mentioned above, Nicaraguan sugarcane products such as bio-ethanol gain preferential access.

While other grievance mechanism might be relevant as well, these proceedings have been identified as highly significant, due to the several involved interest groups, wherefore this section was limited to these means. The minor or incapable role of the Nicaraguan government was remarkable. The next section presents the virtual role of the state.

4.6 The Nicaraguan State's Duty to Protect
This section lays the fundament for the research findings by presenting the institutional background with regard to FLS at the workplace in Nicaragua. Corporate HR responsibilities are defined under international laws and directly imposed on national states having the duty to enforce the law.

\textsuperscript{29}The meaning of this abbreviation could not be identified.
\textsuperscript{30}A critical report about negative impacts on societies and the environment in LA countries in general and Nicaragua in particular due to increased production facilitated by this trade agreement can be found at the referred report, namely: Expansion of Palm Oil & Sugarcane Production and free Trade Agreements between the EU, Colombia, Peru and Central America, which was published by the campaign called: Not all that is green is good.
Nicaragua is a signatory to the nine UN HR Core Treaties\textsuperscript{31} and the eight ILO Core Labour Conventions\textsuperscript{32}. The Nicaraguan Constitution protects and recognises international HR to all people within national borders through Article 46, and upholds universal rights at work to everyone by Article 80. Conclusively, Nicaragua guarantees internationally recognised HR and LR by national law.

LR protection for sugarcane workers in Nicaragua are further provided in several law codes of Chapter IV in the Nicaraguan Constitution, the general Labour Code, the general Law on Health and the additional Law on Occupational Risks and Diseases as well as the Social Security Law. On paper, protective regulations in Nicaraguan laws can be evaluated as sufficient to protect sugarcane workers from occupational risks and harm.

While CR to comply with national labour laws account for directly employed workers, Nicaraguan laws also impose employer responsibilities for subcontracted labourers. According to Article 119 of the Labour Code, employers are responsible for the occupational risks subcontracted workers are exposed to\textsuperscript{33}. Since 2004, CKDu is defined as an occupational disease under Nicaraguan Health Law providing additional protective regulations\textsuperscript{34}.

Several ministries are authorised with the implementation and enforcement of laws. The Nicaraguan Ministry of Labour (in Spanish: Ministerio de Trabajo (MITRAB)) is the responsible governmental body with regard to labour conditions. There are eight labour courts on the regional level that hear cases of labour law violations and forward them to the national labour court in case of approval. The Ministry of Health (in Spanish: Ministerio de Salud (MINSA)) and Nicaraguan Institute of Social Security’s (in Spanish: Ministerio de Seguridad Social (INSS)) Insurance Scheme are in charge of health and social security services.\textsuperscript{35} In conformity with the Paris Principles, Nicaragua has established a national HR institution to promote and protect international HR

\textsuperscript{31} Core Conventions are outlined in appendix III (OHCHR 1996-2014)

\textsuperscript{32} Core Conventions are marked with an F in appendix III (ILO 1996-2014)

\textsuperscript{33} This article rules that employers, when they contract through intermediaries, are responsible for professional risks that suffer their workers (in Spanish: "Los empleadores, cuando contraten a través de intermediarios, son responsables de los riesgos profesionales que sufren sus trabajadores")

\textsuperscript{34} Additional law of professional risks and diseases to the law No. 185, law No. 456 (in Spanish: Ley de adición de riesgos y enfermedades profesionales). Article 3 rules that [...] the Ministry of Labour may punish with the suspension or halting of any company or institution that infringe the dispositions (in Spanish: "[...] el Ministerio del Trabajo podrá sancionar con la suspensión o paralización de aquellas empresas o instituciones que infrinjan las disposiciones [...]". Article 6 rules the right to file a case against the violating employer.

\textsuperscript{35} For a deeper presentation of the governing body's responsibilities please see CAFTA LR Report (2005, 120–21)
norms. The body educates and informs public or private actors about HR and institutionalises international HR instruments. The agency monitors HR violations ex officio or by denunciation and files a complaint in case of alleged HR violations. In the field study case, state intervention was observed as being insignificant. To understand this phenomenon, other cases were investigated, which findings are presented in the next sub-section.

4.7 Comparative Cases of HR Violations in Nicaragua

The research on HR violation cases in Nicaragua found complaints against corporations and the government. Three cases of major significance were selected to demonstrate the processing and relevance to the given field study context.

In the late 1990s, the Taiwanese textile company Chentex was accused for the violation of its worker’s right to form a union to collectively bargain against other HR abuses at their workplace. Workers who had submitted a list to the MITRAB to announce the built union were terminated the day after by Chentex. The ministry was consequentially accused to giving the list to the company, instead of guaranteeing worker’s rights. Due to advocacy campaigns by local and foreign organisations as well as an organised strike, workers who were dismissed for union activities were reinstated. The corporation, located in the Las Mercedes free zone in the Nicaraguan capital Managua, threatened to disinvest due to refusal to accept labour organisations. After three years of negotiation, an agreement was closed between the union and the employer and the filed lawsuits were withdrawn by both parties. (Institute for global Labour and HR 1998; Clean Clothes Campaign 2000)

Final disinvest was the outcome of the case against the Spanish conglomerate Union Fenosa. The former monopolistic energy supplier in Nicaragua, was alleged of serious violations of their workers’ FLS, such as the right to unionise. Further, the contracting out of employees was identified as a business practice to escape accountability and hinder union formation through short employment periods. (Campanía Regional contra la

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36 For more information about the institution see: Procuraduria para la Defensa de los Derechos Humanos (2014)
37 Involved parties included the strike organizing Sandinista-based Chentex union and supporting NGOs in Nicaragua as well as labour-rights advocates in the investing country Taiwan and consumer country US.
38 Dismissed workers entered the plant to raise awareness among other workers and gain support where they were threatened by the company’s armed security forces. Nicaraguan media reported the happenings and CENIDH arbitrated between the parties. On the same day an agreement between the union, Chentex, and MITRAB was concluded.
39 After the divesture of the former intermediate corporation, Union Fenosa organised a new subcontracting corporation taking over the heritage. 300 fired workers had not been paid their entitled compensation provoking labour movements and campaigns, which enforced payment on behalf of Union Fenosa and the disappeared Nicaraguan-owned subcontracting corporation.
The foreign TNC was also claimed for adverse social impacts due to the violation of the HR to an adequate standard of living and to development. Despite protests throughout Nicaragua demanding the government to expel the company, the government engaged in a partnership with Union Fenosa. After the case was heard at the Permanent People’s Tribunal on European TNCs in LA and recommendations were given to the responsible parties, the company sold its stakes in Nicaragua in 2013. The corporate claim for HR violations pended. (Transnational Institute 2007; T. Rogers 2013)

The most popular lawsuit for HR violations in the Nicaraguan context was filed against the government. The Mayagna (Sumo) Awas Tingni Community versus the Republic of Nicaragua has set a precedent for the protection of indigenous people’s rights in LA. For the first time in history, the Inter-American Court of HR has ruled in favor of the rights to community’s indigenous land and natural resources. Accordingly, the state failed to guarantee communal land rights by giving a concession to the Asian corporation Solcarsa for road construction and tropical deforestation. Through the resource exploitation among the respective 62,000 hectares of rainforest area, the Awas Tingni land would have been deteriorated. Community protests and claims were not responded by the Nicaraguan state. Due to this, the court decided that the state failed to provide access to efficient national remedial processes as it is regulated through the American Convention of HR, to which Nicaragua is a signatory. The court enjoins the Nicaraguan state from intervening in the respective land until efficient mechanism and land demarcation were instituted. The state was further ordered to pay compensation of a total of 80,000 United States dollars (USD) to the communities for physical and moral damages as well as the arisen costs of proceedings. The judgment obliged the state to report twice a year to the court and the case could only be closed under the condition of the complete fulfilling of the ruling. As the decision had not been enforced by the Nicaraguan government for two years after the ruling, a claim was filed by the community against the acting president and ten officials in January 2003. In the same month, a new law was passed addressing the ruling. The Awas Tingni was the first community receiving indigenous property titles under the new law in 2008. (ESCR-Net; C. Grossman and S. J. Anaya 2002)

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40 The sole plaintiff was the leader of the Mayagna Community (Sumo) of Awas Tingni, Jaime Castillo Felipe, who was acting in his own name and as a representative of the community. The claimant was sponsored by the Indian Law Resource Center and the University of Arizona Indigenous Peoples Law and Policy Program, which demonstrates the necessity of international support.

41 First, the case had been submitted to the Inter-American Commission on HR under Article 62(3) of the Convention where it got approved and handed over to the ruling court.

42 The violated Articles of the Convention are Article 1, 2, 21, and 25. Special emphasis was given to Article 29b which includes the state’s duty to guarantee amongst others: right to life, equality before the law, an effective judicial remedy, to be free from discrimination, to health, to a clean environment, and to own or collective property.
These three cases are examples in which international legal and non-legal grievance mechanism effectively enforced corporate or state accountability and provided access to remedies. The first claim was exclusively negotiated outside of courts, while the second example was heard through legal recourses and brought to an international court due to the foreign-country origin of the violating business. Both examples illustrate the difficulty to form labour unions and defend worker’s rights in the Nicaraguan private sector. The third case is of specific relevance because of the violation of indigenous people’s rights, which has set a precedent. All three cases showed that the Nicaraguan state did not fulfil its duty to guarantee basic rights to its civil society, and that national grievance mechanisms were highly inefficient in providing access to remedies. Despite the known RV, the Nicaraguan governments’ preferential treatment of the private sector over the harmed civil society was outstanding. Although it was not the intention, the research findings on major negotiated HR violation cases in Nicaragua only identified examples in which foreign-owned TNCs were involved.

In one of the country’s largest and Nicaraguan-owned industries, grievances for severe RV have been emerging as well, without observable consequences for the operating business to date. To gain a deeper understanding of this phenomenon, the respective corporate case has been investigated by means of a field study, which findings are presented in the following.

5 STUDY FINDINGS

This section presents the findings from the LIF study on the labour conditions among the Grupo Pella’s-operated sugarcane plantations, in which current and former workers have been selected as a study population. 29 structured interviews were completed in July 2013. The participation rate was 96.67% due to one non-respondent. The duration of each interviews lasted between one and three hours, depending on the respondent’s given information.

