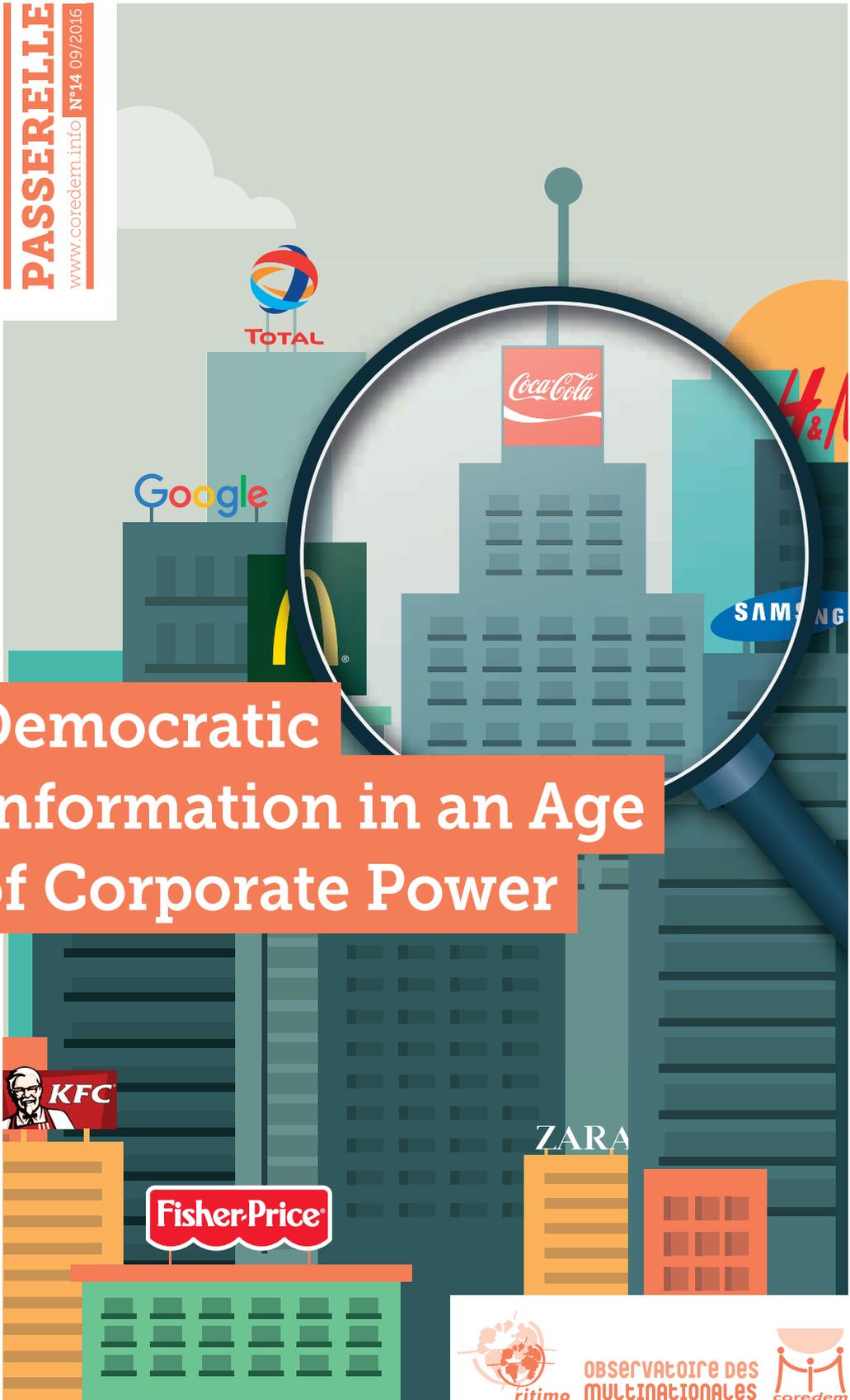


# Democratic Information in an Age of Corporate Power



**Democratic  
Information in an Age  
of Corporate Power**

### **The Passerelle Collection**

The Passerelle Collection, realised in the framework of the Coredem initiative (Communauté des sites de ressources documentaires pour une démocratie mondiale– Community of Sites of Documentary Resources for a Global Democracy), aims at presenting current topics through analyses, proposals and experiences based both on field work and research.

Each issue is an attempt to weave together various contributions on a specific issue by civil society organisations, media, trade unions, social movements, citizens, academics, etc. The publication of new issues of Passerelle is often associated to public conferences, «Coredem's Wednesdays» which pursue a similar objective: creating space for dialogue, sharing and building common ground between the promoters of social change.

All issues are available online at: [www.coredem.info](http://www.coredem.info)

### **Coredem, a Collective Initiative**

Coredem (Community of Sites of Documentary Resources for a Global Democracy) is a space for exchanging knowledge and practices by and for actors of social change. More than 30 activist organisations and networks share information and analysis online by pooling it thanks to the search engine Scrutari. Coredem is open to any organisation, network, social movement or media which consider that the experiences, proposals and analysis they set forth are building blocks for fairer, more sustainable and more responsible societies.

### **Ritimo, the Publisher**

The organisation Ritimo is in charge of Coredem and of publishing the Passerelle Collection. Ritimo is a network for information and documentation on international solidarity and sustainable development. In 90 locations throughout France, Ritimo opens public information centres on global issues, organises civil society campaigns and develops awareness-raising and training sessions. Ritimo is actively involved in the production and dissemination of plural and critical information, by means of its website: [www.ritimo.org](http://www.ritimo.org)

### **Multinationals Observatory**

The Multinationals Observatory aims to provide independent online news resources and in-depth investigations on the social, ecological and political impact of French transnational corporations, in a way that is useful for the action of civil society, MPs, businesspeople and communities. The website is published by Alter-médias a French non-profit organisation that also runs the news website Basta!  
[www.multinationales.org](http://www.multinationales.org)

# Contents

<b>Introduction</b>	8
OLIVIER PETITJEAN	

## THE «RIGHT TO KNOW» UNDER THREAT 12

<b>EU Trade Secrets Directive: Companies Granted New Rights to Secrecy</b>	13
COLLECTIF	

<i>Freedom of Information - Really?</i>	19
---	----

<b>Blowing the Whistle: Don't Shoot the Messenger!</b>	22
GLEN MILLOT, SCIENCES CITOYENNES	

<i>SLAPPs – How to Intimidate Critics and Censor Free Speech</i>	28
--	----

<b>Under the Influence</b>	29
RITIMO	

<i>Happy Families</i>	30
-----------------------	----

<b>"This link between advocacy and journalism is older than many of us think."</b>	34
INTERVIEW WITH ANYA SCHIFFRIN	

## TRANSPARENCY & REPORTING 39

<b>What Can We Learn From "Sustainable Development" Reports?</b>	40
MARTIAL COZETTE, CFIE	

<b>Country-by-Country Reporting: Fifty Shades of Transparency</b>	46
LUCIE WATRINET, CCFD-TERRE SOLIDAIRE	

<i>How big is BP? Using Open Data to map transnational corporations</i>	51
---	----

<b>European Union: is Transparency Enough to Restrain Lobbyists?</b>	53
OLIVIER HOEDEMAN, CEO	

<i>Behind all the Rhetoric, What is the Real Stance of Companies on Climate Issues?</i>	58
---	----

<i>Corporate Welfare: Crying Out for Transparency</i>	59
---	----

## Contents

<i>Eco-labelling, Advertising and Greenwashing: Battling for the Right to Reliable Information</i>	61
--	----

### ON THE INSIDE 64

<b>Companies, Information, and the Public Interest: Can Unions and Civil Society Join Forces?</b>	65
---	----

OLIVIER PETITJEAN, MULTINATIONALS OBSERVATORY

<i>The Public Services International Research Unit</i>	71
--	----

<b>Working Conditions and Workers' Rights: Social Dialogue on the Line in France</b>	72
--	----

IVAN DU ROY, BASTAMAG

<b>"It pays for companies to be transparent with both employees and NGOs."</b>	75
--	----

INTERVIEW WITH BERNARD SAINCY

### COUNTERPOWERS 80

<b>A Swiss Perspective on Injustice</b>	81
---	----

GÉRALDINE VIRET, PUBLIC EYE

<b>SOMO, a Resource Centre on Transnational Corporations in the Netherlands</b>	87
---	----

SOMO

<b>Business and Human Rights: The Failure of Self- Regulation</b>	95
---	----

ERIKA GONZÁLEZ, JUAN HERNÁNDEZ ZUBIZARRETA AND MÓNICA VARGAS

<i>The Permanent Peoples' Tribunal (PPT), an International "Opinion Tribunal"</i>	100
---	-----

<i>The Annual Report, Through the Lens of Civil Society</i>	106
---	-----

<b>Cetim: Getting the UN to Take Action on Corporate Human Rights Abuses</b>	107
--	-----

MELIK ÖZDEN, CETIM

<i>Ejolt, Mapping Environmental Justice</i>	111
---	-----

<b>The Business and Human Rights Resource Centre</b>	112
--	-----

<b>Mirador: Deciphering Multinational Corporations</b>	116
--	-----

BRUNO BAURAIND, GRESEA

<b>Targeting Multinationals and their Destructive Projects by Tracking the Financial Institutions that Fund them</b>	<b>120</b>
LUCIE PINSON, AMIS DE LA TERRE AND YANN LOUVEL, BANKTRACK	
<i>How to Get Big Brands to be Accountable for Global Supply Chains: The Role of Information</i>	<i>126</i>
<b>Public Interest Watchdog Groups: Empowering Citizens to Make Informed Decisions about Technology</b>	<b>129</b>
FRÉDÉRIC PRAT, INF'OGM	
<i>Overview of "Public interest watchdog groups" in France</i>	<i>132</i>
<b>The Importance of Independent Expert Opinions: Three Examples</b>	<b>134</b>
OLIVIER PETITJEAN, MULTINATIONALS OBSERVATORY	
<b>Assessing "Societal Costs" in Order to Choose the Economic Models of Tomorrow</b>	<b>138</b>
CHRISTOPHE ALLIOT AND SYLVAIN LY, LE BASIC	
<b>Recent issues of the Passerelle collection</b>	<b>143</b>

# Introduction: The Challenge of Information in a Time of Corporate Power

OLIVIER PETITJEAN

**I**t seems obvious that without information, democracy cannot exist. It's impossible to imagine modern democracies without the free flow of ideas, without press freedom or open discussion and debate, without regulations that force political leaders to be accountable for their actions (however partial and imperfect this accountability might be in practice).

Yet we live in a time where the emergence of new forms of power – economic powers – are making their mark, and are having an increasing influence on our lives and our societies. The mounting power of transnational corporations is particularly symbolic and the most striking manifestation of this reality. Various factors have contributed to the rise of these global corporations, including the financialisation and globalisation of the economy, technological change, the hegemony of neoliberal ideology, and the relative weakening of state power (or the failure of states to fulfil their responsibilities). In a democracy, all forms of power need counter-powers – yet the forces that could potentially counterbalance the power of these corporate heavyweights (unions, public authorities and civil society) seem weaker than ever.

Do we have enough information to confront these new powers, which affect so many areas of our lives, and impact on so many issues of public interest, and which are so powerful and influential that they can no longer be considered as merely “economic”? Obviously not. The media are structurally geared towards political power. They tend to overlook economic power despite the fact that it is playing an increasingly decisive role in our lives. And yet the frightening reality is that these economic powers are influencing and transforming – or



pervverting – political power, so that decisions are no longer being made only in public assemblies but also out of the public eye, in corridors and offices where lobbying activities go on. The growing influence of corporate power can also undermine civil liberties and freedom of speech, which are the foundations of political democracy. In some countries there is even pressure on public authorities to silence those opposed to certain corporate developments.

In many ways, as we shall see below, lack of information is intrinsic to corporate power in its current form. This is why there are so many and often irrational fears and fantastical views of transnational corporations as some kind of dark force, which sometimes slide into conspiracy theories. In such a context, providing independent information on TNCs is also a way to bring back a bit of rationality into the discussion. Only anti-democratic forces, such as the far right, can thrive off the absence of information and genuine political discussion.

### **Too little information on TNCs despite a desperate need for it**

Why is there so little relevant and democratically-useful information on TNCs given the reality of their power and how important the issues at hand are? This is due to a number of reasons:

- Firstly, though their power is very real, it is not always perceived as such because it does not fit into traditional distinctions between politics and business, between public and private. As previously mentioned, this power is wielded outside of the public eye, across jurisdictions, and is often out of reach of citizen oversight and other traditional countervailing powers, making it even more difficult to grasp.
- In addition, multinational corporations are by definition present in a number of countries, which are often situated at opposite ends of the globe. The language barrier and the geographical distance are two very concrete issues that contribute to making it difficult to ascertain what is happening on the ground on the other side of the world. It is often difficult even for unions working for the same corporation in different countries to communicate and share information due to constraints on time and resources. The same goes for the different local governments where they operate – and, of course, for the communities living around them. In France, we are very far from knowing the reality of what our national corporations are doing in other parts of the world. TNCs are experts at playing their own game of hide and seek.
- Another issue is that information on TNCs is often extremely inaccessible due to its highly technical jargon, making it difficult for most people to get through the web of financial and stock market verbiage. This jargon only gives a very partial (in both senses of the word) picture of the corporate reality. The sad truth is that Corporate Social Responsibility (CSR), with its large-scale

bureaucratisation, has become just another strain of technical jargon, which hides as much as it reveals.

- Furthermore, corporations always have an economic interest in information relating to their operations. They have to strike the right balance between transparency, the public interest and the commercial sensitivity of information. It's for this reason that corporations often require their employees to sign confidentiality agreements and guarantee discretion. Since they largely dictate which information should be available to the public, they tend to take an evasive approach, saying as little as possible – particularly when it comes to sensitive subjects – and the only information they provide is filtered through their stringent communication strategies. This tendency to shy away from transparency is likely to become even more pronounced with the recently adopted EU Trade Secrets Directive.

These are the reasons that make it difficult for journalists to determine exactly what corporations are doing and to assess the impacts of their operations, especially when it comes to complex and potentially daunting issues. The major scandals that end up on the front page of newspapers represent only the tip of the iceberg. But the skimpy amount of information on corporations in the press (compared to the way they follow political leaders' every move) is also a reflection of the fact that these newspapers are often owned by the corporations themselves. The situation is particularly caricatural in France, but it is the same in a number of other countries. And if we consider the mainstream media's dependence on advertising (for products often sold by these same corporations) to pay the bills – we begin to get an idea of just how little investigative work there is on the corporate world, especially when we consider the extent of their influence on our lives. Thankfully, the importance of investigative journalism is now being acknowledged and positive initiatives are cropping up all over the place – with the emergence of new kinds of non-commercial, non-profit journalism.

## Overview

This issue of *Passerelle* aims to get an overview – however incomplete and fragmentary – of these issues.

The first section deals with issues around freedom of information in an economic and corporate context, including corporate activities and their impacts. It addresses in particular the threats (both old and new) that are jeopardising freedom of information, including the recent emphasis on “trade secrets”, and also looks at the role played by journalists and the media.

The second section focuses on transparency and reporting issues – that is, the information that corporations are required (or not) to disclose to the public. These articles tend to reveal an extremely inadequate level of transparency particularly in the area of tax systems, lobbying and corporate welfare.



The third section gets into the nitty-gritty of corporate life and studies the needs and rights of employees and unions in terms of information, and how these are connected to (or disconnected from) the needs of society as a whole.

