

A close-up photograph of a person's hands, likely of African descent, cupped together and holding a small amount of dark, muddy water. The background is a blurred natural setting with rocks and water, suggesting a riverbank or a natural water source. The lighting is natural, highlighting the texture of the skin and the clarity of the water.

With
Power
Comes
Responsibility

Legislative opportunities to improve
corporate accountability at EU level

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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. The European Coalition for Corporate Justice critiques policy developments, undertakes research and proposes solutions to ensure better regulation of European companies to protect people and the environment. The European Coalition for Corporate Justice'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, Friends of the Earth, The Environmental Law Service, The Dutch CSR Platform, The Corporate Responsibility (CORE) Coalition and La Fédération Internationale des Droits de l'Homme (FIDH).

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Shell Oil spill in the Delta region of Nigeria. The local tribe, the Ijaw, complain of loosing their fishing as a result as well as having their water source poisoned

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Introduction

The European Coalition for Corporate Justice was founded in 2005 with a mission to promote an ethical regulatory framework for European business, wherever in the world that business may operate. The European Coalition for Corporate Justice's members represent a diverse range of groups from across Europe aimed at alleviating poverty, protecting human rights and ensuring environmental sustainability¹. During 2007, the Coalition undertook a research project involving international lawyers, academics and human rights and environmental advocates in order to evaluate the current obstacles to corporate justice and what changes to EU law could help prevent human rights abuses and environmental degradation committed by European companies. The European Coalition for Corporate Justice found that the legal structure of companies and weak accountability mechanisms have all too often resulted in ethical mismanagement by companies. This report builds on this research and illustrates how changes to European law could make real improvements to victims of European corporate abuse.

From mercury poisoning in South Africa to child labour in India, companies' breach of environmental and human rights standards has revealed systemic failings in the operation of many companies that has resulted in environmental and social harm for many years. Since the United Nations' (UN) Universal Declaration of Human Rights of 1948 there have been a number of subsequent international treaties referring to evolving human rights standards and environmental protection. These treaties are binding on States, but not on companies. Although it could be argued that companies are also bound to respect human rights – at least those belonging to customary international law or to the general principles of law – there currently exists no binding mechanism at the international level ensuring that they are held accountable for any violations they commit, or in which they are complicit.² Although drafts of laws obligating Multinational Enterprises (MNEs) directly have been proposed, most notably The Draft UN Code of Conduct of Transnational Corporations and The UN Norms on the Responsibilities of Transnational Corporations; neither has become a binding legal standard.

In March 2007, a European Parliament (EP) resolution urged the European Commission to extend legal obligations to some key aspects of corporate accountability. The resolution "*Corporate Social Responsibility: A New Partnership*" includes a number of recommendations that form the basis of the European Coalition for Corporate Justice's proposals in the area of foreign direct liability, mandatory reporting and directors duties (see box). Some of the solutions proposed in this report also echo the work of The Special Representative of the Secretary General on Human Rights and Transnational Corporations and other Business Enterprises at the United Nations, who in his recent report emphasized the need to bridge the governance gaps created by globalization by Governments³.

The European Parliament's Corporate Social Responsibility (CSR) Resolution called for:

● Fair and Accessible Justice for Communities Affected by European Companies

A new mechanism to make it easier for victims of corporate abuse to seek redress in European courts.

● Directors' Duties

Extending the obligation of company directors to minimise harmful environmental and human rights impacts of the company's activities.

● Environmental and Social Reporting

Extending the reporting obligations of companies not just to include financial information, but environmental and social information too.

The European Coalition for Corporate Justice believes there are significant opportunities to improve accountability of European MNEs under European law and that the obligation for Europe to act is clear: **Europe has a moral obligation to ensure it does not profit at the expense of people and the environment anywhere.** The European Coalition for Corporate Justice has prepared this report to illustrate how changes in European Law could make a real difference in preventing and punishing corporate abuse, wherever in the world that abuse may take place. This report has been produced in response to the European Parliament's CSR resolution and in conjunction with a parallel report "*Fair Law: Legal Proposals to Improve Corporate Accountability for Environmental and Human Rights Abuses*" which explains in detail the content of these legal proposals and how they could be applied within the framework of existing EU law⁴.

