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INTERNATIONALLY BINDING LEGISLATION AND LITIGATION FOR THE ENFORCEMENT OF LABOUR RIGHTS

Report of the seminar organised by the Clean Clothes Campaign (CCC) International Legal Working Group and International Restructuring Education Network Europe (IRENE)

Evangelic Academy, Mülheim an der Ruhr, Germany 26 – 28 June 2002

Report written by Julie Smith

BACKGROUND

This seminar explored the legal possibilities for holding multinational corporations (MNCs) responsible for labour rights in their operations outside their home countries. It followed up from discussions held at two previous seminars organised by IRENE which brought NGOs, trade unions, academics and lawyers together to discuss these issues. The first seminar was held in Warwick, UK 20 – 21 March 2000 – **Controlling corporate wrongs: the liability of transnational corporations (see News from IRENE no.31 or contact IRENE for the report)**. The second seminar took place in Bad Boll, Germany 3 – 4 December 2001 – **Global governance: international law on human rights and the liability of transnational corporations (see News from IRENE no. 32 or contact IRENE for the report)**. This second seminar looked at specific legal cases and discussed what is needed to effect corporate liability of MNCs under national and international law.

This third step in the process brought those with a legal background together with NGOs and trade unions involved in campaigning on labour rights in MNC supply chains. About 33 people attended from several West European, East European and Asian countries and the US.

The seminar was held as a roundtable using short presentations and discussions which focussed on:

1. tools that can be used to achieve compliance on basic labour standards
2. the usefulness of litigation
3. the value of lobbying in relation to the development and enforcement of binding legislation that guarantees workers' rights
4. the role of campaigning to support strategies (2) and (3)

It aimed to resolve two key questions:

1. Which groups are interested in exploring possibilities for starting a lawsuit and how do we exchange information and strategic issues ?

DISCUSSION

It was decided that a starting point was to gather information on existing campaigns, and legislation on regulation of MNCs. Examples were given of national and international campaigns and coalitions of NGOs and trade unions addressing issues of corporate social responsibility and other initiatives to improve workers rights. These included:

National campaigns:

The Netherlands	World Citizens- Campaign aimed at increasing support for development aid- CCC, Oxfam NL, COS etc.
UK	CORE (Corporate Responsibility Coalition) – FOEI, AI UK, Save the Children, NEF
US	Shareholder action campaigns eg. Coca-Cola
Italy	Campaigns on socially guaranteed products and mandatory reporting
India	Combined trade union opposition to new labour legislation

International campaigns:

Europe	Coalition of fair trade and ethical trade organisations, and trade unions campaigning for the inclusion of social criteria in the new EU directive on Public procurement
Asia	Discussion on campaign to push for ILO Declaration of Fundamental Principles to become a new convention

Friends of the Earth International (FOEI)

campaign for a Convention on Corporate Accountability

Third World Network

- Another World is Possible: campaign to combine developmental rights of nations with corporate responsibility

TIE-Asia with Sri Lankan unions

- on ILO conventions

World Development Movement (UK)

- campaign on regulating investment (MAI)

WEED (Germany)

- regulation and accountability campaign

Bread for the World (Germany)

- principles for oil and gas industry

ILRF (International Labour Rights Fund), (USA)

- campaign on enforcement mechanisms for existing laws

Women in Europe for a Common Future (coalition of women NGOs in East and Western Europe)

- social and ecological issues, sustainable production and consumption

It was noted that laws already exist in several European countries and the US on regulation of MNCs. It's a matter of knowledge and education to get enforcement. Also, in Asia there are many strong corporate laws that are difficult to enforce and an example was also given of the situation in India where the government is trying to introduce new labour legislation to undermine the trade union movement and favour the MNCs. Similarly, in the US, joint liability of retailers, factories and labels holds all responsible for labour violations but here too, a campaign for implementation has proved necessary.

The control MNCs exert over politics in the industrialised countries was discussed together with the difficulties of convincing politicians of the need for more mandatory mechanisms. An example was given of how public pressure led to the revision of the OECD (Organisation for Economic Coordination and Development) guidelines but this has not led to a strong enforcement mechanism. One final conclusion from this discussion was that there are **two ways to hold MNCs**

accountable, either through establishment of new legislation or through enforcement of existing legislation via court cases.

