



## ECCJ's CONTRIBUTION FOR THE REVIEW MEETING OF THE EU MULTISTAKEHOLDER FORUM ON CSR

Brussels, 10<sup>th</sup> February 2009

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### Introduction

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The European Coalition for Corporate Justice (ECCJ) was established in 2005, and brings together NGOs, trade unions and coalitions promoting CSR and Corporate Accountability (CA) from all over Europe. Among these are sections of the leading NGOs in the areas of environmental, social and human rights, such as Amnesty International, the International Federation for Human Rights (FIDH), Friends of the Earth, Greenpeace, WWF and Oxfam. NGOs from fifteen countries are represented within the coalition by their national platforms, including the UK based Corporate Responsibility Coalition (CORE), the Dutch MVO Platform, the German Network for Corporate Accountability (CorA), the French Forum Citoyen pour la RSE and the Spanish Observatorio para la RSC. Overall we represent over 250 NGOs, trade unions and consumer organisations in Europe, which in turn are connected to global networks and Southern groups and organisations around the world.

The ECCJ was formed to increase co-operation between NGOs working on CSR and Corporate Accountability and to strengthen their representation at a European level. We are committed to working with the European institutions to address the environmental, social and human rights costs of EU-based companies as well as increasing public awareness of this problem and addressing the role of the European Union in regulating business. Since 2005 we have grown to become the main interlocutor for NGOs at EU level and are currently the main NGO representative within the Multistakeholder Forum on CSR. In the course of the last year we have been invited to speak at high level experts' and international conferences and in relevant consultations to present the findings of our legal work.

The ECCJ believes that a regulatory approach, based on internationally agreed standards and principles is needed as a foundation for achieving corporate accountability. ECCJ agrees that these should not exclude voluntary measures, which may be in some cases be an ideal first step towards greater accountability of the corporate sector for their social and environmental impacts, but better regulation is needed to complement such actions. We believe that it is not a either/or question but that both comprehensive legislation and voluntary schemes are necessary to improve the situation.

### *European Parliament resolution on CSR*

On 13<sup>th</sup> March 2007, the European Parliament issued a resolution on CSR urging the European Commission to extend legal obligations to some key aspects of corporate accountability. By voting for the resolution, MEPs called for directors to personally take responsibility for the behaviour of their companies; for European corporations to be liable in the EU for damage they cause abroad and access to justice for non-EU victims granted in EU courts; and for lobbyists to be obliged to disclose information about their clients and budgets.<sup>i</sup> The ECCJ welcomed the statement and the acknowledgement that voluntary CSR was not a substitute for regulatory measures.

### *Expert Seminars*

In 2007 the ECCJ launched a wide-ranging research project on corporate accountability, the results of which were presented and discussed at a series of expert seminars hosted by ECCJ member groups in the UK, France, Italy and Sweden from September to December 2007. Funded through the DG Employment CSR call for proposals, the research handled a range of issues which play a central role in developing a stronger regulatory framework for corporate accountability, including analysis in the areas of social and environmental reporting; supply chain management; corporate liability and access to justice for affected communities, and sustainable public procurement. The seminars involved representatives from all stakeholder groups from all over Europe who were able to provide valuable insights from the fields of development, law, public policy, business and many other areas. The main outcome of this work was to make an inventory of the state of affairs of European regulation (both national and EU level) on the four issues; to analyse lessons to be learnt from existing regulations; and to begin formulating concrete legal recommendations at European level that could fill the gaps in existing legislation.

### *Development of Legal Proposals*

As a follow-up to the seminars, the ECCJ worked with lawyers and academics to produce a concrete set of legal proposals. These proposals were published in May 2008 under the title *Fair Law: Legal Proposals to Improve Corporate Accountability for Environmental and Human Rights Abuses* and contained three elements:

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.

This proposal challenges the conventional doctrine in relation to limited liability and proposes to suspend the effects of the doctrine of separate legal personality in the area of human rights and the environment. The principle of limited liability creates a serious risk of abuses of human rights and environment throughout the enterprise structure for which the central corporate decision-makers are legally unaccountable. A parent company for example may receive profit from its subsidiary's operation without exposing itself to any liability for the environmental and human right consequences of those operations. In addition, the ECCJ proposes that directors' duties be extended so that they are not only liable for the financial position of their companies, but are also equally responsible for environmental and social impacts of their decisions.

2. **Require companies to have a Duty of care:** companies should take reasonable steps to identify and prevent human rights and environmental abuses within their sphere of responsibility.

This proposal establishes a duty of care onto parent companies of MNEs in relation to their human rights and environmental impacts of sub-contractors and suppliers within their sphere of influence. The lack of legal accountability of corporations for the environmental and human rights abuses committed by their business partners is resulting in a situation where the affected communities often lack effective remedies. ECCJ also defines what redress mechanisms for victims of those abuses should be established in order to complement the proposals.

