

# **The effectiveness of International Principles in Corporate Complicity of Human Rights in Peru**

Mary Mikhaeel

30 April 2015

# INTRODUCTION

Since World War II, the international community has been holding nations accountable for their actions. The Nuremberg Trials set a precedent for creating mechanisms by which individuals and nations could be held internationally accountable for their actions. The Trials also recognized that many German companies were active participants in the atrocities of the war by doing things such as supplying the Nazis with the poisonous gas for the concentration camps. In 1945, the United Nations (save for its failed predecessor, the League of Nations) became the first international body to create binding treaties by which governments who were party had to abide. Since then, its mission has been to promote and keep peace across the globe. While the United Nations' (UN) success in doing so is widely debated, it is without question that since its formation, the UN has made a big impact in the world. One of its most prominent bodies is the Human Rights Council. From its creation in 1946 until 2006, it was known as the Human Rights Commission. Most notably, the Human Rights Commission created the Universal Declaration of Human Rights, which has been a key element in defining human rights internationally ever since. Furthermore, the Commission created the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), the two most prominent human rights treaties. Along with the many other binding treaties the Commission and its successor, the Human Rights Council have created, the ICCPR and ICESCR have been remarkably successful in ensuring that states party to the treaties abide by their provisions. Committees regarding each treaty have been effective in holding states accountable. Furthermore, the Human Rights Council mechanism of the Universal Periodic Review has been effective in ensuring that states are abiding by treaties to which they are party.

While there has been significant work done in terms of moving states to better human rights practices, it has proven much more difficult to hold non-state actors in the same way. In an increasingly globalized world, corporations are often the violators of human rights. As aforementioned, there is precedence for holding corporations accountable for human rights violations internationally through the Nuremberg Tribunals. However, corporations are not states and therefore are not bound by the same treaties. Moreover, companies are becoming increasingly transnational, making the jurisdiction of who can hold them accountable extremely questionable. This has made it incredibly difficult to hold transnational corporations internationally accountable for their violations. In 2011, John Ruggie introduced a set of Guiding Principles which corporations should follow in order to ensure they are adhering to high human rights standards. The Human Rights Council immediately endorsed these principles; however, they do not have the same binding features as many other Human Rights Council instruments. Since the Guiding Principles in 2011, the UN and the rest of the international community has taken initiative in creating mechanisms to incentivize corporations to meet these standards. The Guiding Principles are founded upon the idea that it is the duty of corporations to “respect, protect, and remedy” human rights violations. However, because corporations do not meet before the Universal Periodic Review nor must they answer to a Committee on corporate human rights violations, there has been very little research on the extent to which non-binding principles have affected the practices of corporations. Since most of these corporations are transnational, it often remains in question which state has the right to hold the corporation accountable for its violations. Furthermore, corporations can simply move their violations to another part of the world where the risk of being reported for human rights violations is low. Because of the transnational nature of these corporations, it makes it difficult to hold them accountable to the

laws of any one state nor international treaties to which states in which the practice are a party. Several states have mechanisms by which corporations can be held criminally liable for human rights violations. However this relies on the fact that the corporation's violations are in some way tangential to the state litigating. There is no legal mechanism by which an international body, such as the UN can hold a corporation legally responsible to meeting a certain standard of human rights in their practices.

There is a wide variety of guidelines and principles that companies can sign on to as a pledge to respect human rights in their business. The most prominent of these are the UN Global Compact and the Voluntary Principles. The UN Global Compact allows for businesses to sign on to its Ten Principles, largely influenced by the Ruggie Principles on corporate human rights<sup>1</sup>. The UN Global Compact has been successful in terms of its membership, with over 12,000 corporations participating<sup>2</sup>. This makes it world's largest corporate responsibility initiative<sup>3</sup>. However, the language that the UN Global Compact uses is relatively weak, only informing companies on best practices and encouraging them to follow them. Similarly, the Voluntary Principles contain very weak language, framing themselves as a tool in order to assist companies in achieving their own goals of achieving higher human rights standards. The Voluntary Principles are a set of principles established in 2000 in order to encourage and guide companies to in protecting human rights<sup>4</sup>. While only 21 companies have signed on to the principles, they have been globally recognized as a standard to which companies should hold themselves<sup>5</sup>. There is very little literature regarding whether or not these principles, among others, have in fact

---

<sup>1</sup> "Overview of the UN Global Compact" *UN Global Compact*, 22 April 2013.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> "For Companies" *Voluntary Principles on Security and Human Rights*, 2015

<sup>5</sup> *Ibid.*

contributed to the betterment of human rights practices of corporations. This paper will present data and a case study of corporate violations in Peru since 1989 and assess how the UN Global Compact and the Voluntary Principles have affected corporate compliance with human rights in Peru.