EXPECTATIONS FOR THE SEMINAR

Expectations for the seminar demonstrated the need to look at both ends of the supply chain – the MNC parent company in its home country and at the other end, the production facilities that supply MNCs in other “host” countries. There was a general consensus of the need to gather information and forge alliances. Expectations broke into four main categories:

- **Increase knowledge of litigation possibilities and regulation and how to build alliances**
- **Establish an agenda on legislation and litigation for CCC and the aims and function of the Legal Working Group**
- **Learn more about campaigning and coalition building in relation to litigation**
- **To gain knowledge, information and contacts on litigation to support workers in host countries. This included education and training for workers and para-legals on issues about MNCs; legal possibilities at factory level; approaches and mechanisms for enforcing local labour laws; establishing MNC responsibility for actions in host country; information on whether workers will benefit from taking a company to court**

THURSDAY 27 JUNE

LITIGATION

CHAIR

BETTINA MUSIOLEK. (CCC GERMANY),GERMANY

LAWSUITS AGAINST MULTINATIONAL CORPORATIONS FOR LABOUR RIGHTS VIOLATIONS: ISSUES TO CONSIDER – PRESENTATION OF THE legal research on lawsuits against MNCs for labour rights violations

JORIS OLDENZIEL SOMO, AMSTERDAM, THE NETHERLANDS

Joris Oldenziel presented research carried out by himself and Nina Ascoly of SOMO (The Centre for Research on Multinational Corporations), Amsterdam and referred to the preliminary draft document prepared for this seminar. Drawing upon the experiences of those involved in litigation, this document outlines the issues for NGOs and trade unions to consider when contemplating legal action against MNCs. Input from this seminar will be incorporated in the final version of the research report.

This research work was commissioned as part of the IRENE legal research on lawsuits against MNCs for labour rights violations.

Transnational litigation against MNCs for human rights abuses appears to be in its early stages. Though the possibilities for pursuing legal action against MNCs for rights violations in their home countries under existing national and international law appear to be limited or under-explored, some cases have taken place. The bulk of this litigation has taken place in the UK and the US.

The researchers interviewed NGOs, trade unions and lawyers from the US, Europe and Australia to gather input on their experiences. The findings revealed that taking MNCs to court for human rights, and more specifically labour rights, violations is a controversial strategy, and should be approached cautiously. The issues of concern identified during this project highlight the potential benefits of such legal action, but also point to concerns about the limitations of legal action and the very serious pitfalls of becoming involved in litigation.

In brief, the research raised the following strategic and practical concerns:

1. Strategic considerations in relation to a case:

- **Aims and expected results**
 - compensation for individual workers
 - compensation for a group of workers (class action)
 - change of corporate behaviour
 - tool to get media attention for the case/ issue
 - establish jurisprudence/ develop international law
- **Risks involved**
 - safety of the victims/ plaintiffs
 - adverse effects: withdrawal of interest
 - financial risk of losing a case
 - bad publicity and negative jurisprudence

2. Legal considerations.

- **Who can file the lawsuit?**
 - individual victims/ groups of victims
 - NGOs mandated by victims
 - NGOs filing public interest suits
- **Examples of conditions for NGO standing**
 - NGO must have a proven interest in the matter
 - NGOs have undertaken relevant activities
 - Nobody else could be representing the matter
- **Venue**
 - Where can organisations file suits?
 - Suing in the host country – drawbacks:
 - lack of legal infrastructure
 - no access to court
 - financial difficulties
 - Suing in the home country – depends on the national court's jurisdiction
 - court of defendant's domicile (Europe)
 - court of country where violation took place
 - court of country where violation's consequences are felt
 - 'forum non conveniens' - literally 'inconvenient' or 'inappropriate legal forum' to hear case as used in UK and US
 - possible other venues: US and Belgium (if MNCs are listed and active on the stock exchange)
- **Applicable law**
 - After standing and jurisdiction
 - law of home country
 - law of host country
 - international law

3. Practical Issues: Costs

- **Costs involve**
 - lawyer's fees
 - bringing victims to home country
 - time and resources of the organisation
- **Impact of choice of forum**
 - for example: safety of plaintiffs, access to local experts, documents, travel for witnesses
- **Funding possibilities**
- **Time**
 - time to obtain jurisdiction
 - important in relation to other strategies
 - important in relation to aims

