European Coalition for Corporate Justice (ECCJ)

RIGHTS FOR WHOM?

Corporations, Communities and the Environment

RIGHTS FOR PEOPLE RULES FOR BUSINESS

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CONTENT

INTRODUCTION

A growing body of work is documenting how the operations of European companies outside the European Union have been implicated in violations of internationally accepted human rights and environmental standards. The European Coalition for Corporate Justice (ECCJ) has highlighted many of these cases, including oil spills committed by Shell in Nigeria, chemical poisoning suffered by workers in Motorola's supply chain, and the forced relocations of local communities in Anglo-American's South African operations.[1] The causes of these and other violations are complex, but it is clear that significant gaps in the way multinational operations are governed has exacerbated this behaviour. As Professor John Ruggie, the Special Representative of the United Nations Secretary-General on Business and Human Rights, has stated:

> *"The root cause of the business and human rights predicament today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge"*[2]

The ECCJ believes there is an array of governance gaps that Europe has a unique opportunity to address. Through its power to implement legally binding reforms, the European Union (EU) can not only lead the debate internationally, but it is also in the position to take effective steps to enhance compliance with internationally agreed human rights and environmental standards, and to help those impacted by violations of those standards achieve greater access to justice.

Current company law allows Multinational enterprises (MNEs) active in the EU with operations outside the EU to operate as a single economic and operational unit, benefiting from the profits of their subsidiary companies and their commercial relationships with other businesses in those countries. Too often however, such benefits are enjoyed by the MNE while these operations and commercial relationships have avoided liability for environmental and human rights violations, particularly in countries with a weakened rule of law.

This view has been reflected in the European Parliament's resolution, *Corporate Social Responsibility: A New Partnership,*[3] which urged the European Commission to provide further guidance to business through regulation in key aspects of corporate accountability, and to greatly enhance compliance by business with regard to international standards of human rights and environmental protection.

More recently, the European Commission (EC) has accepted that a more clear view of the current situation is needed and has commissioned a study to the Edinburgh University entitled *"Study of the legal framework on Human Rights and the Environment applicable to European Enterprise Operating Outside the European Union"*. The study was in fact one of the requests of ECCJ to the EC as a first step towards identifying what could be the role of the EU in order to effectively implement the so called Ruggie framework, the 3-pillars framework "Protect, Respect, and Remedy: a framework for Business and Human Rights" presented by professor John Ruggie.[4]

In this report, professor Ruggie elaborates on three core principles for a common framework for solving misalignments in the business and human rights domain: the State duty to protect against human rights abuses by third parties; the corporate responsibility to respect human rights and the need for more effective remedies. The above-mentioned EC study has taken the situation one step further in proposing some steps the EU could take in order to contribute to "Protect, Respect and Remedy".

During the last 3 years, the ECCJ has been constantly involved in in-depth research involving input from international lawyers, academics and human rights and environmental advocates to evaluate the current governance framework and obstacles to accessing justice, and what the EU could do to improve the current landscape. The conclusions from this research, published in *Fair Law: Legal Proposals to Improve Corporate Accountability for Environmental and Human Rights Abuses*[5] highlighted a range of legal reforms that could help minimise the negative impact of European companies operating outside the EU. It is important to highlight that the Edinburgh University study has arrived at very similar conclusions that ECCJ

[1] Ascoly, N. (2008) *With Power Come Responsibility: Legislative opportunities to improve corporate accountability at EU level*, European Coalition for Corporate Justice, Brussels: www.corporatejustice.org/IMG/pdf/ECC_001-08.pdf

[2] Report by the Special Representative of the United National Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie, to the United Nations General Assembly, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, 7 April 2008, p.6: www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf

[3] European Parliament, Committee on Employment and Social Affairs, Report on CSR: A New Partnership, (2006/2133(INI)), www.europarl.europa.eu/oeil/FindByProcnum.do?lang+en&procnum+INI/2006/2133

[4] http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf

[5] Gregor, F. and Ellis, E. (2008) *Fair Law: Legal Proposals to Improve Corporate Accountability for Environmental and Human Rights Abuses*, European Coalition for Corporate Justice, Brussels: www.corporatejustice.org/IMG/pdf/ECCJ_FairLaw.pdf

included in Fair Law and successive legal analysis undertaken in these last few years.

The ECCJ believes the international impact of European MNE operations on people and the environment could be greatly improved by recognising the economic and operational reality of corporate structures. Too often, these structures encourage companies to hide behind artificial legal divisions between different companies in their corporate group. There are also commercial arrangements in which European companies are not in a classic parent-subsidiary relationship, but where they still have significant economic leverage - and therefore behavioural influence - with their foreign commercial partners, such as through supply chain relationships and joint ventures. The ECCJ also believes there is a need for much greater transparency of the international operations and impacts of European business. In order to effectively carry out these reforms, and in line with some recommendations from the EC study on the legal framework, the ECCJ proposes a range of legislative reforms:[6]

1. Better Liability of Parent Companies

In the case of European transnational corporations, the ECCJ believes that the most effective way to improve compliance with human rights and environmental standards by business enterprises, in particular in their out-of- EU operations, would be to enhance the direct liability of EU parent companies in their home states. Therefore the responsibility for oversight and control of compliance with human rights and environmental standards by business enterprises should be allocated to the company having the authority to control the entity that actually violated the standards – in short, to the parent company.

2. Establishing a Parental Company Duty of Care

The ECCJ believes that a European parent company should have a duty of care to ensure that human rights and the environment are respected not only in situations directly impacted by the company, but also through it sphere of responsibility, including its business partners and affiliates. Furthermore, a company should be held legally liable if it cannot adequately demonstrate it has adhered to this duty. Therefore, parental duty of care would be expanded to all situations where the parent could significantly influence the adverse impacts on human rights and the environment created by other businesses with whom it has a commercial relationship.

3. Establishing Mandatory Environmental and Social Reporting

An obligation for MNEs to conduct environmental and social reporting would improve the transparency and accountability of MNEs. Effective reporting should include information about: (i) The enterprise structure and its sphere of responsibility; (ii) The risk of human rights and environmental abuses within the enterprise's operations or the operations within its sphere of responsibility, and the measures adopted to prevent those abuses; (iii) Data on the direct and indirect social and environmental impacts of the MNE's operations in the preceding reporting period, according to a specified set of performance indicators.

Additional Cross-Cutting Proposals

a. Directors' Duties

Directors are traditionally accountable for a corporation's financial well-being, but are rarely held accountable for the social and environmental impacts of their decision-making. In order to ensure effective observance of human rights and environmental standards, directors should also be held legally accountable for these impacts.

b. Access to Remedy

Public liability for violation of human rights and environmental laws is generally only enforced by state attorneys or other state authorities. Given the wide range of stakeholders who can be affected by such violations, the ECCJ believes that reform of parent company liability should include private enforcement of public liability, providing locus standi to any European Union citizen, private victim of abuse outside the EU, or those acting on behalf of a private victim.

[6] For a detailed overview and rationale of these proposals, see Gregor, F. and Ellis, H. (2008) *Fair Law: Legal Proposals to Improve Corporate Accountability for Environmental and Human Rights Abuses, Op Cit*.

This report, Rights for Whom? reviews the potential impact of these legislative changes through an exploration of three case studies:

• Trapped in Chains
Independent research highlights the working conditions in the factories of a major garment manufacturer for European retailers such as C&A and Carrefour (India).

• The Powerful and The Powerless
CCAJAR reports on claims of lost labour rights and the murder of union members working for Unión Fenosa's operations on Colombia's Caribbean coast (Colombia).