### **UN Global Compact**

The UN Global Compact is an initiative by the United Nations by which corporations can sign on to 10 guiding principles that ensure a certain standard of human rights, labor, anti-corruption, and environment standards are met. Corporations who sign on the UN Global compact then submit reports assessing how well the corporation has adhered to these ten principles. The UN Global compact allows businesses to collaborate with governments and the United Nations in order to achieve a higher standard of human rights in business<sup>6</sup>. Currently, over 12,000 corporations are participants in the UN Global Compact<sup>7</sup>.

### **Ruggie Principles**

The Ruggie Principles are more formally known as the Guiding Principles on Business and Human Rights. In 2005, the United Nations asked Harvard professor John Ruggie to create a set of guiding principles to help corporations adhere to human rights standards throughout their business endeavors. These principles have become more informally known as the “Ruggie Principles”. In 2011, the Human Rights Council unanimously endorsed the Guiding Principles, making them an influential force in how corporations view human rights while doing business.

---

<sup>6</sup> “Overview of the UN Global Compact.” *UN Global Compact*, 22 April 2013.

<sup>7</sup> *Ibid.*

## **Voluntary Principles**

The Voluntary Principles are more formally known as Voluntary Principles on Security and Human Rights. They were established in 2000 in order to guide companies in their business practices<sup>8</sup>. The United States and United Kingdom played an integral role in creating these principles<sup>9</sup>.

## **DATASET**

The information about Peru in this paper is gathered from the Corporations & Human Rights Database Project (CHRD Project). The database gives specific information on all corporate human rights violations which have occurred in Latin America since 1992. This project is unique in its ability to provide extensive quantitative information on the number of allegations against corporations in Latin America. There is yet to be any qualitative data on corporate compliance with human rights. This has made it difficult to track or analyze patterns in human rights violations. The database is intended to provide the necessary information to be able to make claims and analyze the reasons behind and responses to corporate human rights violations in Latin America. In my paper, I will be dealing specifically with the data from Peru and analyzing solely the patterns in one country.

## **METHODOLOGY**

---

<sup>8</sup> "What are the Voluntary Principles?" *Voluntary Principles on Security and Human Rights*, 2015.

<sup>9</sup> *Ibid.*

In order to create the database, we compiled a list of allegations made by the Business and Human Rights Resource Centre and found the cases that occurred in Latin America. The Database was intended to standardize the qualitative information of each of these cases in order to create a uniform set of data that could be quantitatively analyzed. Before coding, specific standards were created in a CHRDR Project handbook that outlined the way values should be coded into the database in order to create a uniform system between all members of the team. The data describes each of the following: Company sector, type of abuse, date of allegation, location of allegation, date allegation was reported, who reported the allegation, company response and remedy attempts, judicial remedy attempts, state involvement and other actors involved.

## **CASE STUDY: Buenaventura Mining Company**

Buenaventura is Peru's largest mining company and operate several mines within the country. Since 1992, there have been 14 allegations against Buenaventura for human rights violations. The company joined UN Global Compact in 2004<sup>10</sup>. Not only has the company joint UN Global Compact, but they have also sent in an annual report every year since 2006, covering all of the areas the report requires. However, 9 of the 14 allegations against Buenaventura have happened since 2004. Moreover, 10 of those violations have been committed since 2000, when the Voluntary Principles came into effect and 7 have been committed since 2011, when the UN endorsed the Ruggie Principles. At first glance, it does not seem promising that the majority of Buenaventura's allegations occur after the enactment of the Voluntary Principles and their joining of the UN Global Compact. It would seem as though not only does the corporation

---

<sup>10</sup> "GC Active: Compania de Minas Beuaventura", *UN Global Compact*, 2015.