- **Legal expertise**
 - access to legal expertise
 - in-house expertise?
 - finding lawyers to take up such cases
 - **Fact finding**
 - collecting information – major role of NGO
 - witness statements
 - company structure
 - reports from international institutions
 - information about overall situation in region
 - **Piercing corporate veil**
 - Access to internal documents
 - Contact with whistle blowers
4. **Building Coalitions and Networks**
- **Broad base of support**
 - raise awareness
 - coalition of NGOs and trade unions
 - holding rallies, petitions, actions
 - Raising funds

INPUT FROM LAWYERS INVOLVED IN COURT CASES

THE US EXPERIENCE

NATACHA THYS INTERNATIONAL LABOUR RIGHTS FUND, UNITED STATES

Natacha Thys explained that one of the key programmes at ILRF is developing enforcement mechanisms for labour and human rights violations that hold companies directly accountable and that, more importantly, compensate the victims. ILRF believe that it is only when the profit margins of MNCs are threatened that they will actually take steps to ensure human rights. One of their goals is therefore to set the precedent that companies can and will be held accountable, meaning financial damages, should they engage in human rights violations even indirectly.

ILRF also rely on traditional campaigns as another form of pressure and have had success in campaigns against Exxon Mobil and Coca-Cola – where shareholder actions were passed.

There is no legal precedent in the US that says that you can sue a corporation for human rights violations abroad but ILRF have several cases that are attempting to get the US courts to accept that companies should be directly liable. They now have a trial date for September 26th 2002 for a case against Unocal in Burma where they have won the argument that the company can be held liable for human rights violations as a joint *tortfeasor* (the company is held responsible for its agent's acts – known as vicarious liability).

In the Unocal case, Unocal was a member of a joint venture partnership and, under American law, joint venturers are jointly and severally liable for the wrongful acts of their other partners regardless of whether that other partner directly committed the act. ILRF argued that because the joint venture hired the military as its agent, Unocal is vicariously responsible for that decision and should bear that responsibility even though the wrongful acts were committed directly by the SLORC military regime. Other than the corporate structure issues, this has been the hardest aspect of this type of litigation i.e. getting courts to accept this type of joint *tortfeasor* liability when the company does not directly commit the violations.

The Alien Tort Claims Act (ATCA) is the possible legal route in the US. This law gives US courts jurisdiction to hear cases of human rights abuses and violations of customary international law (prohibitions against torture, slavery) occurring anywhere in the world as long as the US courts have jurisdiction over the company.

Drawbacks of the ATCA include:

- the need for a state actor i.e. there has to be a link to government action
- limited application - violation of the law of nations has to be alleged – meaning torture, genocide, slavery, forced labour, rape (war crime)

For any case, it's basically down to the decision of the judge in the early stages and they have a tendency to dismiss international cases or, if the country where the alleged crime has taken place has an arguable legal system, to send the case back there. Therefore, when considering bringing a case, the country chosen is important. Political considerations are another factor especially when a case might interfere with foreign policy.

Corporate structure is also difficult to penetrate. The ILRF bring cases against the big parent company, but it is usually the subsidiary that is actually involved with the violation. You have to establish the corporate chain to get to the parent company and prove the link between the parent and subsidiary companies (*alter-ego liability*). Also, the corporate structure is very respected in the US and there is real ambivalence to breaking this which makes it very difficult to get to the directors of companies.

THE UK EXPERIENCE

RICHARD MEERAN

LEIGH DAY & CO. UK

Richard Meeran spoke about three UK cases litigated over the last seven years which have developed English law with respect to access to justice for overseas victims of MNCs and multinational accountability. All three cases are compensation claims brought against the parent company of the multinational in its home courts in England.

The three cases referred to are:

1. Thor – mercury poisoning of workers in South Africa
2. Cape PLC – asbestos related disease of miners in South Africa
3. RTZ – throat cancer of worker in Namibian uranium mine

The objective is to develop a system whereby multinationals can be held legally accountable for damage and injuries caused wherever in the world they happen to be operating.

The key obstacle to MNC accountability is access to justice. Vast disparities in access to justice means that companies will often push to have cases heard locally in the host country where compensation levels may be very low or where there may be very limited or no public funding available to fund a case. It's also almost impossible to sue subsidiary companies as they are usually insolvent or uninsured. Plus, companies use the corporate veil to protect themselves and say that they are merely a shareholder in the subsidiary company and are therefore not liable. Accountability is also limited because international human rights law is not binding on companies and lastly, if criminal fines are made for violations, they are often very low and not much of a deterrent.