And the last section, which is also the longest and most exploratory, outlines a number of initiatives, organisations and networks that are all contributing, in different ways and from different perspectives, to producing independent information on corporations that can be wielded by society. These “information counter-powers”, although often little-known, nevertheless play a crucial role in keeping economic and corporate powers in check, ensuring that they remain subject to democratic debate. The fact that their resources are so meagre compared to those of corporations only makes their achievements even more remarkable.

Their diverse initiatives and approaches highlight the need to create new forms of collaboration and information sharing (several of which are discussed in this issue), as well as the need to define new rights and new regulations in regards to accessing economic information and independent “second opinions”.

It’s clear that we are facing a number of obstacles, as the EU leaders’ eagerness to protect “trade secrets” at all costs has made glaringly obvious. And this is just one aspect of an overall trend that exempts corporations from playing by the rules of a democracy, that allows them to operate outside of the public eye, making them almost untouchable (not so different from the private arbitration tribunals between investors and governments used for issues relating to free trade agreements such as the proposed TTIP agreement between the EU and the USA).

The issue of information, together with that of legal liability and binding rules for transnational corporations, seem to be one of the core issues integral to the fight for economic democracy – or the fight for democracy full stop. Although information may seem “immaterial” compared to the very real sanction of a judge, its importance shouldn’t be underestimated. Firstly, because the “reputational risk” is extremely important for companies. There is no corporation that wishes to be accused of causing environmental damage or violating human rights – both due to the damage this would cause to their image and brand (in which lies a substantial part of their wealth), and the ensuing domino effect that would result from a “bad reputation” among investors or public authorities. And secondly, because corporate power is always based on a certain level of information asymmetry, which ensures they are in control of the game. And so disseminating independent information also enables those who have a degree of real decision-making power that impacts upon corporations – public authorities, investors, communities, as well as corporate employees and executives – to use this power effectively, influence business practices, and refuse to accept that which is unacceptable. In the end, perhaps the most useful information on corporations is information on alternatives to corporations: examples that prove that we can do things differently, and that we don’t need them to do it.

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# THE «RIGHT TO KNOW» UNDER THREAT



# EU Trade Secrets Directive: Companies Granted New Rights to Secrecy

## COLLECTIVE

Will we ever be able to get reliable information on the health consequences of glyphosate, the main ingredient of the herbicide RoundUp? Will we ever know which companies have tax agreements with Luxembourg? These are just a few of the concrete questions thrown up by the “Trade Secrets Directive” voted by the European Commission and adopted in the spring of 2016. Under the pretence of protecting trade secrets, will transnational corporations succeed in hindering journalists’ work, preventing consumers from accessing the information they are entitled to and threatening whistle-blowers and employees? The many European trade unions, NGOs, and collectives that contributed to this article are resolutely against the Directive. Unfortunately the European Commission has chosen to go ahead with it, despite such resistance.

**T**rade secrets are everything companies keep secret to stay ahead of competitors. A secret recipe or manufacturing process, plans of a new product, a list of clients, prototypes ... The theft of trade secrets can be a real problem for companies, and is already punished in all EU Member States. But there was no uniform legislation on the matter at the EU level.

A small group of lobbyists working for large multinational companies (Dupont, General Electric, Intel, Nestlé, Michelin, Safran, Alstom ...) convinced the European Commission to draft such a legislation, and helped it all along the way. The problem is that they were too successful in their lobbying: they transformed a legislation which should have regulated fair competition between companies into something resembling a blanket right to corporate secrecy, which now threatens anyone in society who sometimes needs access to companies’ internal information without their consent: consumers, employees, journalists, scientists ...

## Why is it a threat?

With the very broad and vague definition used in this Directive, almost all internal information within a company can be considered a trade secret. With this text, companies do not need to pro-actively identify which information they consider a trade secret, as states do when they put “top secret” or “confidential” labels on documents.

But employees, journalists and consumers sometimes also need to have access to, use and publish such information without the company’s consent, and would now face legal threats and heavy fines for doing so. The exceptions foreseen in the text do not correctly protect them, and the huge legal uncertainties created by this text will have a chilling effect that will prevent people in possession of information revealing corporate misconduct or wrongdoing from reporting it.

An additional problem is that the Directive foresees precautionary measures to prohibit the disclosure of documents and proofs during legal procedures, hiding them from public sight. While it is true that certain companies sue others for the sole purpose of accessing their trade secrets and that this is a problem, why should such measures, which risk undermining the rights of defence, apply to individuals?

Last but not least, this Directive only sets a minimum standard in the EU: Member States will be able to go further when they transpose the text in national law, and will be lobbied by industry all over Europe to do so. This will create a situation of uneven legislations in the EU that companies will be able to use, launching lawsuits from the country with the most aggressive measures for trade secrets protection. The European Commission keeps talking about the need to prevent legal discrepancies in the EU (its “Better Regulation” initiative), but has not voiced similar concerns as far as this text was concerned.

In January 2015, when the French government tried to adopt the key elements of the directive, it added criminal measures of three years in jail and a 375,000€ fine for trade secrets violation (and twice as much when vague “national interests” would be at stake). French journalists mobilised to protect their freedom to report on companies’ misbehaviour, and managed to convince the government to withdraw the project; but comparable measures will be considered again in all EU Member States once the Directive is adopted.

## Who is concerned?

### *Consumers*

How safe are products used every day by European consumers? Only independent scientific scrutiny can tell. The scientific studies evaluating the risks of most products in Europe are done by their producers, who then send them to public regulators for assessment. These then take the decision to grant or not a market authorisation.



The problem is that producers systematically oppose the publication of these studies as they consider that they contain trade secrets and, because they are costly, should not be seen and used by competitors. A recent example took place in Rennes, France, where a man died during a clinical trial. Scientists are now asking to access the data of this clinical trial to find out what happened, but the company, Biotrial, refuses, claiming that it needs to protect its trade secrets. Another recent example is glyphosate, the active substance in Monsanto's Roundup wide-spectrum herbicide: industry-sponsored scientific studies at the basis of the EU's controversial assessment that it is "unlikely" to cause cancer to humans (the WHO found the opposite six months earlier) cannot be published and studied by independent scientists to make the debate progress because their owners consider they are (and contain) trade secrets.

Scientists and civil society groups have been fighting for a very long time to obtain the publication of these studies so that the assessment of products put today on the EU market can be genuinely scientific, and significant gains have been obtained for medicines, with the publication of clinical trials data foreseen in the coming years in the EU. But this is still a difficult battle, and with the high financial penalties foreseen in the text for trade secrets disclosure without their owners' consent, companies will be given an additional argument to threaten public authorities if these seek to publish.

### *Journalists*

Journalists will be directly impacted by the Directive. References to the right to information as defined in the EU Charter of Fundamental Rights are made in the text, but the Charter applies regardless of it being mentioned so this does not make a difference: companies will be given the right to sue anyone publishing information they consider a trade secret, and the judge will have to balance this economic right with journalists' political right to inform. While the text cites that the right to information should not be harmed by this directive, there is no guarantee that it will actually be given preference, and journalists will have to weigh up the risk, taking into account potential very high financial damages. Legal harassment of media by private companies and wealthy individuals using defamation laws is already widespread, they will now be able to use trade secrets protection as an additional argument pending case law protects the media – if it does! Which media editor will take the risk of financial ruin in the meantime?

### *Whistleblowers*

These are (most of the time) employees willing to reveal actions or plans of their employers that they think harm the public interest. They are often the main source of information on corporate misbehaviour, and this has been a very thorny issue in the negotiations since the Commission's proposal. But even now, whistleblowers are only protected when they act "for the purpose of protecting the public general interest" (Article 5) and when they reveal a "misconduct, wrongdoing

or illegal activity”: this restrictive list leaves large gaps. They (and journalists using their information) will need to demonstrate to the judge that they acted with “the purpose of protecting the public general interest”: the burden of the proof is on them, and while large companies can afford long and expensive legal procedures, individuals usually cannot.

For instance, the documents which caused the Luxleaks scandal were contracts between Luxembourg and multinational companies, and, from the point of view of Luxembourg, legitimate since most EU countries are also engaged in such dealings to attract multinationals. As a consequence, the whistleblower and the journalist, who are being prosecuted in Luxembourg for (among other things) trade secrets violations, would not be protected by the Directive even though they revealed a major tax evasion scandal harming all European tax payers who contribute their fair share to public budgets.

### *Employees*

Employees are an important category of persons at stake (the vast majority of existing trade secrets lawsuits are already companies suing former or existing employees). The problem is that the definition used by the directive is so huge that much information learned by employees in their job would qualify as trade secrets (only “experience and skills” and information not matching the definition of trade secrets are explicitly excluded). This means that if they want to change jobs and use in their new job knowledge and information that their former employer considers is a trade secret, it might sue them for up to six years after they’ve left! This would be very bad for workers’ mobility and, as a consequence, innovation, which thrives on mixing ideas and experiences. The mobilisation of unions has contributed to significant damage control measures in the text since the European Commission’s proposal, but this is not enough – they could not for instance prevent the extension of the limitation period from two to six years maximum ...

### **Aren’t all of them protected by specific exceptions in the text?**

In our analysis, the real exceptions in the text (Article 5) are insufficient and the other exceptions (in the Recitals but also especially in Article 1) are political indications that Member States will have the possibility to ignore when adapting the directive in national law. The original proposal by the Commission was very bad and, after we and many others managed to create some public debate about it, MEPs and some Member States added to and improved these exceptions, notably for whistleblowers, journalists and employees. But now the text cannot be changed any more and, as we explain above, we think it is still very far from a correct compromise between the need to protect companies’ trade secrets and the need to defend the integrity of citizens’ political rights.

One must absolutely keep in mind, while discussing this text, that it uses such sweeping definitions for “trade secrets” that it creates numerous legal uncer-



tainties. It will take a lot of time for these uncertainties to be clarified by judges, and there is no guarantee that these will always give priority to political rights against economic interests in their judgements. Furthermore, if the legal definitions are vague, the financial penalties foreseen are potentially significant, and this situation of legal uncertainty and high financial penalties will enable companies to use the “trade secrets protection” argument extensively in their litigations against whoever they think can be attacked with it, even if there is luckily language in the text now repressing manifest litigation abuses.

Again, while trade secrets protection is a legitimate objective, this Directive goes way too far and should be rewritten, and this time with a public debate at the beginning of the process, not at the end. Asking companies to pro-actively identify their trade secrets and using specific unfair competition terminology (restricting the scope to economic operators) as opposed to catch-all intellectual property language, for instance, would do a much better job at enabling companies to meaningfully protect their trade secrets without endangering everyone else’s rights.

### **Isn’t trade secrets protection good for innovation?**

It depends. Trade secrets protection is good for individual companies who want to defend a competitive advantage and can be temporarily necessary to enable them to recoup their investments; but prolonged secrecy is also a way to defend harmful monopoly positions. Overall innovation in society thrives on sharing ideas and processes, not keeping them secret. A journalist who wrote about this Directive commented that “the directive is overall a victory for multinationals panicking about competition”.

### **Is there a link between trade secrets protection and the TTIP negotiations?**

Yes and no. Formally this Directive and the TTIP negotiations are two separate processes. However, it is striking to see that almost exactly the same text is going through Congress as we write and that this will lead to a de facto harmonisation of the legislation on trade secrets protection in the EU and in the US. The regulatory cooperation mechanism foreseen in the TTIP will make changing this legislation very difficult if the TTIP agreement is adopted. This makes rejecting this bad text all the more important.

*Signatories: Anticor, ATTAC Spain, ATTAC France, Association Européenne pour la Défense des droits de l’Homme, Asociación Libre de Abogados y Abogados, Centre national de coopération au développement, CNCD-11.11.11, Correctiv.org, Germany, BUKO Pharma-Kampagne, CCFD-Terre Solidaire, CFDT Journalistes, CGT Cadres, Ingénieurs, Techniciens (UGICT-CGT), Collectif Europe et Médicament, Collectif de journalistes “Informer n’est pas un délit”, Comité de soutien à Antoine Deltour, Commons Network, Corporate Europe Observatory,*



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## Freedom of Information - Really?

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Being able to access information is indispensable in enabling citizens to take part in decisions that affect their future, and yet this right is undermined in France by a number of exemptions.

“Freedom of information” (FOI) is largely recognised as one of the pillars of our democracies. If citizens are unable to access information of public interest concerning public policy, how institutions are run and any other issues affecting their everyday lives, they can’t truly make an informed contribution to decisions that affect their future. On a more general level, freedom of information requires that leaders be open and accountable to citizens.

In France, there was no formalised right to information until 1978, when the Law on Free Access to Administrative Documents (*loi sur l'accès aux documents administratifs*) was enacted. There are currently about seventy countries that have specific FOI laws, some more restrictive than others. The United Kingdom’s Freedom of Information Act is widely seen as one of the most advanced, as it provides a clear and relatively transparent framework. It has also set up an Information Commissioner Office (ICO) for citizens who consider that their requests for information have been illegitimately turned down. The ICO is authorised to demand that this information be disclosed. In France, on the other hand, although the Commission for Access to Administrative Documents (*Commission d'accès aux documents administratifs* [CADA]) has had a positive influence in certain cases, it only has an advisory role, so its decisions are non-binding.

### Freedom kept in check by a long list of exemptions

Moreover, freedom of information is often undermined – particularly in France – by a long list of exemptions. It is often impossible to determine whether these exemptions are valid or not, or to prevent abusive practices, particularly those involving industrialists preoccupied with their own interests and covering up bad practices.

Exemptions include information classified as secret in the interest of national defence, greatly limiting access to information concerning armament industries, and, in France, a large amount of information concerning nuclear energy, both military and civil.

They also include information related to tax issues, which prevents disclosing the details, calculation methods and any other negotiations involved in agreements made between tax authorities and transnational corporations.

They include information that relates to personal privacy. Although privacy is an indisputable right in itself, it can be manipulated by, for instance, intentionally withholding information concerning the nature of the relationship between certain public officials or authorities and the private sector. This is often the case in “revolving door” situations where high-level employees move between the public sector and the private sector. This is also the case in situations where there is a conflict of interest.

Last but not least, exemptions also include trade secrets. The trade secret has been used a great deal in the past as a way to prevent access to certain information, particularly that relating to GMOs and biotechnology (i.e., information relating to the whereabouts of GMO field trials). The views of the various European or national agencies on food security and health safety are based on impact studies produced by the companies themselves, which they refuse to make public, citing this information to be a trade secret. As a result, civil society has no say whatsoever in these decisions. The EU Trade Secrets Directive, voted by the European parliament in April and approved by the European Council (see article in this issue), by enlarging the scope and strengthening the protection of trade secrets, will effectively cancel out progress (albeit limited) made in recent years concerning freedom of information.

Even a relatively progressive law like that of the UK provides a number of exemptions to people’s right to access information, as revealed by the EDF project to build EPR nuclear reactors at Hinkley Point. The UK law does, however, require that authorities systematically undertake a “public interest test” – where first the relevant administration and then a judge systematically assess the benefits, in terms of the public interest, involved in disclosing a document and whether these benefits outweigh the secrets and exemptions that might be invoked against the disclosure.

### **What if FOI laws applied to businesses as well?**

Historically and up until now, laws concerning freedom of information have primarily concerned information and documents held by public authorities – those produced by the government and governmental institutions – ministries, parliaments, agencies, etc. Such documents often also reveal information concerning the activities of companies, such as appointments with government officials or policymakers, or even specific documents sent to a minister or another authority in order to have such-and-such project approved. There is much debate around the question of whether or not companies providing a public service (i.e., companies entrusted with the management of public water systems or public transport) should have the same disclosure requirements as governmental institutions. Conversely, there are many cases where contracts



between government authorities and companies – such as France’s infamous “public-private partnerships” (where governments pay a long-term rent to companies for building and managing a public infrastructure) remain confidential, which prevents citizens from being able to make an informed opinion of the conditions of such undertakings and ascertain whether projects can be stopped or not.