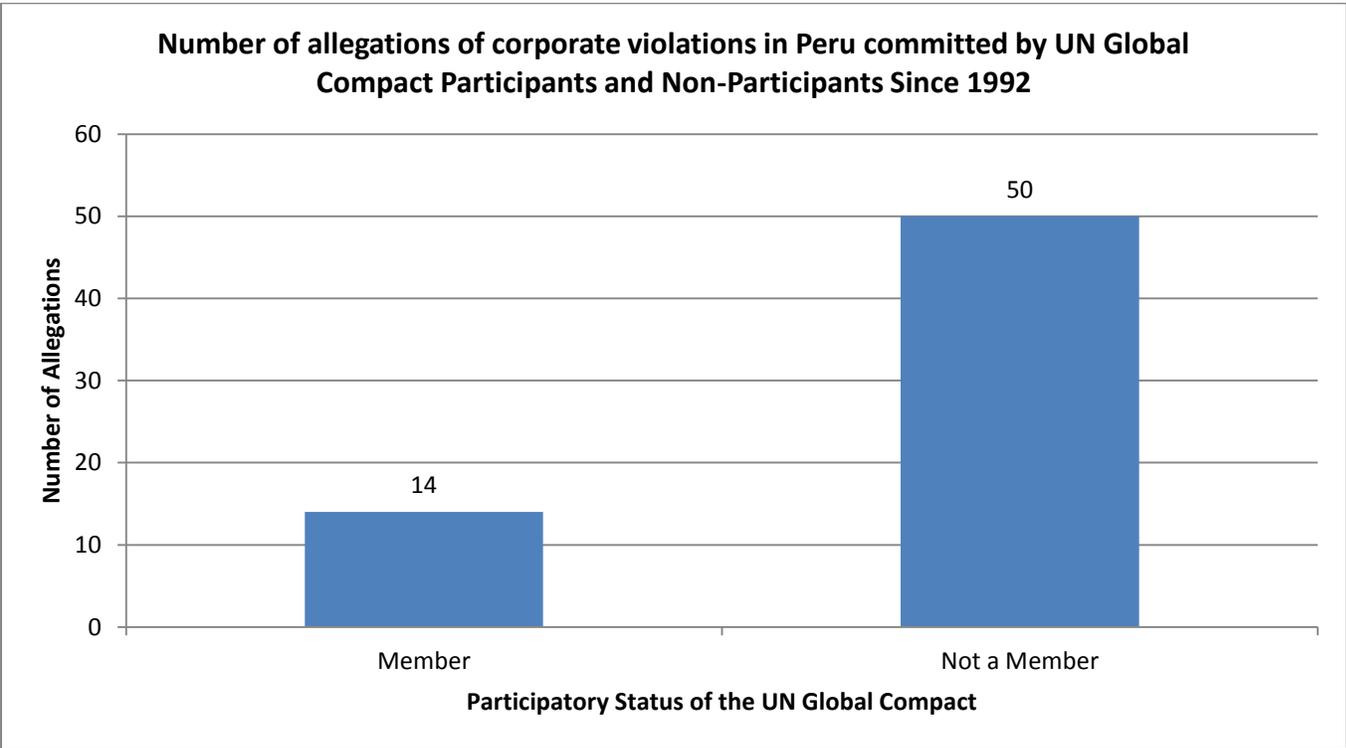
continue to commit violations, but they are increasingly doing so, completely disregarding the guidelines to which they have committed. However, perhaps this is an inaccurate story. The data then raises a new question: What exactly has the effect of new international guidelines for corporations been? It is important to note that the data shows allegations of violations, not violations themselves. The principles are unique in that they cannot be used to hold any of the companies legally accountable. They simply allow companies to pledge to meeting a certain standard, and thereby, advertise to the rest of the world that they have made this pledge. Since the principles are not enforceable, perhaps they have a different effect than would a treaty. The increase in violations reported does not necessarily mean there has been an increase in violations happening. In fact, it could very well be the case that although less violations are happening, more are being reported, meaning the company is becoming more transparent. While this is perhaps not as big of an accomplishment as threatening litigation for the companies, as some countries do, on an international level, it still shows progress. Transparency in the company not only makes the company more aware of its actions, but also allows for them to improve over time. It has only been 15 years since the Voluntary Principles have been in effect, 11 since the company joined the UN Global Compact, and 4 since the UN endorsed the Guiding Principles. However, this may not necessarily be the case. An example of an earlier case (2000) in contrast to a later case (2012) may give insight to this. In 2000, there were two allegations of violations against Buenaventura. Both violations were concerning an oil spill that caused mercury to enter into the water supply, causing many people to get sick. While there is no excuse for Buenaventura not to take responsibility for its actions, the violation can be considered to be less severe as it is merely an act of negligence rather than an act of intent to violate rights. In contrast, in 2012, after Buenaventura had signed on to the UN Global Compact and the Ruggie Principles

had come into effect, there was an allegation against Buenaventura regarding a far more serious case. In 2012, a company personnel working in the Yanchocha mine which is run by Buenaventura attacked school teachers in an elementary school for not accepting education kits from the company. The kits were to be given in exchange for the school's support of the company, but the teachers refused. This violation is more serious in the sense that Buenaventura employees actively committed human rights violations. This situation was by no means accidental. However, the violation was committed by certain employees, not the company as a whole. The company immediately responded saying that it condemned the actions of the personnel involved in the situation. Although the violation was more severe, the company chose to respond. Therefore, perhaps the Guiding Principles cannot ensure fewer human rights violations, but they can effectively guide companies into redressing violations and provide greater outlets for victims to bring forth allegations against companies. This, in of itself, would make such guidelines successful.

# DATA ANALYSIS

## UN GLOBAL COMPACT

The data on corporate violations in Peru gives insight as to the effects that the UN Global Compact has had on human rights allegations. Of the 117 violations that were committed in the 22 year time span, the majority of companies committing violations were not UN Global Compact participants (figure 1).