3. **Require large companies to report on their environmental and human rights impacts and risks:** large companies should have clear standards to which they report risks and impacts of their activities within their sphere of responsibility.

High and consistent levels of transparency of businesses' activities, products and services are needed in order for shareholders, consumers and local communities to make informed decisions and also to facilitate comparability of performance among companies. Many countries in the EU have already introduced mandatory schemes for environmental and/or social reporting criteria such as France, Denmark, Sweden and the Netherlands. Mandatory social and environmental reporting increases a company's level of awareness for environmental and human rights hazards throughout their sphere of influence and thus it becomes a useful risk assessment tool. ECCJ proposes reporting requirements that would be feasible and that would provide information about the company's structure, current activities and its impacts, and prospective risks on human rights and environmental aspects of its operations for all companies residing in the EU. These measures would be enforceable by sanctions against companies who don't report what they should and against responsible corporate officers.

*Fair Law* represented a fundamental step forward in the debate on corporate accountability by identifying specific legal instruments that could be used or amended to improve regulation in this area. These proposals were backed by a collection of case studies from around the world, *With Power comes Responsibility*. Both publications are available on our website at [www.corporatejustice.org](http://www.corporatejustice.org) (Publications section).

*Conference 'Smart regulation: Legislative opportunities for the EU to improve corporate accountability'*

The findings of the seminars formed the basis of a pioneering conference in Brussels in May 2008. Hosted jointly by the ECCJ and the Party of European Socialists, the conference sought to contribute towards the development of a framework for corporate accountability, as well as to present the ECCJ's own legal proposals to this end.

Speakers included Olivier de Schutter (UN Special Rapporteur on the Right to Food), Noreena Hertz (Author of the book "The Silent Takeover", Economist and Distinguished Fellow at the University of Cambridge), Richard Howitt MEP (Rapporteur on CSR for the European Parliament), and Diana Wallis MEP (Vicepresident of the ALDE Group) amongst others like Commission, Member States, trade unions and businesses representatives, as well as those affected by the operations of European companies in the Global South. The conference was very well attended with over 150 people including NGOs and other civil society representatives from all over the world, lawyers, consultants, and representative of all the relevant stakeholders.

*Proactive dialogue with Commission representatives*

As a follow-up to the conference, ECCJ representatives were invited to meet with Commissioners Günter Verheugen and Vladimír Špidla in July 2008 in order to discuss practical steps towards the advancement of ECCJ's legal proposals. As a result of the meeting the scope of the 2009 Review Meeting of the EU Multistakeholder Forum on CSR has been broadened to ensure active NGO participation. Likewise, several consultations are being organised with representatives of different Directorates Generals of the European Commission in order to assess potential ways in which the proposals could be integrated in EU law in the future.

*EU leadership in corporate accountability*

The EU must ensure that it remains at the forefront of international debate on corporate accountability. Thus it needs to move beyond discussions solely focused on voluntary CSR mechanisms and embrace a comprehensive approach to ensure EU companies contribute meaningfully to poverty eradication, sustainable development and fight against climate change goals wherever they operate.

EU Member States are already taking steps to improve the responsibility of their companies for environmental and social impacts. Denmark, the Netherlands, Norway and France now all have some mandatory environmental and/or social reporting requirements, although all of these schemes are as yet imperfect and not comparable to each other. The British government gave directors greater responsibility for their corporations' impacts in the 2006 Companies' Act. We now need a harmonised legal framework at EU level to ensure that all companies have the same rights and responsibilities.

The European Parliament's resolution on CSR of March 2007 represents significant acknowledgement of the need for better regulation to uphold corporate accountability. The EU must take further steps in this area to lead international efforts and maintain its reputation as a defender of human rights and the environment.

*The changing international context*

This is particularly important given that international debate on CSR and corporate accountability is changing. Work such as that of John Ruggie, the UN's Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, has moved the debate from one focused on voluntary initiatives to one which acknowledges the need for the better regulation and law enforcement. In his 2008 report 'Protect, Respect and Remedy: A framework for Business and Human Rights' Ruggie he has clearly stated that *"Government should not assume they are helping business by failing to provide adequate guidance for, or regulation of, the human rights impact of corporate activities. On the contrary, the less governments do, the more they increase reputational and other risks to business"*<sup>ii</sup>

The G8 Summit in Tokyo, Japan in 2008 also recognised that *"that these instruments [for responsible business conduct and corporate social responsibility] are not, nevertheless, substitutes for adequate regulatory and supervisory action by governments"*<sup>iii</sup>

In 2008 after two years work the International Commission of Jurists produced a three volume report outlining how corporations could be held liable under both criminal and civil law, not only for human rights and environmental abuses that they commit directly but also for those in which they can be seen to be complicit.<sup>iv</sup> This is an important step forward in achieving redress for victims of corporate abuse and convincing companies that they need to seriously consider their impacts and ameliorate them where they are negative.