Companies are of course required to publish certain standard information (both financial and, in efforts to be more transparent, extra-financial) as part of their reporting requirements. They are also required to disclose certain information to stakeholders, especially shareholders, as well as employees. But apart from these basic requirements, companies don’t currently respond to requests for information or grant access to specific documents when requested by civil society organisations or citizens. They are free to disclose only what they wish to disclose. And yet there are many areas where companies have an impact on issues of public interest: it thus seems valid that the public should be able to access the relevant information. This might include information on the health and environmental impacts of the company and its products, or social information within the company (French companies with more than 300 employees are required to carry out an annual “social audit” but there is no obligation to disclose this information to the public), or information relating to its suppliers or subcontractors.

# Blowing the Whistle: Don't Shoot the Messenger!

GLEN MILLOT, SCIENCES CITOYENNES

The Panama Papers, Luxleaks, HIV-contaminated blood, the Mediator weight-loss drug . . . None of these scandals would have come to light without the whistle-blowers that chose to rock the boat and make them public. But without adequate legal protection, these whistle-blowers are struggling to defend themselves against the retaliation of governments and companies affected by their disclosures. Glen Millot from Sciences Citoyennes asks the question, "What degree of transparency is necessary for society to function properly?"

NSA surveillance, the Panama papers, Luxleaks, HIV-contaminated blood and the Chernobyl cloud – these are just a few of the scandals that we are seeing more and more of in our newspapers. What do they have in common? The fact that they have only come to light thanks to the whistleblowers who refused to look the other way, and who, in exposing the truth, sometimes had to break their contractual and statutory confidentiality obligations. Both for this reason and due to the fact that their actions upset the status quo or go against vested interests, these whistleblowers are almost always the target of retaliation. Depending on the case, they are punished by their superiors, sacked, or taken to court.

The need to protect them has become relatively consensual, yet this protection is often inadequate and, in many cases, ineffective. Without any clear, coherent support system, whistleblowers are forced to work out what their rights are, which depends on their professional situation, the kind of disclosure they are making, and which field they are blowing the whistle in. Despite the fact that they are acting in the public interest, failure to do this can have serious consequences. Again, without any sort of clear-cut procedure, there is often only a very superficial follow-up on their accusations. Without a proper system in place, whistleblowers are sure to think twice before taking risks. One can even see in this slack system an insidious attempt to discourage whistleblowers from speaking out, to keep a lid on any wrongdoing they are exposed to.



## Issues around whistleblowing

One of the issues that stands in the way of establishing more effective laws protecting whistleblowers is the vast number of sectors and professional situations involved. Disclosed information may relate to crimes, offences, misconduct, conflict of interests as well as the more grey area of potential risks and dangers. Accusations may relate to health, environmental, social, economical or even ethical concerns. The whistleblower may be a direct witness<sup>1</sup> of that which he/she is exposing, or may go through a third party in order to avoid retaliation. Sometimes information<sup>2</sup> is passed on to journalists<sup>3</sup> or NGOs, or the latter develop their own expertise.<sup>4</sup> In the case of journalists, specific laws protecting reporters and their sources do exist. A distinction can therefore be made between an investigative journalist – whose job it is to report on dysfunctions – and a whistleblower, who only takes on this role if exposed to an unexpected discovery.

The whistleblower issue has emerged at a time where there is pressure on public authorities and economic powers to exhibit greater transparency. Only just a few years ago, those that we now call whistleblowers were not even aware that such a thing existed. Many of them felt they were acting normally by informing their superiors of a serious problem. Although they may have been aggravated by their colleagues' indifferent attitudes, they did not necessarily suspect that that this indifference was actually a code of silence. Even more unsettling is if these superiors, instead of acknowledging a wrongdoing and taking appropriate measures, exhibit the same indifference, or even take a threatening role and demand that the subordinate keeps quiet. Furthermore, whether a whistleblower works in the private or public sector, if they sign a confidentiality agreement, they remain bound by it even when exposing a wrongdoing. They risk fines and/or prison even if the wrongdoing is proven and taken into account.

The term “whistleblower”, as well as the French “*lanceur d’alerte*” (literally, alarm raiser) coined by sociologists Francis Chateauraynaud and Didier Torny in the late 1990s,<sup>5</sup> does not really aptly reflect what is involved, considering that blowing the whistle is only the beginning of an extremely lengthy process. In order to defend themselves and to increase their chances of being taken seriously, whistleblowers are forced to pull together a massive amount of information and develop a high level of expertise. Véronique Lapidès, President of the French collective Vigilance Franklin, who challenged the Mayor of Vincennes after making the connection between the abnormally high occurrence of cancers in

[1] André Cicoella was sacked after reporting the dangers of Glycol ethers, and Irène Frachon was subject to intense pressure after her revelations concerning the deaths caused by the drug Mediator.

[2] Wikileaks has leaked thousands of diplomatic cables.

[3] The International Consortium of Investigative Journalists is a group of investigative journalists that got hold of information revealing the tax avoidance schemes known as the Panama Papers.

[4] CRIIRAD and ACRO measured radioactivity levels after the explosion at the Chernobyl power plant, enabling them to challenge the official claim that France was not affected by the radioactive cloud.

[5] Francis Chateauraynaud and Didier Torny, *Les Sombres précurseurs : Une Sociologie pragmatique de l’alerte et du risque*, Éditions de l’EHESS, 1999.



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children and the fact that their school was built on a polluted former industrial site belonging to Kodak, was sued for defamation. She feels that her organisation not only blew the whistle, but, more importantly, had to deal with everything that came after this. The most crucial part of the process actually takes place after the whistle has been blown.

### **Different processes and varying levels of protection depending on type of disclosure**

Due to the punitive and legal retaliation whistleblowers are subjected to, there is a pressing need to protect them, and there are less and less people that contest this. However, the status of whistleblowers can be contested when disclosures don't concern illegal practices. And they can also bring conflicting interests to the fore.

So after Edward Snowden leaked information revealing global surveillance programmes run by the NSA, one of the main intelligence agencies in the USA, the former NSA computer analyst was charged with espionage, theft and illegal use of government property. NSA surveillance was condemned by many countries, the majority of which nevertheless awkwardly refused to grant him asylum. Edward Snowden got no real support and in end found refuge first in Hong Kong and then in Russia.

On a different note, Antoine Deltour, the ex-auditor at PricewaterhouseCoopers (PwC), found himself in possession of documents revealing the existence of large-scale tax avoidance schemes sanctioned by Luxembourg. After the journalist Edouard Perrin, to whom Deltour passed on the information, disclosed



these schemes, which although legal were morally reprehensible, they were both prosecuted by Luxembourg. In June 2016, Antoine Deltour and Raphaël Halet, an ex-colleague of his, received a suspended sentence of twelve and nine months prison, respectively, along with a fine. The journalist was cleared of any wrongdoing. Both whistleblowers said they will appeal the judgement.

A third category of whistleblowing, that linked to scientific controversy, can be more complicated to handle. These types of revelations mainly concern health and environmental risks. The reason they are so tricky to deal with is that they are largely based on contesting views as to how a scientific process (toxicological for example) is carried out. The fact that experts may have a conflict of interest does not necessarily exclude them from committees in charge of approving products. And what is more insidious is the varying quality and objectivity of even the studies that these expert committees take into account. One caricatural example is that of the many laboratories that were funded by the tobacco industry, resulting in the censorship and manipulation of results deemed detrimental to the industry.<sup>6</sup>

The difficulty in defining the limits of whistleblowing explains why it is so difficult to make laws on it. However, certain countries like the United Kingdom (*Public Interest Disclosure Act 1998*) and Ireland (*Protected Disclosures Act 2014*) now have comprehensive laws that refer to the public interest and which take a broader view of whistleblowing than just revealing crimes and offences. These manage to take into account the most contentious cases described above.

### International vs. French law

Before enacting a single comprehensive law, Ireland had several different sectoral laws on whistleblowers. This is currently the situation in France where at least seven laws relating to whistle-blowing have been voted in since 2008, including several that were in direct reaction to scandals in the media (the Mediator weight-loss drug scandal and the Cahuzac tax fraud case). This patchwork of laws is due to the multitude of different issues related to whistleblowing: corruption, drug safety, environment, health and safety, conflict of interest (two laws), financial offences and crimes, and intelligence. However, the laws have been enacted without ensuring any consistency between them. So depending on which law one is going by, the whistleblower can inform either their superior, the compliance officer, his/her company's health and safety committee (*Comité d'hygiène, de sécurité et des conditions de travail* (CHSCT), a judicial authority, whistleblower protection organisations and agencies (*Commission nationale de déontologie de l'expertise et de l'alerte, Haute autorité pour la transparence de la vie publique*, etc.), or go directly to the press. Whistleblowers authorised to disclose information may be employees in the private sector, civil servants, individuals or legal entities,

[6] Stéphane Foucart, *La fabrique du mensonge. Comment les industriels manipulent la science et nous mettent en danger*, Coll. Impact, Denoël, 2013, p. 304.

depending on which law one is going by. The situation for civil servants is even more absurd in that although they are required to reveal any crime or offence they witness as stipulated by Article 40 of the Criminal Procedure Code, it was not until Law n ° 2013-1117 of 6 December 2013 (art. 35) was enacted that any protection from retaliation was provided. This piecemeal system undercuts whistleblowers, making it harder for them to speak out.

Despite this situation, there has been some real progress made, such as shifting the burden of proof, which requires that it is the person penalising the whistleblower who must prove that this penalty is not related to his or her disclosure. Yet there is still a long way to go. In order to improve the legislative structure that protects whistleblowers and provide a better, more efficient system for handling disclosures, Sciences Citoyennes, which pushed for the whistleblowing law in the area of environmental, health and safety concerns, teamed up in 2014 with Transparency International France, an organisation fighting corruption. Together they made a comparative analysis of whistleblowing laws in different countries and advocated for more comprehensive legal rights for whistleblowers in general. They also got fifteen NGOs together to discuss establishing a whistleblower support centre – (*la maison des lanceurs d’alerte*). After a number of discussions, in 2015 they together drew up a proposed draft bill and took part in the French Conseil d’État study group on ethical whistleblowing. The study, published in April 2016,<sup>7</sup> has integrated our main suggestions into its recommendations, which aim to address gaps in the current legislation:

- Recognition of whistleblowers taking action in contexts that are not restricted to an employer/employee relationship. Whistleblower definitions should also acknowledge entities other than individuals.
- It is suggested that a Whistleblower Rights Protector be appointed, a constitutional authority bestowed with powers to carry out comprehensive investigations, in order to protect whistleblowers, and guarantee confidentiality.
- It is recommended that civil lawsuits be filed against abusive procedures.
- It has even been suggested that public authorities back the creation of a whistleblowers support centre!

The French Minister of Finance Michel Sapin, who (despite the fact that he was aware of the Conseil d’État study, as it was commissioned by the government) filed a draft law on economic corruption and transparency before reading the study’s recommendations. The law, called the Sapin 2 Act, is supposed to bring all whistleblowing issues under one law. At the same time, French MP Yann Galut, submitted a bill, which unfortunately only included some of the recommendations made by Sciences Citoyennes, Transparency International and Anticor, assisted by other legal experts, and which still fails to consider whistleblowing outside the realm of the employer/employee relationship. The

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[7] Conseil d’État, *Le droit d’alerte : signaler, traiter, protéger*, La Documentation française, April 2016.



next few months will thus prove decisive in regards to France's ability to get a hold on the whistleblowing issue.

At international level, it seems contradictory trends are coming to a head. Although the Council of Europe, whose Parliamentary Assembly includes representatives of national parliaments, recommended in 2014 that Member States adopt laws protecting whistleblowers,<sup>8</sup> in the mean time the European Commission adopted a directive in April 2016 protecting trade secrets, thus jeopardising whistleblowers' rights, already barely existent in a number of countries. More than fifty European organisations took action and succeeded in obtaining exemptions for journalists and whistleblowers. However, there are huge restrictions on these exemptions and they are subject to tight controls. Secrecy is upheld as the dominant fundamental value, a much disputed question after everything the Panama Papers revealed. The implication of the directive is that in the private sector everything that is not declared as public information is deemed secret, and *companies only have to prove that they did not authorise the procurement, use or publication of a trade secret, while the accused individuals have to prove to the court that their actions fall under one of the exceptions.*<sup>9</sup> Laws that only go halfway in protecting whistleblowers may not hold much weight up against the scare tactics protecting trade secrets.

The fight goes on. Obtaining a European directive on the protection of whistle-blowers is now one of the key goals of the organisations that opposed the trade secrets directive as it is for a number of MEPs. In regards to support for whistle-blowers, the Whistleblowing International Network, which brings together NGOs involved in whistleblower advocacy and protection, is working on creating a European sub-structure. We still need to strike the right balance between secrecy and vigilance. What degree of transparency is necessary for society to function properly?

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[8] Recommendation CM/Rec(2014)7 of the Committee of Ministers to Member States on the protection of whistleblowers (adopted by the Committee of Ministers on 30 April 2014).

[9] "54 organisations demandent aux chefs d'Etats européens de ne pas valider la directive Secret des Affaires", <http://sciencescitoyennes.org/54-organisations-demandent-aux-chefs-detats-europeens-de-ne-pas-valider-la-directive-secret-des-affaires>.

## SLAPPs – How to Intimidate Critics and Censor Free Speech

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**L**awsuits (or legal threats) against trade union activists, whistle-blowers, local activists, journalists and authors . . . Legal intimidation is the tactic some companies choose to silence critics. Such lawsuits are called SLAPPs – Strategic Lawsuits Against Public Participation, and are often based on claims such as defamation (libel or slander), moral damages, or trademark infringement. For the companies that take this route, they serve a double purpose: intimidating critics and diverting the public’s attention away from the issue for which they were criticized in the first place.

Some corporations have pushed this logic as far as it will go. The oil company Chevron, as part of its judicial battle against its Ecuadorian victims after it was exposed that Texaco (now Chevron) was responsible for the oil pollution disaster in the Ecuador Rainforest, got hold of the emails of its adversary’s lawyers and accused them of nothing less than racketeering. As if seeking financial compensation for this environmental disaster could be reduced to an extortion attempt.

French companies don’t shy away from prosecuting unions, associations, organisations and media outlets. After the association Sherpa filed a complaint in France, citing that the construction company BTP Vinci violated the human rights of migrant workers on its sites in Qatar, the company filed six complaints against Sherpa! And there are other cases where investigative journalists revealing cases of corruption have been prosecuted.

For the companies involved, the cost of SLAPPs is negligible; yet for the individuals, organisations or small independent media outlets, the financial costs involved are often extremely burdensome. Even when they win, they are responsible for paying the defence costs. In French law, filing a civil suit for defamation automatically results in a trial, no matter how lame the company’s arguments are, and these trials can go on for years. Moreover, the accused may find themselves being prosecuted for a tiny section of their article or book, irrespective of how marginal it might be.

Several North American States and provinces now have laws designed to prevent SLAPPs, but there are currently no effective measures protecting human rights activists in Europe.



# Under the Influence

## RITIMO

In many countries the biggest obstacle to independent information on the economy and corporations is the concentration of media ownership by a few corporate giants. Conflicts of interest, the overshadowing role of advertising and entertainment, and complicity between political and economic figures all stand in the way of providing the public with real democratic information.

**I**n countries at war with democracy, independent news and information doesn't exist. But is news and information really that democratic in countries where freedom of expression is supposedly respected and guaranteed by law? In both France and a number of western countries, the media system no longer protects independent information. It encourages neither reflection nor equips people to take action. How did this happen?