Establishing legal liability against a parent company is a complicated and a hugely expensive challenge. In each of the three cases, the corporations attempted to rely on the principle of *forum non conveniens* (literally 'inconvenient' or 'inappropriate legal forum' to hear case). This principle is applied by the courts of the US, UK, Canada, Australia and Ireland to provide a means for declining jurisdiction. EU states (including the UK) are signatories to the 1968 Brussels Convention. Article 2 stipulates that a defendant "shall be sued in its domicile". As a result of a ruling by the European Court of Justice in July 2000, it is likely that *forum non conveniens* is not now applicable, not even in the UK. Therefore cases against corporations (including parent companies of MNCs) should be sustainable in the EU (including in the UK). Cases could be heard in the UK if it could be shown that justice will not be done in the host country. However, a global convention on jurisdiction is being drafted although it is unclear when it will come into

effect. The Hague Convention, as it is known, will effectively allow *forum non conveniens* back in for the whole of the EU if the US has its way.

One way of overcoming the corporate veil obstacle has been to focus on what the parent company did from its home base. For example, if there is an industrial process which was designed and orchestrated by a parent company in the US or EU which the parent company knew or ought to have known might cause damage, the parent company could be held liable under conventional principles of the law of negligence (delict). Thus by arguing that the parent company is the architect of the violation and not the subsidiary, the UK lawyers have avoided arguments about the liability of shareholders which have been previously used.

Holding companies to account in home rather than local courts can overcome the lack of legal resources and the corporate veil obstacles. The Cape case was heard in England at the request of the South African government, although some South African lawyers were unhappy that the case had not been pursued locally. On the other hand, some South African lawyers thought this was a good thing.

Finally, there are the strategies that MNCs will engage in to try and derail a case – this could involve political lobbying and companies, as was the case with Cape Plc, offering to fund a case against itself in the local, host country to ensure it was heard in South Africa.

Legislation to remove the corporate veil barrier, increased damages awards in developing countries, and funding allocated to enable cases to be fought in developing countries, would make legal action more of a deterrent. It would also encourage more uniform application of standards of health and safety and environmental protection around the globe and which would assist in ensuring greater multinational accountability.

DISCUSSION POINTS

Supply chain issue

There is a need to show how the parent company is responsible for violations in its supply chain. An example was given that if a company fixed the price for goods, the supplier has to cut corners. Consequently, if the company knew this, it had the power to do something about it. If it has the power and does nothing, it should be considered liable.

It is therefore important to choose the right case which develops a helpful precedent.

The experience on this in the US is very different. The test for who is in control is key and there is a need to show that the suppliers and sub-contractors are 90 – 100% owned by the parent company. Some cases also have to show that fraud took place.

What should NGOs do?

NGOs have the important role of gathering information and campaigning. If NGOs decide to take on cases they almost need to turn themselves into “mini law firms” as has happened at IUCN. Taking on cases really changes the structure as litigation is so labour intensive. There is the other option of working with a law firm but then you need to look at how much control you want over a case.

Disclosure

The problems of campaigning around a lawsuit were raised. Bringing a case does bring disclosure but there may be a restriction on making the information public. On the other hand, companies may be reluctant to sue NGOs if they do disclose information as this would mean a lot more sensitive information is made public.

Risks for workers

How can companies be prevented from “cutting and running” if a case is brought? Workers who file a case have to be aware that they may lose their jobs but there may be practical, rather than legal ways to prevent this happening. For example, ensuring that unions in other countries are aware of the situation.

FEEDBACK FROM AN NGO INVOLVED IN A COURT CASE

NIKKI BAS

SWEATSHOP WATCH, USA

Nikki Bas explained that Sweatshop Watch is a US coalition, which includes several groups whose focus is legal advocacy. In addition, several board members are lawyers. They are currently involved in a lawsuit to hold MNCs (retailers) responsible for sweatshop conditions on the US island of Saipan. The basis of the lawsuit is misleading advertising in conjunction with two others, which are class action lawsuits brought by former and current Saipan garment workers. Sweatshop Watch initiated the court case because other efforts to stem sweatshop abuses on Saipan failed, including a union organising drive and legislative efforts by the US Congress. Initial problems arose as the workers have no organisation to represent them (union organisation had failed, lack of NGOs on Saipan) but two local lawyers have taken up the case and have now interviewed 700 workers who are participating in the class action lawsuits.