3 Legal Proposals

To help bridge the current regulatory gap and create a level playing field in which all companies are obligated to respect standards of good behaviour the European Coalition for Corporate Justice is calling for three specific legal reforms:

#1 Enhancing Parent Company Liability

Parent companies should be held liable for their subsidiaries and the contractors which they have right to control, for environmental and human rights impacts.

#2 Require Companies to Have a Duty of Care

Companies should take reasonable steps to identify and prevent human rights or environmental abuses within their sphere of responsibility.

#3 Require Large Companies to Report on their Environmental and Social Impacts and Risks

Large companies should have clear standards to which they report risks and impacts of their activities within their sphere of responsibility.

The European Coalition for Corporate Justice's three legal proposals aim to create an improved liability regime in Europe, creating a more just and effective legal structure to regulate the operations of European companies. To ensure effective enforcement, the proposals also entail much easier access to justice in an EU court for victims of corporate abuse.



Directors within companies should have a personal responsibility to ensure that companies follow up on their duty of care and reporting obligations. © SOMO



Who's In Charge?

The European Coalition for Corporate Justice believes that those who reap economic benefits of business activities should be responsible for the human rights and environmental impacts of that business too. MNEs operate as a single economic entity, normally through the coordination of a number of separate legal persons. The twin concepts of separate legal personality and limited liability insulate each member of the MNE from obligations, civil or criminal, of the other members of the economic group. This is a fundamental principle of company law, protecting entrepreneurs from financial risks connected with their operations beyond the sums initially invested, and hence encouraging investment. However, this has created a "double standard" in which a parent may receive profits from its subsidiary's operations without generally exposing itself to liability for the environmental or human rights consequences of those operations⁵. This significant limitation on a parent's legal liability has discouraged MNEs, both from a legal and financial perspective, from effective environmental and human rights management of the whole enterprise.

The ECCJ believes that the most effective way to improve observance of human rights and environmental standards by business enterprises in their out-of-EU operations would be to suspend the effects of the doctrine of separate legal personality in the area of human rights and the environment. Responsibility for such violations should be allocated unconditionally to the company having the right to control the entity that actually violated the standards – in short, to the parent company.

As the following case studies illustrate, expanding the liability of parent companies to the entire enterprise would have a significant impact on preventing environmental and human rights violations in the global south and would also improve victims' ability to seek redress if violations were to occur.

The European Coalition for Corporate Justice (ECCJ) proposes a strict parent liability that would hold parent companies liable for the human rights and environmental impacts of their operations, subsidiaries and the contractors which they have right to control. Company directors would also be held liable. People and organisations who maintain impairment of their rights, or other sufficient legal interest, could take action in EU courts if companies cause damage or injuries.

● MERCURY POISONING IN SOUTH AFRICA

After coming under scrutiny in the UK in 1987 regarding concerns about high levels of mercury in the blood and urine of their UK workers, Thor's Chemicals, a UK manufacturing company of mercury-related products, stopped their UK mercury operations and intensified their mercury-based operations at their South African subsidiary.⁶ The story of mercury contamination among Thor's South African employee's broke and public protest, union inquiries, legal action in South Africa and the UK followed. For years lawyers battled over whether, in addition to criminal prosecution in South Africa, Thor workers could have their claims for compensation from the parent company heard in the UK. This occurred while claimants were reportedly "going mad", being hospitalised, going into comas and dying. Some 13 years after Thor stopped its mercury-based operations in the UK and increased their operations in South Africa, the last legal case filed by workers against Thor in the UK was settled out of court.⁷ The undue burden of proving that they had a right to hold Thor liable in the UK for its unsafe operations had meant years of legal efforts and insecurity for families devastated by illness.

If ECCJ's proposal on parent company liability had been in place the entire process would have been resolved much sooner, allowing victims to move on with their lives. The South African workers would not have had to prove that the UK parent company was liable; there would have been no questioning that UK courts had jurisdiction over the case and UK law could apply. Any legal case would go straight to the heart of the matter: did the subsidiary's operations cause injury? And because the proposal also includes public liability, UK authorities or individuals could take the company to court in relation to violations of international law, the company could be forced to pay penalties as long as the violations were ongoing. This is important because in cases like this, not only are workers poisoned but damage is also done to communities, which are left with polluted neighbourhoods and toxic waste. If subsidiaries of multinational corporations have caused any damage that violates the law, they would be obligated to take responsibility for the clean-up.