• Failure to Communicate
GroundWork reports how local communities near ArcelorMittal's steel plant are suffering environmental damage and displacement (South Africa).

These case studies add to the corporate accountability discourse, and provide further support for the reform of European law to improve compliance with human rights and environmental standards, and to allow those affected by violations of those standards greater access to justice.

TRAPPED IN CHAINS

Exploitative working conditions in European fashion retailers' supply chain

Many of Europe's largest clothing retailers buy huge quantities of garments manufactured in India. The immense buying power of these European companies allows them to negotiate contractual terms that are extremely favourable, including very low wholesale prices and very short production timeframes.
While this is commercially beneficial for the retailer, these contractual terms effectively help to determine the environment and labour conditions for the workers who are making the clothes.

Research by local NGOs in Tirupur, India has exposed deplorable working conditions in Tirupur's textile and garment factories that manufacture clothing for big European fashion companies. This case study will show how the employment practices of some Indian companies in the European supply chain create poor social and economic conditions for Indian garment workers and their local communities.

The Indian textiles and garment industry
India plays an important role in the global textiles and garment industry. It is the second largest producer of textiles and garments and one of the few countries that covers the whole value chain - from the production of cotton to the last stitches.[7]

After China, India, together with Bangladesh and Vietnam, is a major exporter of finished garments to the US and EU. In 2009 India exported garments worth USD 5.68 (4.06 billion Euros) to the EU, accounting for 55%of the country's total garment exports.[8]

The textiles and garment value chain is long and complex, with a high incidence of subcontracting. Along the supply chain, production units vary from huge factories employing thousands of workers to small, informal home units. The supply chain is fragmented, with thousands of production units, most of them specialising in one phase of the value chain.

Textiles and garments bring in high foreign currency revenue, playing a pivotal role in the Indian economy. In order to attract foreign investment the Indian

Photo: Alessandro Brasile

government attempts to create a business friendly environment. It does so by offering businesses various incentives. For instance, special economic zones have been set up where companies are offered various financial incentives. At the same time, implementation and enforcement of labour laws are lagging behind.

KPR Mill - Supplier of European Fashion Retailers

Located in India's most Southern state Tamil Nadu, KPR Mill Limited is a leading textile producer and garment exporter. It is one of the few companies in the region that has integrated the whole process, from yarn manufacturing to clothing production. The company has four production units and employs more than 10,000 workers, of which about 90% is female. It's garment production unit operates under the name of Quantum Knits. Quantum Knits is a wholly owned subsidiary of KPR Mill[9] and its production unit is located at KPR Mill's Arasur complex.

In the fiscal year 2010, the listed company made net profits of USD11.25 million (€8,21 million).[10] In 2009, the company produced 9.029 metric tons of fabric and 20,5 million pieces of clothing.[11] All the clothing the company produces is intended for export, mainly for the European market, where 90% of its exports is sent to.[12] A number of well-known European buyers are sourcing or have sourced from this supplier, such as: H&M from Sweden, Decathlon, Kiabi and Carrefour from France, C&A from Belgium/ Germany and Gap from the US.[13]

Sumangali Scheme

KPR Mill proudly states to have "one of the lowest employee cost of the industry". "At 3.3 % of sales, against an industry average of 8.3 %".[14] Contributing

[7] AEPC (Apparel Export Promotion Council) website, " Fact Sheet" , no date, < http://www.aepcindia.com/adv-Fact-Sheet.asp > (accessed on 5 October 2010)
[8] AEPC (Apparel Export Promotion Council) website, "AEPC News: India-EU FTA to garner extra garment exports worth $3 billion ", no date < http://www.aepcindia.com/news.asp?id=319&yr=2010 > (accessed on 4 October 2010)

[9] Four-S Services, "K.P.R. Mill Limited – Initiating coverage", Four-S Services, October 2009.
[10] Worldscope, KPR Mill Limited, 2010.
[11] Four-S Services, "K.P.R. Mill Limited – Initiating coverage", Four-S Services, October 2009.
[12] Ibid.
[13] KPR Mill website, "Clientele" <http://www.kprmilllimited.com/client.php> (accessed on 7 October 2010); Es, van. A., "Indiase textielarbeidsters uitgebuit voor C&A en H&M", De Volkskrant, 3 september, voorpagina, blz.1; Pascual, J. "Les damnées du prêt-à-porter" , Libération, 18 September 2010. Due to lack of supply chain transparency, ECCJ is unable to verify the nature
[14] KPR Mill website, " People" http://www.kprmilllimited.com/people/php <accessed: 14 September 2010> KPR Mill has recently deleted this statement from its website

to its low labour cost is what factory management euphemistically calls its 'unique labour model'.[15] The company only employs young, unmarried women. While factory management states[16] to only employ girls aged 18 years or older, the monitoring study located girls aged between 15 and 17, and even a 13 year-old girl, working at one of the company's spinning mills. Employment of child labourers is a violation of India's Child Labour (Prohibition and Abolition) Act 1986 and a breach of the International Labour Organisation's Convention Prohibiting Child Labour.[17] To maintain low labour costs the company prefers not to employ any permanent workers. A vast majority of workers is hired for a three-year period only.

The company specifically targets young, unmarried girls mostly coming from socially and economically marginalised indigenous communities. These girls are offered to receive a large amount of money, Rs. 30.000 to Rs. 40.000 (approximately €500 to €650), after three years of employment, which could be used to pay for their dowry. Although legally prohibited, the payment of a dowry is still commonplace in India, where a girl cannot get married without providing money to her groom in exchange for taking her as his wife. This labour recruitment system has come to be known as the 'Sumangali scheme' where 'Sumangali' refers to a happy and contented married woman in Tamil.This recruitment scheme is widespread in Tamil Nadu; it is estimated that more than 100.000 girls are employed under the Sumangali scheme.

Exploitative Working Conditions

Almost all of the 9000 production workers at KPR Mill have migrated for work and are housed in dormitories located on the factory complex. On the Arasur complex in Coimbatore, KPR Mill's biggest production unit, 5000 girls live in such dormitories. Each dormitory is shared by 12 girls at a time and is reused by different girls after each shift. It is impossible for anybody without permission to enter or exit this walled complex and leave is restricted to a few days a year when the girls are allowed to visit their families. Workers are thus severely restricted in their freedom of movement. As the lump sum of money is only paid after three years of work, workers feel forced to stay with the company for all three years. Local NGOs have denounced this labour practice as a form of bonded labour.[18]

KPR Mill prohibits the existence or formation of a trade union even though this contradicts Indian law and international treaties. As according to the factory management trade unions create a great deal of unrest, they are denied access to the factories. Moreover, hiring young women is another tactic to prevent unrest. "With girls, it is easy to keep discipline", says factory management, they would be less inclined to form unions than boys. By restricting the movement of workers, the company effectively prevents the girls from reaching trade unions. "Boys would never keep to that rule, they want to go on the streets, always wanting more freedom. Girls are simply happy with what you give them" explains factory management.[19]

According to the factory management workers earn above the legally set minimum wage. Statements of workers and ex-workers, however, indicate that workers are paid less than the minimum wage. A considerable amount is deducted from the workers' wages to pay for food and to save for the dowry. The workers are paid approximately 10 to 25 Euros a month (Rs. 600 to Rs. 1500). After the completion of three years the company pays another 500 to 800 Euros (Rs. 30.000 to Rs. 40.000). For textile mill workers the basic minimum wage fixed by the Government is 2.3 Euro (Rs. 147) per 8-hour work day. Thus, workers should have to be paid 57.5 Euros instead of only 10 to 25 Euros per month.