Increasingly more relevant voices from the international community are therefore highlighting the need for legislation which prevents human rights and environmental abuses, provides for better law enforcement and mechanisms of redress for victims and creates a level playing field, so that companies who do adhere to human rights standards are better rewarded and increased their legal certainty. Such is also Justice Ian Binney of the Canadian Supreme Court who has acknowledged the need for greater corporate accountability in August 2008: *"You cannot have a functioning global economy with a dysfunctional global legal system. There has to be somewhere, somehow, that people who feel that their rights have been trampled on can attempt redress."*

The lack of appropriate regulation of financial markets has resulted in severe problems not only for businesses and consumers in the developed world, but also for developing countries. Short-termism, opaque financial practices and speculation have fuelled economic instability and food and commodity price rises. Prospects for sustainable development and efforts to tackle climate change will be adversely affected, human rights will suffer. Altogether, self-regulation has been recognised as insufficient for the modern, globalised world.

The ECCJ would like to see concrete results from the European Commission's Review Meeting of the Multistakeholder Forum on CSR. We believe that for the MSF to be truly productive, it must not simply be a one-off event but a process of continued engagement between stakeholders, with a clear agenda and objectives which match the discussion being held at the international and also EU and national level on these issues. There must be space for all participants to present their concerns and proposed solutions for equal consideration and the forum must be prepared to engage with the workers and communities whom their CSR policies aim to help. In addition, the European Commission must commit to take genuine action on agreed proposals coming from the forum.

The following are some concrete proposals for the Review Meeting on 10<sup>th</sup> February:

1/ Establishment of working groups with the different stakeholders in order to discuss the best way to include ECCJ's 3 proposals on Parent company liability, Duty of care and social and environmental reporting by companies (see pages 2 and 3 of this document) into the relevant pieces of EU legislation.

2/A number of concrete actions can be taken by the EU to advance corporate accountability and position the EU at the forefront of international efforts to improve regulation of businesses:

a) Reaffirming the roles and responsibilities of states and corporations on human rights: The EU could consider providing a clear support to the framework on business and human rights currently being discussed by the international community under the UN framework. An indicative signal could be drafting a declaration whereby the EU clarifies the roles and responsibilities of the EU, its Member States and European companies.

b) Clarify the nature and scope of the existing EU legal framework applicable to EU companies operating abroad and identify gaps: There is a protection gap in the relation between states and companies. This often results in mismanagement of human rights and environmental risks of the global operations of EU companies due to legal uncertainty. Clarifying the extent and scope of the current EU regulatory framework would be most useful in order to identify where the governance gaps are.

c) Propose new regulation addressing identified gaps: The EU could play a strategic role in developing guiding principles and regulations on crucial issues such as access to justice, transparency and supply chain responsibility. Given the EU's influential role as the biggest aid donor worldwide and considering that it has already established a developed set of domestic laws to regulate corporate behavior within the Union's territory, the EU is uniquely positioned to contribute greatly to the advancement of the international discussions on CA.

d) The EU should invest in making the agenda of the discussions on CSR and Corporate accountability more attractive so more and diverse representatives from all stakeholder groups take part in the relevant discussions.

e) Rename the Multistakeholder Forum on CSR into "Multistakeholder Forum on CSR and Corporate Accountability".

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<sup>i</sup> European Parliament resolution of 13 March 2007 on corporate social responsibility: a new partnership (2006/2133(INI)) available at [http://www.i-csr.org/repository/P6\\_TA\(2007\)0062%20European%20Parliament%20resolution%20of%2013%20March%202007.pdf](http://www.i-csr.org/repository/P6_TA(2007)0062%20European%20Parliament%20resolution%20of%2013%20March%202007.pdf)

<sup>ii</sup> *Promotion and protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development/Protect, Respect and Remedy: a Framework for Business and Human Rights* Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie  
[http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Human\\_Rights\\_Working\\_Group/29Apr08\\_7\\_Report\\_of\\_SRSG\\_to\\_HRC.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Human_Rights_Working_Group/29Apr08_7_Report_of_SRSG_to_HRC.pdf)

<sup>iii</sup> <http://www.ethicalcorp.com/content.asp?ContentID=6025>

<sup>iv</sup> <http://www.business-humanrights.org/Updates/Archive/ICJPaneloncomplicity>

<sup>v</sup> <http://www.lawyersweekly.ca/index.php?section=article&articleid=745>