Top: Oil pollution in Goi, Nigeria, from a Shell-pipeline. Oil spills pollute the creeks of the Niger Delta, seriously affecting fisheries.
© Kadir van Lohuizen, January 2008.

Right: Oil pollution in Ikot Ada Udo, Nigeria, from a Shell-installation. Members of the community used to grow cassava and yam here.
© Kadir van Lohuizen, January 2008.



● OIL SPILLS IN THE NIGER DELTA

Most of the 27 million people of the Niger Delta in Nigeria depend on the fish, vegetables and water their surroundings offer for sustenance. For some thirty years, thousands of oil spills have affected the fertile wetlands and the livelihood of the people.⁸ The majority of the spills are a consequence of aging facilities and human errors of oil companies. For decades, Royal Dutch Shell has been the biggest foreign oil company present in the Niger Delta. Its 100% subsidiary, the Shell Petroleum Development Company (SPDC) of Nigeria, operates a joint venture that in normal years accounts for about 40% of Nigerian oil production. Each year, SPDC reports about 250 oil spills.⁹

Approximately 500 oil spill-related cases have been filed against SPDC in Nigerian courts.¹⁰ Many of these cases have been pending for years. For the communities of the Niger Delta there is little progress. Prince Chima Williams, of Environmental Rights Action (Friends of the Earth Nigeria) says "*The parent company Royal Dutch Shell should take its responsibility for Nigerian operations. With the kind of legal reform the European Coalition for Corporate Justice has proposed, it would be less difficult for victims like the people in the Niger Delta to get justice done in EU-countries when parent companies based in the EU are not abiding by the law.*"



Top: Anglo Platinum sign post Potgietersrust, South Africa. © SOMO, 2007

Bottom / Right: Communities in Potgietersrust, South Africa. © SOMO, 2007

● FORCED RELOCATIONS IN SOUTH AFRICA

When Anglo Platinum, the world's largest platinum company, decided to expand its mine in the Potgietersrust region of South Africa's Limpopo province, it caused the resettlement of three local villages, effecting a combined population of 17,000. The village of Ga Pila was resettled in 2001 and since then these families have been living in slum-like conditions at a nearby farm. According to one South African civil society group "Ga Pila residents were subjected to forced removals like those in the time of apartheid".¹¹

Now, some seven years later, Anglo Platinum claims to be engaging with the community through a resettlement committee. This committee, subsidised by Anglo Platinum, has however come under scrutiny for its lack of independence. Although Anglo Platinum claims that the villagers now have better housing and more farmland,¹² most of this farmland is in the hands of the members of the resettlement committee, leaving the majority of the villagers much worse off.¹³ One of the displaced villagers told researchers: "There is no grazing land for the animals and my people are no longer ploughing. They promised that we would live like we did in the village, even better. It's not true. My people are suffering."¹⁴

The Mohlohlo communities Ga Puka and Ga Sekhaolelo have also been affected by Anglo Platinum's operations. These communities, recently resettled to the Armoede farm have expressed their anger with the project for several years, documenting worsening living conditions in the two villages due to the mine's expansion. There are now intolerable levels of dust, noise and property damage, drinking water has been polluted and crops have been destroyed or are being threatened to make way for expanded mining activities. Attorney Richard Spoor describes the difficult position of the South African villagers: "Many community members signed the documents believing that they faced no other alternative to homelessness and destitution when forcibly relocated, so lacked the necessary free will when they signed the documents".¹⁵

International anti-poverty group ActionAid, which published research into this case in 2008, continues to press Anglo Platinum and its majority shareholder UK-based Anglo American, about its activities, which they allege are violations of rights guaranteed under the South African constitution such as the right to food, water, housing, a healthy environment and sustainable development.¹⁶ Anglo American maintains that its platinum subsidiary will be dealing with the matter itself.¹⁷

The European Coalition for Corporate Justice's proposal on parent company liability would mean that adversely affected communities could access UK courts with relative ease as the UK-based Anglo American Company would be liable; the company would not be able to defer responsibility to their platinum subsidiary. The state or individuals could also initiate public liability proceedings against the UK company or its directors, which would entail sanctions for human rights violations. If the court found that the contracts signed by the villagers were void, the people involved could request compensation; if the company still continued to relocate the villagers the UK courts could impose sanctions. The villagers could seek compensation for the poor living conditions they were forced to endure.