In addition to low wages, workers have been subjected to excessive working hours. While company management claims that their employees don't work more than eight hours a day, workers and ex-workers told the researchers that they have to work 12-hours shifts several times a week. The work week consists of six working days. On Sundays, where the workers are said to have the day off, workers would have to clean the dormitories and wash their clothes, leaving very little time to rest.

Due to overwork and lack of sleep the workers are exhausted. There are many complaints of poor food quality. In March 2009, 24 girls working at the Sathyamangalam unit were admitted to the hospital for food poisoning. Three girls later died.[20] The workers' health is furthermore compromised by work floor conditions. In the spinning area, humidity, heat and swirling cotton fibres all contribute to ill-health and breathing difficulties. Workers often feel forced to take off their face masks to be able to breathe, yet working without protective masks can cause more serious health problems. Some of the ex-workers have had to face surgery to remove balls of cotton fibres found in their bowels. The cotton fibre was presumably ingested while working with raw cotton without the protective mask. Furthermore, some of the workers in the spinning unit have to work on roller-skates all day - without any protective gear - in order to improve productivity.

Due to the harsh working and living conditions some of the workers don't make the three-year mark and leave the factory earlier. In some cases these girls do not receive the money they have built up so far. Because

[15] Pascual, J. "Les damnées du prêt-à-porter" , Libération, 18 September 2010.
[16] ibid.
[17] International Labour Organisation, C138, "Minimum Age Convention, 1973 " and C182, " Worst Forms of Child Labour Convention, 1999". Convention 138 and 182
[18] See for instance "National Conference on 'Sumangalis: the Contemporary Faces of Bonded Labourers", May 28, 2010, Maduarai, concept note, http://www.cec-india.org/index.php?option=com_content&view=article&id=1962:national-conference-on-qsumangalis-the-contemporary-faces-of-bonded-labourersq-on-may-28-2010-at-madurai&catid=52:labour-and-society-main, <accessed on 6 October 2010>
[19] Es, van. A, "Gevangen tussen fabrieksmuren voor bruidsschat", De Volkskrant, 4 september 2010, Economie.
[20] Tamil newspaper Kalai Kathir, reported on one of the deaths, Erode edition, 19 March, 2009.

the workers don't receive an employment contract[21] - only an appointment letter - it is difficult to check, what exactly has been promised to them and to undertake action.

Legal Protection and Legal Reality

While India may have laws in place against the types of malpractice raised in this case study, the reality is that the researchers could not identify that any action has been taken against the manufacturer by the Indian Labour Department or the general administration of the Indian government.

For the parents of the girls working in the garment factory, most of whom are financially vulnerable and have not had access to education themselves, allowing their daughters to continue to be subjected to the working conditions means they will at least be given meals three times a day. For these reasons communities affected by the impacts of this supplier to European companies feel powerless and largely remain silent.

Company Responses

In early September 2010, after a fact finding mission by journalists organised by the ECCJ, various newspapers reported on labour conditions at KPR Mill. In response to these media articles, some of these brands have announced to have ended their cooperation with the supplier or that they are considering terminating the relationship. The ECCJ believes that EU companies have a duty of care to ensure that human rights and environment are respected throughout their operations and relations, including their supply chain. Companies should adhere to this duty by taking all necessary steps to prevent or mitigate violations. In order to be effective and increase leverage to enable mitigation of the problems, coordination amongst buyers is crucial.
Before publishing its findings ECCJ sent the draft report to those companies mentioned in it, the responses of these companies are summarised below:

H&M:

H&M responded that after several audits they have decided to end their business relationship with KPR Mill's garment division Quantum Knits. H&M states that they "don't have the needed trust for a continued relationship and has therefore decided to terminate the business relationship."

H&M informed ECCJ that it works together with other buying companies in the Brands Ethical Working Group. This working group is discussing how buyers can work together to prevent Sumangali Scheme among spinning mills. H&M has also addressed the issue with the Apparel Export Promotion Council in India, with the Indian Minister of Textile and with the Tirupur Exporters Association.

Carrefour:

Carrefour explained its decision to end their business relationship with KPR Mill. It says no discussion was possible with KPR Mill about their use of the Sumangali scheme.
Carrefour teamed up with a local NGO "to identify possible cases of Sumangali Scheme in its supply chain and avoid starting to work with suppliers using this scheme."

C&A:

C&A claims to have already ended their cooperation with KPR Mill in 2007 when it discovered the use of the Sumangali scheme. It placed a test order (which could have led to the order of 58.000 men's sweaters) with Quantum Knits in 2010, not knowing that in fact it was dealing with KPR Mill. When this was discovered, C&A states to have pulled back the order.
C&A informed ECCJ that it is currently conducting extensive auditing of its Tirupur supply base in order to be certain that practices as reported in the above case-study do not occur in its supply chain.

Gap:

Gap, in its response to the ECCJ, denied to have any business relationship with KPR Mill.

Decathlon:

After media reports about labour practices at KPR Mill, Decathlon (now Oxylane) conducted an audit at KPR Mill. During this audit some critical non-conformities with Decathlon's code of conduct were identified. Decathlon subsequently suspended its production ar KPR Mill. KPR Mill was given the time to set up and implement a corrective action plan. Decathlon states that recent audits have confirmed a strong improvement (in relation to working hours, freedom of movement and hiring practices, amongst others). It has therefore decided to re-launch its production at KPR Mill.

Kiabi did not respond.

[21] Es, van. A, "Gevangen tussen fabrieksmuren voor bruidsschat", De Volkskrant, 4 september 2010, Economie.

THE POWERFUL AND THE POWERLESS

Unión Fenosa's electricity monopoly In Colombia

Case study information researched and provided by the José Alvear Restrepo Lawyers Collective in Colombia (CCAJAR)

Colombia has had an armed conflict with legally and illegally armed protagonists for nearly 50 years. This has generated such grave consequences as forced displacement, forced disappearances and a longstanding humanitarian crisis in which more than 45 per cent of the population lives in poverty.[22] In addition to these socio-political problems, the population of close to 10 million people in the seven departments along Colombia's Caribbean coast have had their problems exacerbated by the presence of a powerful corporate monopoly that provides this region's electricity supplies - Spain's commercial energy giant, Unión Fenosa.[23]

In this case study, CCAJAR reports the claims made by civil society organisations, trade unions, workers and affected communities in the region that this European MNE has either committed, or is otherwise implicated in, violations to internationally recognised human rights. Yet, as this case study reveals, the failure of the country's legal system to properly investigate the company's activities has left serious questions unanswered and many people without access to justice.