The questionnaire was divided into four main parts. First, demographic data was collected. The second part comprised working conditions, including the sub-categories: contracts, remuneration, working hours, provision of services, and health and security at the workplace. The third part referred to the three FLS: freedom of association, no child and forced labour. The fourth section included individual, social and political rights, in which amongst others the fourth FLS, non-discrimination, was a central theme.
After the demographic data will be outlined, the findings of the selected study variables will be presented. The major focus entails the four FLS, which are presented in more detail. The other studied variables are presented by demonstrating the most significant findings to describe the given context. Due to the small sample size and the accordingly low statistical significance, the studied variables mostly rely on qualitative data. Informant’s knowledge and observations, which were identified within the scope of the field study, are presented separately in boxes or footnotes to illustrate an issue in greater detail. An evaluation regarding the corporate compliance with the principles finishes each sub-section.

5.1 Demographic Data

28 men and 1 woman were interviewed from the age range between 19 and 56. Participants had a median age of 26 and an average age of 28. The literacy rate was very high with 96% of respondents reporting that they could read, and 93% who could write. Participants were residing in the city of Chichigalpa or nearby communities. They lived on average with five other household members and had 1 child.

The study population comprised 75% that were working during the time of study while the remaining 25% had been working in the past for the local sugarcane industry. The job was found through relatives, friends, or by directly asking managers.

Respondents verified that the Grupo Pellas’s subsidiary NSEL/ISA was the largest employer in town offering the only accessible income resource for the majority of population: “(the work is) for the poor, there are no other jobs” – Male, 21. As mentioned by the study population, there were only a few other available job opportunities around Chichigalpa, such as privately-owned small workshops or commercial businesses. Residents may not see other options to support a family than seeking an employment in the region’s largest industry: “we must eat and are forced to go the fields” – Male, 25. Although 86% of the study population attended high school, out of which 32% finished the maximum of five years, the job opportunities around the city are considered to stay the same: “[...] even if they (the residents) go to school, the only future is there (at ISA)” – Male, 26. While the larger part of workers that are employed in the sugarcane industry thought about doing other work, they were seeking an employment at ISA due to imperative. “I do not like the conditions at ISA (but) it is the only life source.” – Male, 20.43

43 It is worth noting that the variables in this paragraph were subordinated to the forced labour section in the questionnaire. However, according to the ILO, forced labour cannot be equated with: “pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives” (International Labour Office Staff 2009, 5). Accordingly, the lack of other job opportunities in the region of Chichigalpa cannot be associated with forced labour nor can it be attributed to the responsibility of the operating corporation.
Except of one respondent, who worked for a subcontractor without having a contract, respondents verified that they had ever had a fixed-term contract, which lasts between four and six month. Only two directly employed workers had an indefinite contract. To that end, the term of contract usually lasts for the harvest period; however, workers could be dismissed without notice at any time. The active working population accounts for around 0.007% of workers who are seasonally employed. 31% of these were directly employed at ISA while 48% were subcontracted. Three respondents acknowledged working for a subcontractor under a false identification card because they were dismissed at ISA through high levels of creatinine or CKDu diagnosis. Respondents that could not seek further employment reported severe social cuts. Of the study participants, 17% have ever shown high levels of creatinine and 14% have been diagnosed with CKDu. In total, 31% of those surveyed were somehow affected by kidney damage. Primarily they were working on the fields where they were highly exposed to risk factors of CKDu.

Reported jobs on the sugarcane fields included seeding, planting, irrigation, applying pesticides and herbicides, weeding, bundling and collecting cane with machinery. Cutting cane was executed at some point by 41% of the study population. Cutting burnt cane was reported as well although the combustion practice is said to be abolished by the corporation. In the sugarcane processing plant, respondents fulfilled tasks regarding packing sugar, storage, welding, masonry, repairing machinery. Few respondents were also involved in managing and financing tasks.

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44 The exact contract conditions could not be identified. Regulations that were mentioned by the study population entailed: job description, working hours, salary, and health and safety instructions.

45 The identified percentage lies below the estimates of other study findings mentioned in section 4.3. The number emphasises that workers are for the larger part subcontracted.

46 ISA and subcontractors verify the worker’s identity through their identification card called cedula. These are linked to the social security number and information about the worker’s health status. Subcontractors are said to be aware of the usage of false cedulas, but ignore it to be able to recruit enough people for work.

47 According to the informant Marvin Gonzales (MSc, UNAN-León), creatinine is a risk indicator for CKDu. Workers with a creatinine level over 1.2 are not allowed to work. The level might be increased by law to 1.3 to be able to recruit more workers. These workers are said to be put at a high health threat.

48 It is important to note that one 22-year old male respondent acknowledged that he had been diagnosed with CKDu after working for a subcontractor. As his creatinine levels had been decreasing below the required limit of 1.2, he continued working on the sugarcane fields as a directly employed worker.

49 Although the findings do not reach the outlined statistics in section 4.3, they still indicate the high number of workers who are affected by kidney disease.

50 If it would be of any interest to the reader, the study population specified the application of: Butane gas, oxygen for oxyfuel, urea, randon, 2,4-D, Gramoxone, Gimoxone, proC, and sapad.
5.2 Working Conditions Related to LR

The conditions of the working environment are vaguely defined under international laws and deeper regulated through national laws which determine the selected study variables in this section. The systematic monitoring of actual working conditions was of great significance because the chosen measures impact the workers' economic and social well-being.

(a) Wages

While the wages for sugarcane workers are extremely low, subcontracted labourers tend to earn even less than directly contracted employees. Wages are paid at two different payment windows called pegaso: one for directly employed, which is said to be a more formal process, and the other one for indirectly employed workers that get paid in cash and a less formal proceeding. Wages ranged from 600 to 4,000 Nicaraguan Córdoba (NIC) (equals 11.50 to 77 USD) for every 15 days. The high distinction might be associated with a difference in workload or working hours. Planters were identified to earn the lowest wages while mechanics and management employees earned the highest salaries among the study population. Cane Cutters, who get paid through a quota system, acknowledged to earn 20 NIC (0.9 USD) per cut ton of sugarcane. Harvesters, who work 15 days without a free day, specified a maximum salary of 4,000 NIC (154 USD), which was achievable for cutting 13 tons of sugarcane daily. The minority of respondents reported payment for rest or holiday days. Part of the wage is deducted for social security, for which employees receive a receipt called colilla. Low wages in conjunction with the enormous workload negatively impact the socio-economic situation of the sugarcane communities: "the simple fact is that the salary is not good and does not let me buy what is needed" – Male, 30.

Illustrative CR Practices

To support the food supply of the sugarcane communities, ASOCHIVIDA, which is a social organisation of the CAO dialogue board next to Grupo Pellas, gives benefits to the worker’s family in form of food baskets that are distributed on a monthly basis. Several informants have stated that labourers continue working to prevent revocation of the essential benefit. It was also mentioned that revocation of food baskets is used as a means of punishment and intimidation. In particular, beneficiaries would fear to get denied the basket if they express demands in front of the employer or the government. Of the study population, five respondents have ever received food baskets. None of these approved such accusation.

51 The selected study variables are regulated by the Nicaraguan Constitution, Article 59 and 82 as well as Labour Code, Article 100
(b) Hours of work
The harvest season usually lasts for 24 weeks, starting in November and ending in May. According to Article 51 and 53 of the Labour Code, the working day should not be more than 8 hours, and the working week 48 hours. In unhealthy working environments, which include workplaces of the study population, the working hours are not allowed to exceed 6 hours. As verified through the questioning, the average workday lasts for 12 hours – ranging from a minimum of 9 to a maximum of 15 hours. Workers mainly work from 5 or 6 in the morning to as late as 8 in the evening; but also night shifts were reported: “the night is very dangerous; they force us to work without stopping, sometimes for 36 hour shifts. On one occasion, we worked 48 hours [...] and they gave us pills so we did not go to sleep” – Male, 28. The majority of interviewed workers felt exhausted due to the long working hours and expressed the wish to work less hours: “the six months of the zafra (common expression used in Nicaragua for the English word: “harvest”) are difficult, you cannot enjoy your family, you work all day, it is completely slavery, you do not have a free day” – Male, 32. Others mentioned that they became or must be accustomed to the work schedule. The majority of the study population verified that a maximum break of 30 minutes is given during the work day; however, others mentioned that breaks do not exist but that workers would try to take them in secrecy, despite the fear of getting fired: “I would immediately get fired if I took a break” – Male, 34.

The identified long working hours and short breaks, which conform to other study results mentioned above, clearly exceed applicable regulations and jeopardise the worker’s well-being.

(c) Provision of a healthy and safe working environment and protection from work-related hazards
With a remarkable majority of 90%, the study population believes to work under dangerous and unhealthy conditions.

Precarious tools and machinery as well as heavy loads were acknowledged as a threat to the own safety. Especially the night shifts and the work behind the cane collecting trucks were mentioned as being highly unsafe. The consequent higher risk of accidents had already caused death cases in the past. Workers were also afraid of the snakes and mosquitoes in the fields, which bites can cause serious injuries and diseases.
The extreme heat and solar radiation were acknowledged as a hazard to their well-being. The exposures to chemicals were identified as severely jeopardizing to the worker’s health, especially as little available protective equipment – masks, gloves, plastic overalls, and boots – were available. Respondents were afraid of the pesticides that contaminate the air, the water and the land and consequentially pose a risk to their health: “[…] we smell the poison” – Male, 43. While they expressed the fear of falling victim to CKDu, the majority of respondents had not been informed about the related risks or preventive measures at work. “I am afraid to leave with CKDu, one can lose his life” – Male, 20. Only the doctors in the hospital were said to explaining occupational health risks, while employers did not want to talk about it52. Respondents working in the fields acknowledged to bringing their own water bottle called pichinga from home, containing around 3 to 5 litres, as there was no accessible clean water on the fields. Three respondents specified that ISA provides water on the fields occasionally and in the factory regularly; however they do not want to drink it, as they believe it was contaminated: “[…] in terms of taste, smell and colour” – Male, 19. While the consumption of water is clearly insufficient, 83% of respondents confirmed taking on average 4 hydration packages53 per day, which are handed out mostly to workers on the field.

More than half of the study population believes that the corporation keeps records about CKDu cases, but does not think so with regard to subcontractors. This strengthens the supposition that sick workers only work under subcontractors: “as I am sick with CKDu, I have to look for other employment” – Male, 33. Respondents further verified a wide disparity between the accesses to medical attention for directly and indirectly employed workers with regard to work-related injuries. Although the nearby hospital, which is facilitated by Grupo Pellas, is officially said to attend both working population groups, subcontracted workers are said to be attended to a lesser extent. Half of the study population confirmed that CKDu patients, who had been working before and were fired due to their illness, are denied access to the company’s health facilities and sent to the public health center in Chichigalpa.