With Rights Come Responsibilities

The proposal for expanded liability of parent companies, discussed above, only covers companies that parents can directly control. But it is quite common that companies operating in Europe have influential relationships with companies even though they aren't their subsidiaries, such as through the establishment of joint ventures, and through complex supply chain relationships. In some sectors, it's quite common for multi-national companies to work with dozens, even hundreds of suppliers. While these overseas companies might not be direct subsidiaries of a European company, such a company might very well exercise "strategic control" over its suppliers: this control takes different shapes and is often shaped by the terms laid down by the European company for the conditions of the work they want done, for example, production, delivery, and unit price paid (all are factors that have a direct connection to working conditions – in the wages paid to workers, working hours and working conditions etc.). In their relationship with suppliers companies operating in the European market can often set the standards for a workplace that they might not directly own. But while they might have outsourced the work, by maintaining a high level of influence in the operations they have not outsourced their responsibility for human rights and the environment.

Under existing European laws, the duty of care of the parent company with respect to the affiliate's operations is limited to specific situations where the parent is involved in the contested operations or in fact driving the affiliate's decisions. While this may not have deterred certain MNEs operating in brand sensitive sectors from improving their

supply chain management, it has generally discouraged parents from better and more transparent management of environmental and social impacts within their sphere of responsibility as the more they know and control, the greater the risk of legal liability.

The European Coalition for Corporate Justice believes that a company should have a duty of care to ensure that human rights and the environment are respected throughout its sphere of responsibility. A company should be held legally liable if it cannot adequately demonstrate it has adhered to this duty by taking all reasonable steps to prevent and/or end the violations. Thus, parental duty of care would be expanded to all situations where the parent could significantly influence the operations of other legal persons it has business relationships with.

As the following case studies illustrate, expanding the responsibility of companies would have a significant impact on preventing environmental and human rights violations in the global south and would also improve victims' ability to seek redress if violations were to occur.

The European Coalition for Corporate Justice proposes that companies be given more responsibilities and duties where they have influence over the behaviour of a supplier or joint venture. Companies should be obliged to take reasonable steps to prevent or mitigate environmental and human rights degradation within their sphere of responsibility. Directors within the companies should have a personal responsibility to ensure that companies follow up on these duties. People and organisations who maintain impairment of their rights, or other sufficient legal interest, could take action in EU courts if companies cause damage or injuries.

● TORTURE OF BURMESE WORKERS

Total Oil, operating in Burma since 1992, has a joint business venture with the Burmese military regime to develop an offshore gas field in the Andaman Sea. Annual revenues for the venture are estimated at US\$450 million per year.¹⁸ In 2002, in connection with this venture, Burmese citizens filed cases against Total (then called Total Fina Elf) and its director in French and Belgian courts, alleging forced labour and torture in connection with the operation of the venture's Yadana pipeline. One of the plaintiffs in the French case was 13 when she was forced to work on the pipeline. The area, home to farmers, plantation workers and fishing communities, had been militarised to "secure" the pipeline area. Relocations and evictions are said to have devastated the communities. Soldiers reportedly conscripted thousands of people, including children and the elderly, to perform forced labour for the benefit of the pipeline. In their report on Total's activities in Burma, the Burma Campaign in the UK reports that those who did not flee to Thailand or escape into the jungle had to endure routine and systematic forced labour and "a life defined by fear." In addition, they say, other abuses such as extrajudicial killings, torture, rape and extortion by pipeline security forces dramatically increased after the Yadana Project began.¹⁹

In 2005 a US\$ six million out-of-court settlement was reached in France and after some five years of legal action,²⁰ in 2008 the case was closed in Belgium.²¹ Total continues to operate in Burma; while rights campaigners continue to press Total to pull out of the country.²² Aung San Suu Kyi, Burma's democracy leader, has said that "*Total is the biggest supporter of the military regime in Burma.*"²³