MNEs, Paramilitarism and Trade Unions

The process of privatising the Colombian electricity sector, including the entrance of Unión Fenosa into the market, took place amid strong opposition by trade unions to the sale of this vital public service. This resistance was brutally silenced however, including

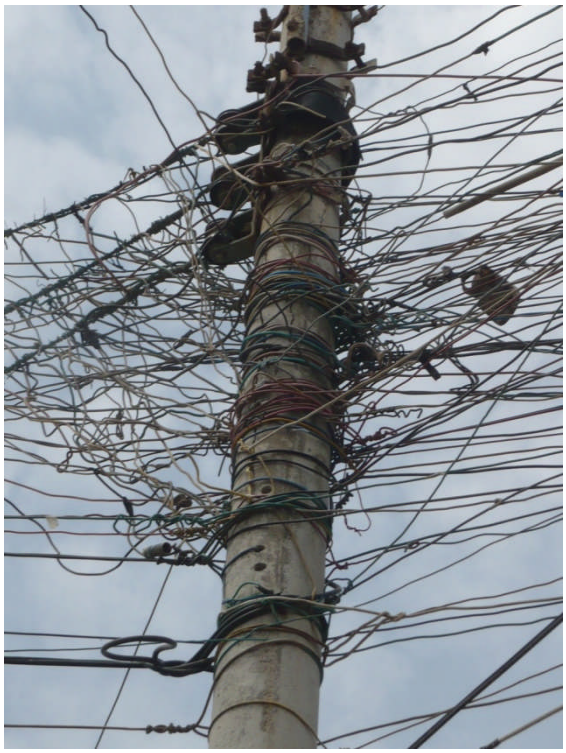

Photo provided by CCAJAR

through the systematic murders of eight union members who worked at Unión Fenosa subsidiary companies, Electrocosta and Electricaribe. CCAJAR reports claims by trade unions and others in Colombian civil society that members of illegal paramilitary groups were behind the murders, and that a document written by Unión Fenosa companies may have played a role in these murders that should be fully investigated in a court.[24]

MNEs operating in Colombia have previously been implicated in paramilitary activities with some senior paramilitary leaders claiming a number of MNEs finance paramilitary operations in the country.[25] The criminal investigations carried out by Colombian public authorities in relation to the involvement of companies in such activities have made little progress, despite one US company, Chiquita Brands, pleading guilty in a US court and being fined US$25 million for financing paramilitary activities, and other companies, for example the Dole Food company, facing an ongoing civil lawsuit in California.[26] This weakened rule of law

[22] 2008 Annual Report of the United Nations High Commissioner for Refugees (16 June, 2009) and Report by the United Nations Human Rights Commissioner on the situation in Colombia, Bogota, 2007, p.37.

[23] In 2009, Gas Natural purchased 95% of Unión Fenosa creating one of the 10 largest utilities in Europe: "Unión Fenosa Aprueba su Fusión con Gas Natural, que Canjeará Tres de sus Acciones por Cinco de la Eléctrica". Cotizalia Magazine, Madrid, 23 April, 2009. Gas Natural and the majority of its shareholders are also European companies: Annual Report by the Gas Natural Corporate Government, 2008, p.4.

[24] Documentation by the Central Workers Union (CUT) and the Electricity Workers Trade Union (SINTRAELECOL). See also the Ruling for the Permanent Peoples' Tribunal hearing on public services, Bogota, 8-10 March, 2008.

[25] For example, "Mancuso Dice que Directivos de Postobón y Bavaria Tenían Conocimiento de los Pagos de estas Empresas a los Paramilitares." Semana magazine, Bogota, 17 May, 2008. See also: "Nos Quieren Extraditar Cuando Empezamos a Hablar de Políticos, Militares y Empresarios." Verdadabierta.com, Bogota, 11 May, 2009.

[26] US vs. *Chiquita Brands*, US District Court of the District of Columbia, No. Criminal 07-055, 19.03.07. In 2009, family members of other victims filed a lawsuit in California (USA) against the Dole Food Co. for having made million dollar payments to paramilitary groups in Colombia, though a ruling has yet to be issued in this case: "Demanda

and alarming rate of impunity for the most serious of crimes is further demonstrated by the conviction rate of murdered Colombian union members over the last 23 years: of the 2,709 murdered, there have only been convictions in 118 cases.[27]

The failure by the legal system to bring these human rights violations to justice led segments of Colombian civil society to convene an international opinion tribunal. The Permanent People's Tribunal, a non-governmental body that includes experts in international law, human rights and international humanitarian law, held sessions based on international conventions through several public hearings from 2005 to 2008. It considered evidence in the case of the eight murdered Unión Fenosa trade union members, including a document acknowledged by Unión Fenosa to having been written by two of the company's subsidiaries in Colombia, Electrocosta and Electricaribe. The document branded members of a trade union to which its workers belonged as part of extremist guerrilla groups. This is a life-threatening allegation in Colombia, as those branded become targets, and in numerous cases victims, of paramilitary groups and even of the public force – something the subsidiary companies would or should have been aware of.[28] The Tribunal's final ruling found that activities by companies in the corporate group were crucial in explaining the deaths of the eight trade unionists.[29]

Labour Rights

The murder of unionised workers in Colombia's electricity sector is not only a grave violation of human rights, it also has significant consequences for the labour rights of all workers. Workers who fear joining unions are denied the ability to exercise their right to freedom of association, and to participate in a legitimate and democratic process through which they can stand up for their labour rights. In turn, lower membership means the collective power of unions to represent the best interests of workers is also significantly weakened through reduced negotiating power.

CCAJAR reports that contracts between Electricaribe and its workers include a clause for employees not to join trade unions in exchange for receiving a bonus,[30] which potentially constitutes a violation to the International Labour Organisation Convention that grants workers the right to freedom of association. Furthermore, the average monthly salary of the 6,000 subcontractors working for Unión Fenosa subsidiaries in the country is reported to be less than half the average monthly salary in the electrical sector and is not enough to cover basic family living costs[31] - a violation of the Universal Declaration of Human Rights.

Abuse of Power and Electrocutions

Communities from the Caribbean coast have reported being subjected to power cuts, reconnections, overbilling and undeclared electricity rationing. In so-called marginalised neighbourhoods,[32] where 69.7 per cent of the population live in poverty, there have been reports of up to 10 unannounced interruptions occuring per day, with some cut-offs lasting up to several days.[33] Complaints concerning billing have also been abundant. In the Las Malvinas neighbourhood in Barranquilla, the population gathered all of the irregular billing from 2007 and 2008 and documented 160 cases, with at least eight different anomalies of a diverse nature.[34]

Serious claims have also been made about the safety of the electricity infrastructure provided by Unión Fenosa companies, including a failure to protect local communities from the risk of electrocutions. While there are no comprehensive official statistics for fatal electrocutions in Colombia, reports of deadly electrocutions are very common. For example, from January to May 2008 in the area of Barranquilla, Atlantico, 12 people died from electrocutions, with a further five people electrocuted in the period from June to August.[35]

It is claimed many electrocutions occurred due to poorly installed cables and insufficient maintenance, but the companies deny any responsibility, alleging

Acusa a Dole de Financiar a 'Paras' en Colombia." El Nuevo Herald newspaper, Miami, 29 April, 2009.

[27] 2009 Annual Report by the International Trade Union Confederation (ITUC), June 2009, and "*Informe de la CSI sobre Violaciones de Derechos Sindicales en 2008.*" *Escuela Nacional Sindical*, Medellín, 10 June, 2009.

[28] See for example the case of the Peace Community of San Jose de Apartado. Before suffering a massacre of five people in February 2005, they had been branded in public as being members of guerrilla groups. "Orden de captura a ex coronel Duque por masacre". Verdadabierta.com, Bogotá, 24 Agosto, 2009.

[29] Ruling on Public Services, Permanent Peoples' Tribunal: Bogotá, 8–10 March, 2008. For more information on the Permanent Peoples' Tribunal, see: www.internazionaleleliobasso.it/index.php?op=6

[30] Interview by CCAJAR with the Central Workers' Union (CUT) – Bolivar Chapter on 19 May, 2009.

[31] Interview by CCAJAR with SINTRAELECOL member in Cartagena on 8 July, 2009, and Silverman, J. and Ramírez, M. (October 2008) **"***Informe: Unión Fenosa en Colombia*." *Escuela Nacional Sindical (ENS)*. Medellín.

[32] These neighbourhoods are regulated by Resolution 120 of the Energy and Gas Regulatory Commission (2001) and are affected by different kinds of discrimination, including a single bill being issued for an entire neighbourhood (inhabitants must collectively take on responsibility for payment, even for late bills); the neighbourhood has to cover the costs for the installation of community meters, leaks, and the billing process – none of which has to be done by other consumers.