One school of thought blames neoliberalism for turning information into a commodity like any other. Mass media is now in the hands of major industrial companies whose primary goal is to make a profit, which means selling as much as possible . . . In the space of a few decades, the CEOs of these corporations have found themselves at the pinnacle of power and have increased media concentration both vertically (integration of the different phases of creation, production and distribution) and horizontally (ownership of different kinds of media [TV, radio, newspapers, internet, etc.] by the same group). Their aim, obviously, is to control information in order to make money, ensure news and information serves their interests (by, for example, praising the products sold by their industrial empires, and presenting the neoliberal economic model as the only option out there), and hold sway over politicians, who might also be their friends or, quite possibly, their . . . colleagues.

### **And what about the public service?**

Thankfully, these media empires don't own all French media outlets (even if they own a significant percentage of them). One would hope that media outlets acting in the public interest are able to escape the clutches of these media

## Happy Families

In an interview held in October 2015 with Fabrice Arfi, journalist at Mediapart and editor of *Informer n'est pas un délit*, a book on new forms of censorship, he confirmed that "Seven billionaires control 95% of media news and information." So who are they?

- **Bernard Arnault:** the richest person in France (*Challenges*, 2015), Chair and CEO of luxury group LVMH (fashion, jewellery, perfume, champagnes and spirits), he owns a small media sector which includes Radio Classique and the French daily newspaper *Les Échos* (bought for a high price in 2007) and the *Le Parisien/Aujourd'hui*, which he bought off the Amaury family, making him the first person to own two French newspapers.
- **Vincent Bolloré:** French industrialist in the transport, logistics and energy distribution sectors, ninth richest person in France (2015), he owns the French TV channel Direct 8. After selling Direct Star and Direct Matin, he became the main shareholder of Vivendi, which owns Canal Plus and its whole "package" of TV channels.
- **Martin Bouygues** (son of Francis Bouygues, founder of the French construction company Bouygues): Chair and CEO of various companies in the construction, energy, transport, real estate, telecommunications and media sectors, 27<sup>th</sup> richest man in France (2015), he owns Bouygues Télécom, the TF1 Group and *Métronews*.
- **Serge Dassault** (son of Marcel Dassault, French aircraft designer – four of his children occupy key positions in the Dassault empire): business leader in the aerospace and weaponry industry, senator and former mayor of Corbeil-Essonnes, fifth richest person in France (2015), he owns Socpresse (Figaro Group, as well as a number of other regional daily newspapers).
- **Patrick Drahi:** owner of French telecommunication group Altice (SFR-Numericable) and the Israeli news channel i24news. Sixth richest person in France (2015), he has just bought *Libération*, the group L'Express-L'Expansion, and NextRadio TV (BFM TV, RMC).
- **Arnaud Lagardère**, son of Jean-Luc Lagardère, who founded Lagardère SCA (aerospace, defence and automotive industries): director of Lagardère SCA, 225<sup>th</sup> richest person in France (2015), he owns, among others, *Elle*, *Paris Match*, *Télé 7 jours*, *Le Journal du Dimanche*, Europe 1, Virgin Radio, RFM, Canal J, MCM, Hachette Livre (third biggest publisher of general-interest and educational books worldwide) and all Relay outlets.
- **Xavier Niel:** tenth richest person in France, founder of the Free brand (French internet service provider and mobile operator), acquired, along with Pierre Bergé and Mathieu Pigasse, the group Le Monde which other than the newspaper with the same title, also includes *Courrier international*, *La Vie* and *Télérama*. In 2014, Claude Perdriel sold *Le Nouvel Observateur* to the three co-owners.



conglomerates, and don't succumb to pressure or get embroiled in dependent relationships involving financial or political forces. Easier said than done! The few television chains and radio stations that have escaped privatisation and are still owned by the French state receive much of their funding through advertising.

Another aspect is that prominent political and media figures are often revealed to be in league with each other. One example is the chairmen of France Télévision and Radio France, who were chosen by the French president out of a close circle of friends. In such a context of conflicting interests, it's hard not to wonder if the "public service", instead of focussing on the public interest, is not merely focussing on the interests of the government?

### Censorship and self-censorship issues



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The media moguls maintain that their editorial teams are independent, but the reality is that journalists often censor themselves to protect the image and interests of those that employ them. And when they don't do it themselves, they are often brought into line, or someone else does it for them: in 2007, the Bolloré Group refused to publish an article entitled, "Roma musicians troubled

by police" in the free daily newspaper *Matin Plus* (now *Direct Matin*) on the pretext that it would be "extremely unpleasant for France". The same censorship techniques are being used by Dassault: after being accused of vote-buying at the Corbeil-Essonnes local elections in 2009, the senator and media tycoon Serge Dassault sued the newspaper making these allegations (*Libération*), got rid of all issues in his town, and ensured that there was no mention of the scandal in the newspaper he owns (*Le Figaro*).

The growing influence of media moguls and their political friends, together with worrying trends in bills and directives concerning "trade secrets", prompted several investigative journalists to form a group called "*Informer n'est pas un délit*" ("It's not a Crime to Keep People Informed"), who published a book with the same title, which denounces the "new forms of censorship", which come from the complicit forces of political authorities and media owners. The case of Vincent Bolloré is a prime example – the owner of both media and advertising groups such as Havas, has no qualms about using his position to intervene in the editorial policy of his own media outlets, and has mastered the art of filing libel suits against journalists.

## And what's the situation elsewhere?

France is not an exception. In many other countries the media landscape is characterised by a concentration of media ownership involving a handful of media conglomerates who are financially dependent on political figures, resulting in a distorted and standardised vision of social and political life. Cases in point:

- News Corp, the media empire controlled by Rupert Murdoch, is implicated in all media outlets in the USA, Britain and Australia. It has a close relationship with the British Conservative government, and the Republican Party and neo-conservatives in the USA.
- Globo owns 80% of all that is seen, read or heard in Brazil. The network represents the economic elite in Brazil, so consequently publishes news and information that impinges negatively on the Workers' Party, and which is often biased (in 2013 coverage by the main TV channel of Brazilians protesting against high prices portrayed Brazilian activists as thugs . . .).
- Berlusconi and his groups Fininvest and Bertelsmann control Italian television as well as a number of Italian and German daily newspapers and magazines. As Italy's Prime Minister for nine years in total, he was able to control practically all Italian television over this period.

## What can be done?

Concentration of media ownership has been recognised as a problem. Some countries are developing antitrust laws in order to limit concentrated ownership of media outlets and advertising companies. In Argentina, the Clarin group was forced to give up some of its radio and television licences in order to comply with a new media law.

In France, a law adopted in 1945 to ensure media pluralism prohibited any one group from owning more than 30% of the daily newspaper circulation (both mainstream and those with a more political focus). The so-called "rule of two" prohibited any one group from owning companies in more than two media (radio, television or print media). And the "20% rule" states that a non-European group cannot hold more than 20% of capital in a French television channel, radio station or print media. There are policies and media moguls that are seeking to do away with this legal arsenal, which they deem the internet has made redundant. This would essentially pave the way to an even more concentrated situation.

## Quality compromised

Media consolidation has changed the face of news and information, whose primary goal is now to sell, or increase audience ratings, at the expense of its role as a transmitter of information, providing analysis and sparking debate. And this trend is exacerbated by the increasingly invasive role of advertising.



Advertising represents, on average, 50-60% of the print media's revenue. Some media have basically become advertising platforms, inventing new and varied forms of advertising. The diversion techniques come in all different shapes and sizes – whether it's the “advertorials” – basically advertisements for a product or company in the guise of a news article, or the “fashion and lifestyle” supplements of certain daily and weekly newspapers – essentially a catalogue of brands in which the traditional ethical distinction between editorial content and advertising has entirely disappeared. In newspapers and magazines that are free, 80% of their pages feature one or two advertisements that serve to finance it.

The impact of advertising also plays a role in the quality of information out there: far from taking a neutral standpoint, advertising promotes stereotypes (gender, age, ethnicity) and clichés that attempt to define success and the pleasures of overconsumption. Eager to please the advertisers that fund them (most of which are in the retail, automotive and mobile operator industries), the media chooses content that showcases the image and products of their advertisers in order to boost sales.

There are instances where this goes as far as actual censorship. In its issue published the 30 September 2015, the French satirical newspaper *Le Canard Enchaîné* accused Volkswagen of blackmailing advertising agencies. It seems the German company attempted to keep the French press from talking about the scandal concerning its vehicles, which are sold the world over, and were revealed to be equipped with software used to cheat on emission tests. *Le Canard* got hold of an email sent by MediaCom (Volkswagen's media agency in France) to certain regional newspapers: “In order to continue our investments, we would like to ensure that there will be strictly no mention of the VW scandal in the issues to appear on the 6, 8 and 10 October . . . If this is not possible, we will be obliged to discontinue our investments.” The accusations, denied outright by the car maker, expose advertisers' attempts to blackmail and censor the media.



This article is taken from the guide *S'informer, décrypter, participer. Guide pour s'orienter dans le brouillard de l'information*, published by Ritimo.  
See <http://www.ritimo.org/S-informer-decrypter-participer>.

# “This link between advocacy and journalism is older than many of us think.”

## INTERVIEW WITH ANYA SCHIFFRIN

A number of international tax avoidance scandals have come out over recent years, highlighting the important role played by investigative journalists in denouncing the corrupt practices of governments and corporations. Investigative journalism has been playing this role for decades, as the American journalist and teacher Anya Schiffrin explains. Schiffrin is the author of a collection of investigative articles on different issues across the globe.<sup>1</sup>

### **What triggered you to work on this collection of investigative journalism pieces from all over the world, which date back a hundred years?**

Reading *King Leopold's Ghost*, I was inspired by what Adam Hochschild wrote about the role of E.D. Morel and his coverage of the conditions in the Belgian Congo.<sup>2</sup> He really describes him as an investigative journalist who was also a campaigner. Like all American journalists, I had heard about the “muckrakers” of the Progressive Era in the US,<sup>3</sup> but I had not known that at the same time there were people busy writing about terrible conditions overseas. The aim

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[1] Journalist and teacher Anya Schiffrin is the director of International Media, Advocacy and Communications at Columbia University's School of International Affairs. In 2014, she edited *Global Muckraking: 100 Years of Investigative Journalism from Around the World*, a collection of investigative journalism articles spanning one hundred years and every continent, with introductions by prominent international journalists working in Asia, Africa, Latin America, Europe, and the Middle East.

[2] See Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa* (1998). “Edmund Dene Morel (1873-1924) was a British journalist, author, pacifist, and politician. In collaboration with Roger Casement, Morel led a campaign against slavery in the Congo Free State, founding the Congo Reform Association and running the *West African Mail*.” See [https://en.wikipedia.org/wiki/E.\\_D.\\_Morel](https://en.wikipedia.org/wiki/E._D._Morel).

[3] “The term muckraker was used in the Progressive Era to characterize reform-minded American journalists who wrote largely for all popular magazines”, such as Upton Sinclair, Ida Tarbell, Ray Stannard Baker... See <https://en.wikipedia.org/wiki/Muckraker>.



of the book was to showcase reporting about developing countries on crucial issues over the last 150 years. There are a lot of collections of great American investigative reporting, but I had never seen one that included international stories about Africa, Asia, and so on. Another objective was to look at how campaigning journalists, across continents, have covered the same problems: labour, police and military brutality, conditions for women, conditions in the countryside ...

**How would you define investigative journalism and what makes it different from “regular journalism”? You seem to use the expression “campaigning journalism” as an equivalent for investigative journalism.**

One of the distinctions is that investigative journalism is about subjects that matter for society. You can do deep reporting on movie stars or subjects like that, but does it necessarily matter that much? That’s probably the distinction that matters the most: investigative journalism has to matter for society. But it is not the same thing as campaigning. I use the term “campaigning journalism” because I want to be clear about what is in the book. Some of the pieces in the book are not investigative journalism by modern standards. I don’t know if someone like E.D. Morel could be published in the *New York Times* today, because he was a campaigner. He had an opinion. He wanted King Leopold to get out of the Congo. Many of the people that are in the book were not working for large media outlets. In some cases, they were not even journalists. But they saw something terrible, and they started writing about it. Some of them wrote about those atrocities for a few years and then went on to do something completely different.

What is so interesting in looking back at two hundred years of investigative journalism is that you can see how people’s taste and the way they communicate change over time. Today, people say that the Internet is changing everything, but there have been major changes all the time. If you look at a newspaper from 1890, it’s totally different from what we would read today. It’s natural that this evolution is still occurring today. We don’t need to be nostalgic about how things were twenty years ago.

**What have been the key topics covered by investigative journalists over two hundred years of history?**

There are some perennial subjects that cross time and countries, such as abuse of power by government and corporations, labour conditions, or corruption. I would also mention consumer reporting, especially in places where the media is not free: at least you can write about a shop that’s cheating people or something like that. I would also add environmental issues. And nowadays, with the Panama Papers and similar investigations, we see a lot of work on issues such as offshore finance and tax avoidance.

**Would you say that certain periods are more conducive to investigative journalism than others? Do we live in such a time at the moment?**

Periods of political upheaval and transition are often conducive to a freer media climate. This was the case in France after World War II, in Spain after Franco and Indonesia after Suharto, during the Arab springs . . . There is a flowering of media outlets, although a lot of them cannot survive in the long run.

The times when investigative reporting has the most impact are times when there are also other groups of society that are ready for a change. Because there are already campaigners and journalists that are not writing by themselves and into a vacuum. For instance, the writings of Albert Londres in the 1920s about the conditions in the French prisons in Guyana and North Africa came at a time when there were already groups worried about these issues. The French government felt obliged to pass reforms thanks to his reporting. This is a quintessential example of how a journalist can be a catalyst for change, but only because there were people ready to listen to him. Exactly the same thing is happening today with the Panama Papers. There are a lot of groups working on offshore finance and tax evasion, a lot of work being done in international organisations, a lot of coverage of these issues in the press. The Panama Papers came at a moment when people were already upset and trying to address the issue.

I wrote an article two years ago explaining why I think we live in a “golden age” of investigative reporting.<sup>4</sup> There are several reasons why this is so: the fact that we live in a period of political upheaval, the rise of digital technologies, the fact that philanthropy and foundations are willing to fund a lot of investigative reporting, and perhaps also the fact that older journalists are losing their jobs in declining mainstream media and able to train younger generations and start new media outlets. We’re in this crazy, fabulous time for investigative journalism. The kind of cross-border work that we’re seeing with the International Consortium of Investigative Journalists (ICIJ)<sup>5</sup> or the Organised Crime and Corruption Reporting Project (OCCRP)<sup>6</sup> is totally new. It’s a major innovation, and it could be transformative.

**Would you say that investigative journalism also becomes more important in times when the traditional media or the traditional democratic institutions seem less able to address certain key issues, such as the financial crisis and its aftermath?**

After the financial crisis, there was a lot of soul-searching among journalists, who wondered why they didn’t see it coming. The same had happened after the Iraq war. There are indeed certain periods when people become more interested in doing investigative journalism.

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[4] Anya Schiffrin, “Who Knew We Were Living in the Golden Age of Investigative Journalism?”, 26 August 2014, [http://www.tomdispatch.com/post/175886/tomgram%3A\\_anya\\_schiffrin\\_who\\_knew\\_we\\_were\\_living\\_in\\_the\\_golden\\_age\\_of\\_investigative\\_journalism/](http://www.tomdispatch.com/post/175886/tomgram%3A_anya_schiffrin_who_knew_we_were_living_in_the_golden_age_of_investigative_journalism/). See also Sheila Coronel, “A Golden Age of Global Muckraking at Hand”, keynote speech at the 2016 conference of *Investigative Reporters and Editors*, 20 June 2016, <http://gijn.org/2016/06/20/a-golden-age-of-global-muckraking/>.