If the European Coalition for Corporate Justice's proposal on duty of care was in place, Total would have had an ongoing obligation to investigate and prevent any risks of human rights abuses within its sphere of responsibility. This would include abuses connected to the operations of its joint venture in Burma. Victims of any abuses connected to the operation of the venture's pipeline could seek redress, including compensation, in French courts for any violations that Total did not take reasonable steps to prevent or mitigate. Sanctions could be imposed on Total and its directors by the French courts if the company continued to violate its duty of care and rights abuses resulted. Right now, Total does not have a clear legal duty of care in connection with the pipeline project. While some compensation has gone to some Burmese people affected by abuses stemming from the pipeline operations, the risk of severe rights violations is ongoing in Burma. Total continues to operate its venture in a country ruled by a repressive military dictatorship where workers and communities have few possibilities to speak out against abuse.

"Enacting an expressed duty of care for companies for the joint ventures they are involved in would definitely provide greater accountability of the parent company and legal security for all parties," explains French Attorney Lawyer, Yann Queinnec of Lawyers Association Sherpa.

● TOXIC POISONING IN CHINA

Hivac Startech Film Window Co., Ltd. produces lenses for mobile phone handsets in the Special Economic Zone in Shenzhen, China and is part of Motorola's supply chain. Hivac Startech supplies Hon Hai Precision Industry Co., Ltd. (Foxconn), a first tier Motorola supplier, with lenses for two of Motorola's products.²⁴ Workers at Hivac were using n-hexane, a highly toxic substance, to wash and scrub acrylic screens for mobile phones, but were working in poorly ventilated workshops and were not provided face masks or training in handling the dangerous chemical. As a result of these dangerous working conditions, in December 2005 many workers from the acrylic screen workshop began to lose their appetites, an early sign of chemical poisoning. Twelve women experienced numbness in their limbs, another clear sign of poisoning. In February 2006, nine workers, all of whom had been working at the factory for more than one year, were hospitalised and diagnosed with n-hexane poisoning. Under medical advice, a pregnant worker had an abortion due to the toxic level of n-hexane in her body.

When local labour support groups raised the issues of hazardous working conditions and just compensation for the poisoned workers with Motorola management in 2006, an external audit was conducted. Hivac management and Motorola claimed that the issues had been resolved, but workers reported only superficial changes. For example, the hazardous n-hexane was replaced with an equally dangerous "lacquer thinner" containing benzene. Although the faulty ventilation system in the factory was replaced it was rarely turned on because the increased flow of air dried out the paint and would force the company to spend more on materials. The workers who were poisoned did not receive the compensation they sought.

The European Coalition for Corporate Justice's proposal would mean that companies like Motorola would have to take reasonable care in ensuring that violations of workers' rights don't take place. If violations do occur, people working in unsafe conditions could relatively easily seek compensation in European courts and companies such as Motorola would be found guilty if it was proven that they did not take reasonable steps to prevent violations.

"This proposal on duty of care would enable these and other workers to access justice and hold the brand name companies accountable for the unsafe working conditions in their supply chains" says Esther de Haan, of GoodElectronics, an electronics industry watchdog group.²⁵ "This is especially important for workers in workplaces beyond first tier suppliers, where implementation of safety standards is notoriously lax or non-existent."²⁶



Top: Thousands of Chinese workers demonstrating in Xixiang Town, Shenzhen. © SACOM, August 2007

Bottom: Workers soldering metal at a mobile phone factory in China. © SOMO 2008

● CHILD LABOUR IN INDIA

Since 2003, human rights activists²⁷ have been calling for an end to the use of child labour in Andhra Pradesh, India, in the production of cottonseed for companies including the German-based pharmaceutical company Bayer. In 2003, 2004, and 2006 researchers found that children were working shifts of up to 14 hours a day, earning less than US\$0.50 a day and suffering serious injuries due to pesticide exposure working for farmers that supplied Bayer's Indian subsidiary ProAgro. Most of the children worked under "debt contracts" and some were even living in outright slavery. Although several complaints, including to the OECD guidelines national contact point were made, a recent 2007 study showed that children were still working in the fields.²⁸

Huge pressure from rights advocates was needed to get Bayer to develop an action plan to improve the situation. The civil society groups working on this case over the years still feel that the efforts are insufficient and that many issues remain unaddressed e.g. low procurement prices that farmers receive from Bayer effectively incentivise the use of child labour.²⁹