Embarking on this type of case brings resource problems for an NGO. There is a need to carry out extensive research of retailers and garment factories. Fees for lawyers and other associated costs can come to millions of dollars. Sweatshop Watch have overcome the problem of costs by lawyers working on a no win/ no fee basis. It was pointed out that if an NGO does not employ a lawyer as part of its own staff team, there needs to be very clear channels for communication with lawyers working on the outside.

The coalition of NGOs and trade unions involved in this action (Sweatshop Watch, Global Exchange, UNITE, Asian Law Caucus) works well offering complementary work and a variety of expertise. This has also enabled them to target the biggest producers on Saipan – The Gap- through their ability to carry out public campaigning. The long term nature of this type of litigation (three and a half years so far) also underlines the need for NGOs to consider long term resources to sustain the campaign.

This is a slow and complicated strategy and there is a need for an NGO to know what is involved and what is involved for workers as well as the potential risks for them. Being clear about who the decision-makers are is also important (in this case the US judges).

Other important factors include:

- building a strong communication strategy with lawyers from the outset. Ensure that you share the same goal even if you are working from different perspectives. Ensure that workers have very clear expectations of the legal process, including the length and complexity of litigation, their participation, the risks involved, and what they are likely to gain.
- distance between the NGO and the workers involved can be a (costly) barrier
- government involvement is helpful. In the Saipan case, the US Department of Labour has found labour violations and there are many other government reports that can be used as evidence. (The US government is also suing a number of the same factories)
- safety is the biggest concern. Most of the Saipan workers are in debt as they signed contracts which included recruitment fees (average around \$3,500) to get the jobs. By bringing a class action the workers have been able to remain anonymous which is important.
- the threat of the retailers suing the NGO has been countered by the lawyers involved agreeing to defend them for free if they are sued.

The construction of the three cases has enabled Sweatshop Watch to cover different aims. The first class action lawsuit brought by former and current Saipan garment workers is filed in Saipan

federal court against several contractors (factories) under US federal laws and local CNMI laws for non-payment of wages and other labour violations. The workers are seeking their back wages and damages. The second class action lawsuit brought by former and current Saipan garment workers was originally filed in Los Angeles federal court against several retailers (MNCs) and contractors alleging unlawful conspiracies under the racketeering law (RICO) and a system of garment production which violates the Anti-Peonage Act (use of forced labour). It is also filed under the Alien Tort Claims Act (ATCA), which permits foreign nationals to sue in the US for violations of human rights. This second action asks for a remedy of a monitoring system being put in place to stop further abuse. The third case is the NGOs and trade union against the retailers. This alleges the companies engaged in unfair business practices, including false advertising as the garments were being made in violation of labour laws. This third action also asks for a remedy of a monitoring system being put in place to stop further abuse.

In conclusion, campaigning has been very helpful. The litigation could not have gone on without the high profile of the case with the public. This has also perhaps stopped the companies from “cutting and running” as there would be a lot of media attention if they left Saipan. The cases have also led to some health and safety improvements and workers have more freedom of movement than previously. The retailers are in the “hot seat” with workers and consumers telling them that they are responsible which is another strength of the campaign. To date, nineteen companies have agreed to a total of \$8.5 million in back pay and to external independent monitoring programmes but a number of legal steps still need to happen which is making this a very slow process.

DISCUSSION POINTS

How to establish that forced labour exists?

The debt of the Saipan workers from the recruitment fee is critical to the case. The workers are trapped by the need to repay the fee into working very long hours for low pay with forced (unpaid) overtime.

There was some discussion about whether compulsory overtime can be proved as forced labour. It was suggested that it might be possible in some US states or that it might fit more neatly into other violations – for example the UN convention on economic and social rights. The point was also made that it is important not to negate the seriousness of the term “slavery” as a crime against humanity.

How to address Asian MNCs?

The case of the Saipan workers is an American territory case and therefore they come under American law but what happens in the case of Asian-based MNCs who are operating in other Asian countries for example, Taiwan, China etc.? There was a view that a global monitoring system should be put in place which would monitor all companies in every country.

The point was made that Hong Kong has a very similar legal system to the UK and that, in this instance, this could be explored.