[33] Material gathered by CCAJAR from interviews in Barranquilla, Cartagena, Monteria and Santa Marta. See also: Mancera, Carlos Arturo: "*Por Qué las Lluvias Infartan el Sistema Eléctrico de Barranquilla?*" El Heraldo newspaper, Barranquilla, 3 May, 2008, p.4a.

[34] Documentation of the Las Malvinas neighborhood, Barranquilla, May 2009.

[35] Documentation from *Red de Usuarios*, Barranquilla, presented at the Permanent Peoples' Tribunal, Lima Chapter, 13-16 May, 2008. "*17 Personas Han Muerto por Accidentes Eléctricos*." La Libertad newspaper, Barranquilla, 24 August, 2008, p.4d.

that people in poor neighbourhoods are trying to connect to the electrical grid without authorisation. However, there are multiple cases of electrocutions that fall within the responsibility of the subsidiaries of Unión Fenosa as evidenced by a court order in 2009 that found one of the subsidiaries found guilty of failing to maintain the cables at a gas station, which resulted in the electrocution of two people, killing one of them.[36]

Economic and Social Rights

Given the alarming culture of impunity within the Colombian legal system, and the absence of independent investigation, there is little real chance for the victims and their families to carry out legal actions against MNEs. Confronted with an environment of intimidation and financial difficulty, they risk being stigmatised, threatened and even murdered should they seek justice through Colombia's legal system for these human rights violations.[37]

In addition to its ruling on Unión Fenosa's eight murdered trade unionists, the Permanent People's Tribunal also issued a verdict convicting 43 companies and the Colombian State as responsible for multiple violations to individual and collective rights; including the right to life and physical integrity, the right to health and food, women's rights, the right to freedom and freedom of movement, labour rights, and the right to live a life with dignity.[38] Unión Fenosa was one of a number of MNEs notified of the accusations and the ruling against it by the Tribunal. In response, however, the company simply stated that it availed itself of internationally agreed human rights, labour, environmental and anti-corruption principles for businesses established by the United Nations.[39]

The Colombian government has ratified many international treaties on economic, social, cultural and other human rights. CCAJAR argues that the rights of the Colombian people under a number of these international treaties appear to have been violated, including: the Universal Declaration of Human Rights (1948); the International Pact on Economic, Social and Cultural Rights (1966); the International Pact on Civil and Political Rights (1966); the Universal Declaration on the Eradication of Hunger and Malnutrition (1974); the Universal Declaration of the Rights of Peoples (1976); the Declaration on the Right to Development (1986); and the European Criminal Law Convention on Corruption (2002). However, CCAJAR reports that no MNE has ever been convicted in Colombia for its responsibility in the commission of human rights violations.

[36] "*Electrocosta tendrá que pagar indemnización*". El Universal newspaper, Cartagena, 10 June, 2009.
[37] See claims made by the Inter-Church Commission of Justice and Peace (www.justiciaypazcolombia.com), CCAJAR (www.colectivodeabogados.org) and the National Movement of Victims of State Crimes (www.movimientodevictimas.org).
[38] Permanent Peoples' Tribunal Ruling: Bogota, *Op cit,* 21-23 July, 2008.
[39] For more information about these principles, see: www.unglobalcompact.org

FAILURE TO COMMUNICATE

Steel conglomerate ArcelorMittal in South Africa

Case study information researched and provided by GroundWork – Friends of the Earth South Africa

ArcelorMittal is one of the world's largest steel companies. Registered in the European tax haven of Luxembourg and headed by one of the world's richest individuals, the company has operations in more than 60 countries.[40] ArcelorMittal's Vanderbijlpark steel plant near Johannesburg, South Africa, is the largest inland steel mill in sub-Saharan Africa[41] and returned an operating profit in excess of 12 billion South African rand in 2008 despite the global economic downturn.

But as groundWork reports in this case study, the activities of this European steel conglomerate have also been the centre of serious claims of environmental pollution, displacement and degradation of labour rights.

Air and Water Pollution

The history of pollution coming from ArcelorMittal's steel plant is formally acknowledged by South African public authorities and is a matter of public record.[42] Pollutants from the plant's industrial waste have reportedly seeped through the ground, contaminated local aquifers and affected the groundwater of nearby communities.[43]

ArcelorMittal is also one of the top three polluters of particulate matter, sulphur dioxide and carbon dioxide in the Vaal Triangle industrial region, where an estimated 65 per cent of chronic illnesses in the area are reported to be caused by industrial pollution.[44]

Photo supplied by GroundWork

Withholding Information

Despite these serious public health concerns, ArcelorMittal and the South African government are actively withholding information that would help the public and civil society to assess recent attempts by the company to clean up its pollution, and whether the company's plans for reducing environmental damage in the future will be effective. Following mounting public pressure in the late 1990s, ArcelorMittal was forced to partake in an environmental management plan between 2001 and 2003. This included determining the levels of pollution at that time to use as a baseline against which progress in rehabilitating the polluted areas could be measured.[45]

The government, however, agreed that the environmental management plan could be kept secret and will not allow full public disclosure of the information it contains, including the level of pollution caused by ArcelorMittal.[46] Without this information the public is unable to understand the full extent of ArcelorMittal's pollution, whether the environment will ever be properly rehabilitated and protected from further degradation, or whether the measures undertaken will address the impacts of past and present pollution on the lives of people living in the communities near the plant.[47] The withholding of this information is also inhibiting genuine and meaningful participation in legitimate government processes, such as the 'waste site public monitoring committee' that seeks to monitor the impacts of the ArcelorMittal waste site on society and the environment.[48]
Despite various attempts at negotiating access to the environmental management plan with the South African subsidiary and with the MNE's head office in Luxembourg, ArcelorMittal has refused to release the

[40] See: www.arcelormittal.com/index.php?lang=en&page=9
[41] ArcelorMittal South Africa Limited Sustainability Report 2008, p.8.
[42] See for example, the Emfuleni Local Municipality Integrated Development Plan for 2007 – 2012, the West Rand District Municipality Disaster Management Plan, Revision 8, May 2006, pp.24, 32 and 132, and the Department of Environmental Affairs And Tourism, Environmental Quality and Protection Chief Directorate: Air Quality Management and Climate Change: Vaal Triangle Airshed Priority Area Air Quality Management Plan, 2009, p.ii.
[43] Cock, J. and Munnik, V. (2006) *Throwing Stones at a Giant: an account of the struggle of the Steel Valley community against pollution from the Vanderbijlpark Steel Works*, Centre for Civil Society, University of KwaZulu-Natal.
[44] Scorgie, Y. (2004) *Air Quality Situation Assessment for the Vaal Triangle Region*, Report for the Legal Resource Centre, South Africa.
[45] Cock, J. and Munnik V. (2006) *Throwing Stones at a Giant Op Cit*.
[46] Mittal Steel Vanderbijlpark and the Environment, brochure in Hallows, D. and Munnik, V. (2006) Poisoned Spaces: Manufacturing wealth, producing poverty, GroundWork, p.142.
[47] Miskun, A. et al. (May 2008) In the wake of ArcelorMittal: The global steel giant's local impacts, Czech Republic, p.24. See: http://bankwatch.org/documents/mittal_local_impacts.pdf
[48] Personal communication between groundWork staff and Samson Mokoena, the coordinator of the Vaal Environmental Justice Alliance.

information stating it 'will not be in the best interest of ArcelorMittal South Africa'.[49]

Retrenchments and Relocations

ArcelorMittal's operations also have impacts beyond the environment with the company's activities also contributing to popular mobilisation and legal challenges.