52 As an illustration, Marvin Gónzales (MSc. UNAN-León) stated that the harsh conditions require harvesters to drink up to 19 litres during the workday. The doctors in the hospital would recommend 5 to 6 litres according to the respondent’s verification.
53 The mentioned numbers were ranging from at least 1 or 2 up to 8. One respondent mentioned to drink sometimes up to 16 packages a day. According to Marvin Gonzales (MSc. UNAN-León), the packages contain high levels of sugar which increases the risk of kidney damage through dehydration.
The obligation to provide a safe and healthy working environment to prevent work-related injuries and diseases is not fulfilled by the employer. There is a lack of appropriate safety equipment and training regarding safety regulations, which should be addressed by the party responsible. While labour inspections through the MINSA were verified, respondents specified that these are announced in advance, providing the supervisors in the field with the opportunity to prepare for the inspection. Spot checks on the plantations could prevent such falsification.

(e) Summarisation
The identified harsh working conditions contravene with national legal regulations. To which extent the international understanding of a good working environment is met remains debateable, due to a lack of specific applicable measures. Regardless of a concrete universal denotation and specific indicators, working conditions on sugarcane plantations can be evaluated as extremely poor, due to the given information. International laws promote the provision of decent working conditions, which enclose: social protection, social dialogue as well as the ILO fair labour standards. The latter will be focused in the following section.

5.3 Labour Conditions Related to Fundamental Principles
The variables in this section were chosen as the central theme of the thesis due to their universal character and consequential international importance. The ILO four Minimum Labour Standards are both – labour-related HR and LR – which violation is rigorously forbidden through UN and ILO Conventions.

1) Freedom of association – right to organise and collectively bargain
The response rate with regard to unionizing was compared to the other sections quite low, due to the fact, that none of the respondents was affiliated with a union and could not give any insider information. The study population was further not well informed about the role of unions at their workplace. One respondent did not know what a union was. The next categories give attention to the

54 See for example the Report of the UN Conference on Sustainable Development, Article 147 and 148 UN (2012, 29); or the EU-Central America association agreement, Article 41 (1, 2f) and Article 42 (1a), and particularly Article 286 (1), which states that its members "respect, promote, and realise […] the principles concerning the fundamental rights which are the subject of the fundamental ILO Conventions, namely […]" European Commission (2012).
verified status of union activities. It should be emphasised beforehand that described picture of unions may be more comparable with company unions.

1a) Existence of labour unions
Workers being organised to defend their interests were not identified by the LIF study. Only two respondents of the surveyed study population had been a member at a worker’s union named Sindicato Ronald Alfamirano. However, the affiliation was ended around two decades ago, due to the corporate takeover consequential non-representation of workers’ interests. One respondent specified that the union was compromised in the beginning of 1990: “in the 1980s and 90s they (the union) gave benefits to the members and looked after families that lost a union member” – Male, 51.\(^55\) Despite the desire to unionise, further information about other existing unions was not identified by the study population: \(^{56}\) “[...] it is the only way to defend rights […] we should unionise as workers” – Male, 32.

1b) Relation between unions and the company
Independent unions are essential with regard to the improvement of labour conditions, and the consequent well-being of workers who are negatively affected by business practices. With a striking consensus, respondents acknowledged that the unions and the employer are closely interrelated. 59% of study respondents supported this statement: “independent unions do not exist” – Male, 51. Of the study population, 38% endorsed that the employer interferes with the actions of the union. Three respondents specified that the two parties would only meet among themselves, excluding the direct involvement of independent workers: “they (the union) do not do anything. They are not workers” – Male, 32. The employer is said to manipulate the union for its own interest and to give direct orders regarding union activities and involved members: “there are no elections. ISA puts them in” – Male, 20. “You have the opportunity (to participate) if you are close or a relative of some manager” – Male, 26. One of the respondents, who had been a union member in the past, acknowledged that the employer had forced the union to negotiate. The other past member did not prove such an accusation. The employer was furthermore reluctant to allow a relationship between unions and workers that do not represent the company’s interests. With regard

\(^{55}\) The informant Escobar acknowledged that institutional changes towards privatisation, which were implemented after the revolution in the 1990s, weakened the position of labour unions and increased power inequalities between the two parties.

\(^{56}\) According to the PASE report, there were five operating unions in 2005. Despite the one mentioned above, four others were listed, which are coordinated by the Confederación de Unidad Sindical (PASE and ILRF 2005, 13)
to negotiations about labour issues, respondents agreed on that the employer would be the only beneficiary: “the company always buys the unions out. The unions agree with the company and leave the workers behind” – Male, 26. According to the study population, the corporation would also pay the salaries of the union members and provide them with additional benefits, which creates distrust among the working population: “they have bought off all the unions. They have trucks, many buses and money. Maybe they cannot buy an international organisation because they have their own money” – Male, 26.

1c) Right to unionise

The right to organise, to form, and to join a worker’s organisation for the protection of their interests, without previous authorization or distinction, was acknowledged by the study population as not being respected.

Respondents were for the major part aware of their right to organise. However, they feared to getting dismissed, if they organise to defend their interests in front of the employer, because workers had been fired in the past for seeking to execute their right to unionise57. None of the respondents has ever been involved in the formation of a labour union: “they’ll fire you for participation in unions, so everyone is scared of participating or believing in unions” – Male, 26. While some respondents were also not interested in joining an established union, the desire to participate in unions was expressed by others. Respondents who were aware of their right to join a union outlined that the exercise of the right was considered as difficult or even dangerous: “everyone should have (union) rights, but it is not so for ISA, they do not like the people who complain (about their rights) and they (ISA) fire them” – Male, 30. While respondents believe that everyone has the same rights, they emphasise that there was a disparity between informal and formal workers with regard to the opportunities to defend their rights. Directly employed are said to have a higher priority to gain access to unions. 34% of the study population believe that subcontracted labourers do not have the same right to unionise. Accordingly, the interests of informal employees have lower chances to be considered, compared to directly employed workers. Respondents specified that there was no

57 It is worth mentioning in this section, that worker’s participation in independent studies on the cause of CKDs had led to dismissals during the time of field study. Ten labourers were fired due to the participation in the UNAN-study which was also supported by LIF. The workers belonged to the same group that was organised by an informant in the field. The study was confidential, but the group organiser was accused of providing the corporation with the identity of study participants. Workers were reinstated after negotiations between UNAN-León, the labour union named Sindicato Democrático, high-level government officials, and the company. This information was collected during a meeting at UNAN-León with Aurora Aragón (PhD) and the dismissed workers in April 2013. Until the end of the research time, there were no signs that respondents of the LIF or thesis’ field study were negatively affected due to their participation. This positive result confirms the applicability of the ethical protocol by the time.
organisation defending the rights and interests of subcontracted labourers. The study population regrets that they were not informed about the possibility to affiliate, or were invited to join the union, which was the most verified reason for non-affiliation. Others mentioned that their interests would not be represented by any of the existing unions. The denial of membership on part of the union itself was also acknowledged. A respondent specified that the unions were only selective with regard to certain political views and would only accept members sharing the union’s interest. A lack of changes with regard to better conditions for workers was mentioned as a reason for not joining a union: “all the time, we think that they (the unions) do not help us, hence, why we have low salaries and the bad conditions in all of ISA and the poor conditions with the subcontractors” – Male, 30.

José Benito Escobar is a representative of the labour union Confederación Sindical de Trabajadores CST-JBE. He knows well the challenges of workers to organise among informal structures and advocates for the political control of subcontractors rather than the prohibition. To overcome the socio-political dominance of businesses, he places emphasis on transnational networks that involve influential interest groups.

(11 February 2013)

1d) Right to collectively bargain
In general, a union should defend the worker’s interests in front of the employer. Study respondents acknowledged that unions among their workplace defend the interests of the company and not the ones of the workers. About one third of the studied population acknowledged that the union or employees raised a concern within the past year with regard to: health and safety, the daily workday and discrimination, unfair worker-employer relations, and abuse at the workplace. Successful achievements by the union were denied by the study population. Instead, cases in which the unions withdraw the attention of claimed right violation were verified. Strikes organised by the union or employees were identified as non-existing. While these are only one negative example, it shows the refusal of the union to defend the interests of negatively affected workers and family members.

58 The organisation focuses on the textile- and manufacturing industry and is part of the Sandinista union called in Spanish Frente Nacional de Trabajadores FNT. The organisation promotes better working- and living conditions of the Nicaraguan workers and society.
59 In the LIF study, a case was specified in which an allegation for a worker’s death was brought to a union which refused to deal with the case. The claimant, a family member, had to open a case with the mayor’s office as a consequence. The outcome is unknown.
60 While the vast majority of respondents and informants denied the existence of organised strikes at the workplace, one valid answer was collected respectively during the questioning. The respondent mentioned that a group of protestors were claiming funds that were promised in 1992 by Grupo Pellas, but never had been paid. As a consequence of the strike, 13 people were killed and 133 detained. Further detailed circumstances are unknown.
1e) Summarisation

It was verified that the employer has a high influence on unions, which were described as compromised and would exclude workers from negotiations, is probably more comparable with a company union, to which formation the company would have a license. However, the study findings conclude – with an outstanding consensus of the respondents – that the worker’s right to organise independently is infringed to a large extent, which prevents workers from collectively bargain. Due to the low response rate in this questioning section, further evidence may be necessary to identify and address challenges in unionizing processes.

2) Elimination of all forms of forced labour

As mentioned above, the ILO delineates strictly banned means of coercive practices, which can take various forms and may bring or keep workers into force labour.61 The Nicaraguan Constitution prohibits all forms of slavery or likewise treatment by Article 40, which is a more amplified definition. In the following, the reported impacts on the worker’s right of freedom from forced labour are presented by using the ILO elements, mentioned in the footnote below, as study variables.

Some business practices were identified as putting pressure on employees to continue working. A notable high consent of 93% of respondents confirmed that workers were not allowed to leaving the workplace whenever they want to during work. The majority of respondents who gave remarks respectively answered that workers would need a permission to leave, which is mostly denied or may be given in cases of emergency such as severe sickness. However, respondents mentioned that also in the case of illness, they were told to finish work before being allowed to go to the hospital. Workers are anxious to get fired in case of taking unauthorised rests or leaving the workplace: “they wish we were forced labour and threaten us with firing us” – Male, 25. The denial of the worker’s desire to take breaks or leave the workplace, in conjunction with the threat of penalty to be excluded from further employment, can be evaluated as a coercive labour practice.