Why is it useful for the CCC to have court cases?

Theoretical liability of companies has always existed but it has not been applied. Court cases offer a means to enforce certain legal enforcing mechanisms and monitoring but it's important to be aware of what the outcomes will be – for example, sweatshops do exist for a reason i.e. they do provide employment for millions of workers who would otherwise be unemployed.

Litigation is a deterrent and it also provides compensation for victims.

LITIGATION AGAINST MNCs: PERSPECTIVES FROM MNC HOST COUNTRIES

PERSPECTIVE FROM INDONESIA

VENNY DAMANIK

LAWYER. GARTEKS UNION, INDONESIA

Venny Damanik made the point that Western MNCs are better at complying with labour legislation than other companies in Indonesia and key challenges come from Taiwanese and Korean companies who have bad labour practices.

Opportunities for litigation against MNCs are limited as most of the supply chain companies are protected by the government as a way of encouraging investment. Also, existing Indonesian legislation is limited.

Unions face particular problems. There is confusion about court jurisdiction. Unions also have very limited knowledge of international law and have difficulty with accessing international legislation. It is very hard to collect proof from members about violations and even when this exists, workers often give up because of the length of time it takes to resolve court cases.

It is more common in Indonesia for the union or the workers to be sued rather than the companies. The workers become the criminal for forming a union. Also, companies fire unionised workers before their length of employment qualifies them for severance pay. Unions face other problems when companies file for bankruptcy once workers get organised. In this way they avoid implementing the minimum wage and as a consequence the workers have to re-organise all over again. Support from Europe for lobbying for legislation on these local company practices is needed in Indonesia to protect the workers.

PERSPECTIVE FROM TURKEY

ENGIN SEDAT KAYA

DISK/TEKSTIL ISCILERI SENDIKASI, TURKEY

Engin Sedat Kaya talked about the large number of companies in the garment sector in Turkey working as sub-contractors for MNCs and in addition, the hundreds more who are willing to produce for MNCs if required. This highlights the potential risk of bringing litigation against MNCs as they have so many alternative sub-contracting companies to choose from and will relocate, either elsewhere in Turkey or to another country.

Also, even when violations are exposed in sub-contracting companies, the MNC will say “Yes, you are right, I agree with you. Labour rights have been violated in this subcontractor. These are also violations of my code of conduct. Because of this, we will no longer work with this subcontractor” and move on to another company, where it is highly possible workers will face the same violations. In this situation the subcontractor is seen as “the enemy” by the workers and the parent company “the protector of labour rights”. The reality is often different as MNCs are aware of these violations but will only admit that they exist when they are exposed thus avoiding responsibility.

The irony is that as a result of action taken to improve labour rights, the workers become the loser as they lose their jobs. This is a serious problem in Turkey where 4 million people are unemployed. People’s primary concern is to get work – any work.

The union – which organises in the garment and textile sectors – is very concerned with maintaining jobs provided by MNCs but feels that litigation at the international level is still possible. The aim of such action would be to ensure that MNCs and their sub-contractors comply with existing national legislation and recognised ILO standards. Action should then be launched at all the MNC production centres around the world or at least, all the sub-contractors in a selected country.

The union is going to launch an organising campaign in Turkey and will be looking at taking legal action for violations at the national level which could be used in an international context. But the main priority remains maintaining the current level of employment provided by the MNCs through these sub-contractors.

PERSPECTIVE FROM INDIA

VIVEK MONTEIRO, CITU, INDIA

with contributions from Ashim Roy, Mill Mazdoor Panchayat Trade Union, India

Vivek Monteiro explained that the only way to ensure that labour standards are actually observed in the production chain is to help get the workers organised. In India there is local legislation, but this does not get implemented unless the workers get organised. The best way to learn what works in this area would be to take up a few concrete cases and try to get the labour standards implemented by using all the tools available, including legal cases. These could start from either end of the production spectrum - for example, tracking workers wanting to organise back to the parent MNC or by taking the MNC as a starting point and looking at the position of workers in the sub-contracting companies in regard to compliance with labour standards.

There is a need to use all the tools available – soft law, campaigning, national laws, litigation against MNCs etc. to have labour standards complied with.

We should attempt to have CSR (corporate social responsibility) clauses (in company codes and in international instruments) to be implemented by companies even if they are not legally binding, in some concrete cases by working with unions concerned. Unions need to formally inform employers that they are held to account over labour standards. They need support in India from the CCC to do this.