[5] <https://www.icij.org/>.

[6] <https://www.occrp.org/en>.



Sadly, the places that need investigative journalism the most often don't have it. Let's take, for example, the African countries that are dealing with powerful oil and mining companies. They need investigative reporting very badly, but often these are precisely the places where it's harder to do, and where media outlets don't have the resources, the expertise and the freedom to do it. And when they actually do it, often it does not have the impact you would expect. I heard of a case in Nigeria where a journalist had been writing for nine years on a case of corruption in the oil and gas industry, and the people that stole the money are still not in jail.

**A lot of investigative journalism is made possible by foundations and philanthropy, at a time when mainstream media are winding down and cutting jobs. Do you think this funding model is sustainable?**

Investigative journalism has never paid for itself. Someone is always going to have to pay for it, whether it's the mainstream media outlet that funds it because it's important and brings in prizes and prestige, or whether it's foundations. E.D. Morel's work in the Congo was largely funded by the Quakers. Right now, foundations are paying for a lot of investigative journalism. Are they going to keep it up? I don't know. Some people are very cheerful about the prospects for crowdfunding investigative journalism. Last year, with my students, we profiled media outlets from developing countries and found that most of them have a very low annual revenue. One of the great things about today's world is that the barriers of entry are lower, and it's much easier to set up new media outlets, but they are often less stable. A lot of investigative journalists I know around the world have to work for different media outlets.

**Historically, investigative journalists have rather been mavericks, who worked by themselves. Do you think we're going to see more and more of the sort of collaborative, international team-work we're seeing with ICIJ and other similar initiatives?**

This team-work is a fantastic new thing. Mike Hudson, who is one of the editors of the Panama Papers, talks about how journalists used to be competitors and now they're realising they can also be collaborators. Paul Radu, of OCCRP, says crime doesn't stop at national borders, so why should journalists? Journalism is becoming more collaborative, which is not surprising. It's natural, when people start having financial difficulties, that they try to find ways to team up together.

**We talked earlier about the difference between investigative journalism and campaigning journalism. Where does ICIJ sit in this respect, when it comes to issues such as tax evasion?**

What I find interesting about ICIJ is that they really have resisted getting involved in campaigns. When you talk to them, they don't really know much about the on-going campaigns by groups on tax avoidance. They're not really interested either in getting involved in these campaigns. It's just not what they do. Global

Witness is more of a real hybrid that does both reporting and advocacy. ICIJ and ProPublica are still very much in that American tradition of public interest reporting, which is not campaigning.

**On the other hand, we see more and more NGOs, such as Greenpeace, using investigative journalism as a tool in their campaigns.**

This is extremely interesting. One of the things that surprised me when I did the research for *Global Muckrakers* is that advocacy groups have been involved in investigative journalism for a long time. For instance, in the 19<sup>th</sup> century, the abolitionist movement in the US used a lot of reporting. This link between advocacy and journalism is older than many of us knew. Whether it actually increased in recent years I'm not sure, although everyone has the impression that it has.

**Would you say that link between reporting and campaigning carries risks for investigative journalists – the risk of losing their specificity or even their credibility?**

There is a lot of talk at the moment whether journalists who take money from foundations should have some sort of code of conduct. It is indeed a subject that needs thinking about. I've been looking around at the different practices, and they vary widely. There are connected questions: the behaviour of the journalist taking the money, the behaviour of the funders giving the money, and the question of the status of campaigning NGOs putting out reports.

*Interview by Olivier Petitjean*



# TRANSPARENCY & REPORTING

# What Can We Learn From “Sustainable Development” Reports?

**MARTIAL COZETTE**, CENTRE FRANÇAIS D'INFORMATION SUR LES ENTREPRISES

Corporations now include an “extra-financial reporting” section in their annual reports, which features a wealth of information and indicators on their social and environmental impacts. But how much do these reports really tell us?

**M**ost major companies now include a section on “sustainable development” in their annual report, which includes information and figures on the social and environmental impact of their activities. Despite constant progress in standardisation and legislation, this “extra-financial” reporting remains disparate and it is often difficult for internal and external stakeholders and public interest organisations to access or use. These reports are nonetheless full of information about companies that could serve as a basis for dialogue and engagement. CFIE-conseil, an independent organisation that analyses companies’ CSR policies, has been studying the sustainable development reports of the French corporate heavyweights for fifteen years, basing their analysis both on French legislation and using their own interpretive lens. There is much to be learnt from their work, including potential areas for improvement that would enable enlightened readers to make informed conclusions from these reports.

## **What issues do sustainable development reports cover, and how are these selected?**

A growing number of companies include “materiality matrices” in their reports, the aim being to make a comparison between economic, social, environmental and societal issues, indicating what these represent for the company and what these represent for stakeholders.



Yet this approach has revealed to be problematic, for the following reasons:

- Giving stakeholders the task of identifying issues raises the question of how these have been selected, and there are some stakeholders that don't wish to take part in such a process.
- Transparency standards would require that stakeholders participating in the exercise be identified so that readers don't suspect the company of including only stakeholders partial to the company or of sidestepping certain controversial issues.
- By comparing different issues, the company may focus on areas that are sector-specific, dismissing other issues that could have a significant impact on the sector. For example, the issue of paper and cardboard consumption (which has a definite impact on forest preservation) is addressed by companies that are thought to have an impact in this area (banking and insurance) and dismissed by industrial sectors, despite the fact that it is the latter that often consumes significantly more paper and cardboard. This is the case with Saint-Gobain whose paper/cardboard consumption is thirty times more than that of insurance company Axa.
- This method may also overlook important emerging issues, not yet identified by stakeholders themselves.

Generally-speaking, there are issues that remain largely overlooked in the reports, such as biodiversity conservation and regeneration, work practices, restructuring, lobbying and funding of political leaders and parties. This is due to several factors including the fact that companies are under no obligation to address these issues, regulations that are too vague in certain areas, and short-sightedness in assessing the impact of a company's activities, which are often indirect.

## Indicators

The degree to which indicators accurately reflect the situation depends on the issue. In order to provide relevant solutions to the issues raised, there should be more focus on the following areas:

- There needs to be a clear distinction between: a) the actions taken by the company to address identified issues, which can be measured as a volume, a quantity or an amount relative to a specific unit that reflects its activity (sales, units produced, etc.), and b) its cumulative impact on the environment, which can be measured, expressed as an absolute value. For example, the amount of energy a company consumes and the quantity of greenhouse gas emissions it emits per unit produced, which varies from one year to another, conveys the company's performance in the sector, but does not show its changing impact on the environment, which can only be assessed by calculating the total amount of energy consumed (resource use) and the total volume of greenhouse gases emitted. And this calculation should take into account the effects of changes in the company's consolidation perimeter.



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- Data is rarely expressed in comparative terms (i.e., regardless of the entry/exit of new entities in the consolidation perimeter), which makes it difficult to evaluate change.
- Statistical series are often too short to assess trends, and measuring instruments are still relatively inaccurate, resulting in varying figures that can be very inconsistent.
- Lastly, in many cases, consolidated indicators reveal little about a company's actual CSR performance. Consolidated or average data on wages or working hours should be complemented by information that gives a detailed picture of specific CSR issues, such as the percentage of workers paid below the local minimum wage, and details of how this is calculated.

## Issues

**Employment and work practices.** Reports usually include a comprehensive overview of the company's human resources profile and its overall evolution, providing detailed information and figures. However, the issue of job creation is often problematic. This can only be determined if the figures are reported on a comparable consolidation perimeter. But not all the reports (in fact, very few) provide this information. There is still little explanation of the company's general employment policy in the reports, and there needs to be a better approach to the issue of restructuring. Although we often see companies making general commitments, they are often vague and they rarely include a detailed break-down of the actions to be taken in order to meet these commitments. Similarly, there is not always information available with indicators that enable the reader to assess the effects of restructuring on the employees concerned.



**Diversity, equality and inclusion.** Most progress has been made in the area of gender equality. The measures in place are often comprehensive and include awareness-raising outside the company (external), redefining professional roles within the company, and establishing targets to ensure gender equality in managerial positions, etc. However, although there has been some progress in this area, most reports fail to include objective information that would enable assessing whether there is a gender pay gap or not. There has also been significant progress in integrating people with disabilities into the workplace but this remains mostly concentrated in France. France is also often mentioned when it comes to integrating young people and seniors into the workplace. There is less mention of other population groups: LGBT, veterans (USA and Colombia), former prisoners, people that have experienced long-term unemployment, individuals from troubled neighbourhoods, etc. Although initiatives do exist, they remain marginal.

**Safety and well-being of employees.** This issue is one that is usually adequately covered in reports. The measures in place are usually well-displayed and the figures sometimes correspond to a period long enough to illustrate the effect of measures implemented. There are shortcomings, however, regarding the way in which results are analysed: reports still fail to include the main causes of workplace accidents, and consequently areas where improvements could be made. There is less reference to work-related diseases than there is to workplace accidents, and the indicators are often less accurate (when there are indicators at all). And often it is only internal surveys that provide information on the well-being of employees. The results are not always explained, and when they are, they often conceal aspects that might show the company in a bad light – whereas it is precisely these aspects that might interest the reader, representing a potential area for improvement

**Employee satisfaction.** This section concerns information relating to wages and benefits, training, internal promotion and development and growth within the company. The section concerning wages is generally unsatisfactory in addressing fundamental issues. Most of the time, although the general policy is stated, the actual figures are not, making it difficult to assess the impact this policy has on employees' situations. Does the policy ensure that all employees receive wages that allow him or her to live a dignified existence, for example? The reports state that comparisons are made based on different markets, but none of them give figures that prove this. Similarly, there is much focus on on-going training as well as new guidelines adopted in this area, but they are more ambiguous when it comes to the different measures taken and how they apply to different employees (managers, other staff members, etc.).

**Internal communication.** This section concerns labour relations, managerial methods and the relationship between management and staff representatives, and gives

the least accurate picture of the actual situation. This is due to several factors. Firstly, there are often a number of gaps concerning actions taken to organise collective work, address labour relations and improve managerial methods. And although the relationship between management and staff representatives is an issue that is systematically addressed (as stipulated by French legislation), in many cases this is reduced to a list of the main bodies involved (group committee, European works council, etc.). There is sometimes information on how social dialogue processes are carried out in the main countries in which the company is active, but this is still rare, and almost never mentions measures taken by companies to promote a calm, direct approach to social dialogue in the event of potential issues in certain countries.

***Development, rights and freedoms.*** This sweeping section encompasses a wide range of issues, the different facets of which depend on which sector the company is active in. There is often a focus on partnerships with local SMEs, and this sometimes includes actions that aim to develop small businesses or start-ups. However often the company has trouble assessing the importance and potential benefits these relationships bring locally. Building up the skills of the local population, particularly the skills of employees working on sites in developing countries is another subject that is rarely discussed. One of the emerging issues is that of personal data protection. It features in an increasing number of reports but needs to be looked at in more depth. We also noted that there is some confusion between the relations the company maintains through sponsorship and its relations with public interest groups in regards to pinpointing areas for improvement in the way it carries out its business.

***Social rights in the value chain.*** This is an issue that is systematically included in reports, but overall the measures described are not detailed enough for the reader to get a clear overview of the different situations occurring in companies and their supply chains. These situations may include subcontracting issues (whether this relates to production or services such as caretaking, security or call centres), purchasing of supplies or equipment. Each situation requires an approach that is adapted to the context (self-assessments, third party assessments, audits, etc.), which are not always differentiated. The same can be said for the different regions where purchases are made (developing countries, emerging markets, mature markets, countries involved in major controversies, etc.). Furthermore, in some cases, it is necessary to consider the issue of second tier subcontractors or the whole supply chain, an aspect which is rarely discussed.

***Influence, ethics, financial flows.*** This section comprises several issues. Firstly, the relationship the company has with public authorities and its official stance in public debate. Several reports include a list of organisations to which the company belongs, and if relevant, states the key views it defends either directly or by way of these organisations. But it is hard to deduce from the reports whether or not these lists are exhaustive. There is also little information concerning funding of political



organisations. Despite the fact that there are still gaps, however, fighting corruption is an aspect that is being tackled more and more, and measures currently being taken are now mentioned. However, actual figures are still rare. Several aspects come under the problem of financial flows, particularly companies' tax contribution, which is made according to the geographical breakdown of activities and profits. This has become a major issue in recent years but it still relatively overlooked in reports

***Benefits and impact of the product/service.*** The scope of this category is fairly broad because it covers how accessible a company's services/products are – whether this relates to concrete issues (access for disabled persons, isolated areas, etc.) or whether this relates to prices – strictly speaking, the role of the company's products and services, which includes their benefits (primarily but not exclusively health benefits), as well as a section on customer satisfaction and preventing potential negative effects. Again, there is room for improvement in a number of reports, particularly in regards to customer satisfaction. Sometimes there is information that outlines the ways in which the company seeks to ensure customer satisfaction, but quantitative data allowing the reader to substantiate this information is still rare.

***Resource conservation and waste.*** This section takes into account the amount of natural resources extracted, and how these are managed, the operations that might affect local biodiversity, the initiatives adopted to restore it, as well providing information on waste and emissions. Of the companies studied, impacts on biodiversity is the issue that is least integrated into their sustainable development framework. This is due, on the one hand, to the fact they don't all encompass that which relates to ordinary biological diversity and on the other, that they rarely take into consideration the indirect effects of extracting natural resources. Although this may be an aspect that companies are devoting more attention to, it is done in a way that is too patchy or vague. Moreover, they often have a distorted perspective of the local dimension, which is reliant on laws and the capacity of civil society to express its concerns in this regard.

***Energy and greenhouse gases.*** Energy efficiency is one of the issues that is more comprehensively covered. Many examples are provided (maintenance, replacing facilities, etc.), all the figures are available, and objectives are stated. Although this is the overall situation, we have noted a slowdown in achievements, partly due to the fact that the majority of inexpensive undertakings have now been completed. There is a similar picture in regards to greenhouse gas emissions. It would be valuable to find a way to improve the transparency of documents: provide a more detailed analysis of the company's GHG emissions trajectory, be more proactive in highlighting renewable energy solutions, better integrate measures that apply to Scope 3 (indirect emissions), whether these relate to purchase of materials, components or services (like cloud) or whether they are generated by services or products sold or financed by the company.

# Country-by-Country Reporting: Fifty Shades of Transparency

LUCIE WATRINET, CCFD-TERRE SOLIDAIRE

In view of the latest string of corporate tax avoidance scandals, civil society has come up with a simple way to keep companies in check. Country-by-country reporting would oblige companies to divulge all the ins and outs of their financial and fiscal arrangements. Progress is being made but there is still stiff resistance to this move, despite the financial crisis and the reality of tax evasion.

**E**ach year France loses between 40 and 60 billion euros – the equivalent of France’s education budget – due to corporate tax avoidance: companies that strategically choose to store their profits in offshore tax havens. Such tactics also take hundreds of billions of euros away from developing countries, depriving them of vital resources that could be used to develop quality public services and help them fight poverty. While the countless scandals – Offshore leaks, the Panama Papers and Luxleaks, to name just a few – have served to illustrate the magnitude of the problem, the political response to this issue, despite grandiose declarations made in the heat of the moment, falls far short of what is required. And what’s worse is that policymakers are still reluctant to take simple steps that would make transparency obligatory for everyone, claiming that such measures would hinder competition, as revealed by the outcome of the heated debate on the French “Sapin II” law on transparency, anti-corruption and economic modernisation (see below).