61 The ILO Declaration on the FPRW (1998) Article 2 (b) and Convention No. 29 (1930) Article 2 demand the prohibition of forced labour in general. Convention No. 105 (1957) Article 1 involves the elimination of compulsory labour in five specific occasions, namely: “(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination”. A definition of these elements can be found at: International Labour Office (2008, 8–11)
Out of 29 respondents, three specified that they are required to meet a set quota before being allowed to finish work, which is a method of using labour for achieving the corporation’s economic demands: “I have the right to leave once I finished otherwise they would punish me” – Male, 21. Although the worker’s schedule exceeds by far the limited regulations, only 28% of respondents had ever been paid overtime. It was verified by the study population that supervisors were threatening workers with dismissal or punishment in case of early termination. A respondent expressed that workers feel treated like “[…] slaves” – Male, 43, and forced to work unceasingly until they are sent home. Accordingly, workers may perform overtime under menace. The quota and payment system may be used to some degree as a mean to keep labourers on working.

In sum, workers are exposed to a high mental and physical stress at the workplace. Means of coercive acts were verified to some extent by the study population. The labour conditions identified in this regard were equal between the contracted and subcontracted working population. To that end, Grupo Pellas should adopt CR policies to completely combat compulsory labour practices among directly and indirectly employed workforce.

3) The effective abolition of child labour

In addition to the strict prohibition of wards, the ILO reported that hazardous child labour around the globe mostly occurs in the agricultural sector, in which mainly young boys aged between 5 and 17 are found. They work either with their family, are self-employed, or employed on a paid or unpaid basis. The ILO prioritises the elimination of child labour in this sector, due to the high numbers of children who are exposed to occupational conditions that may cause physical harm and diseases. At the same time, the ILO is aware of the highly challenging task to identify and combat child labour across the world’s remote rural areas. (International Labour Office 2011, 9) Nicaraguan legislation supports the goals of the ILO and explicitly prohibits children under the age of 18 to work in environments that jeopardise their health. Further, work that negatively affects the children’s education or development is forbidden by Article 132, 133 and 136 of the Labour Code. Despite the overall prohibition of child labour, it is

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62 It is worth noting that the ILO does hardly possess any national statistics on children’s injuries or diseases that are caused through hazardous work among developing countries. It is acknowledged in the report that filling this information gap is of great importance to adequately address current challenges.
known that the rights of children, who are working in Nicaragua, are abused to a large extent, particularly in the agricultural sector. Major difficulties to prevent child labour include: poverty and a lack of labour inspection or monitoring of the employment of children. (PASE and ILRF 2005, 30–31)

3a) The Practice of child labour

During the time of field study, the practice of child labour on the sugarcane plantations was verified by the study population. Of the respondents, 34% answered to the best of their knowledge that children below the age of 14 work on the sugarcane fields. 83% stated that they know adolescents between the ages of 14 to 17 who work on the plantations. Among the study population, three respondents began working on the fields as children.

"I began when I was 15 and they should have refused to let me work. There are many boys that need the work and it is good that they work, but not here. They have no rights" – Male, 30. This respondent continued working on the sugarcane fields under a subcontractor after being dismissed at ISA for showing high levels of creatinine at a young age. He worked with a borrowed identification card. This common practice – to gain access to work under conditions that do not allow for direct employment – was also used by a 19 year old respondent, who began to work for a subcontractor around the age of 13. He acknowledged working 12 hours a day during the harvest time, for a daily salary varying from 6 to 11 USD. He needed to work at least 6 days a week, otherwise the subcontractors would punish him by withholding his salary. He also feared that his position could be replaced if he misses a workday which would leave him without the needed job. The respondent acknowledged to work under dangerous conditions. Although his personal data was not registered at the INSS, he believes that his family would receive social security benefits in case of a future work-related death. A 22-year old respondent began to work at the age of 15 together with a friend of the same age. As a reason he stated the need to earn money. He used the identity card of another man, for which he paid 50 NIC per week. He worked for a subcontractor who was aware that he was underage.

63 This expression was chosen because of a language difference in the Spanish questionnaire. The term used for the first age group could only be understood as: if working children are known; while the second phrase is more likely to be understood as: if the respondent personally knows working children in this second age group.
The practice of child labour was exclusively substantiated among the subcontracted workforce. Of the respondents, striking 86% confirmed this business practice. The majority of respondents clarified that Grupo Pellas does not directly employ children under the age of 18. Of the respondents, 69% are convinced that the employer ISA has knowledge about the indirect employment of children: “it is irresponsible because ISA accepts that children work without taking necessary precautions” – Male, 33. Respondents also supplemented that children work with their parents or with false identification cards. 72% felt certain that minors receive the same salary as adults, while 10% negated and argued that subcontractors, or the owner of the card, deduct part of the salary thereby exploiting child workers. All respondents that gave remarks regarding the working hours answered that the schedules for the children were the same as for adults. This contravenes with the hours of the school and provides evidence that working children are hindered in their educational and social development: “the kids have to be in school but those responsible are the subcontractors” – Male, 20. Poor educational and professional opportunities seemingly keep adolescents highly reliant on the accessible jobs on the nearby sugarcane plantations.

3b) Exposures to child labourers

Both age groups are said to carry out the same work as adults such as: seeding, planting, irrigation, weeding, cutting, collecting and loading cane with machines. With regard to the age group 14 to 17, one respondent mentioned the additional task of burning cane, while another reported the application of herbicides and pesticides. These tasks expose a high risk to their health, due to physical stress and the inhalation of toxic materials. Of the respondents, 83% were aware that children work in jobs that endanger their health or safety: “[…] they leave sick. The boys are suffering” – Male, 28. In greater detail, the same amount of respondents acknowledged children working under extreme heat. By an overwhelming consensus of 90%, the respondents attested to the exposure of high solar radiation during work. In conjunction with a lack of access to clean drinking water, which has been generally identified, children are exposed to a high risk of dehydration and sunstrokes. Further, the children’s health is highly jeopardised due to the probable relation between long working hours in a hot lowland climate and CKDu. In regards on children being exposed to fire, gas, and flames, 62% verified such accusations, which may cause severe burns. The majority of respondents verified that
children are exposed to chemicals, with 66% being positive on this inquiry. Toxic substances used in the sugarcane cultivation may cause poisoning and severe organ damages. Considering that pesticides have been identified as a causal factor for CKDu, the life of working children is tremendously at risk: “on the one hand, it’s bad that it’s important for them (the employer) to get their product without caring who works and for how much. On the other hand, it’s good for the opportunity to work even though it takes your life” – Male, 26. Children are also at risk to become ill through insects or animals that transmit life-threatening diseases. Minors working on the fields are exposed to dust and fumes, which was pointed out by 83%. The study population also confirmed that there was insufficient ventilation as well as dark or confined spaces, which might be referred to work in silos or a lack of wind on the fields, due to the high altitude of the cane.

Dangerous tools, such as long machetes that are used to cutting cane, are used by working children, which was affirmed by 90% of respondents. Children are at risk to suffer serious cuts or even dismemberment. Some specified the dangerous work with transport vehicles or machinery endangering the children's life in case of accidents. The related exposure to loud noise or vibration through these equipments, which was affirmed by 76%, may also lead to hearing loss. 38% of the respondents mentioned that children are working near electric charges that put their lives in danger, due to a risk of electrocution. When asked if children were working in water, which might occur for example in the profound irrigation wells, 69% answered with yes. Minors carrying heavy loads, such as cane batches that are piled and later collected by trucks, were affirmed by 69%. Children may suffer physical injuries as a consequence of weighty loads.

3c) Protection from child labour

While children are not directly employed through the corporations of Grupo Pellas, the labour flexibility policy among the sugarcane plantations provides children with the opportunity to work illegally. According to Nicaraguan law, corporations are responsible for negative health impacts on subcontracted labourers – hence including the identified child labour practice. Protection from subcontracted child labour was not verified. One respondent even believes that the employer does not address these grievances.

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64 For example, Nicaragua is at risk of Dengue fever and Malaria transmitted through mosquitoes and rabies transmitted through wild animals.

65 Possible adverse health impacts are outlined with accordance to the hazards and its health impacts in crop agriculture that are outlined in: International Labour Office (2011, 21–25). The evidence section in this paper also includes topic-related studies in LA.
on purpose: “ISA won’t help hurt child labourers because it will bring attention” – Male, 22. Accordingly, children are not fully protected from child labour abuse and exploitation.

The MITRAB is in charge of labour inspections; however, the study population was not informed that there would be governmental supervision of child labourers specifically. In case of general field visits by the ministry, respondents acknowledged that supervisors get notified in advance so that underaged workers can run away.

(d) Summarisation

With an outstanding consensus and a high response rate, the study population verified children working on the plantations. Accordingly, the physical and mental health, and the social development of child labourers, is highly jeopardised. At an early age they get involved into the sugarcane community’s cycle of poverty and death. Both – international and national – laws are violated by subcontractors, who allow minors to work in the field, which is economic exploitation of wards. The identified practices are universally condemned as the worst form of child labour. Apparently, Grupo Pellas has combated direct employment of children and should further pursue its CR to efficiently contribute to the abolition of child labour and its worst forms within their sphere of influence – regardless of a lack of law enforcement through any accountability mechanisms.

Specific challenges in this regard may arise in the studied developing country-context or elsewhere, which is discussed at a later point.

4) Elimination of discrimination in respect of employment and occupation

No concrete evidence for discrimination was identified during the field site observation, for which reason it was not addressed in the LIF questioning. Inequalities have already been presented above, which occurred in particular between directly and indirectly employed workers. With regard to discrimination, the questioning focused on workers who suffer from kidney damage, and in what way they are refused attention due to their disablement.

Of the respondents, 80% believed that CKDu-affected workers are discriminated by the employer. As a reason they stated the non-employment after being diagnosed with kidney disease: “they no longer exists for ISA” – Male, 20. While the non-employment

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66 The ILO provides an extensive list of recommendations on how corporations as well as all industry stakeholders can make a contribution towards combating hazardous child labour, according to: International Labour Office (2011, 41ff)
of sick workers can be considered a good business practice, there are almost no alternative income resources available, especially if the requirements for social security benefits cannot be fulfilled. In this desperate situation, CKDu-affected seek work under subcontractors who do illegally employ them. This can be described as abusive business behaviour.