( Figure 1)

Although at this point, there is no data on the number of companies operating in Peru that are participants of the UN Global compact that do not commit violations, this information is still insightful. The large majority of corporations committing violations are non-participants. Only

21% of the companies in the dataset are members of the UN Global Compact. This may mean that signing on to the UN Global Compact is, in fact, effective in keeping companies from committing violations. In this set of cases, violations are more likely to have been committed by a non-member company than by a member company.

However, the data tells a slightly more complicated story than that. Although there are more companies in the dataset who are not members than those who are non-members, 59% of allegations against companies were against companies who are members of the UN Global Compact. Since only 21% of the companies in the database are participants, the number of allegations from them is greatly disproportionate ( Figure 2).



Figure 2

There can be multiple explanations for this. What comes into question is what the actual affect is of the UN Global Compact and if this is in line with the intended effect. The intended purpose of the Global Compact is to “Catalyze business action in support of UN goals and issues, with emphasis on collaboration and collective action”<sup>11</sup>. However, corporations that are members of the UN Global Compact and find themselves in the database are falling short of the vision of the Compact. There is no data on whether or not this is a significant percentage of companies who are participants. However, although these 14 companies are not models of the Global Compact’s achievement of its vision, it does not mean that the Global Compact has not achieved anything at all. One of the main issues researches face when trying to measure the human rights record of corporations is that violations are not always reported. However, companies who are working to improve their human rights standards generally have mechanisms by which people can more easily hold allegations against the company. It is also plausible that in Peru, like in many cases, people are also more likely to report violations by companies that they find will more likely change their behavior than those who they believe will not. Referring to Principle 10 of the Ten Principles of the UN Global Compact could provide an explanation to this. Principles 10 states “Businesses should work against corruption in all its forms, including extortion and bribery<sup>12</sup>.” While this provision does not explicitly demand that companies act in a manner that allows those affected by its practices speak out against their violations, it is a policy that requires the same amount of transparency as would lead to a greater number of their violations being reported.

---

<sup>11</sup> “Overview of the UN Global Compact,” *UN Global Compact*, 22 April 2013.

<sup>12</sup> “The Ten Principles”. *UN Global Compact*, 2015

A further assessment of the data compliments this claim. Of those companies who are participants of the UN Global Compact , a greater number of their violations were reported after they became participants than before ( Figure 3).