Following a large number of retrenchments from the company in the late 1990s,[50] a grassroots resistance movement, called the Vaal Working Class Crisis Committee, was formed and has successfully challenged the subsidiary on issues such as unfair labour practices. For example, the Committee has reported that ArcelorMittal retrenched workers but promised to re-employ them when the job market improved. When the job market improved, ArcelorMittal did begin hiring people again, but did not re-employ the retrenched workers. It is also reported that ArcelorMittal has fired those responsible for not re-employing the retrenched workers as promised – an acknowledgement the company was not properly monitoring and enforcing its procedures – but the retrenched workers have still not been re-employed, and the company is facing an ongoing court challenge from the Vaal Working Class Crisis Committee on this issue.[51]

Local communities in the region of the steel plant have also been affected by displacement issues. In addition to the pollution of their groundwater, a series of legal challenges and out-of-court settlements resulting in 'buy-outs' by ArcelorMittal, has meant that the local population have effectively been moved off their land.[52]

ArcelorMittal has then enclosed this land with electric fences to keep the remaining families from grazing on the land that was in the past used as common land despite ownership. This area of small holdings is now best described as a 'ghost community' of abandoned and demolished homes, with only two families remaining of the original 500.

[49] Letter from CEO Nonkululeko Nyembezi-Heita to groundWork, 8 July, 2009.
[50] According to the National Union of Metal Workers of South Africa and Solidarity, the facility's workforce has been reduced from 44,000 in the 1980s to 12,200 in 2004. Since ArcelorMittal took operations, the National Union of Metal Workers has reported further large job losses.
[51] Discussions between GroundWork staff and Mashiashiye Phineas Malapela, organiser with the Vaal Working Class Crisis Committee, 13 August 2009.
[52] Cock, J. and Munnik, V. (2006) *Throwing Stones at a Giant, Op Cit*.

APPLYING THE ECCJ'S PROPOSALS FOR LEGISLATIVE CHANGE

The case studies presented in this report involve multifaceted political, economic and social issues. The range and complexity of the human rights violations and breaches of environmental standards highlighted, mean that no silver bullet can solve all of the issues raised in each of the case studies. As the analysis below indicates however, the ECCJ's proposals could significantly improve the accountability of European companies for their actions outside of the EU and assist victims in obtaining redress where these companies are found to have behaved inappropriately.

1. Parent Company Liability

The corporate group structures of MNEs usually involve the coordination of a number of separate companies with a parent company owning shares in subsidiary companies in other countries. Under current company law, each company has its own separate legal 'personality' which means that despite this close relationship, each company is legally liable for its own actions, but generally not liable for the civil or criminal actions of other companies in the group.

An effective way to improve compliance with human rights and environmental standards by businesses in their operations outside of the EU would be to ensure companies do not use corporate structures to hide behind. It is also important to ensure that companies who benefit from the profits of the behaviour of related companies also share responsibility for the negative effects of those operations. The ECCJ proposes that the best way to do this is to reform the current law by suspending the doctrine of separate legal personality in relation to human rights and environmental impacts, so that parent companies can be held legally responsible for the violations of their subsidiary companies.[53]

In the cases of ArcelorMittal and Unión Fenosa, affected stakeholders were unable to convince governments, local law enforcement and other public authorities to take action on allegations of human rights and environmental violations, and stakeholders had no legal ability to prosecute subsidiary companies for these public offences. The application of the ECCJ proposal to enhance the direct liability of parent companies would provide affected stakeholders - such as local communities, workers, and non-governmental organisations with interests in preventing human rights and environmental violations - with the ability to bring an action in European courts against the parent company for the public offence of the subsidiary. By providing this improved access to justice, this reform would allow for the activities of the corporate group to be properly investigated, and those affected by violations to have their concerns addressed through due legal process and to be able to claim damages in civil actions.

It should be noted that such reforms are not without precedent, with some recent developments in the law acknowledging the reality of corporate operations. For example, European competition law can now look beyond the separate legal entities, and treat the corporate group as the single economic unit that it is. The European Court of Justice, has made several competition law judgments imposing penalties even on foreign parent companies.[54]

Furthermore, parent companies are already required to prepare consolidated financial statements that include the accounts of subsidiary undertakings irrespective of where the subsidiaries are established, in accordance with the European Seventh Company Directive on Consolidated Accounts. The single economic entity perspective is also a feature of some international soft law, such as the Guidelines for Multinational Enterprises set by the Organisation of Economic Cooperation and Development.[55]

These laws and guidelines are exceptions however, and companies are still legally allowed to use artificial corporate divisions to avoid exposure to any responsibility for the environmental or human rights consequences. Given the significance of human rights and the environment as policy areas, however, particularly in relation to competition law or financial accounting, the ECCJ sees suspending parent

[53] Gregor, F. and Ellis, H. (2008) *Fair Law*, p.12, *Op Cit*.

[54] For example, the Dyestuffs case, *Case 48/69 etc ICI v Commission [1972] ECR 619*. While the economic entity doctrine has been criticised for not respecting the doctrine of separate legal personality, the European courts and Commission have relied on the economic entity approach on subsequent occasions. See for example *Genuine Vegetable Parchments Association OJ [1978] L 70/54* and *Johnson and Johnson [1981] 2 CMLR 534*: *Fair Law*, p.11, *Op Cit*.

[55] Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983, p. 1–17): see Art. 1 and 2 of the directive. The duty to draw consolidated accounts is also recognised in the standards of the United States' Financial Accounting Standards Board, and the International Accounting Standards Board. See also point I.1 of the Guidelines for Multinational Enterprises available at www.oecd.org/dataoecd/56/36/1922428.pdf: *Fair Law*, p.11, *Op Cit*.

company liability as essential to ensuring better compliance with human rights and environmental standards.

2. Duty of Care

The Indian case study of KPR Mill differs from the last two case studies in that instead of the main relationship being one of a European parent company and its subsidiary based in a country outside the EU, there is a supply chain relationship. That is, a European company has entered into a contract with a supplier based outside the EU for the supply of goods or services. Companies structure their business relations in this way for many reasons - including for tax purposes, because the companies lack the expertise to provide the goods and services themselves, and sometimes so that the company can pass on the risks of production to someone else.

The strong bargaining power of large MNEs allows them to negotiate arrangements with suppliers that result in downward pressures on prices and delivery times that contribute to higher sustainability risks in supply chains. Despite this significant influence over suppliers, under existing European laws a company may be found to have a duty of care with respect to the impact of the supplier's operations only in very limited situations - where the company is directly involved in the operations or is driving the supplier's decisions. Extensive civil society pressure has forced some European MNEs operating in brand-sensitive sectors to improve their supply chain management but, generally, this limited duty of care has discouraged companies from implementing better and more transparent management of environmental and social impact, and those affected find it difficult to obtain information proving the company's direct involvement.

The ECCJ believes that even in cases where there is not a parent-subsidiary relationship, a company should still have a duty of care in situations where that company is able to exercise significant influence over the operations of a commercial partner and those operations can have an adverse impact upon human rights or the environment. If this proposal became law, European companies such as those who purchase from KPR Mill or others in the Indian garment industry would have to take reasonable care in ensuring that violations involving abuse of young workers did not take place at any level of the supply chain that falls within the company's sphere of responsibility.[56] The ECCJ's proposals would also require European companies supplied by KPR Mill to exercise a duty of care through initiating processes to identify risks of human rights and environmental violations in the supply chain and, most importantly, take steps to avoid their consequences. This might include being aware of the wider context of the Indian garment industry and reports of past violations, and assessing the effects of onerous contractual terms
on the manufacturer.