Respondents further specified a wide disparity between the access to medical services at the nearby intra-corporate hospital for workers who are sick or not sick of CKDu. Workers receive attention during their status of employment, but are refused after they are not allowed to continue working: “they do not give them work and they do not let them enter ISA and they tell them that they are going to die” – Male, 25. “They (ISA) treat them (CKDu-diseased ex-workers) like dogs” – Male 32. While the corporation frequently tests the worker’s health status with regard to the CKDu-indicator creatinine, the employer should also guarantee the medical attention after workers become sick. The referral to a public health institution or any other health organisation was negated by informants and the study population. Quite the contrary, further medical attention was hindered by not providing the patient with the necessary documents. Accordingly, the employer abandons sick workers to their fate, or places the responsibility to the state. Instead of exacerbating the situation, adjustments should be made to better attend these vulnerable groups. This should happen not only after they got sick, but also as prevention such as: medical leave or adaption of working hours and breaks. This would be reasonable for all parties as it maintains the workforce and decreases social costs.

In sum, the study population verified some discriminatory corporate acts with regard to workers affected by kidney disease. Only a few questions were asked in this regard, which the study population specified by consensus. Further research is suggested to better assess current challenges.

The labour conditions, presented in the sections above, do not only conflict with FLS, but they provoke serious social tensions and exacerbate poverty, which is outlined next.

67 In the Nicaraguan language usage, this expression is used for the worst form a person can be treated by a third party.
5.4 Individual, Social and Political Rights

The following sub-sections address the corporate impact on non-LR, the extent to which negatively affected individuals and groups gain access to remedies, and the status of CR enforcement through the government.

(a) Access to social security

“I am sick, I cannot continue working and I have paid contributions (to social security) but they have denied me” – Male, 34. Although every worker should be registered at the INSS, three cases were verified in which the subcontractor had not registered or paid the required deposit to the INSS. As a consequence, the access to medical attention and social security was delayed. One respondent mentioned that he was registered after an inspection by the INSS. An insurmountable access barrier occurs in cases in which labourers were working under false identification cards: “if someone is sick, they will not give him his social security because he has a borrowed cedula card” – Male, 20.

The most mentioned obstacle to receive social benefits were the requirements to fulfil the minimum labour time\(^68\), and to provide the necessary paperwork and documentation. None of study respondents who were sick of CKDu, did receive any social security benefit, due to non-fulfilment of the required working weeks: “I applied for social security, but I was required to have worked 26 weeks. This was impossible because I was fired before I could complete the weeks. […] I left sick” – Male, 33.

In sum, the policy system puts a high pressure on the workers. If they become sick of CKDu, they cannot work for ISA anymore and if workers do not receive social security, they seek to work for a subcontractor, which exacerbates their health situation. Until the end of the study period, there was no programme in place to bolster people falling through the social net of benefits. A joint programme between the economic, political, and social sector could be implemented to address grievances and better protect these vulnerable groups.

(c) Equal protection and justice

Of the studied population, 76% do not believe that the Nicaraguan justice system

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\(^{68}\) Marvin Gónzales (MSc, at UNAN-León) acknowledged that the social security system implemented by the INSS would entrap workers to continue working. Workers deposit in social security and are aware that they would only receive benefits if they fulfil the respective requirements. These are however in most cases not accomplishable for sugarcane labourers that become too ill to continue working. In particular, to be entitled for social security in case of CKDu affection, agricultural workers need to fulfil: a total of 26 weeks of uninterrupted work during the year before the worker became ill. However, the harvest time of sugarcane mostly lasts for 24 weeks only. Furthermore, workers are required to have worked a total of 107 weeks, which equals 4 complete harvest periods.
protects their rights: “the police treat people like animals” – Male, 20. Some respondents did not feel treated fairly after falling ill: “because justice doesn’t respond to my sickness” – Male, 34. Others mentioned the inadequate response of the government’s forces. These are said to act in favour of the company and in disadvantage to the civil society that should normally be protected: “they fired me just because I demanded LR, I asked for permission (to continue work), complained to the union, and I was thrown in jail for 3 days” – Male, 28. Also physical violence was verified: “the police beat the boys that were detained by the security of ISA for speaking out against the company” – Male, 32. Due to these occurrences, people felt intimidated and limited in their freedom to exercise and defend their rights.

Of the respondents, 93% believed that the employer endangers the life of the workers. The majority also reported death cases. People may feel intimidated and limited in their freedom to execute and defend their rights due to these incidents. Several respondents verified that they had filed a lawsuit or complaint against their employer ISA for: indemnification for CKDu-affection, economic exploitation, and pollution. None of these claims has been answered yet. Of the respondents, 34% believe that people, who have more money or belong to a higher social class, have more rights than the poor. Almost 60% assume that the government discriminates against the poor by refusing the guarantee of people’s rights.

### Indigenous people’s land rights

| According to the focus group, the community Goyena, which belongs to the indigenous land of Sutiaba, is confronted with an additional adverseness. It was acknowledged in an earlier section that conflicts between economic interests and indigenous rights have been arising. To comply with international HR laws that protect indigenous people, it is the Nicaraguan state’s duty to transfer the land titles to the community’s cooperative. During the time of research, the municipality had control over the land, which was leased to the Grupo Pellas’ agribusiness for the cultivation of sugarcane. According to informants, the municipality would also have the intention to sell the land to the private sector, which was unlawful. The indigenous people in Goyena do not only demand the guarantee of their land rights, but also the cleaning of environmental damages that have been caused by business activities. The transition of land titles to the indigenous cooperative was pending, but if the sale of land to a third party would occur in future, then the ruling of the Mayagna (Sumo) Awas Tingni Community lawsuit presented above may be of great importance to the community. While there were social tensions in Goyena, no protests were observed, in contrast to Chichigalpa. |

(February – April 2013)
(d) The right to protest

The observed consequence of the above mentioned grievances were protests that were arising during the time of field study. Of the study population, 35% felt that their personal life and physical well-being was negatively impacted by the company. However, working respondents were identified as not participating in protests, due to the fear of consequences: “if you work for ISA, you can’t be in protests [...]” – Male, 43. Respondents felt intimidated and punished by the corporation when defending their rights in public, which limits the freedom of opinion: “they are going to look at the protest photos and put the names on the blacklist” – Male, 21.

Respondents acknowledged that the police would not guarantee people’s rights nor protect them from any arising risks: “when we want to protest against the company they send the (private) security at us and impede our walk towards the company. The company does not let us exercise our rights as workers and citizens” – Male, 33.71

Observed arising protests

Numerous demonstrations, which started first in Managua and then moved back to Chichigalpa, were organised by former sugarcane workers and their families. It was their goal to demand accountability by the corporation and the Nicaraguan government. In Managua, the headquarters of Grupo Pellas and INSS were targeted as locations for protests. In Chichigalpa, the entry to NSEL/ISA, the police office, and the streets towards the central park were chosen as protest sites. Two major protests that began pacific and turned into violence in Chichigalpa were occurring. On 18 March 2013, protestors and passersby – including children – were severely injured due to a violate attack by special police forces69. Ten months later, on 18 January 2014, protestors and the riot police collided and the police opened fire. One man died and a 13-year old boy was seriously injured. Promises on part of the government to address the protestor’s demands were announced shortly after the second protest; however, no response occurred until the end of the study period and protests were continuing.70

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69 In response to the protest, 10 interviews with affected civilians were conducted by LIF legal department during my time of participation on 19 March 2013. A structured questionnaire was designed to monitor the events and consequences of the riot. For more information, please find the report, which was published shortly after to advocate for adequate government response: LIF legal department (2013)

70 This information was gained through the field site observation of a protest in Chichigalpa on 30 January 2014. Several protest participants confirmed these happenings. The informant Velasquez visited both families at their houses and documented the visit. The video footage was used as evidence as well as several newspaper articles that were published within the days after. For a detailed presentation of the events please see the joint civil society statement, which was amongst others published by: LIF (2014a)

71 The Nicaraguan HR institution, CENIDH, addressed the responsibility to respect worker rights of Grupo Pella’s subsidiary ISA by publishing an advocacy letter, which was enriched by information through social advocacy groups: CENIDH (2014). The statement of LIF is available at: LIF (2014b).
The informant, José G., acknowledged that within the passing ten month of protest participation, nothing has been changing. Although he was seriously injured during the protest in 2013 he continued demanding his due for becoming sick of CKDu. He was denied access to work and demands compensation in the amount of 200 NIC per day for 10 years which would assure his and the other ex-sugarcane worker’s survival. Neither the government nor the company has responded to the claim to date.72

(f) Summarisation
Corporate and governmental acts conflict with universal HR to a certain degree, which exacerbates the struggle for survival of CKDu-affected instead of producing relief.

5.5 Main Findings
A lack of compliance with Nicaraguan labour laws was verified. The relevant regulations are of particular importance to the conditions among the workplace with regard to: working hours and wages as well as occupational safety and health. Due to the small confidential sample size, further investigation is necessary to deepen the extent of unlawful practices.

The collected data showed some patterns of business practices that assign to the violation of the four FLS. The right of freedom of association was confirmed by the study population as not being respected remarkably. The abolition of child labour was affirmed as ineffectively enforced to a large extent among the subcontracted working population. The direct execution of forced labour or discrimination in its pure form, which is strictly internationally denounced, was not identified, but some business practices can be interpreted as related. To that end, the non-ambiguous abolishment of compulsory labour or discrimination could not be completely excluded.

According to the presented study findings, it can be proposed that the sugarcane production negatively impacts the business environment. It seems that the corporation does not contribute to the wealth and development of dependent communities, but does exacerbate poor conditions. The UN framework promotes the enforcement of CR, but how effectively can negative impacts be reversed?

72 This informant was interviewed twice. The interview on 18 March 2013 was undertaken by Tom Laffay. The second interview was personally conducted on 29 January 2014. Both interviews were filmed on the protest location in Chichigalpa. In accordance with the ethical protocol, the inclusion of a photo or the full name was considered as a risk to the informant’s security. This informant did not participate in the LIF questioning from 19 March 2013. Other protestors, who were briefly interviewed, mentioned to be in a similar desperate situation.
6 DISCUSSION

The objective of the CR study is to discuss the effectiveness of the UN framework through its relevance in a developing country context. The three pillars will be regarded first separately. In each sub-section, the main framework’s guidelines are presented and assessed through the studied variables. Policy recommendations are given to stakeholders and current gaps reassigned to the framework to give suggestions for its advancement. Second, it will be debated how the three pillars harmonise with each other, and what current opportunities and challenges are in preventing adverse business impacts by enforcing CR for universal labour standards and rights.

Normative ethics are influenced by context-sensitive factors and may conflict with international understandings. A triangular research approach was chosen to consider the political, economic, and socio-cultural environment, and interpret the business case beyond standardisation. The variety of independent data-collection methods increases the validity of case realities and the transferability to the thesis’ theory.