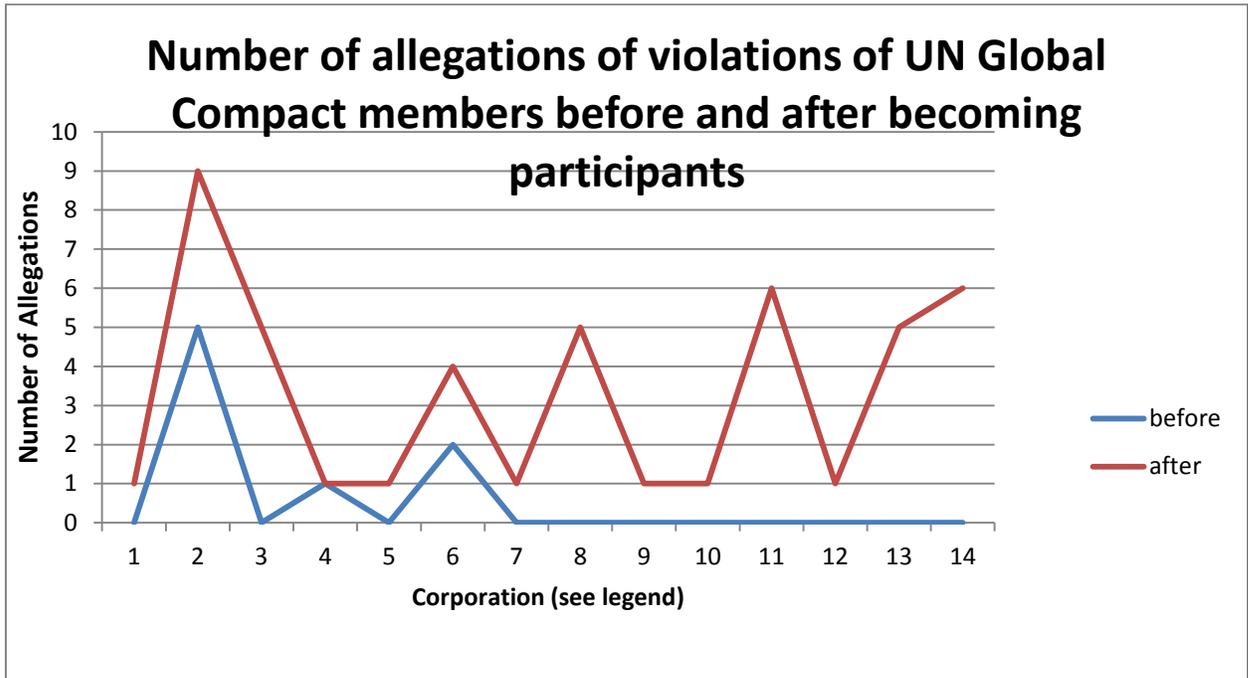


Figure 3

LEGEND

List of Corporations according to each number on the graph	
1	Barrick Gold Corporation
2	Buenaventura
3	BHP Billiton;Xstrata; Teck; Mitsubishi Corporation
4	Ecopetrol
5	Rubiales

6	Repsol YPF
7	Royal Dutch Shell
8	Securitas Peru S.A.
9	Grupo Prosegur
10	Centrais Electricas Brasileiras, S.A. ( Electrobass)
11	Allianz
12	BBVA Corporate and Investment Banking
13	HSBC
14	Banco Santander

Figure 4

There seem to be two plausible explanations for the rise in the number of allegations. Firstly, it could be possible that companies committed more violations after joining the UN Global compact. However, this seems unlikely since members are obligated to turn in reports of their human rights record for that year. It would make sense that companies would turn in reports that celebrated their progress in respecting human rights rather than violating more rights. The second option then seems more likely. Since others are aware of a corporation’s dedication to human rights, they are more likely to make complaints against the company when rights are violated. The data shows that save for Ecopetrol, which has the same number of violations before and after signing the Global Compact, all companies had an increase in their number of allegations of abuses after they signed on to the Global Compact.

**RUGGIE PRINCIPLES**

Trends among the Ruggie principles seem to be similar to those of the UN Global Compact.

Although there is no membership to the Ruggie principles as there is to the UN Global Compact, It is possible to see a significant change with regards to the number of violations before and after the UN endorsed the guidelines (Figure 5).



Figure 5

### Number of violations reported each year between 1992 to 2014

Year	Number of violations committed each year
1992	2
1993	0
1994	3
1995	1
1996	2
1997	3
1998	5
1999	1
2000	5
2001	1
2002	3
2003	1
2004	2
2005	4
2006	11
2007	5
2008	1
2009	7
2010	6
2011	14
2012	7
2013	1
2014	1

Figure 6

The red circle on the graph of the number of violates reported yearly in Peru shows that there was a significant increase in 2011, the year the principles were enacted than in any other year. This led to an increase in the average number of cases reported each year ( Figure 7).