3. Environmental & Social Reporting

A significant obstacle to better protection of human rights and the environment is a lack of access to information about how a company's operations can impact on those areas. Without proper information – such as was seen in the South African case study - those affected by the company's operations and other stakeholders are unable to make an independent assessment of the true cause and extent of the impacts. From a company perspective, this lack of information means companies will fail to build trust, or have proper engagement with, affected communities about issues of risk.

The ECCJ's third key proposal for reform requires an expansion of the current non-financial reporting obligations under the EU Accounts Modernisation Directive,[57] and various national-level laws[58] to include specific environmental and social reporting that provides accurate, comprehensive and comparable information that is appropriate for all relevant stakeholders and not just shareholders.[59]

An EU-level mandatory requirement for annual social and environmental reporting would help increase transparency and assist those seeking to hold a company accountable for breaches of the primary obligations set out in the other ECCJ proposals. It would also contribute to processes that would help identify a company's risks and impacts on human rights and the environment, and could transform

[56] For further discussion about operations within a company's 'sphere of responsibility' see *Fair Law*, pp.21-26, *Op Cit*.

[57] See Directive 2003/51/EC of the European Parliament, and of the Council of 18 June 2003, amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain companies, banks and other financial institutions, and insurance undertakings. **(***OJ L 178, 17.7.2003, p. 16–22).* See also Article 46 of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, and Article 36 of Seventh Directive. (*OJ L 222, 14.8.1978, p. 11–31*): *Fair Law*, p.11, *Op Cit*.

[58] For example, see: Section 417 of the United Kingdom's Companies Act 2006 which obliges quoted companies to report information such as policies, and the effectiveness of policies, on: business impacts on the environment; employees; social and community issues; and about persons with whom the company has contractual or other arrangements which are essential to the business of the company. See also the Danish Environmental Protection Agency survey of efficiency and impact on Danish 1995 Green Accounts (Environmental Protection Act as amended in June 14 1995 by Act No. 403, and statutory order No. 975, of December 15, 1995); Dutch Environmental Management Act (EMA) as amended on 10 April 1997; Norwegian 1998 Accounting Act (Regnskapsloven, LOV-1998-07-17-56), Swedish Accounting Act amended in 1999 (Law of Accounts (1995:1554); and French New economy regulations (Loi relative aux nouvelles régulations économiques n°2001-420 du 15/05/2001 as implemented by Decree 2002-221): *Fair Law*, p.28, *Op Cit*.

[59] Gregor, F. and Ellis, H. (2008) *Fair Law*, p.29, *Op Cit*.

corporate social responsibility reporting into a powerful tool for encouraging positive practice within companies.

If this reform was in place, it would require each of the European companies mentioned in the case studies to report their analysis of the potential and actual risks of company operations violating, or being complicit in, violations of internationally agreed human rights and environmental standards, and give a clear description of steps taken by the corporate group to prevent and eliminate those risks. For example, in the case of supply chain relationships, lack of transparency about working conditions of supply chain manufacturers like KPR Mill, and about the sources of origin for goods, are major obstacles to the promotion of more responsible consumption. Under the ECCJ proposal, European companies buying products sourced outside the EU would be required to map their supply and production chains, and report information such as the number of audits throughout the whole supply chain, the number of non-compliances found, corrective actions taken, and how stakeholders have been involved.

In the ArcelorMittal case study, GroundWork reported difficulties in obtaining information about the company's environmental impacts and its plans to address these impacts. An obligation on the MNE to produce a comprehensive environmental report could provide communities impacted by pollution from the steel plant with information to give them a better understanding of the plant's impact. ArcelorMittal and the South African government would also have benefited from a process that supported better reporting through early identification of risks, as this would have allowed violations to be avoided and possible damages mitigated much earlier. If regular reporting on environmental issues was already available, this would have also significantly reduced the burden of the company and government in preparing the environmental management plan.

In addition to the benefits already outlined, better reporting would mean companies could decrease costs through more efficient environmental operational management and avoid costly disputes.[60] Most importantly of all, it would encourage mutually beneficial accountability to all stakeholders, including the government. More open reporting would also ease the burden of proof for plaintiffs, which would increase the ability of local communities to establish their case for just compensation for the damage suffered.

[60] For example, *Fair Law* notes the "Danish Environmental Protection Agency has conducted a survey of efficiency and impact on 550 Danish companies. According to the survey, 41% of companies believed they had achieved environmental improvements through green accounting. Among these 70% emphasized energy, 50% highlighted water and waste, 40% consumption of resources, 30% wastewater and additives, 20% reduced emissions into the air and 10% emissions into the soil, p.28, *Op Cit*.

Additional Crosscutting Proposals

A. Expanding Director Duties

The ECCJ proposes that the company law duties imposed on directors of European companies be expanded to include the requirement to identify and minimise environmental and human rights risks.[61] This expansion of director duties is not uncommon in other public interest laws with some countries already beginning to implement legal reforms. For example, the new Companies Act in the United Kingdom obliges directors to have regard for the environmental and social impacts of their decisions, while the Canadian Environmental Protection Act obliges directors to exercise due diligence on the company's compliance with that Act.[62]

In the Colombian case study, this would mean that the management of the European parent company, Unión Fenosa, would be required to ensure that members of the corporate group implement complementary policies, processes and training into their existing risk management frameworks. These procedures should proactively anticipate actual and potential human rights and environmental risks that could result from the business's operations. These duties would also apply to directors of European companies in significant supply chain relationships, such as European retailers who purchase clothes from the Indian garment industry.

As with all risk management, projects and operations should be assessed individually and on an ongoing basis, but certain companies, geographical regions and industry operations will involve common types of risks. This will also be the case with human rights and environmental risks, and accumulated knowledge across industries will help minimise the process of risk assessment in these areas. Under the ECCJ proposals, companies undertaking this risk assessment would be provided with clear guidance on what human rights and environmental standards apply, increasing certainty for business about how to approach addressing risks in these areas.[63]

[61] Gregor, F. and Ellis, H. (2008) *Fair Law*, p.18, *Op Cit*.

[62] See section 172 of the United Kingdom's Companies Act 2006. Although the UK requirement would be insufficient on its own in these situations, as this duty is only to the company and not to affected stakeholders: *Fair Law*, p.18, *Op Cit*.

[63] The ECCJ proposes that the appropriate standards are those agreed treaties listed in Annex III of the Generalised System of Preferences as the EU has already identified these treaties as necessary and desirable for sustainable development and good governance. EU Generalised System of Preferences is set by Council Regulation (EC) No 980/2005, of 27 June, 2005. (OJ L 169 30.6. 2005, p. 1-43). A full list of the relevant conventions can be found at

Once a comprehensive overview of risks is completed, steps to prevent risks of violations occurring, and to minimise the impacts of any violations that do occur, should be taken by the corporate group. Relevant expertise should be used to formulate an appropriate approach in each risk area but, in the Colombian case, this might involve actions such as: ensuring enforcement of disciplinary procedures and working with public authorities where paramilitary associations are suspected; worker training and management leadership on labour rights compliance; and working more closely with civil society organisations and public authorities.

Furthermore, under current company law, directors' duties are normally only owed to a company's shareholders, meaning that directors are not legally accountable to other stakeholders. Under ECCJ reforms, however, other interested persons, such as non-governmental organisations concerned with protecting public human rights and environmental interests, would have the right to bring actions against directors who breach their duties in relation to human rights and environmental risks.