The State duty to protect

The duty to protect places a liability on public sector bodies to guard human beings from corporate HR harm by a series of acts, namely: “to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (OHCHR 2011, 3). It shall be emphasised that the UN framework provides room for states to define the limit between voluntary and obligatory CR, except for FLS, where an unambiguous duty to protect is imposed.

The field study revealed a large range of RV on the study population. The Nicaraguan government could not prevent the abuse per se. Conclusively, the role of the state will be considered in detail by considering two study variables more closely.

Important steps towards the achievement of combating the employment of children were made. To prevent the employment in hazardous environments, the government imposed distinguished shelter for working environments that endanger children’s health and physical integrity. The legislation strictly prohibits adolescents working in environments like the sugarcane plantations and was abolished by Grupo Pellas, which proves the policy’s effectiveness in changing corporate governance. But the agricultural sector still provides employment to minors among unregulated subcontractors. With stricter regulation, businesses presumably outsource their workforce to intermediaries
to avoid direct responsibility. To accomplish its duty to protect, the government could formalise the private sector. But even for states it may be difficult to facilitate such a process. State capacity and the size of the production facilities challenge the control of child labour in agriculture. The solution to combat employment further needs to go beyond the single prohibition, because minors work due to economic necessity. Children working are quite common in extremely impoverished countries – like Nicaragua – where families depend on the additional income. Governments should be encouraged to impose policies that directly address the complexity of the problem. In turn, this requires costs, which neither the public nor even the private sector in developing countries may be able to finance. International instruments could provide approaches, which enable states to provide better education, in conjunction with supporting alternative job creation, to effectively prevent children from hazardous work in secret.

While the elimination of child labour was supported by the government, there may be rights, which guarantee the state could not have an interest in – such as the right to freedom of association. This HR was not guaranteed to a very large extent in the studied case, in which union activities were highly difficult. The understanding of unions is further ambiguous. Following the guidelines of the UN framework, it can be recommended that states should promote the building of independent unions, in comparison to company unions, and strengthen their organisational culture. This would further entail negotiations with the local business to ensure undisturbed union activities. However, the political agenda could not have an interest in this task because, in turn, strong labour unions may also put pressure on the state to exact policy changes. Governmental support in this regard can be considered as unlikely, due to possibly arising conflicts of interests. While states are obliged to regulate and guide corporations that infringe people’s rights, the UN framework hardly addresses the reluctance of states, which requires the development of alternative solutions. The involvement of international union activates could be a meaningful support to fill the gap of power imbalances in such cases.

73 For instance, better information for their parents why the children’s protection is necessary would be required because they mostly take or send their children to work. A key in preventing child labour could be full-day school or care. It shall be emphasised that NGOs address this issue in Nicaragua, trying to fill this gap. The government was not, or only to a small degree, directly involved in the development of observed educational programs. Despite the benefit for the children, attention should probably also be given to actually increase state capacity as it is the state’s duty to provide equal education opportunities.

74 This trend was also seen throughout the comparative cases in Nicaragua in section 4.7 and other cases LA countries such as Guatemala and Colombia, which are presented in appendix I.
Governmental control on business practices and response to claims was verified as insufficient. To better fulfil the duty to protect its civil society, and hold corporations accountable for law violations and enforce compliance, the Nicaraguan state could focus on the increase of its capacity towards effective remedial processes. For example, to address poor working conditions and eradicate worker’s rights abuses, labour inspection processes could be improved. The informal workforce was identified as highly vulnerable to occupational risks, which could be considered in particular. It seems that the state’s low numbers of authorised inspection-agents lack the capacity to adequately address this duty. But the process is also hampered by industry patterns. While control and consultancy with regard to Grupo Pellas might be easier, due to the formal corporate structure, the supervision of the subcontractor’s informal workforce appears to be more difficult, because of a lack of transparency. The labour flexibilisation policy is one of the major barriers, which could be counteracted through respective amendments.

In sum, the Nicaraguan Constitution and Labour Code recognise FLS, and provide additional regulations under national legislation. Protective measures in Nicaraguan legislation entail gaps, especially with regard to informal employment. As a result, the barriers of legal mechanism are currently highly challenging and difficult to overcome. Non-legal instruments may be valued as being more effective in the given context. To implement the UN guiding principles and remove barriers that impede access to legal remedies against corporate RV, institutional capacity building is crucial. As international legal enforcement of CR is not applicable through established instruments, better state efficiency is the only solution to date, which can foster the implementation of rules in weak governance systems. The strengthening of national institutions is of major importance, taken into consideration that a large range of national labour laws, which regulate working conditions and are decisive to protect the worker’s health, are violated in the field study case. The UN framework provides guidelines for states on how to assess the impact of business activities. The practicability could be guaranteed by mutual understanding and effectual agreements. To which extent this is achievable depends ultimately on the openness of the acting government and the agenda of supporting international institutions. For instance, the governments’ negotiating power could be strengthened to enable the opposing

75 By contrast, the comparative case study findings showed that there are lawsuits in which LA governments, more or less successfully, sued corporations for violating HR.

76 The presented cases in Nicaragua, and other LA countries, showed how difficult it can be for states to keep up with, or overcome, the influence of foreign investors.
of dominant market power. The empowerment towards better legal punishment and successful imposition of a sanction on non-complying businesses, which could entail the shut down as a last resort, could be a focal point.\textsuperscript{76}

Not only national governments, but also trade partner states hold a substantial stake, as they facilitate the development of product supply chains. It could be seen paradoxical that developed nations globally enhance the compliance with FLS on the one hand, but engage in trade agreements with countries, in which supplying corporations violate their labourer’s rights with impunity. The UN guide pointed out this governance gap. Globalisation has created free markets through deregulation, of which the private sector highly profited – as seen in the field study case. In reverse, the strength of political influence was weakened and social inequalities were increasing. Governmental institutions may need to recapture control to be able to adequately address socio-economic gaps with regard to CR. Trade can contribute to beneficial change and development, if imposed rules are observed, and violations penalised. To illustrate, the recently signed trade agreements between the EU and LA countries uniquely link market access and the compliance with FLS (European Commission, Article 42f.).\textsuperscript{77}

But economic sanctions and prosecutions in case of a breach of agreement are virtually unlikely, which questions the real impact. The near future will show if the EU standards effectively enforce CR to address conflicts between economic interests and adverse impacts on surrounding populations. In general, trade relations could shift more attention to social impacts. In this regard, the legal basis of past and future agreements could be adjusted. The role of international stakeholders, like investors or buyers, could be re-considered as well. While the UN guiding principles request foreign businesses and governments to assure the non-involvement in HR abuse, above all in conflict areas, the approach could go beyond this soft responsibility and actually recommend appropriate preventions. As the UN framework recommends, governments should give directions to corporations on how to monitor their HR impact. Information sources could be diversified by incorporating not only the private sector, but also social interest groups. The UN framework does not specifically emphasise the important role of social actors who observe corporate behaviour, and could contribute their knowledge. However, this is may be a key factor in legitimate evaluation of business influence and could be emphasised by the UN body.

\textsuperscript{77} It is worth noting that also the promotion of health care, in particular the combating of chronic diseases, is included in the agreement under Article 44 (3).
Conclusively, the effectiveness of the UN framework depends on the government itself and how the indefinite concepts are interpreted. Each country context and corporate case is individual and requires adaption of the guidelines. The findings conclude that in the studied country context, the state failed to a certain degree to fulfil its obligation of imposing and enforcing CR. As a consequence, corporations are able to continue unhindered with harmful business practices. The UN framework does not provide a final resolution for non-responding governments. This is probably one of the central weaknesses with regard to the state’s duty to protect human beings from adverse business impacts.

The corporate responsibility to respect

The UN framework’s principles state that corporations are responsible for compliance with universal UN or ILO Conventions, as well as treaties ratified by the state. This type of law is called soft-law, because it can only be enforced through the national state. While domestic laws define direct corporate liability, international regulations present the responsibility to comply – regardless of the enforcement through the signatory state. The introduced UN principles are currently in the implementation phase, but do they serve as a guide for respectful corporate behaviour and have they already increased standards of worker liberties. The field study findings provide some practical evidence on its adaptability, which will be again examined more close by two exemplary variables.

To effectively use the advantage of unionizing, the bargaining power of workers should be at least equalised compared to the employer’s power. But due the high poverty level and the dependency on one major employer among the studied region, the inequality is immense. The high risk of losing the job, due to union activities, prevents the organisation of workers. The economic necessity and social instability might be exploited by the corporation, and interests shifted from the organising employees to the employer. With monopolistic industries, which offer almost the only income resource, independent union building can be considered as highly difficult. In comparison to former studies among the Grupo Pellas plantations, there have not been distinguishable improvements with regard to the respect of the right to unionise.

78 The comparative case study findings also provided evidence that other LA governments do not completely enforce third party compliance with universal HR standards.
In contrast, a remarkable change has been made on the direct employment of minors through Grupo Pellas. In the last years, child labour was addressed to a large extent by the international community, which could be a reason for increasing CR in this regard. While international legal efforts were focusing on the state’s duty, non-legal measures were also effective in changing corporate cultures. Campaigns, that addressed child labour, clarified that such practice is neither justifiable nor ethical. This global attention was posing high customer pressure on the private sector. To prevent, amongst others, a reputational brand loss, corporate policies became more responsible in this regard.

However, this also has had a triggering effect because companies increasingly outsource their workforce, posing a new challenge with regard to CR for worker’s rights. This is true especially in cases with workers, who do not meet the requirements of direct contracting, and then try to seek work under subcontractors. This practice creates large disparities between the labour conditions for organised and unorganised workers. The relationship between the corporation and its subcontractors was studied to discuss whether CR for labourers, who are employed by middlemen, can be assigned to the higher-level business. Sufficient evidence that contractors and the corporation are closely related was collected and it can be argued that HR responsibilities are assignable to Grupo Pellas for both – the formal and informal – workforce. The applicable national and international regulations in this regard are almost non-existent, which reveals a lack of governance. Despite this, CR could be taken over through the implementation of control mechanisms that monitor the behaviour of middlemen. However, to gain full control and provide a better working environment, it could be recommended to directly employ workers. In consideration of corporate interests and the current deregulation of the private sector, the voluntary abandonment of the subcontracting practice may be implausible. The enforcement of corporate liability for the indirect workforce is extremely challenging at present. The adoption of regulations towards better incentives for corporate governance could achieve compliance with HR norms, and the steady improvement of local conditions.

The strengthening of FLS has been positively influential in the global economy. The UN framework is a decisive standard-setter regarding CR, but due to the current indirect and non-binding nature, it is ultimately the corporation’s decision to follow the rules. This is particularly true for business environments in weak national justice
systems, which are not capable to adequately regulate corporate behaviour. Despite the intention, the framework could not close this governance gap. Conclusively corporations may not be sufficiently incentivised by the UN framework, due to the absent fear of any solid consequences.

