The Need for Transparent Multinationals

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1. Introduction

In recent decades, the transnational activities of corporations have expanded immensely, increasing both the positive and negative impacts on workers, local communities and individuals. Corporate supply chains are often long and opaque. Business and legal structures have become increasingly complex with large corporations being split into a multitude of subsidiaries and other entities. Collecting, analyzing and disclosing information on the impact of business operations on human rights and the environment throughout the whole company and with regard to business partners is not only vital for corporate decision-making. It is also vital to ensure that affected people and communities have access to remedy for loss and damage caused by business operations.

In the absence of robust global regulation and extra-territorial application of national laws, civil society organizations are often looked upon to perform a ‘watchdog’ role, by monitoring the activities and behaviour of corporations and addressing negative impacts of their operations on human rights and the environment. In a recent policy document, the Dutch Minister for Foreign Trade and Development Cooperation Ploumen stressed the importance of the ability of civil society organizations to signal concerns and address them appropriately through corporate engagement, public campaigns, legal actions and other non-judicial means of conflict resolution. It is clear that civil society organizations can only perform this task if they have the relevant information as described above, as well as information about companies’ structures, ownership, employment relationships, and internal group rules, so that the appropriate responsible director, employer or corporate entity can be addressed.

At present, this kind of information is not or insufficiently provided by companies. The few companies that produce CSR reports often do not provide the relevant information needed to assess the company’s social, environmental and human rights impact, and decision-making and ownership structures needed to identify responsibilities. CSR reports are often highly inconsistent and therefore hard to compare.

2. The Need for Non-financial Information

The four cases below make clear why it is important that companies disclose non-financial information, as well as information on corporate structures, ownership and internal decision-making.

2.1 Case 1: Rana Plaza

On 24 April 2013, an eight-story commercial building, Rana Plaza, collapsed near Dhaka, the capital of Bangladesh. It appeared to be one of the world’s worst industrial accidents. More than 1,100 people, many of them garment workers, died; approximately 2,500 injured people were rescued from the building alive. The building’s owners had been warned that the building was unsafe. They reportedly responded by threatening to fire people who did not carry on working as usual. When translating this tragedy into human rights terms, it can be concluded that basic human rights (of many) have been violated: the right to life, the right to physical integrity, the right to health and safety at work and the right to an adequate standard of living for those who have lost their income.

Obviously, much of the blame lies with the Bangladeshi government, which did not enforce the national building code in a proper way. However, the spotlight is also on the multinational clothing retailers and their suppliers in the Bangladesh garment industry. Did the multinational retailers conduct a human rights risk assessment before buying from the Bangladesh industry? Have they engaged with their suppliers to mitigate any risks found? Rana Plaza makes clear that multinationals need to disclose such information before they start doing business abroad. This will enhance internal deci-
2.2 Case 2: Flexibilization of Labour in Global Production Chains

Increasingly complex and opaque corporate structures also make it difficult to identify responsible entities and individuals within a corporation. SOMO's November 2012 briefing paper on temporary agency work in the electronics sector identified temporary contracts and agency labour as one of the most pressing challenges in the sector. As a result of this trend, owners and management of factories producing electronics in emerging and developing countries are often no longer the direct employers of factory workers. The ultimate owner of the production unit may be a distant investment fund, and the employer may be an employment agency with little interest in the working conditions in the factory. As a result, workers face increasing difficulties in ensuring that their basic rights, such as freedom of association, are respected.

2.3 Case 3: Shell Holds the Cards Vis-à-vis Nigerian Farmers

A third example concerns four Nigerian farmers and the Dutch NGO Milieudefensie, who filed a case against Royal Dutch Shell (RDS) and its Nigerian subsidiary Shell Petroleum Development Company of Nigeria (SPDC) before The Hague district court (court decision on 30 January 2013). The plaintiffs claimed that Shell had destroyed their livelihoods by oil pollution from leaking pipelines. The plaintiffs had to substantiate their claim that the oil company was liable by proving that the oil spills were due to operational failure, not to sabotage. This appeared to be an impossible task. In considering the claim, the court had to rely on Shell’s own oil-spill investigation reports. Research by Amnesty International has exposed serious flaws in the oil-spill investigation process in Nigeria. The farmers had requested access to documents held by Shell, which they thought were vital in supporting their claims. However, under Dutch disclosure rules, in order to obtain the requested documents from Shell, the farmers had to prove their claim before the court hearings started. Their request for the documents was denied. Although the farmers were able to present some evidence that challenged Shell’s safeguard claims, this was insufficient to substantiate their claim.