*"Continuing oversight is needed. With a requirement that a company such as Bayer assess and deal with the risk of serious labour rights violations in its supply chain in India, the local organisations that are advocating for these communities could hold the company accountable here in Germany, potentially a more effective process for those involved."*³⁰ says Cornelia Heydenreich, of the NGO Germanwatch, which has pressured Bayer to take action to prevent the use of child workers for five years. *"We're also concerned that with the announced expansion of the area in India that Bayer's suppliers have under cultivation, the number of children might increase again significantly, so this is definitely not a problem that is solved."*

Similar to the case of mobile phone workers presented above, under the European Coalition for Corporate Justice's proposal, Bayer would be required to take preventative measures to ensure that violations of workers' rights at any level of its supply chain do not take place. If violations, such as poisoning or use of child labour did occur, action could be sought relatively easily in European courts and Bayer would have to prove that they took reasonable steps to prevent the rights violations.



Child labour is still abundant in India's cotton seed production.

© India Committee of the Netherlands



What's Really Going On?

It is rare to find a Multinational Enterprise that is comprehensively or accurately reporting on the social and environmental impacts of its operations. While EU companies do have to publish annual financial reports, there is no clear requirement to include information within these reports on the risks or negative impacts of their business practices on people or the environment.

Companies should be required to be transparent about the actual impact of their practices on the environment and people and there should be clear standards that all big companies have to observe so their performance could be easily comparable. Reports with more transparency about the structure of a company and where the company actually influences decision-making throughout its operations would also be a useful tool to promote compliance with good labour and environmental standards.

As a result of pressures from consumers and other stakeholders, some companies have voluntarily published reports that touch upon these subjects, although these reports often emphasise the positive and gloss over the negative. An upbeat case study on one workplace might be showcased, while the overall picture of working conditions across the company's global operations may be vague or missing entirely.

The European Coalition for Corporate Justice proposes that large companies' be mandated to annually report on human rights and environmental risks within their sphere of responsibility, as well as information on how companies are dealing with these risks. Companies and directors within the companies should have a personal responsibility to ensure that companies follow up on these duties to report. People and organisations who maintain impairment of their rights, or other sufficient legal interest, could take action in EU courts if companies cause damage or injuries.

Without detailed and coherent social and environmental reports, it's nearly impossible to compare one company to another or to even measure the progress (or lack of progress) that a single company might have made over time. An EU-level mandatory requirement for annual social and environmental reporting, however, could transform CSR (Corporate Social Responsibility) reporting into a powerful tool for encouraging positive practice within companies, and the entire international business community.

A proposed obligation for companies to conduct environmental and social reporting seeks to compliment proposals 1 and 2 by improving companies' transparency and assist in the attainment of further accountability indirectly. The European Coalition for Corporate Justice believes effective environmental and social reporting should include information in relation to:

1. The enterprise structure and its sphere of responsibility;
2. The risks 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;
3. Data on direct and indirect social and environmental impacts of the company's operations in the preceding reporting period according to a specified set of performance indicators defined by sector of activity.

This will ensure that companies report on what is important with respect to their impact on human rights and the environment and that the information contained within the report is accurate, comprehensive and comparable.



Top: ENI AGIP KCO sign in front of the cuttings oily-water treatment facility in Koshanai, Kazakhstan which shows the companies with participating interest in the Kashagan oil field. © FoEE

● CONTAMINATION AND TOXIC WASTE IN CENTRAL ASIA

Friends of the Earth Europe have reported that Italian energy giant, ENI, has committed a series of environmental offences within its operations in Kazakhstan including contamination, oil spills, dumping, poisonous substance emissions, toxic wastes, and death of seals, sturgeon and birds.³¹ Because of ENI's failure to report in relation to the environmental and human rights impacts of its Kashagan Project, it is not known whether impact assessments have been conducted and if so what the results of these assessments were, as no information has been made public.