NGOs fighting for tax justice have for years been advocating a simple transparency measure that would enable making concrete progress in curbing tax avoidance: corporations should have to disclose basic information on their business operations – their turnover, profits, number of employees and the taxes they pay in all countries where they operate, without exception – otherwise known as



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country-by-country reporting. This would allow the public to determine whether transnational corporations are paying their fair share of taxes and would have a dissuasive effect on any corporations engaging in tax avoidance. It would also draw positive attention to those corporations not involved in these abusive schemes. The current situation in France is that neither citizens, nor members of parliament, nor journalists have any way of knowing whether a company keeps its profits coming from France or from developing countries in tax havens. And yet not all business carried out in tax havens is necessarily reprehensible: a more transparent system would make it possible to distinguish a “genuine” and valid business activity from one that is artificial.

It should be also noted that far from harming the real economy in terms of the costs involved, as has been argued, country-by-country reporting would only rectify an imbalance that had previously weighed on small and medium enterprises. According to the European Commission, a multinational corporation pays on average 30% less tax than their domestic competitors. Only multinational corporations are able to use their innumerable subsidiaries located in different countries and call on legal and tax advisors to shift their profits to tax havens in order to pay less tax. SMEs create the most jobs and stimulate the most growth and yet they are subjected to unfair competition. In the globalised world we live in, corporate tax avoidance is just another way of dumping tax responsibilities on the shoulders of less mobile entities, such as SMEs and less affluent individuals.

The Tax Justice Network first came up with the idea of country-by-country reporting in the early 2000s. It saw country-by-country reporting as a way to force not only multinational corporations to be fiscally accountable but also

those countries and jurisdictions which, through lenient or opaque tax and legal systems, make such tax avoidance possible. It also challenges the laxness of tax administrations of countries that are “victims” of tax avoidance schemes. The idea has been gaining ground since, especially in the wake of the 2008 financial crisis and the string of tax avoidance scandals that have emerged in recent years.

### French banks – a case in point

French MPs were the first to introduce country-by-country reporting into the banking sector with the enactment of its 2013 law on the separation and regulation of banking activities. This then prompted the European Union to introduce these requirements for all European banks.

The NGOs CCFD-Terre Solidaire, Oxfam France and Secours Catholique, in collaboration with the Plateforme Paradis Fiscaux et Judiciaires (French coalition of tax justice organisations) analysed the figures in a report entitled *En quête de transparence, que font les banques françaises dans les paradis fiscaux ?* (“On the trail of transparency – what are French banks doing in tax havens?”), published in March 2016.<sup>1</sup> Their work reveals that there is a real difference in the business operations of banks in tax havens and those in other countries: while banks make a third of their global profits in tax havens, these only represent a quarter of their turnover, a fifth of their taxes paid and a sixth of their employees. The figures also revealed a number of anomalies: there are 34 cases where banks report having offshore subsidiaries with profits recorded – and yet zero employees. Another interesting case are subsidiaries with reported profits that are the same or more than the turnover, which reveals that their profits probably have nothing to do with their real economic activity.

Another lesson learned through this experience of country-by-country reporting was that transparency doesn’t represent an exorbitant cost or hamper competition between banks. This has been substantiated by an impact study conducted by PriceWaterhouseCoopers for the European Commission, which concluded that reporting costs were negligible and transparency would even have a positive impact on investor confidence and bank competition.<sup>2</sup>

### The transparency façade

Although progress has been made in the area of country-by-country reporting, too often restrictions are imposed that significantly limit its scope and effectiveness. Disclosing information to the public is essential in dissuading corporations

[1] <http://www.stopp paradisfiscaux.fr/que-font-les-etats/la-france/article/nouveau-rapport-en-quete-de>.

[2] PriceWaterhouseCoopers (2014), *General assessment of potential economic consequences of country-by-country reporting under CRDIV*, study for the European Commission DG Internal Market and Services (DG Markt), September 2014. Available at: <<http://www.pwc.com/gx/en/eu-institutions-services/pdf/pwc-cbcr-report-en.pdf>>.



from going down the route of tax avoidance, ensuring all tax administrations concerned are able to access information, and ensuring citizen oversight. Yet the G20 and OECD countries adopted a non-public country-by-country reporting requirement in November 2015 that concerns only corporations whose turnover exceeds 750 million euros, i.e., only 10-15% of multinational corporations.<sup>3</sup> However, at the same time the European Parliament voted to amend the Shareholders Rights Directive<sup>4</sup> to make country-by-country reporting public, and reiterated that it was in favour of public reporting on three other occasions in 2015.<sup>5</sup> European negotiations regarding the adoption of this directive are currently underway. Under a draft legislation that the European Commission put forward in April 2016, multinational corporations will only be required to publish information on a country-by-country basis for activities inside the EU and for countries on a yet-to-be-published list of tax havens. If multinational corporations only have to disclose information on their operations in selected countries, they can easily choose to shift their profits to other tax havens such as Switzerland or Delaware in the US, which are unlikely to turn up on the black list. In addition, this geographical radius excludes developing countries, which are the countries that are hit hardest by corporate tax avoidance. It also makes it impossible to have an overall picture of what corporations are doing and identify tax avoidance schemes.

For France, the challenge is to make country-by-country reporting obligatory not only for banks, but for all large companies. After the French president François Hollande publicly favoured extending this obligation to all multinational corporations, in December 2015, certain MPs pushed for parliament to make country-by-country reporting obligatory for all companies. Despite two MP votes in favour of this move and proposed amendments to the 2015 Finance Bill, the French government managed to overturn the vote halfway through the night, giving rise to a barrage of criticism on its real political will to end tax avoidance. This faux-pas was not easily forgotten, and the discussion was reignited at the

[3] OECD (2015), *Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*, page 4. Available at: <<http://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf>>.

[4] *Amendments adopted by the European Parliament on 8 July 2015 on the proposal for a directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement*, art 18b. Available at: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0257+0+DOC+XML+V0//FR>>.

[5] *European Parliament resolution of 8 July 2015 on tax avoidance and tax evasion as challenges for governance, social protection and development in developing countries, (2015/2058(INI))* point 7. Available at: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0265+0+DOC+XML+V0//FR>>.

*European Parliament resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect, (2015/2066(INI))* (paragraph 138). Available at:

<<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0408+0+DOC+XML+V0//FR>>.

*European Parliament resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union (2015/2010(INL))*. Available at: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0457+0+DOC+XML+V0//FR>>.

first reading of the “Sapin II” draft bill on transparency, anti-corruption and economic modernisation in May-June 2016.

Unfortunately, the “compromise” that was eventually adopted, which is unambitious and uninspired, falls far short of what is required to effectively fight tax avoidance. Limiting disclosure obligations to a minimum number of subsidiaries per country (the details and exact number to be determined by decree, i.e., by the government) constitutes a huge loophole. It basically makes the whole thing meaningless. Even if the threshold is set at two subsidiaries, this exemption would represent a massive escape clause. It only takes one subsidiary in a tax haven for a corporation to dodge taxes. And there are many corporations that only have one subsidiary in the majority of countries where they operate: a threshold of more than one subsidiary would mean that out of 98 countries where the French corporation Total operates, 37 countries would be exempt from reporting requirements. And the outlook is even worse if the threshold is any higher – if it is set at five subsidiaries for example, twelve countries out of the twenty where the French multinational Areva operates would be exempt from reporting. These loopholes would allow companies to hide their profits, which would make it impossible to uncover tax avoidance schemes.

Organisations fighting for tax justice have bemoaned this “reporting facade” and denounce the spinelessness of the government and most MPs. The fight goes on, both in France and in Europe. We need to take action now – not when the next scandal hits ...



## How big is BP? Using Open Data to map transnational corporations

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Can Open Data reveal how multinational corporations are organised and run? OpenOil attempts to do just this by mapping BP.

*Excerpts from: <https://blog.opencorporates.com/2014/09/03/how-complex-is-bp-1180-companies-across-84-jurisdictions-going-12-layers-deep/>*

At OpenOil we deal with an industry with a reputation for secrecy. So when OpenCorporates put the idea on the table that we should experiment with whether it was possible to create a systemic view of a global oil major entirely from public filings, it was both challenging and irresistible. We settled on taking a look at the British oil giant BP Plc as a test case.

It took a bit of time to get to grips with the quirks of company filings – what you can find there, what you can't, and how to get data into usable open formats – but by the end we had 1,180 affiliate companies for BP, registered in 84 jurisdictions around the world and in layers of ownership that run twelve layers deep.

We learned a number of things on the way.

The first is what we call the Socrates Principle – we know that we know almost nothing! We have a reasonable “Equity Map” – the shareholdings of BP Plc, the mother company, around the world. But what about the flow of money between all these companies, and into and out of the group network (BP turned over about \$350 billion in 2013)? And the relationship between the money and BP's extensive activities at all stages in the value chain, exploring for, producing, refining, trading and retailing oil products all over the world?

And yet even these exiguous structures throw up all manner of interesting questions. Why do all BP's Cayman Island incorporations seem to be concentrated on pipelines and the Caucasus? Does it use a Belgian affiliate to handle earnings from the Rumaila oil field in southern Iraq, and if so is that for reasons of tax efficiency? Did a tiny company owned by Price Waterhouse Cooper take over legal compliance functions for huge parts of its network in mid-2010 as part of a “Macondo shield”, to insulate BP executives from possible liabilities over the Gulf of Mexico spill?

The core data by itself cannot answer these questions. But the mere fact of being able to zoom in to individual structures, then zoom out again to the group as a whole, allows questions to form which might never otherwise occur. It is our hope that the data and the visualisation are the spur to others to pursue these and other questions and gain greater insight about the way the oil industry works.



PETER KIRKESKOV RASMUSSEN / CC BY-NC-SA 2.0

Which leads us to our second lesson – this map is not the end but the beginning of the quest. The map of company structures provides a skeleton from which to hang more information and deeper knowledge. For example, we have financial reporting for 150 of the BP subsidiaries going back a number of years. You need to be corporate accounting experts – and we are not – to detect trends in this data, and responses to real world events BP has faced, such as the incredible financial fall out from the Deepwater Horizon disaster, or current developments in and around Russia. But the open data principle means that if we collect and curate and post this data, maybe someone else can come in and start to make sense of it. (...)

[Third] is a principle we call “Click to Check”. Open data has one big advantage on closed systems – they can be clear about the provenance of the data – and we want to make it easy for users to be able to toggle easily between a visualisation layer and the source data that backs each atom of information in the network, each company “node”, each ownership “edge”. We have made a modest start to implementing that in the BP data. (...)

Finally we should say that there was no purpose in this project to single out BP as a company, nor did we expect to find, nor have we found, any smoking gun.

It is our belief that this degree of transparency, which provides system-level views, should be part of business as usual, that in fact it was part of business as usual in the pre-modern age, when the boundaries of corporate activity aligned much more with nation states, and the potential for public oversight. All we are seeking to do is to return to the balance in business between entrepreneurial freedom and public oversight that existed before global communications and instant capital flight tipped the scales.

Open data sets and visualisations of this kind are not anti-business. They are, in fact, good business, as is being increasingly recognised by policymakers all over the world.”



# European Union: is Transparency Enough to Restrain Lobbyists?

OLIVIER HOEDEMAN, CORPORATE EUROPE OBSERVATORY

After a decade of lobby scandals and debate on how to secure transparency and ethics, the European Commission needs to go beyond half measures.

**T**en years ago in summer 2005 a group of NGOs came together to form the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU). Back then, the EU's lobby transparency register did not exist and the secrecy around lobbying in Brussels was shocking. If you were to ask one of the many large lobby consultancy firms in the EU quarter for which multinational companies they were lobbying, they would simply refuse to answer, arguing they had promised their clients confidentiality and that they had no obligation to be transparent. Today most lobby consultancies are registered, and disclose at least some basic information about their clients and an indication of how much they spend on lobbying. Progress has been made, but genuine lobby transparency is still far from achieved, let alone adequate regulation to prevent conflicts of interest, undue influence and the capture of decision-making by narrow economic interests. The European Commission's typical pattern of reaction to the many lobbying scandals that have emerged over the last ten years has been first denial and dismissal of concerns, and then in some cases a half-hearted proposal for reforms that do not effectively solve the problems.

ALTER-EU was launched when Commissioner Siim Kallas took Brussels by surprise by proposing to set up a lobby register, an idea that instantly faced a heavy backlash both from corporate lobbyists and from within the Commission. Three years later a voluntary EU lobby register was launched, both a breakthrough and a serious disappointment. A breakthrough because lobbyists were, for the first time ever, expected to register and disclose for whom they lobby



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and how much they spend. A major disappointment because it was voluntary, which predictably resulted in low sign-up rates and limited, often unreliable, information. Subsequent reforms of the register were mere baby steps in the right direction. If you visit the register's website today you will still find that many large corporations, law firms and other key lobby players are missing and information is often wildly inaccurate, giving a misleading image of what is going on in EU lobbying. This sad situation reflects the lack-lustre approach and dearth of political will on this issue throughout the ten long years of Jose Manuel Barroso's Commission presidency. And 18 months into the mandate of Commission president Jean-Claude Juncker, it is increasingly clear that not much has changed since Barroso left office.

The same pattern has emerged in other key lobby regulation battles which the ALTER-EU coalition fought during its first ten years. In 2010, when a record number of ex-Commissioners from the first Barroso Commission went through the revolving door into industry lobbying jobs, the Commission first denied there was a problem. Only when the political controversy over the glaring conflicts of interest of ex-Commissioners like Günter Verheugen and Charlie McCreevy continued to intensify, did the Commission introduce limited changes to its Code of Conduct. Similarly, it was only at the European Parliament's insistence that a modest one-year cooling-off period was introduced before Commission officials could move into lobbying jobs. The many new controversial revolving door cases that have emerged since then have shown that the Commission's



revolving door rules remain inadequate and poorly implemented. The latest of many examples is Neelie Kroes, former Commissioner responsible for EU competition and digital sector regulations moving to controversial taxi app company Uber and other digital sector firms.

ALTER-EU has for years called for clear and binding rules to end the continuing dominance of lobbyists representing commercial interests in the Commission's many advisory groups (the so-called expert groups). This dominance can have devastating impacts. In the years before the financial crisis, the advisory groups that helped prepare EU banking regulation were captured by banking lobbyists, predictably resulting in the all too soft regulations that enabled the financial bubble that sparked the 2008 crisis. Still today, despite heavy pressure from the MEPs and the European Ombudsman, the Commission refuses to introduce clear and binding rules and we continue to see new examples of advisory groups teeming with corporate lobbyists eager to shape draft EU legislation.

The consistent refusal to take the kind of determined action needed to prevent corporate capture scandals reflects a flawed political culture in the Commission. Excessively close contacts and cooperation with big business lobbyists are considered natural and unproblematic, because large parts of the Commission see it as their mission to promote these interests. The EU's trade department, for instance, prepared a negotiation position in the TTIP talks with the US by actively seeking guidance from big business lobby groups, while other interests were largely ignored. The result: negotiations were launched towards a deal with the US including controversial investor-to-state courts (ISDS) and a regulatory harmonisation system that fits corporate interests but would have disastrous consequences for EU citizens.