The position taken by the The Hague district court in this case raises the question whether there is a level-playing field regarding access to information between poor communities affected by corporate operations and powerful, well-resourced multinationals.

2.4 Case 4: Mailbox Companies

SOMO has done research into mailbox companies that incorporate in the Netherlands in order to avoid paying taxes. In addition to depriving developing country governments of much-needed revenue, questions have also risen as to whether and where the company owners can be held to account for negative impacts that they may have caused. Recently, members of the Dutch Parliament asked the responsible minister if she believes that the approximately 24,000 mailbox companies incorporated in the Netherlands are complying with the OECD Guidelines for Multinational Enterprises. They also questioned the minister regarding the lack of publicly available information concerning the activities and ownership structures of these mailbox companies as an obstacle for citizens to file complaints against them at the Dutch National Contact Point for the OECD Guidelines.

3. What Information Should Be Disclosed?

First, there is a clear lack of transparency concerning multinationals’ organizational and legal structures as well as their operations worldwide. In order to ensure that companies are held accountable for loss or damage they cause or contribute to, it is essential to know who is responsible for what within corporate groups. The information on organizational and legal structures provided in annual reports and corporate websites is overly simplified and ultimately insufficient.

Second, there is a clear lack of transparency concerning the impact of business operations on human rights and the environment. Most corporate CSR reports merely mention the company’s CSR policies and philanthropic activities, as well as ‘CSR successes’ like reduction of the company’s CO₂ emissions. However, non-financial reporting must go beyond this.

Internationally accepted standards like the UN Guiding Principles on Business and Human Rights (UNGPs)

6. The court decided in favour of one of the plaintiffs, stating that Shell Nigeria had breached its duty of care in that case by failing to take reasonable action to prevent third parties tampering with oil wells and causing oil spills. Shell has to pay compensation to the affected farmer. The judgments of the district court of The Hague have been published under the LIN-numbers BY9845, BY9850, BY9854, [www.rechtspraak.nl].

7. The information in this section is (also) based on ‘Corporate non-financial reporting’, Amnesty International position paper, April 2013 and ‘EU legislation on non-financial reporting by companies’, European Coalition for Corporate Justice (ECCJ).
and the OECD Guidelines for Multinational Enterprises call on companies to respect human rights and the environment and to disclose information that is necessary for stakeholders to understand the business’s impact on the environment and human rights. Paragraph 21 (commentary) of the UNGPs states, ‘The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights.’ The UNGPs and the OECD Guidelines call for corporations to conduct human right due diligence and define this as ‘assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responsibilities as well as communicating how impacts are addressed.’ Non-financial disclosure should also include risks associated with a company’s supply chain and key business relationships, such as subsidiaries and joint ventures.

In our opinion, non-financial disclosure should also include the publication of environmental and social (including human rights) impact assessments and management plans to mitigate the risks. Furthermore, companies should report on all significant incidents where their operations caused or contributed to human rights abuses or environmental damage. They should provide sufficient information to enable independent verification. To assess what can be considered a ‘significant incident,’ companies need to clearly define – based on severity and scope of impact – what incidents will be reported on. Such prioritization, including methodology and decision-making, must be made public.

3.1 EU Legislation on Disclosure of Non-financial Information

On 16 April 2013, the European Commission adopted a proposal for a directive enhancing the transparency of large companies on social and environmental matters. Companies concerned will need to disclose information on policies, risks and results regarding environmental matters, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues and diversity on the boards of directors. This is an important step toward ensuring that European companies function transparently and accountably wherever they operate. However, the approach adopted by the proposal is too flexible. The current proposal does not give enough guidance to companies on what topics they should report on or what standards they should apply in their reporting. The proposal also fails to provide tools for enforcing reporting requirements.

Consequently, companies can choose what to report and what to exclude.

4. Conclusion

It is time for multinationals to listen to the increasing public demand for more transparency, both on their organizational and legal structures, and on the impact of their operations on human rights and the environment. Some companies argue that a mandatory requirement to disclose non-financial information constitutes an undue administrative and financial burden. However, companies which properly analyze and disclose non-financial information increase their competitiveness, benefit from cost savings, gain easier access to capital and enjoy increased stability and a better reputation.

In addition to the EU proposal for a directive on non-financial reporting, EU authorities should provide further guidance on the selection and presentation of the information, including a standard format and common and sector-specific key performance indicators. States should take appropriate measures to enforce reporting rules.

References