If enforcement mechanisms are weak, the UN framework provides alternative measures in its repertoire to enhance respectful corporate behaviour. A self-regulation concept, which is called due diligence, was introduced. Accordingly, businesses are advised to evaluate and disclose independently their HR impact – regardless of being direct or indirect. (J. Ruggie 2008, 16) But such self-assessment could be a controversial subject. In the studied case, this is especially true regarding the CKDu epidemic, where the corporation insists on innocence unless proven otherwise. Despite arising critiques, the CAO process serves as an example, in which CR was assumed and collaborative efforts were instituted to address negative HR impacts. Although the business states to support any studies on the cause, intervention and lack of cooperation was observed. This was one of the reasons why the present study had to be conducted under the utmost anonymity and confidentiality. Such challenges could be addressed by future guidelines.

While the UN framework seeks to ensure a good corporate governance, it only addresses the corporation’s obligation to not harm the society or environment. The approach seeks to enforce CR through threatening consequences in case of non-compliance. Sustainable economic activities should go beyond this rule towards actually doing well and improving its surrounding environment. To improve conditions, businesses could be incentivised that positive contribution is key of doing business, instead of only avoiding negative impact. Benefits of CR are overlooked in the UN guide. The UN framework recommends the compliance with minimum standards, instead of an ideal CR concept. An advancing framework could find an adequate balance between threats and rewards. CR is a concept that largely emerged within the last two decades. In particular, corporations that have their origin in weak governance systems may lack the necessary duteousness to prevent HR harm, or clear instructions on how to best contribute to the social environment. While ignorance is no defence against penalty, corporate education on sustainable business practices may find a remedy.

79 Even more challenging seems to be the regulation of foreign TNCs. Differences between home and host country rules create variable CR. The suing of a TNC in its home country, for a violation in a host country, can be considered as highly unlikely, especially if national laws are violated.
The access to remedies

The UN framework refers to mechanisms that have been implemented to address corporate HR abuse by the enforcement of their CR. The studied case provides evidence on the lack of effectiveness of these instruments.

The Nicaraguan justice system was verified as being ineffective in attending filed complaints. Petitioners face high barriers such as bribery, which entails the bail out of judges and lawyers. The power inequalities between social stakeholders and the closely connected public and private sector, seem difficult to penetrate. Legal proceedings are also complicated because plaintiffs have the burden of proof. If responsible state ministries lack the capacity to investigate alleged violations, the collection of sufficient evidence is hampered. NGOs can provide legal counselling and facilitate independent investigations, but if these are accepted in front of courts is uncertain.

If victims, whose universal rights are infringed as a result of corporate activity, do not get necessary assistance through local mechanisms, international legal instruments can put pressure on local stakeholders. But the utilization is only applicable if the national justice system fails to address claims conforming to the international law, because the state’s sovereignty cannot be bypassed. In the past, the Inter-American court of HR enforced the duty of the Nicaraguan state to enforce such law obligations. But in the studied case, the affected population faces two major impediments:

First, the non-complying business is Nicaraguan. While the framework was developed for all types of corporations, some mechanisms only apply to foreign-owned TNCs and the associated home state and society. Exerting external pressure on local companies having little or no visibility in foreign countries where consumer pressure is most likely to develop, is highly difficult.

Second, poor conditions and health outcomes are attributable to the violation of national laws. The Nicaraguan Labour Code regulates working conditions with regard to hours, wages, and safety by a far deeper extent than international laws. While international standard-setters impose pressure to enforce international regulations within the country’s territory, the warrant of national laws remains apparently unaffected. Despite the framework’s imposition on corporations to obey national laws, there are no consequential measures in place for corporate failure to comply, and a lack of enforcement through the state. Not only the UN guiding principles, but also
international laws are very vaguely specified, which constrain the usage of international enforcement mechanism. For example, this barrier could be reduced by establishing a respective court in the LA region. The Northern American Mechanism (ACTA), which is unique worldwide in suing US-owned corporations for HR abuse, could serve as blueprint. But filing a petition to an international court is also a limited tool because legal processes require a long period of time, in which people are confronted continuously by negative impacts.

Even if states seek to fulfil its duty to protect and provide remedy, it is not guaranteed that plaintiffs ultimately get their right. Convicted corporations must forfeit at most a monetary penalty, which is rather low, compared to the made profits and the damage they caused. Finally convicted businesses may even refuse to pay the fine. A prison sentence of the company’s owners or acting managers is currently also unlikely, because legislation lacks individual penalisation. This is especially true for international corporations. As a consequence, wielding criminals get away with a claim against the corporation, but are themselves exempted from punishment. These barriers set a wrong sign and will make future prevention of HR difficult. Corporate non-compliance with protective laws should be punished more severely to safe people’s lives.

To circumvent this barricade, indirectly involved stakeholders could also be approached through non-legal channels. Market-led instruments are able to directly affect business behaviour, for which reason they may be more effective. In the studied case, the CAO process was the only significant rule enforcement mechanism. As an initial mediator, a joint forum between local social and economic actors was created. The role of the Nicaraguan government was identified as being minor. If it is a sustainable solution to bypass the state is a contentious matter. Such tools only address the individual case, but do not incentivise an overall change. Other cases remain unaffected and neither is the state’s capacity improved. The circumvention of state power may even impede national proceedings, if the case is considered as already heard. This assumption may also lead to an abandonment of other international mechanisms. It was observed that the studied population was hoping for a resolution through the CAO process, and has not considered the activation of other instruments, which could balance weaknesses. The UN framework emphasises that states should promote HR with their trade partners. The new free trade agreement between Nicaragua and the EU raises hopes to approach the objective of nationwide impact on people’s HR respect. The market-led mechanism
is able to impose pressure through direct economic sanctioning. Such a restrictive clause is a good example on how the UN framework applies, and could promote the decrease of negative HR impacts. But it also raises the question to which extent foreign governments should interfere in other nation’s internal affairs. The application of the enforcement mechanisms cannot be valued by now, due to its innovation.

A mix of instruments, that are available to report HR abuse, could increase the effectiveness of grievance proceedings as a whole. Such an approach entails the barrier of individually stipulated agreement clauses as well as non-transparent or hardly accessible information. Further, each process arises costs which poor communities simply are not able to cover. Poverty can be considered one of the major constraints with regard to equal protection and justice. In the worst case, affected people may end up filing a complaint to instruments, which expectations are low. A proposed solution could be the combination of complaint mechanisms that facilitate victims to defend their rights by forwarding individual cases to the most promising mechanism. The UN could be the institution to control such an umbrella instrument, due to its legitimateness.

To conclude, whether the UN framework is an effective driver to prevent businesses from HR abuse, the enforcement instruments that are tied on imposed corporate guidelines, are crucial. The UN has laid this cornerstone through its business guidelines, but especially enforcement mechanisms need to be strengthened, re-thought or re-developed.

**Linking the framework’s pillars**
The graphic in appendix II demonstrates that the framework’s pillars are inter-related and need to harmonise to create sustainable business environments. Currently, the UN does provide a useful guide, which is completely handed over to its public and private addressors. As a mediator, the UN facilitates the connection between the pillars because one actor cannot be the sole driving change. In field study case, one party was mainly excluded from ongoing processes, which constrained the creation of a joint forum. As mentioned in the sub-section above, trade mechanisms can be evaluated as more effective on the international level, compared to legal instruments. The state is provided with the opportunity to evade its duty, which consequentially impedes people to defend their rights to some degree. A collaborative responsible takeover, which considers legal and non-legal instruments, would be a mutual benefit – especially for victims.
The findings and discussion conclude that case-related stakeholders fail to address HR harm to an extent that is fatal for the affected population. To that end, the UN framework has not yet effectively led towards the enforcement of CR in the studied context. The UN framework addresses corporate RV by three pillars, but the civil society is the least incorporated stakeholder. There is a lack of intention to provide a helpful instrument to negatively affected populations and the provision of necessary information. The internationally defined CR guidelines were seemingly not known among the field study site, which questions the framework’s relevance. The opportunities for civil societies to participate in the interpretation of the framework and actively shape implementation policies are currently rather little. The scope for civil society groups, to using the UN framework as a protector against corporate HR abuses, needs to be expanded. It is further highly challenging that claimants may be victims of intimidation or punishment. There are slight possibilities to overcome these obstacles at present. The empowerment of vulnerable groups should be more focused. During the time of research, organisations as well as individuals, advocating for better HR protection, faced hazards such as losing the license to operate or personal threats. The maintenance of humanitarian space is barely addressed in the UN guidelines and could be included in future.

Despite social organisations that seek to bridge the gap between victims and available enforcement mechanisms, the UN itself could better implement the own governance model. The UN Working Group on Business and HR is assigned with this task and accepts submissions to corporate HR issues. Individual cases are not investigated, which would also be unbearable due to the large number of cases worldwide. The mandate expires in 2014 and responding efforts, with regard to the evaluation of collected experiences, are officially unknown yet. The UN framework only sets very minimum standards and provides recommendations that need to be further developed. Universal rights were implemented decades ago, but they are still widely abused and only little has been done to improve enforcement mechanisms, which make the norms ultimately valuable and actually abolish violations. Taken into consideration the UN role as a global pacifier, more room could be provided for reverse information sharing on how to improve or establish enforcement mechanisms that ensure good governance and help affected population.
7 CONCLUDING REMARKS

A field study approach was selected to apply the theoretical framework in practice, with the objective to analyse its capability to promote the enforcement of CR. While this may limit the transferability to other cases, it is exactly what the implementation phase of the UN framework required to assess the practical relevance of global guiding principles. The findings and conclusions of this thesis shall contribute to narrowing loopholes, which currently allow corporations to evade their responsibilities.

The UN framework emphasises a large range of norms and rules that apply to all types of businesses. Above all, the main focus lies on Northern TNCs though, which operate in developing countries. The CR study found that especially victims of locally-owned companies face insurmountable challenges, due to limited instruments. In comparison to industrialised countries, major challenges are mono- or oligopolistic industries as well as informal structures, which are highly difficult to penetrate. The paramount importance of large conglomerates for such economies restricts opportunities to achieve better working and living conditions. For these business environments, the framework does hardly provide a best practice policy yet and should be focused in future.