Last summer, Jean-Claude Juncker made a surprise promise as part of his campaign to become Commission President. He said he would introduce a mandatory lobby register. This was the first time ever that a Commission President had made such a promise and it represented a u-turn on the previous Commission's voluntary approach. Already a few months later, however, it became clear that the Juncker Commission was shying away from introducing a legally binding lobby register, preferring a lighter approach that is unlikely to deliver genuine transparency. New rules were introduced in December 2014, blocking unregistered lobbyists from having meetings with Commissioners and just over 200 top Commission officials. All meetings that Commissioners and top officials have with lobbyists are to be listed online. While this was refreshing compared to the inertia of the Barroso years, these measures are too limited to fulfill the promise of mandatory lobby transparency. The ban on meeting unregistered lobbyists should clearly be extended to all levels of the Commission. Making all lobbyists sign up and disclose reliable information requires legislation, allowing for sanction and strict enforcement.

Another new measure announced by Juncker was less remarked-upon but potentially more important. In the new guidelines for the work of the Commission at the end of 2014, Juncker stated that the “Members of the Commission should seek to ensure an appropriate balance and representativeness in the stakeholders they meet”. Of the new measures, this is arguably the most far-reaching, with the potential to change the political culture, including in DG Trade and other Commission departments suffering from deeply rooted patterns of privileged access, if not regulatory capture. Unfortunately, it appears that Juncker has not made serious efforts to ensure that this new rule is implemented. Research by Transparency International and ALTER-EU last year revealed that more than 75% of the lobby meetings of Commissioners and high-level Commission officials are with lobbyists representing business interests. In areas such as financial regulation, the internal market and international trade policy, 80% or more of the meetings are with big business. This extreme imbalance in access to decision-making is devastating for public trust in the Commission. ALTER-EU has written to Juncker to remind him of this broken promise, insisting that he introduce “measures to ensure a more balanced representation of stakeholders in high-level Commission meetings, including limiting the number of meetings with big business lobbyists.” The Commission’s response did not question the findings but unconvincingly argued that there are – in addition to direct meetings – also other forms of consultation with stakeholders.

The implementation of Juncker’s promises were delegated to Vice-President Timmermans, the media-genic Dutchman who has cultivated an image as a common-sense, can-do politician bringing a breath of fresh air to the Brussels bubble and promising a break with the bureaucratic habits of the past. The reality so far, however, has been disappointing. Timmermans is clearly far more interested in that other Juncker Commission priority, the “Better Regulation” initiative, which is essentially a deregulation agenda that has been greeted with enthusiasm by Brussels’ corporate lobbyists. In debates about lobby transparency, Timmermans has disappointed with his repeated use of unconvincing old-school bureaucratic excuses for not broadening transparency measures. Disclosing a wider range of lobby meetings, Timmermans continues to argue, would violate personal data protection of officials and lobbyists. Hardly the kind of arguments that will make EU citizens feel the European Commission has changed its old ways. Clearly, there is a strong need for campaigning to make the Juncker Commission deliver on its promises. This is why ALTER-EU has launched a pan-European citizens campaign for Full lobby transparency now! with activities in Brussels and in the member states to promote a high-quality mandatory EU lobby transparency register (and similar registers on the national level).

After ten years of ALTER-EU battling for transparency, ethics, accountability and democracy in EU decision-making, some progress has been made in the form of new rules and procedures. These rules have proved to be inadequate and



the European Commission has yet to learn the key message: half measures do not work. This is why there is still no genuine transparency nor any meaningful protection against conflicts of interest and why the capture of decision-making by vested economic interests continues unchecked.

Change is desperately needed, at a time when public trust in EU institutions is reaching historic lows. The EU's prioritising of financial sector and multinational profit over the basic rights of citizens – the treatment of Greece being the most striking example – will only reduce trust levels further.

But public awareness about the dangers of corporate capture and support for ALTER-EU's demand for change has never been bigger. Ten years ago, campaigning to expose and challenge big business influence in Brussels was a significantly more lonely endeavour. Now, in the European Parliament, more than 180 MEPs are signed up to a pledge to “stand-up for citizens and democracy against the excessive lobbying influence of banks and big business”. Vibrant new citizens movements are emerging, such as Plan-B for Europe, which denounces the EU institutions for being “subservient to the corporations and financial firms that deploy armies of lobbyists” and calls for “a Democratic Rebellion in Europe”.<sup>1</sup> Also the Democracy in Europe Movement 2025 (DiEM25), launched by former Greek finance minister Yanis Varoufakis calls for radical democratic change, arguing that “the EU will be democratised or it will disintegrate”. It is movements like these that provide hope for, one day, achieving the meaningful change European citizens so badly need.

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[1] <http://planbeuropa.es/declaration-for-a-democratic-rebellion-in-europe/?lang=en>

## Behind all the Rhetoric, What is the Real Stance of Companies on Climate Issues?

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The aim of Influence Map is to assess the true stance multinational corporations and their advocacy groups have on climate issues and expose those taking an “obstructionist” position.

With the approach of the Paris Climate Conference (COP21), it felt like there was a wind of consensus among political and economic leaders. But behind the rhetoric, what is the true stance of corporations on the climate crisis and on the proposed policies to tackle it? Influence Map, a new British NGO, attempts to answer this question, by systematically assessing the public stance of multinational corporations and their lobbies on a range of climate-related issues and their role in political debate. In other words, what do corporations really have to say about official renewable energy targets, energy efficiency, the European carbon market reform and fracking?

Influence Map is a joint initiative of ethical investors such as ShareAction, researchers and the CDP (ex Carbon Disclosure Project), an organisation that assesses and discloses corporations’ greenhouse gas emissions. Its methodology, developed in collaboration with the Union of Concerned Scientists, an American NGO, does not only consider public statements made by directors or companies’ official communication documents but also factors in their real lobbying actions on concrete issues, through their own reporting or by way of investigative journalism. (The assessment process does not, however, take into account the actual business activity and its impact).

One of the main merits of the assessment process is that it not only takes the official position of the companies themselves into account but also considers the lobby groups these companies belong to and fund. It is not unusual that a company officially defends this or that policy on climate taxation or emission reduction targets while using the various lobby groups to which it belongs to furiously fight it behind the scenes.

It turns out that many companies are at odds with their official image. The results say it all: Total received a score of E+ (as did Bayer, Rio Tinto and Lukoil); Airbus and Sanofi received a D; EDF, the official sponsor of COP21, got a C-. The highest-ranking companies are Google, Unilever and Cisco, all of which received a B. The scores of most trade associations – which are less in the public limelight than the companies themselves – are even more dismal.



## Corporate Welfare: Crying Out for Transparency

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Billions of dollars are dished out to corporations in the form of direct or indirect public subsidies, but lack of transparency stands in the way of any real debate on how useful these subsidies really are.

Behind the ideological discourse that sings the praises of the private sector and the free market, the reality is that companies – and big corporations in particular – pocket millions of euros in direct and indirect subsidies from governments. Direct subsidies as well as other forms of financial assistance such as tax credits, various other exemptions, infrastructure investment, etc., all form an integral part of their commercial and financial model. Some of them even base their choice of location on whichever region will grant them the most advantageous conditions.

The 2008 financial and economic crisis has only made this trend even more pronounced, as reflected in France where the government, under the pretext of job creation, has increased tax credits and cut corporate “costs”. The “*pacte de responsabilité*”, the “*crédit impôt recherche*” (CIR) and the “*crédit impôt compétitivité emploi*” (CICE) are the most well-known and the most criticized, but represent only the tip of the iceberg of so-called job-creation subsidies. In addition to the various forms of direct and indirect tax credits being dished out to companies, there exist a number of other corporate subsidies in France, such as those in the field of scientific research. And this is on top of the subsidies paid out by local authorities. Given the lack of transparency, and the complex web of corporate subsidies, it’s impossible to currently calculate the exact amount that companies are pocketing, and even harder to assess the economic and social impacts of these pay-outs.

Yet given the amounts involved, assessing how effective subsidies are, and their appropriateness, seems a basic democratic requirement. There have been many reports of abuse, and these hand-outs generally involve sucking cash out of other areas of public spending. And their real benefits in terms of job creation are questionable. In France, there has been hefty criticism of certain tax loopholes and companies such as Sanofi, which continued to cut jobs as it pocketed tens of millions of euros in so-called job-creation subsidies, paying out huge dividends to its shareholders and assigning its directors exorbitant salaries.

Transparency of government subsidies (and government contracts) is a necessary complement to lobbying transparency: a significant percentage of companies effectively use lobbying in order to obtain markets, subsidies, or other advantages. The EU Transparency Register includes information on subsidies received from the Commission and contracts granted by European institutions.

## Situation in the USA

In the US, processes around awarding government subsidies are significantly more transparent than they are in France. The NGO Good Jobs First compiles and tracks all available information relating to government subsidies in its Subsidy Tracker database.

Good Jobs First bases its calculation on all forms of financial assistance that may be awarded to a business: direct subsidies, tax credits, exemptions and preferential rates. For example, in the State of New York, an aluminium smelting plant benefited from preferential electricity tariffs for ten years, enabling it to save hundreds of millions of dollars.

The Subsidy Tracker database began by compiling data on direct and indirect subsidies awarded by states, counties and municipalities. In 2015 it expanded the database to include federal subsidies, so that it now covers 137 federal programmes of the US government, representing 68 billion dollars in subsidies awarded between the year 2000 and 2015. This new data reveals for instance that the main beneficiaries of federal subsidies for scientific research are none other than... arms manufacturing companies.

## Astronomical subsidies awarded to TNCs, not SMEs

Generally speaking, the data compiled by Good Job First has confirmed that it is big companies and multinational corporations (both American and others) rather than SMEs that are the main recipients of corporate welfare, monopolising approximately three quarters of subsidies awarded by local governments between 2008 and 2014. The NGO's studies also suggest that parent companies hide behind a large number of subsidiaries in order to accrue an even greater number of subsidies.

This analysis has also revealed the degree to which corporate subsidies are ineffective socially and economically – if only in terms of job creation. It highlights the blatant discrepancy between the overall amount of subsidies awarded and the relatively insignificant number of jobs being created: based on the dozens of megadeals (giant subsidy packages awarded by local governments) Good Jobs First calculated that the average cost per job is 456,000 dollars in government subsidies!

It would be valuable if figures were available in France, which would enable us to get a better picture of corporate welfare there.



## Eco-labelling, Advertising and Greenwashing: Battling for the Right to Reliable Information

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Companies have a field day singing the praises of their products, sometimes going so far as to move into the realm of deliberate deception. What is the best way to fight disinformation?

There are two ways to make it hard for people to access relevant information – economic or otherwise. The first is to stifle or withhold it; the other way is to drown it in a mass of redundant, secondary and potentially misleading information.

Most of us already feel bombarded by an endless stream of often contradictory information, received via various channels – the media, politicians, organisations, commercial information, word of mouth ... Information overload makes it hard for anyone to form an informed opinion on controversial issues: Which arguments should we listen to? Can we trust the figures we're given, and are they relevant? And it's even harder when economic players deliberately distort information in order to mislead the public about the true state of the science on a particular issue and the consequences to be drawn from it. One has only to remember the tobacco industry's persistent attempts to hide the dangers of smoking, and the climate sceptics who are basically paid by the oil industry to deny the reality of climate change.

### Consumer information

A particularly crucial issue for businesses is providing information to consumers through labelling and product certification as well as through advertising. Consumers theoretically have the power to reject low-quality products, those that carry health risks, are harmful to the environment or violate human rights, and so push the entire economy towards being more responsible and more sustainable. But in order to do this, consumers need to be able to access the relevant information and be really in a position to choose. There are of course laws in this area that prevent certain abusive practices, such as labelling regulations and laws against false advertising.

But the reality is that too often it is “disinformation that reigns over the aisles”, as the French director of the NGO Foodwatch recently denounced. The NGO is focussed on tracking down double-dealing and dishonesty (by and large legal) in the food industry.<sup>1</sup> Foodwatch denounced products contaminated with hydro-

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[1] “Dans les rayons, c’est le règne de la désinformation”, *Terra Eco*, February 2016, <http://www.terraeco.net/Foodwatch-hydrocarbures-grande,64342.html>.



DUP PHOTOS / CC BY-NC-ND 2.0

carbons (from mineral oils in packaging), turkey fillets labelled “100% fillet” yet containing “16% water, gelling agents, colorants and other additives”, organic yoghurts containing non-organic flavouring, soups with an appetising piece of beef on the packet despite the fact they contain no more than 1% gravy. The list goes on . . . Foodwatch begins by targeting specific products and companies, but it ultimately seeks to change regulations.<sup>2</sup>

Companies, on the other hand, are regularly involved in furious lobbying activities to curtail or water down labelling requirements, whether these relate to GMOs, nanotechnology or processed food. Currently in France, agri-business lobbies are attempting to derail a project to put nutritional information on labels, on the pretext that such labels would “stigmatise” certain products (by clearly displaying that the excessive consumption of the product in question is unhealthy).<sup>3</sup>

## Trying to navigate the ocean of “sustainable” and “responsible” labels

Other than information on the actual product quality, another issue is that of how products are being produced and the environmental impact of these processes. There are an increasing number of consumers who want “sustainable” or “responsible” products that don’t violate workers’ rights or impact on biodiversity.

[2] See Foodwatch’s fifteen suggested labelling requirements: <http://www.foodwatch.org/fr/s-informer/topics/des-ruses-legales/en-savoir-plus/etiquetage-15-revendications>.

[3] “Comment le lobby agroalimentaire tente de saboter l’étiquetage nutritionnel”, <http://multinationales.org/Comment-le-lobby-agroalimentaire-tente-de-saboter-l-etiquetage-nutritionnel>.



In order to meet this demand without it eating into their profits, companies may be tempted to greenwash their products, making little or no attempt to actually change them at all. It is hard to see anything other than marketing in this tactic, adding to consumers' sense of bewilderment. At the same time, there has been an explosion of eco-labelling standards, brands, labels and schemes – “sustainable”, “green”, “ethical”, “responsible” – which represent very different realities, and which make it even harder for the consumer to know which to trust. Many of these “eco-labels” are owned by the companies themselves or groups in which they occupy a central role.

There have been several suggestions of how to address this situation, which include establishing several national or European standardised environmental indicators, which are clear and relevant, and which can be applied to all products. At the same time, there's a need to tidy up the massive amount of eco-labels that already exist (logos, labels and other so-called certifications). It would also be valuable to make a detailed inventory of labels out there, retaining only those that conform to a set of strict specifications and which are regularly verified by independent organisations.

And lastly, regulations on false advertising could be toughened up and their scope extended to address “ethical” marketing. In France, regulatory bodies such as the *Autorité de régulation professionnelle de la publicité* (French Professional Advertising Regulation Authority – ARPP) remain a self-regulatory organisation. There is room for an authority bestowed with higher powers and which include different stakeholders including NGOs. In the meantime, the actions of certain NGOs have already borne fruit. It was NGOs that were behind the ARPP's criticism of several advertisements aired by the French electricity company EDF during COP21, touting nuclear energy as “CO<sub>2</sub>-free energy.”<sup>4</sup> Several associations have also filed complaints against companies such as Auchan or Samsung for “misleading marketing practices”, denouncing the discrepancy between their ethical messages (present in their sustainable development reports and their codes of conduct) and the reality of their social and environmental practices. None of these complaints have yet yielded any results.<sup>5</sup>

[4] “Le nucléaire, une énergie ‘sans CO<sub>2</sub>’ ? Les intox d'EDF”, November 2015, [http://multinationales.org/Le-nucleaire-une-energie-sans-CO<sub>2</sub>-Les-intox-d-EDF](http://multinationales.org/Le-nucleaire-une-energie-sans-CO2-Les-intox-d-EDF).

[5] <http://multinationales.org/Rana-Plaza-ouverture-d-une-enquete> and <http://multinationales.org/Travail-des-enfants-le-grand-ecart>.