B. Access to Remedy

Reform of the law in line with the ECCJ proposals should, in itself, lead to a reduction in cases of violations of human rights and environmental standards by subsidiaries of European companies. However, further reductions will also occur if the legal system also provides effective mechanisms of redress for this type of corporate behaviour. The ECCJ therefore proposes that parent companies, companies with a duty of care in commercial relationships, and directors who are convicted of public offences of this nature, will be liable for effective, proportionate and dissuasive sanctions and remedies.

In each of the three case studies, this would mean that, in addition to sanctions such as fines, undertakings and orders to rectify damage to the environment, those affected communities and workers would be entitled to legal damages if a court decides that they suffered damage because a company violated human rights or environmental standards. Legal redress for violations can be obtained in two ways. First, the victims might claim remedies in a civil action in court. Second, the public offence should be investigated and punished by the relevant authorities.

The proposals for parent company liability and duty of care would, in principle, enable those who have suffered to claim damages against parent companies in European courts through taking civil action. However, it is necessary to ensure that the height of such damages is sufficient to compensate the victims and to deter further wrongdoing. The courts should be also able to order a convicted company to compensate all victims of the violation in question and not only those who were able to start legal proceedings. Actions for public offences such as breaches of human rights or environmental standards should normally be taken against a company by the public authorities. As both the South African and Colombian case studies have shown, some countries have a weakened rule of law preventing effective enforcement by public authorities. Public authorities in European states then might be discouraged from taking action because of lack of evidence and remoteness of the case - even when they have legislative basis for such actions as proposed by the ECCJ. Therefore, the ECCJ proposes giving affected communities and workers, or their representatives, the right to start court actions in Europe for defined public offences based on breaches of international law or principles.

One of the key problems for the people of Colombia, as discussed above, is their inability to take effective legal action and receive justice and remedies for the negative impacts they have suffered. Under the ECCJ's proposals, the legislative changes would allow challenges for breach of an European statute to be brought in courts by those with an interest in the alleged offence, particularly those Colombians living in the affected communities, and where there is evidence supporting allegations of damage caused by human rights and environmental abuse.

Where the affected communities do not have the financial means, or are in other ways intimidated or unable to bring a legal action due to weak rule of law, non-governmental organisations that meet appropriate criteria for protecting the affected public interests would also be allowed to bring a challenge. The non-government organisation could also present evidence that a company - whether it be a parent or at the top of a supply chain - and a company's directors, has not fulfilled its obligations of reasonable care.

Allowing private enforcement of public laws in these ways would again be consistent with the European Parliament's Corporate Social Responsibility Resolution that called for a new mechanism to make it easier for victims of corporate abuse to seek redress in European courts.

http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_123910.pdf: Fair Law, p.18, Op Cit.

CONCLUSION

The case studies presented in this report involve multifaceted political, economic and social issues. The range and complexity of the human rights violations and breaches of environmental standards suffered by the local communities and workers mean that no single approach can solve all the issues that have been highlighted.

There are, however, some common factors: the presence or significant influence of European companies; serious claims implicating the operations of those companies in the violations and breaches; and a weakened rule of law preventing the companies being called to account for the allegations, and preventing affected communities and workers accessing a means to justice.

The ECCJ's proposals for legislative change are intended to help the lives of people who may be politically, socially or economically constrained from enjoying some of the most basic rights that many European citizens have the privilege of taking for granted. The ECCJ's proposals do not recommend new environmental or human rights standards. They merely provide mechanisms to increase the breadth and depth of compliance with standards that already exist, which are enshrined in international treaties that enjoy strong international consensus. The proposals could significantly improve the accountability of European companies for their actions outside of the EU and assist those affected by those actions to obtain redress where these companies are found not to have complied with human rights and environmental standards.

The ECCJ's legislative reforms can be achieved by building on well-established precedents and consolidating progressive regulatory and policy frameworks already in place. From a legal perspective, many of the ECCJ's proposals mirror laws that have precedent in other areas of public policy, such as competition law, financial accounting, environmental legislation and national-level reporting laws. Human rights and environmental protection are clearly just as significant as these areas and, by their very nature and consequence, provide strong justification for extending a similar regulation framework to them.

Years of attempting to address the impact of MNEs on human rights and environmental protection solely through voluntary initiatives, unenforceable codes of conduct and non-binding corporate social responsibility programs has confirmed the lack of intellectual traction of such approaches, created cognitive dissonance in the corporate marketplace, and proven to be even starker in practice. Effective guidance for business through regulation, to be applied consistently across all companies, can, however, provide equitable protection for all stakeholders. Industry could then use this common foundation as a platform on which to build corporate responsibility programs up to best practice, while affected stakeholders would be ensured a minimum standard of protection.

While human rights and environmental protection must remain at the heart of any such legislative change, the benefits of the proposals for business should not be neglected. Clarity about what human rights and environmental standards should be applied will also provide businesses with greater certainty about their impact abroad. This will encourage compliance with those standards, helping to reduce a company's litigation, operational and reputational risk. Consistently applied rules on corporate accountability will also help provide a more level playing field for companies registered in one of the world's biggest markets, and those who want to operate in it. Unlike the current business environment, more effective enforcement laws will mean companies who violate human rights and environmental standards will be less likely to achieve competitive advantage by undermining those who comply.

Through its power to implement legally binding reforms, the EU has a unique opportunity to not only lead the debate internationally, but also to take effective steps to enhance compliance with internationally agreed human right and environmental standards, and to help those impacted by violations of those standards achieve greater access to justice.

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The European Coalition for Corporate Justice (ECCJ) is the largest civil society network devoted to corporate accountability within the European Union. Founded in 2005, its mission is to promote an ethical regulatory framework for European business, wherever in the world that business may operate. The ECCJ critiques policy developments, undertakes research and proposes solutions to ensure better regulation of European companies to protect people and the environment. The ECCJ's membership includes more than 250 civil society organisations in 16 European countries. This growing network of national-level coalitions includes several Oxfam affiliates, national chapters of Greenpeace, Amnesty International, and Friends of the Earth; the Environmental Law Service in the Czech Republic, The Corporate Responsibility (CORE) Coalition in the United Kingdom, the Dutch CSR platform and the Fédération Internationale des Droits de l'Homme (FIDH).

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Case Study 1 "Trapped In Chains: Exploitative working conditions in European fashion retailers' supply chain"

Research and information for case study 1 is provided by organisations of the Campaign Against Sumangali Scheme (CASS). CASS is a coalition of civil society organisations in India that works together to raise awareness about the Sumangali Scheme and advocates for an end to this exploitative system.

Case Study 2 "The Powerful And The Powerless: Unión Fenosa's electricity monopoly In Colombia"

Research and information for case study 2 is provided by CCAJAR - the José Alvear Restrepo Lawyers Collective www.colectivodeabogados.org CCAJAR is a Colombian non-governmental human rights organisation with 26 years of experience in the prevention, defence, and promotion of human rights. CCAJAR contributes to the fight against impunity and to the construction of a just and equitable society with political, social, cultural and economic inclusion, as well as working toward the respect for the full development of the rights of peoples to sovereignty, self-determination, development, and peace with social justice.

Case Study 3 "Failure to Communicate: Steel conglomerate ArcelorMittal in South Africa"

Research and information for case study 3 is provided by GroundWork - Friends of the Earth South Africa www.groundwork.org.za GroundWork is a non-profit environmental justice service and developmental organisation that seeks to improve the quality of life of vulnerable people in South Africa, and increasingly in Southern Africa, through assisting civil society to have a greater impact on environmental governance. groundWork places particular emphasis on assisting vulnerable and disadvantaged people most affected by environmental injustice.

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