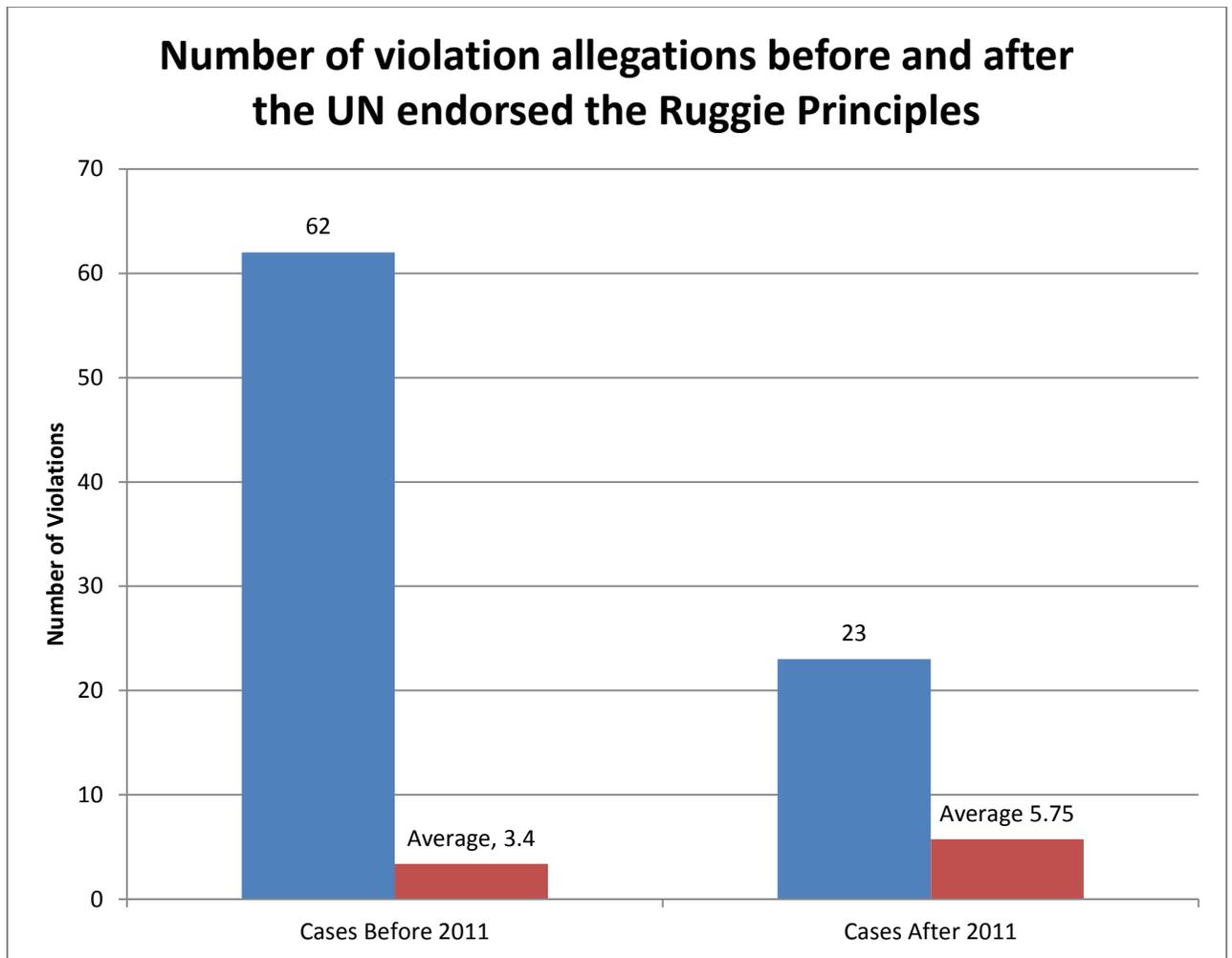


Figure 7

Figure 7 shows the number of violations committed from 1992 to 2010 and 2011 to 2014. 62 violations happened over the 19 year period while 23 happened in the short 4 year period since the Ruggie Principles were enacted. The average number of violation allegations increased from about three a year to about 6 a year. Therefore, there is a relationship between the average number of allegations reported and the year the Ruggie Principles came into play. The possible explanation I used for the UN Global Compact could apply here as well. While this data makes it difficult to say if the number of violations went down or not because of the principles, it seems likely that the Ruggie principles informed and empowered people, allowing them to file more

complaints about violations than they did before the Ruggie Principles provided guidelines of what people should be expecting from corporations. The data may not be able to show if violation frequency lessened as a result of the Principles, but there is a definite correlation with the number of allegations reported and the year the Principles were enacted. This could mean that at some level, the Principles acted as a tool for people to hold corporations accountable.

## **VOLUNTARY PRINCIPLES**

An analysis of the data shows that the Voluntary Principles on Security and Human Rights resembles a similar pattern to that of the Ruggie Principles. Since 2000, when the Voluntary Principles were enacted, there has been a steady increase in the number of violations reported (Figure 8).