"One of the key problems is that ENI contends it has conducted an environmental impact assessment (EIA), but refuses to release it," explains Darek Urbaniak of Friends of the Earth Europe. *"Despite all the lip service it pays to environmental and social accountability, ENI asserts it will only release the results of the EIA if forced to so by the Kazakh government. If European companies were all required to conduct such assessments and release their results, ENI wouldn't be able to keep poisoning the people and environment of Kazakhstan."*

● LABOUR RIGHTS IN THAILAND

"When we raised questions with Nokia about labour practices and the degree of its relationship with a Thai supplier we were told that this information was confidential and commercially sensitive," says Joseph Wilde-Ramsing, who co-authored SOMO's 2006 research report on conditions in mobile phone supply chains. *"Neither Nokia's Annual Report nor its Corporate Responsibility report provide information on its suppliers and contain only very limited information on the working and environmental conditions at factories supplying components for Nokia phones,"* adds Wilde-Ramsing.³²

"Often, workers at suppliers such as this Thai factory don't even know which brand company they are producing for and therefore are deprived of critical information they need to try to have those in a position of authority address rights infringements," explains Wilde-Ramsing. *"Nokia's claims to protect workers' rights are thus rendered meaningless when the workers themselves are unable to access such protection. If the European Coalition for Corporate Justice's proposal on mandatory reporting were put into law it would compel companies to identify their suppliers and report on their social and environmental impacts, clearing a path for workers and communities who are victims of abuses to seek justice by directly addressing the companies responsible."*

The European Coalition for Corporate Justice's mandatory reporting requirement would be a powerful deterrent to abuse. To be able to report accurately and comprehensively, companies would have to put internal management systems in place to assess the risks and impacts of their operations on people and the environment. They would also have to have systems in place to develop their follow up efforts to prevent and remediate violations. Such systems would be important internal drivers of positive change within companies. Facing up to the possible problems and the necessary solutions would surely improve corporate performance in relation to environmental and human rights issues.



Chip makers in a Thai factory. © SOMO 2007



ECCJ believes that those who reap economic benefits of business activities should be responsible for the human rights and environmental impacts of that business too. © SOMO

Conclusion

As the case studies in this report demonstrate, the extent to which human rights are being violated and the global environment is being degraded, by European MNEs and their partners, is unacceptable. Not only is Europe currently failing to ensure responsible standards are met by its international business operations, the legislative framework in which MNEs in Europe operate within is at best complicit, at worst actually encourages, these violations. The complex chain of companies and suppliers acting as the engines for European MNEs outside the union has far too often led to a web of deceit, where profits made by European MNEs are far too often acquired through unknown and ethically dubious behaviour by a company's subsidiaries and partners overseas.

There is no simple solution to stopping MNEs profiting at the expense of people and the environment. However it is clear that of central significance is the legal framework that companies in Europe operate within. The European Coalition for Corporate Justice believes that although legislative reform may not currently be very fashionable, reforms made to legal frameworks, particularly around the notion of parent company liability, provide opportunity for preventing MNE mismanagement not found in any other arena.

The case studies reviewed within this report illustrate how key changes to European legal frameworks in relation to parent company liability, enhanced duty of care and the introduction of environmental and social reporting, could make a real difference to people and the environment around the world. In order for any of these proposals to have a working impact, proposals have also been made around reforms to enforcement measures, including amendments to choice of law regulations and establishment of civil law liability. These amendments would allow greater access to private actions by all relevant affected parties, whether in Europe or in the rest of the world. The proposed legal reforms outlined in this report are not the only way to improve corporate accountability, but they are one useful way that Europe can make some small steps towards meeting the greatest global challenges of our time and ensuring a better future for the next generation.

Would you like a legal briefing on these proposals?

To read more about the details of the European Coalition for Corporate Justice's three proposals please see *"Fair Law: Legal Proposals to Improve Corporate Accountability for Environmental and Human Rights Abuses"* available at www.corporatejustice.org

Endnotes

- 1 ECCJ represents over 250 civil society organizations present in 16 different countries around Europe including NGOs, trade unions, consumers' organizations and academic institutions like the FIDH and national chapters of Oxfam, Greenpeace, Amnesty International and Friends of the Earth.
- 2 Some of the international treaties, such as The 1976 OECD's Guidelines for Multinational Enterprises, The 1977 ILO Tripartite Declaration Concerning Multinational Enterprises and Social Policy, and the 1992 UN's Rio Declaration on Environment and Development, have explicitly emphasized the role of the MNEs and stated what their obligations should be. None of them went so far, though, to actually oblige them.
- 3 <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>
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