There is a similar need not to put exporters and sub-contractors out of business in India, but the implementation of labour standards is just as important. Maybe making labour standards part of the quality assurance for the products would be a way forward.

Corruption and criminal activity in the labour market are big problems in the local political structure. “Local goons” are hired to beat people up who try and organise. MNCs should be made liable by informing company management of the MNC that this is happening and by using the affidavits of victims. Increasing transparency is vital to improve production chains and illegal activities need exposing.

There is also the possibility of using the concept of principal employer. Litigation can be brought against local employers and the MNC could be listed as one of the local respondents too. There is a need to establish law by making case law and it's important to use all the information available in other forums to build knowledge and to publicise any gains that are made. Also, the process of litigation can be used to get information as employers are forced to disclose information in court cases.

This will be a long haul and we will be working against the tide in India as further dilution of labour laws and deregulation is taking place. On the positive side, the fact that the garment industry is organised in medium and even large factories should mean that it is possible to go forward and organise workers in these factories in unions to obtain compliance with labour standards.

WORKING GROUPS

POSSIBILITIES FOR LAUNCHING COURT CASES IN DIFFERENT CCC COUNTRIES

Participants were asked to discuss the possibilities of bringing litigation against MNCs and were given four different perspectives to consider. Participants were able to select the working group which had most relevance to their own experience and interest.

Group 1

Would a lawsuit against an MNC be a good strategy to respect labour rights?

Will workers' rights be restored? How do we link litigation in the MNC home and host countries?

Areas of labour rights to target

- international pressure to force local governments to implement national law
- MNC decisions which affect workers at sub-contracting level

Liability issues along the supply chain

- possibility of bringing case on health and safety accidents/ violations and their link to pricing/ delivery time set up by MNC. Could have application in a number of host countries
- clarify which liability laws to use and at which level of supply chain – need to have international application

Aim cases against home country governments

- governments should enforce existing legislation or introduce legislation to discipline behaviour of MNCs

Case requirements

- simple
- general enough to have wide application
- venue
- mapping of cases where favourable judgements already exist
- frame the argument to make the link between the host and home countries
- cases in home countries are stronger and have wider applications
- bring one case in 2 or 3 host countries for same violation

Making the links between host and home

- mutual campaign and litigation
 - good strategy: deterrent effect and enforcement of existing mechanisms
- enforcing codes (as part of supply contracts)
 - make links via pricing
 - bring 2 cases : host and home
- Pick an MNC with strong campaign in home country which has strong links and a mandate in host country

Group 2

Would a lawsuit against an MNC be a good strategy to test existing legislation? Which laws should be used? How can campaigning support Code of Conduct litigation? How do we link litigation in the MNC home and host countries?

- litigation has a deterrent effect, adds teeth
- **Which laws?**
 - Different laws were discussed – for example, consumer laws on such things as false advertising and contract law, which could be considered in relation to the retailer's possible control over pricing and quotas and with regard to establishing the link between suppliers and the retailers
 - it was suggested that two cases should be brought – in the home and host country
- **Making the links between host and home**
 - Pick an MNC with strong campaign in home country which has strong links and a mandate in host country

Group 3

What is the role of litigation and campaigning?

How to make alliances to campaign on successful litigation? How do we link litigation in the MNC home and host countries?

- **Litigation may affect campaigning**
 - requires you to be careful about what you say publicly and when information is revealed
- **False advertising case**
 - involves the consumer in the case
 - links consumer action and litigation/ more transparent reporting
- **Position of NGOs**

- burden of proof makes litigation a big risk for NGO
- consider other strategies first: look for or develop laws that can be enforced by the state
- develop a check list : engage in social dialogue and other strategies – litigation is the last resort
- **Campaigning and litigation**
 - how long/ how often/ what strategy? What are the aims of combining litigation and campaigns?
 - how will CCC identify workers to support?
 - alliances with trade unions are important
 - case could be brought in 2 or 3 countries where the same brands are produced or in 1 country using national legislation
- **Benefits of litigation and campaigns**
 - build broad support
 - win enforceable labour standards
 - win over critics
 - move from voluntary to binding legislation and test existing laws

Legislation to regulate MNCs

TOWARDS REGULATION? DIFFERENT APPROACHES TO PUBLICLY REGULATE MNCs

ANNE VAN SCHAIK CLEAN CLOTHES CAMPAIGN

Anne van Schaik presented a draft paper which looked at strategies for regulation of companies by governments. The importance of governments making binding policy through labour regulation for companies operating within their own borders was stressed.