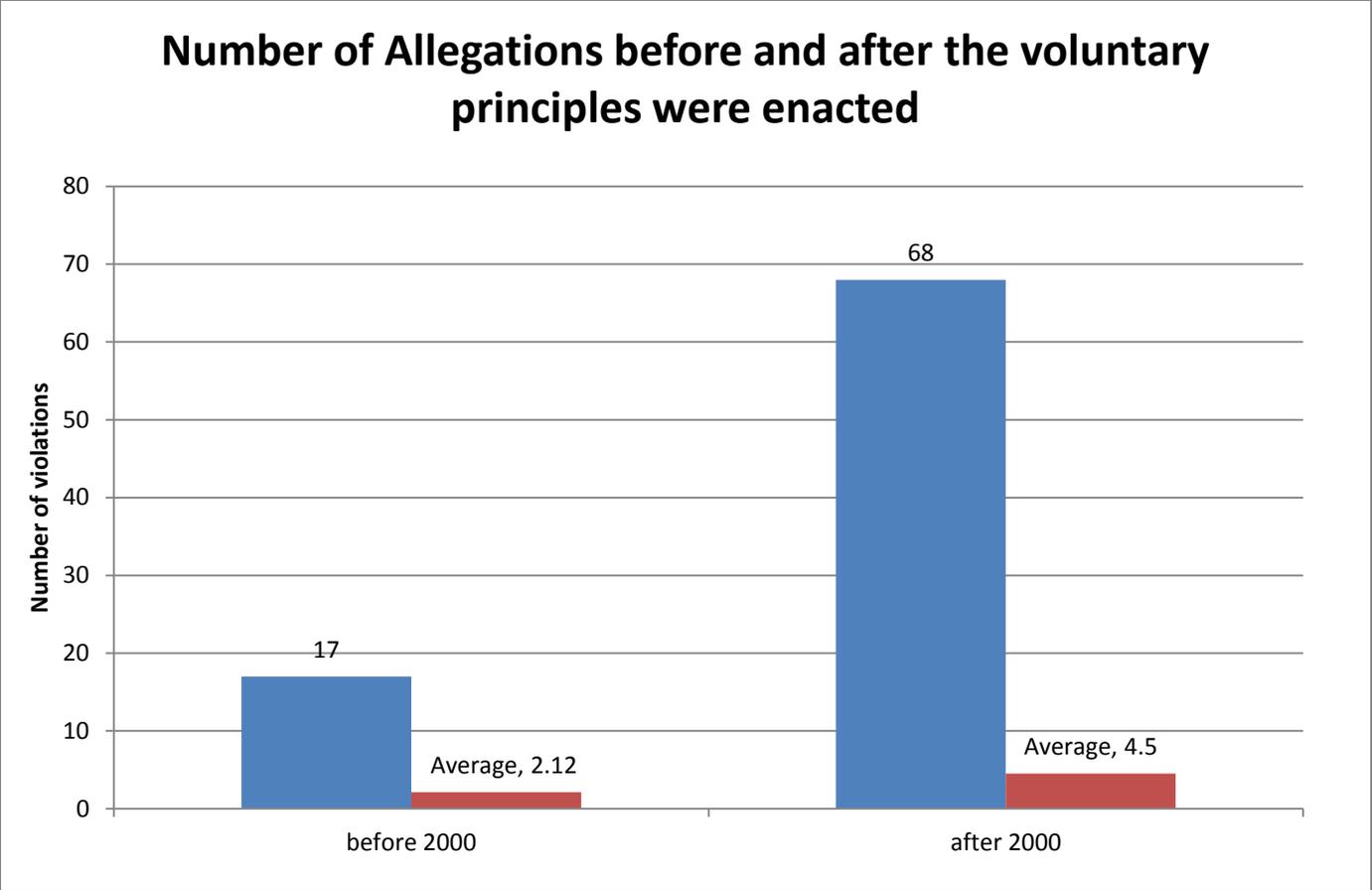


Figure 8

As the graph shows, 17 of the violations were committed before 2000, on average 2 a year while 68 were committed after 2000, on average 5 a year. Here, again, there is a dramatic increase in violations after the Voluntary Principles were enacted. The Voluntary Principles does not work by membership, as only a few very large organizations are participants. Rather, it was intended as a set of universal guidelines for all companies to follow. Similar to the Ruggie Principles, there is a correlation between when they were enacted and an increase in the number of violations reported.

Overall, there is a trend in an increase in number of violations ( Figure 9).