As the thesis outlines in the very beginning, people need to actively defend their rights; however, institutional systems can entrap vulnerable groups where external support is the last resort. The stakeholder community should work towards the mandatory regulation of businesses by creating new concepts for corporate duties. The effectiveness needs to be improved by developing enforcement mechanisms, which address the victims’ needs and prosecute law breakers more strictly. UN bodies have the unique global influence to foster novel governance instruments such as transnational supervision committees, which directly demand corporate accountability for universal rights breach – regardless of the corporation’s national origin. Research on the needs and requirements for better enforcement is recommended to be pursued more closely in future. To shape an advancing UN framework, the participation of the actual beneficiaries, namely adversely affected workers and communities around the globe, should be the spotlight in the remake.
VI ORBITUARY

At the end of my thesis, I would like to give some personal reflections about the time spent in Nicaragua. I chose to collaborate with a social organisation to maximise the scope of independent study activities. Doing research for several months on the HR situation of sugarcane workers, was a highly challenging experience. I learnt about the chances and limitations of NGOs to address HR, and above all, how important these efforts are to balance unequal conditions.

During my second stay abroad, I was also leading the LIF department named Fee for Services, in which exclusively young local graduates were employed. Differences in culture and language did not raise any barriers, quite the contrary, we became close friends and combined our strengths. The main objective of our team was to form in-house business concepts, which cover the foundation’s operating costs and increase publicity. Develop competitive strategies in such a challenging business environment was a very instructive practical experience. Above all, I could achieve one of my objectives for going abroad, namely the application and enhancement of my academic knowledge and the contribution to local development. With regard to the latter, I hope that my friends at LIF will continuously be successful in achieving their goals.

Despite the see-saw between the hope to contribute to the alleviation of people’s misery and doubts on the own goal’s achievement, I have never been remaining defiant and remembering instead, why I decided to go this way: People. Hearts. Solidarity.
Appendix I: Comparative Case Studies

This section addresses all three pillars of the UN framework by analysing patterns of corporate HR violations in LA economies. The information was collected through an in-depth internet search on cases related to the thesis’ topic. Cases, which were published through HR research institutes, were mostly used to gain an insight of case realities. This may limit the identification of cases that were not supported by HR organisations. The research focuses on workers or communities, who are victims of abusive corporate acts in diverse LA industries. Although it was not the exploratory focus, the major identified cases were filed against foreign-owned TNCs. The omnipresence particularly appeared in the primary sector, in which affected people prevalently suffer from irreversible physical or mental harm. These examples shall serve as a comparative basis to the field study case. Similarities and differences as well as finding precedents were analysed for this purpose. The legal basis, proceedings and advocacy strategies were further reviewed. It was the objective to identify strengths and weaknesses of current instruments, apply resulting trends to the theoretical framework, and develop recommendations for its advancement.

The oil company ChevronToxico was sued in Ecuador and Brazil for severe environmental contamination, and consequential harm on the health of people living in the affected areas. The case was brought to the national court of the plaintiffs’ country, due to the defendant’s request. The Ecuadorian and Brazilian courts fined the corporation with a multi-billion dollar amount. The company refused to pay the penalties and both cases were still open until the end of the thesis’ research period. (BHRRC-1; ChevronToxico – The Campaign for Justice in Ecuador 2011) This is a rare case example, in which LA governments addressed HR abuses, but faced challenges to overcome the market-power of the US-owned TNCs. In other lawsuits, plaintiffs were confronted with even higher barriers.

With the support of an international HR NGO, indigenous Peruvians filed a case against the US-owned oil giant Occidental Petroleum. The company was brought to trial for the violation of fundamental indigenous people’s rights. For thirty years, the corporation polluted the environment, thereby causing serious harm on the health of indigenous communities. Plaintiffs first needed to prosecute the claim to sue the company in the US, instead of the Peruvian national court – a process that lasted for six years. The application
was allowed due to the inefficiency of the Peruvian judicial system to protect the rights of indigenous people. High levels of corruption and law-abiding disruption were given reasons by the US federal court. The case was opened in 2013, under the Alien Tort Claim Act (ACTA), 28 U.S.C. § 1350, and respective US state law claims (in the following only referred to ACTA). (EarthRights International. 1995-2014)

Ecuadorian farmers accused the North-American company DynCorp for adverse impacts on the environment and agricultural crop. The business was further accused for severe human health damage and death, caused by fumigation of drug plantations near the Columbian border. The denunciation was brought to a US federal court under the ACTA. The court dismissed the case eleven years after the filing, due to a lack of evidence, which would confirm that harm on the plaintiffs was caused by DynCorp. The decision might be appealed. Other Ecuadorian citizens filed a case under the same act in another US state court, which has been processing since 2006. (BHRRC-2)

The US fresh food producer Del Monte was sued for the violation of the rights to unionise and collectively bargain among their operated banana plantations in Guatemala. Del Monte claimants first sought access to remedial procedures within Guatemala. Due to legally inefficient national mechanisms and ongoing HR violations, plaintiffs and their families were brought to the US under the Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350, for torture and extrajudicial killing. As a result, complaints were raised at a US federal court under the ACTA for: denial of the rights to associate and organise, illegal dismissal, kidnapping, unlawful detention, and torture of labour union leaders through private security forces, as well as crimes against humanity. Proceedings were pending for more than a decade. The complaint was ultimately refused. (International Rights Advocates; FindLaw 2014)

Under the same act, dependants of Colombian union mineworkers, who were murdered by paramilitaries by order of the US-based mining conglomerate Drummond, submitted a case to an US federal court. The lawsuit was abandoned. Claimants have been seeking a new trial against Drummond for: the ordering of intimidation, torture, kidnapping and murder through paramilitaries. Evidence for corporate complicity has not been proven until the end of the thesis’ research period. A former contractor was convicted of murder by a Columbian court that ordered further investigation of the case. (BHRRC-3)
Soft-drink worker unions accused the Coca Cola Company with similar HR abuses among the bottling plants in Colombia. The case was dismissed after an eight year trial. (BHRRC-4)

These cases limit the transferability to the field study case, because the used international instrument ACTA could not be applied. But they demonstrate the remarkable ineffectiveness of protecting rights by states. Further, they show the tediousness of remedial processes. In many cases the long duration caused additional harm to affected people.

Alleged corporate HR abuses have also been released to public in many LA countries, in which sugarcane is a large-scale agricultural crop: forced labour of Haitians in the Dominican Republic1, abuse of rights of women and children as well as a lack of freedom to build unions and collectively bargain in Costa Rica2, lack of social security in Guatemala3, and the worst forms of child labour in Bolivia4 are some examples. The producing market is mainly dominated by large and powerful family-owned sugar businesses5 that have close ties to the government. They are organised in sugar associations to control their dominant market position. The comparative case study research has not found any evidence on a major filed lawsuit for such HR violations in these countries.

It is exceptional that exclusively notable cases were found, in which corporations of foreign origin were prosecuted for HR violations. This may be an indication of failure to hold local businesses accountable. To find explanations on this phenomenon, a field study was being conducted in Nicaragua, which was the major focus of this thesis’ CR study.

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1 See B.J. Bernier (2003, 16,26, and 35) for a demonstration of local conditions. Forced labour is specifically mentioned on the outlined pages.
2 According to: PIRM (2009)
3 An explanatory article is provided by A. Arce and M. Rodríguez Pellecer (2012)
4 See for example B. Sharma (2006, 3-4, 13-14)
5 For example, according to Hartley (2009) and DominicanWatchdog.org (2009-10), the Vicini family is the mayor player in the Dominican sugar industry and has also close ties to the Fanjul family in Florida, who are big players in the US sugar industry and the owners of the largest sugar mill in the Dominican Republic called Central Romana.
Appendix II: The UN Framework in the Case Study Context

This graphic illustrates the integration of the theoretical framework and the practical study. It highlights the harmony between the three divisions, and the necessity to assign lessons learnt from each pillar to the whole framework.

Appendix III: Glossary of Relevant Legal Principles

The following overview illustrates the range of reviewed standards and laws, which were used as the foundation for the LIF study. Based on these norms, guidelines for ideal corporate and governmental behaviour were defined. Found on these, the questionnaire was developed. The findings were verified with the help of the regulations to assess corporate compliance. Due to the length of the document, only the index of contents is outlined:

**International Human Rights Law**
- Universal Declaration of Human Rights (UDHR) (1948)
- International Covenant on Civil and Political Rights (ICCPR) (1976)
  - Convention (SP)
  - First Optional Protocol (SP): Establishes an Individual Complaint Mechanism under HRC once domestic remedies have been exhausted
- Relevant Case Law
- International Covenant on Economic, Social, and Cultural Rights (ICESR) (1976)
  - Convention (SP)
  - Optional Protocol – Establishes a complaint mechanism for Covenant. Not yet entered into force. Nicaragua not a signatory
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1987)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1990)

UN Resolutions
Declaration on Social Progress and Development (1969)
Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms
Declaration on Occupational Illness (WHO), 1994
Declaration of the UN Sustainable Development Conference – Rio+20 (2012)
Declaration of the UN Sustainable Development Conference – Rio+20 (2012)
66/2. Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases

ILO
Constitution of The ILO
Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia) – Appended to the Constitution
Freedom of Association and Protection of the Rights to Organise, 1948 (Convention 87) F
Right to Organise and Collective Bargaining Convention, 1949 (Convention 98) F
C135 – Workers’ Representatives Convention, 1971 (No. 135)
Abolition of Forced Labour Convention, 1957 (No. 105) F
C029 – Forced Labour Convention, 1930 (No. 29) F
Minimum Age Convention, 1973 (No. 138) F > ratified 02 November 1982
Worst Forms of Child Labour Convention, 1999 (No 182) F > ratified by Nicaragua on 6 November 2000
Equal Remuneration Convention, 1951 (No. 100) F
C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111) F
Employment Policy Convention, 1964 (No. 122) P
C169 – Indigenous and Tribal Peoples Convention, 1989 (No. 169) > ratified on August 2010
Tripartite Consultation Convention 1976 (No. 144) P
Protection of Wages Convention, 1949 (No. 95)
Workmen’s Compensation (Agriculture) Convention, 1921 (No. 12)
Right of Association Agriculture Convention, 1921 (No. 11)
Plantations Convention, 1958 (No. 110)
Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)
Rural Workers’ Organisations Convention, 1975 (No. 141)
ILO Declaration on the Fundamental Principles and Rights at Work (1998)
Tripartite Declaration of Principles Concerning MNE’s and Social Policy
Committee of Experts on the Applications of Conventions and Recommendations
Committee on Freedom of Association
ILO Conventions
ILO Recommendations

WTO
Case Law

WHO
International Health Regulations (2005)

PAHO
PAHO Resolutions
Pan American Health regulations/language

OAS
OAS Charter
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