In MNC home countries these standards on labour regulation are generally respected for legal workers but this is not the case in many of the host countries where good labour legislation is often not enforced. In the garment industry, sub-contracting makes it easier for companies to deny their responsibilities.

Free trade agreements have made it easier for companies to move production around the world but this has not been accompanied by international regulation. There is international regulation for governments but it is not clear what rules and regulations companies need to comply with on an international scale. Voluntary regulation or “soft law” standards for companies has not worked.

Voluntary measures

Several governments (examples were given of The Netherlands and Belgium) have adopted policy for companies but most of this is voluntary. There are also supranational institutions which have taken steps to support CSR such as the European Parliament, the European Commission and the United Nations. This policy is currently voluntary but may become mandatory in the future.

Working on voluntary regulation is not necessarily a waste of time as it can be seen as preparatory work for public regulation.

Public regulation

There has been recent discussion in the Northern countries to see whether existing laws can be used to hold companies accountable when they are producing in Southern countries. Several lawyers say it should be possible to raise a case in a Northern country where a company has its headquarters for their actions abroad. It is still under debate if this is also the case with supply chain responsibility. Consumer protection is another possible legal route. In most countries consumers are entitled to the right to proper information. The Nike case, brought in the US, was given as an example.

Ideas for CCC Activities

The CCC Secretariat has compiled a list of five ideas for possible campaigns in relation to legislation to regulate MNCs. These are merely ideas, as yet not discussed within the CCC. The first two proposals, on liability for directors and legal provision for suitable sanctions for companies are from Friends of the Earth International on binding corporate accountability. The other proposals, on public procurement and incentives, reporting and labelling requirements, are from the CCC itself.

1. Extend liability to directors for corporate breaches of national social laws (i.e. national law in MNC home and host countries) and to directors and corporations for breaches of international laws or agreements. Extend the jurisdiction of the International Criminal Court to try directors and corporations for environmental, social and human rights crimes.
2. Establish national legal provision for suitable sanctions for companies in breach of duties, rights and liabilities (i.e. those who do not respect high minimum social standards), such as:
 - * suspending national stock exchange listing;
 - * withholding access for such companies to public subsidies, guarantees or loans;
 - * fines; and
 - * in extreme cases the withdrawal of limited liability status.
3. Get national governments to pass legislation on ethical public procurement and legislation that would only allow them to give incentives to “ethical” companies. These incentives would be in the form of export subsidies, export credit insurance, etc.
4. Make it mandatory that company and brand name can be traced down based on a number in the label (similar to already existing legislation in USA and Canada)
5. Make social reporting mandatory (national and international)

FRIDAY 28 JUNE

CHAIR

FRIEDA DE KONINCK.

CLEAN CLOTHES CAMPAIGN. BRUSSELS, BELGIUM.

Friday morning was a wrapping up of the discussion on both litigation and legislation from the previous day. Most of the morning was spent looking at litigation. Participants considered whether it was feasible for the CCC to start court cases, under which conditions it might be possible and at who would be interested in exploring the possibilities.

After that, a very brief discussion followed on legislation and ideas for legislation to lobby for were compiled. Finally, concrete resolutions were made about follow up to the seminar and the continuation of the legal working group.

The Friday morning session looked at the report backs from the working groups on litigation.

In total there were 3 different working groups, each discussing specific topics. The plenary discussion focused on the starting point and goal of litigation and clarified how participants felt about court cases, what goals we want to achieve and what the starting point was for court cases.

EVALUATION

Finally on the Friday a brief evaluation was done in order to see if the programme met the expectations of participants.

Generally it did:

- established links and networks
- provided information
- international discussion was very rich
- opened up many possibilities
- learned about tools such as lawsuits
- know what questions to ask when consulting local legal advisors
- gained more knowledge of global issues and activities of MNCs
- Now: also important to consult lawyers in MNC host countries

Colophon:

This IRENE/CCC seminar has been organised by Peter Pennartz, IRENE, Anne van Schaik, CCC and Nina Ascoly, CCC.

Writer of the report: Julie Smith

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