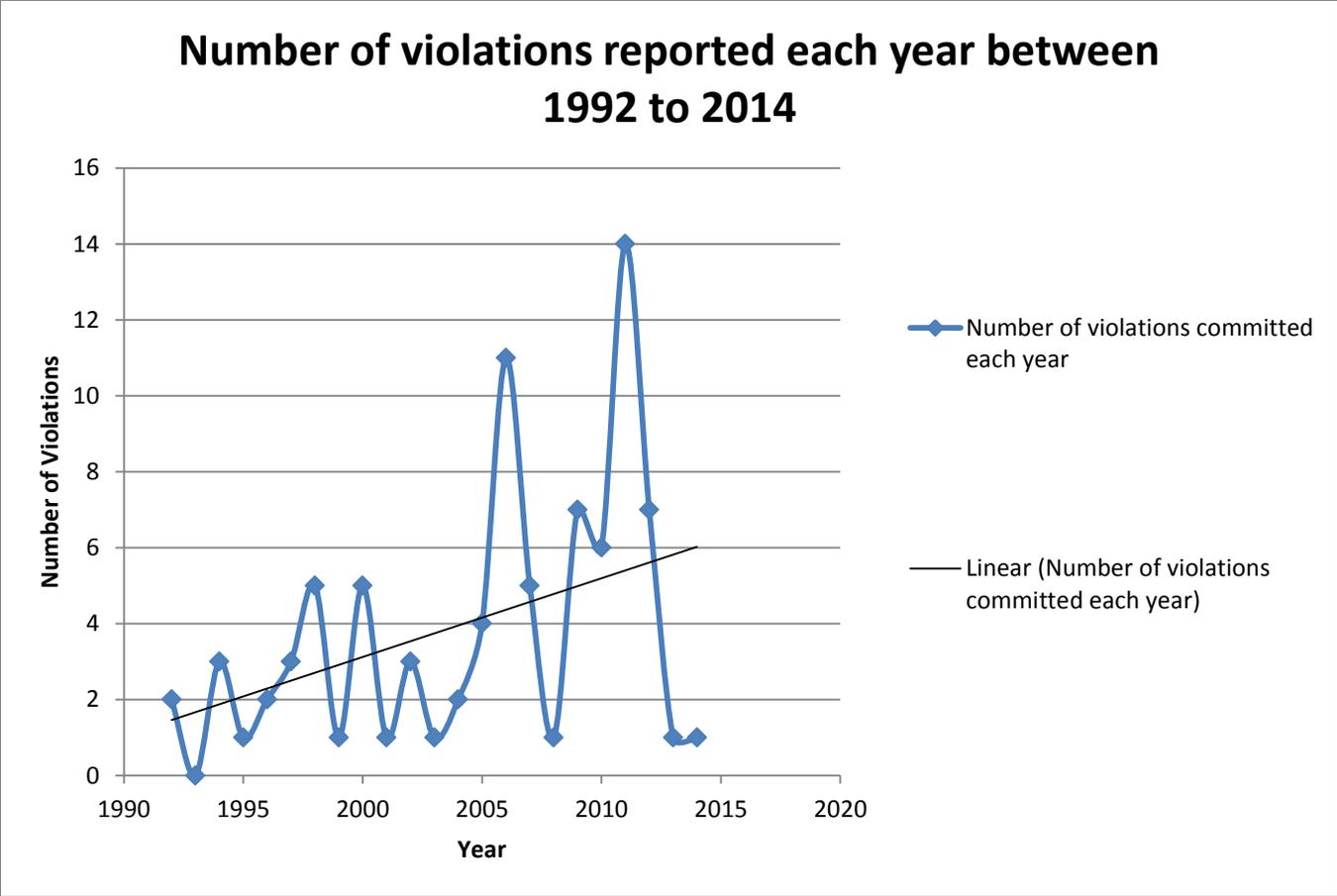


Figure 9

Figure 9 shows the number of violations reported each year since 1992. As the graph shows, there has been some fluctuation over the years of the number of violations reported. However, the black line on the graph is the line of regression in the cases. This line shows that, despite the variation, there is a strong trend towards an increasing number of violations being reported over time.

# CONCLUSION

No definitive conclusions can be made from the data regarding a causal relationship between patterns in the data and the principles mentioned in this report. However, there is strong evidence for a correlation. While more research and data would be necessary to make this claim, it appears that these principles create an environment that makes it easier to hold corporations accountable for their actions. This is beneficial in that the more corporations are held accountable for their violations, the less violations they will be likely to commit as time passes on.

This research is significant as it gives quantitative insight to the trends marking allegations of corporate violations in Peru. Corporate complicity with human rights is often difficult to measure, making it difficult to assess the effectiveness of attempts to encourage corporations to meet a certain standard. I hope that this research will pave way for further research in being able to make statistical claims of the effectiveness of certain guidelines and principles regarding corporate complicity in human rights.

This research is intended to be preliminary and guide future research on the topic. Therefore, there are limitations on this research that must be acknowledged. Primarily the dataset used for this project only contained 117 cases. Such a small case number makes it difficult to create any sufficient statistical analysis. Furthermore, the cases in this report are solely concerning Peru. While it may be hypothesized that other states will project similar trends, this information cannot be properly extrapolated to other states without further research. Moreover, the nature of the data is limited in that it only accounts for known violations. This means that these violations are reported. Several other violations occur that may not be reported and

therefore are not included in the dataset. This is discussed extensively throughout the report. The data shown here and the analysis can only point to correlate relationships, they cannot prove causation. Lastly, there are many different factors in each violation that cannot be quantified and therefore can never be adequately reflected in a dataset. This makes it possible to infer as to causes why certain trends occur, but impossible to ever make definitive claims regarding these variables that cannot be quantified.

Future research on this subject will use a large dataset that includes all cases coded in the CHRDR Project database. This will include all violations throughout Latin America within the same time period. Having a larger database will allow for greater statistical analysis, making it possible to make larger claims on the relationships between reports of violations and international principles that may affect these trends. Further research will also include a much more extensive number of international principles and guidelines corporations have signed on to. A larger number of these will allow for distinctions to be made of the consequences of certain principles based on how obligatory they are. It will also allow for an assessment of if the number or types of principles a corporation signs on to makes a difference in their violations record. Furthermore, the dataset has the capability of allowing for an analysis if certain types of violations are more or less likely based on certain principles, if judicial remedies or corporate remedies are more or less likely to be taken, and if corporations are more likely to respond to allegations based upon which principles they have signed on to.

## Bibliography

- “For Companies” *Voluntary Principles on Security and Human Rights*, 2015
- “GC Active: Compañía de Minas Buenaventura”, *UN Global Compact*, 2015.
- “Overview of the UN Global Compact,” *UN Global Compact*, 22 April 2013.
- “The Ten Principles”. *UN Global Compact*, 2015
- “What are the Voluntary Principles?” *Voluntary Principles on Security and Human Rights*, 2015.