# ON THE INSIDE



# Companies, Information, and the Public Interest: Can Unions and Civil Society Join Forces?

OLIVIER PETITJEAN, MULTINATIONALS OBSERVATORY

Employees and their unions have varying degrees of information and consultation rights, enabling them to defend their own interests as well as broader public interest issues. But when it comes to teaming up with activists and NGOs, things are not always straightforward.

**N**o discussion on the role of information in tackling corporate power would be complete without going into the role of trade unions. And this is relevant both in regards to defending victims of transnational corporations and in regards to public interest issues. In certain contexts, unions are legally entitled to specific information. They also act as intermediaries, passing on claims made by NGOs to companies, or the other way around – they sound the alarm on unacceptable practices, or seek external support in defending their own working conditions.

Yet unions hold a very particular position within companies. As employee representatives, they, on the one hand, are invested in the company's success and may choose to defend its "private" interests over public interests – or they may refuse even to discuss their employer's dubious practices. On the other hand, they themselves may be victims of some of these practices, in regards to employment, wages, outsourcing, or health and safety in the workplace. This might mean that they team up with external stakeholders (for example, with residents dealing with pollution issues). Overall, most trade unions also defend broader societal issues, which go beyond their own immediate interests and, if necessary, will challenge their own employers' interests. They may go down this road if they disagree with the company's political and economic policies or an increasingly



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financial approach to the company's management. They might also be prompted to do this when confronted with privatisation and outsourcing, and choose to promote alternative economic strategies.

Basically, depending on circumstances and their political outlook, trade unions can as much represent the companies' private interests as they do the specific interests of employees and/or the public interest – or at least broader societal interests – within companies. The particular position of trade unions explains why there is gap – and at times even a conflict – between the information needs and the information being produced by trade unions on companies on the one hand, and the information needs and the information being produced by civil society (especially NGOs) on these same companies.

### **Employees' right to information**

The right of workers to information, consultation and participation varies by country. In France, the works council (*comité d'entreprise*) is consulted and may make comments on a company's official documents before it is passed on to shareholders. Work councils have robust rights when it comes to information and consultation, which have grown in importance over the years. The role of works council's information has become so central that it would be impossible to disagree with the French labour law specialist Antoine Lyon-Caen's statement that "in France, apart from strike action, it is almost entirely through the information of works councils that staff representatives and employees are able to gain leverage on their employers. If we look at the ways in which workers or staff representatives work to impede or change restructuring measures, it



always takes the form of a criticism of the information provided by employers, a criticism of an employer's narrative about the company".<sup>1</sup> This has not always been the case. Although employees' "right to information" via works councils was enacted in 1945, it was not until the sixties and seventies that this right was really enforced, and the Auroux laws (1982) were even more decisive in this respect.

Another important right of works councils (as well as committees on health safety and working conditions) is their right to expert second opinions, which is crucial in ensuring they not only have access to comprehensive information but also can utilise it effectively. They are entitled to consult accountants or experts on working conditions at the company's expense, which means they can utilise, scrutinise and if necessary challenge the information provided by their employers. These experts are able to draw on wide-ranging information: they even have access to confidential information in order to produce their own reports (which are not confidential).

Generally, civil society doesn't have access to this wealth of information given to employees. The "*bilan social*" (report on employment and working conditions) that French companies have to draw up every year and present to trade unions and employee representatives is often not made public. Neither employers nor the unions themselves apparently see any value in making this information public, even though there is theoretically nothing standing in their way, especially when civil society may be interested in a company's stance on social issues.

### What about information at international level?

Information and consultation rights of unions tend to wane beyond the national context. Trade unions of the same multinational corporation in different countries don't always have access to comprehensive information on the company's operations in every country the company is active in. This means they lack the information necessary to assess their company's business strategy or compare working conditions, especially when subcontractors, suppliers, joint ventures or subsidiaries with a minority interest are involved.

Unions have developed tools to deal with the new reality of multinational companies. These include global framework agreements (which sometimes include ad-hoc steering committees),<sup>2</sup> and European or Global works councils, which encompass a limited level of information and consultation rights, although less comprehensive than those provided by French law. International standards on

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[1] Jean-Luc Metzger, Antoine Lyon-Caen, Henri-José Legrand, Pierre Habbard and Michel Capron, "Informer les salariés ou leur permettre de repenser la gestion ?", *La nouvelle revue du travail* [on-line], 7 | 2015, published 31 October 2015, viewed 30 June 2016. URL: <http://nrt.revues.org/2375>.

[2] Global framework agreements are international labour agreements signed between a multinational corporation and one or more global union federations, establishing a certain number of rights for all employees of a company and on-going social dialogue at international level.

multinational corporations such as the OECD Guiding Principles on Business and Human Rights also mention communicating and sharing information with employees, but without any specific mechanism ensuring this actually happens.

The level of information provided to unions at international level varies for each multinational corporation, but it generally falls far short of what is needed. Nevertheless, international works councils or global framework agreements generally prioritise unionisation and respecting union rights in all countries where the multinational is present, as well as granting international unions free access to all company sites across the planet. It could be said that these priorities do indeed favour the circulation of information about what goes on in these companies.

European and global works councils don't provide for any "right to expert second opinions" either as they do in France. They generally don't have their own independent budgets. The European and global federations of public service trade unions are one of the very few federations to commission research into the sectors in which they are present and on the multinational corporations operating in these sectors, through the Public Services International Research Unit (see box).

Information provided on an international level is also, by definition, extremely general. It should include separate detailed information on every country. It would be valuable to have international "social reports" on employment and working conditions modelled on the French "*bilan social*". Country-by-country reporting (see the article on this topic) is another common demand of both NGOs and unions, which would enable the latter to gain deeper insight into their companies' strategies and financial reality.

### What information are we talking about?

Another issue is the nature of the "information" that employees are receiving from their employers. This "information" can't be considered to be totally neutral, because it may be patchy or insincere, and also because it locks employees into a certain way of thinking. Giving employees a list of figures conveys a financial logic, which although may be the logic of the executives or shareholders, eclipses other issues and alternative strategies for the company, for its employees, and, above all, for society as a whole. This is also why certain trade unions were for a long time highly suspicious of information provided by employers.<sup>3</sup> Being able to seek independent expert opinions, something that became possible in the seventies, and even more so in the eighties, has only partly resolved these

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[3] Michel Capron, "Les représentants des salariés confrontés à l'information économique et sociale d'entreprise : 'Je t'aime, moi non plus'." , *Économies et sociétés*, Série "Entreprise et finance", KF, n°3, 8/2013, p. 1225-1237.



concerns, in that although employees are now entitled to get “second opinions” on information provided by their employers, it is still the employers that frame the information they see in the first place.

Another shortcoming is related to the type of information that employers are required to provide. For a long time this was limited to financial and social information related to the company’s financial health and employee conditions. And then along came “Corporate Social Responsibility” (CSR) and companies were also expected to provide “extra-financial” information – otherwise known as environmental, social and governance (ESG) information – intended primarily for shareholders and then for employees and society as a whole. Trade unions have access to extra-financial information (sustainable development reports) just as they do to financial information (annual reports). But the extremely formal and abstract nature of this information, along with the fact that these reports are intended primarily for financial/extra-financial analysts, makes it difficult for unions to actually access or use this information. Just as they were slow to seize opportunities opened by the 1945 French law on works councils and their right to information, trade unions are only slowly making use of extra-financial information. This information is also consolidated at group level, making it harder for trade unions (and NGOs and other external stakeholders) to use it.

## Collaborations

Among the issues taken up by civil society and NGOs to keep corporations in check, some are more likely to lead to alliances with unions than others. When it comes to contesting mining or energy projects, or building new infrastructures, trade unions tend to be on the opposite side to environmentalists and residents (although there are exceptions<sup>4</sup>), because their primary concern is job creation. Yet for anything that concerns outsourcing or working conditions in corporate supply chains, trade unions and defenders of human rights often see eye to eye, as illustrated by a number of collaborations, particularly in the garment industry.

After the Rana Plaza disaster, employees’ right to information and citizen-led campaigns merged in a way that had not been seen before. Union representatives of the French retail giants Carrefour and Auchan questioned their employers at works council meetings about their responsibility (as indirect as it may have been) for the disaster, and asked what their contribution would be in compensating the victims. Unions were also involved in complaints filed in France by NGOs denouncing violations of workers’ rights in third countries (Vinci in Qatar) or the misleading ethical marketing ploys of Samsung and Auchan.

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[4] These include the position taken by CGT Vinci against plans to build an airport in Notre-Dame-des-Landes in France, and the collaboration between the global union federation IndustriALL and NGOs fighting against Rio Tinto. They joined forces and published an “alternative annual report” on the environmental impacts and the social practices of the mining corporation. See <http://multinationales.org/Une-journee-d-action> and <http://multinationales.org/Kemal-Ozkan-Les-accords-cadres-mondiaux-sont-un-outil-important-pour-les>.



Another area where unions and civil society tend to join forces is that of privatisation, particularly when it comes to water. Both national and international unions, NGOs and local groups have teamed up and worked together to successfully oppose the privatisation of water and other services, and to encourage their “remunicipalisation”. They have not however yet had the same degree of success in other sectors.

Another area of mutual interest but which is much more contentious is climate change and the energy transition. Under the banner of a “just transition”, there are trade unionists that recognise that over the long-term fossil fuels need to be phased out, but they ask that this transition be not at the expense of workers in the energy sector. Their requests are focussed on ensuring that companies draw up transparent transition plans in consultation with unions, which will ensure employees have a secure future. From this perspective, unions have often supported environmental organisations and ethical investors in their pleas that oil, energy and mining corporations pay more attention to the “carbon risk” of their operations. The French company EDF and its plans for a new nuclear power plant at Hinkley Point in Britain have also been the subject of much heated debate, with French unions publicly requesting that the project be at least delayed for several years – something that has never been seen before. Although these developments may only represent the faint outline of a different way of challenging corporate strategies, involving unions and civil society joining forces, hopefully this heralds the beginning of a new trend.



# The Public Services International Research Unit

PSIRU was set up in 1998 to carry out empirical research into privatisation, public services, and globalisation. It is based in the Business School, University of Greenwich, UK. PSIRU's research is based on the maintenance of an extensive database of information on the economic, political, financial, social and technical experience with privatisations of public services worldwide. The core work is funded by Public Services International (PSI), the global confederation of public service trade unions.

The principal focus of PSIRU's work is on water, energy, waste management and healthcare, but it also addresses the general questions of the role and structure of public services, both in the EU and in developing countries; the role of multinational companies in globalisation; and the role of the international financial institutions, especially the World Bank. The work of the PSIRU touches on a number of issues, including: corruption, public enterprise, multinationals' labour relations policies, public-private partnerships, political and economic effects of long-term private financing or PFI, pension funds and corporate governance, use of internet and databases for sharing information internationally, social network analysis.

The core work of the PSIRU centres around the following functions:

- Maintaining a database on multinational companies involved in privatisation of public sector activities. This includes monitoring of takeover and merger activities, financial and political developments, and developments in the sectors, covering issues such as concentration of ownership, performance, pricing, financing, employment, political relations, and corruption.
- Producing and publishing commissioned and other reports, based on the empirical data collected by PSIRU. These include surveys of developments by region and/or sector, i.e., water in Latin America or Africa, venture capital in healthcare worldwide, electricity regulation in the UK, energy privatisation in central and eastern Europe, corruption and procurement, EU policy initiatives on public services, critiques of World Bank policies, patterns of ownership in a sector, reports on specific companies such as Enron. PSIRU is involved in long-term research projects such as the three-year Europe-wide research project, Watertime, examining the decision-making in water systems, funded by the European Commission. Other research projects are commissioned by various bodies including the ILO, UNRISD, The Work Foundation, European Federation of Public Service Unions (EPSU), NGOs (eg War on Want, Intermediate Technology Development Group, Action Aid), or individual trade unions, e.g., in Italy, Austria, Canada. PSIRU has collaborated on research reports with a range of NGOs and other social organisations, such as the twin reports on water remunicipalisation worldwide: *Here to stay. Water remunicipalisation as a global trend* (2014) and *Our public water future. The global experience with remunicipalisation* (2015).

In addition to PSIRU's own reports on our website, which are widely read, PSIRU staff publish papers in academic and other journals, for example, on energy policy, healthcare, corruption, water privatisation, privatisation and democracy.

# Working Conditions and Workers' Rights: Social Dialogue on the Line in France

IVAN DU ROY, BASTAMAG

The Committee on Health, Safety and Working Conditions plays an important counter-power role in French companies, which can be inconvenient for employers. With the support of the French government, they are now seeking to limit the powers of these committees.

**I**n France, it is not only journalists and bloggers whose freedom of expression is under threat. The twenty-four million employees working in corporations are also being confronted with this reality, their freedom to discuss working conditions within their companies currently in jeopardy. Several measures adopted (or planned) by the French government are likely to drastically restrict their collective expression, facilitated by way of employee representatives.

The most harmful is probably the potential axing of the Committee on Health, Safety and Working Conditions (*comité d'hygiène, de sécurité et des conditions de travail*) (CHSCT).<sup>1</sup> This body, which was created by the Auroux laws, named after the socialist labour minister Jean Auroux, in 1982, and then reinforced by another labour minister, Martine Aubry, in 1991, includes representatives of both employers and employees, occupational physicians and labour inspectors. It plays a crucial role in the healthcare of workers in a context where the corporate workplace is riddled with hazards – whether it be the asbestos scandal, the escalation in musculoskeletal disorders or psychosocial hazards – and where corporate management is still largely indifferent to the health of their employees.

If the new working conditions that an employer wants to set are likely to have adverse effects on the health of their employees, the CHSCT makes it possible for these

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[1] In early 2015 the Medef (French network of businesses) and the French government proposed integrating the CHSCT into works councils, and restricting them to large companies, but the idea was dropped.



ZEEV BARKAN / CC BY 2.0

employees and their representatives to intervene and analyse the issues at hand, and potentially challenge the employer's proposals. The CHSCT is an invaluable channel in a context where the workplace is getting increasingly stressful and psychosocial hazards are becoming commonplace. It has played an instrumental role in preventing projects that would have had a detrimental effect on employee health, and, ultimately, on the company. One of the most symbolic examples is the 2008 "Sneema case". The aircraft subsidiary of the Safran group wished to undertake restructuring in its plant in the town of Gennevilliers (1400 employees), which would have involved cutting the number of employees working daytime hours and required its employees to work more nights and weekends, resulting in risks associated with isolated work. Drawing on expert assessments commissioned by the CHSCT, the French union CGT (General Workers' Confederation) filed a complaint, and the restructuring was suspended.

### **A counter-power ruffling a few feathers**

In September 2012, a French court prohibited the directors of the bank Caisse d'épargne in the Rhône region from "benchmarking" the performance of its employees and its agencies. Following a complaint made by the union Sud, which were again based on assessments made by the CHSCT, the court deemed the managerial assessment technique to "undermine the dignity of employees by deprecating them on an on-going basis in order to encourage constant competition between employees", resulting in an "increase in psychological and mental disorders". Three months later, the directors of the French retail chain Fnac were also pulled into line, and were forced to cancel restructuring plans that involved job cuts and reorganisation measures. After several expert assessments were made by CHSCTs throughout France, the court judged that the directors had underestimated "the workload and resources required, particularly in terms of staff numbers", a situation which would be "stressful" and "could compromise the health and safety of the employees concerned."

And yet it is not as if there is any ambiguity regarding the employer's obligations: "The employer is responsible for ensuring the safety of his/her employees as well as their physical and mental health," stipulates the French Labour Law. The CHSCT is authorised under case law to challenge restructuring plans, evaluation methods and lay-offs in accordance with this provision. "The CHSCT has become a real counter-power in the company, which employers have to deal with," says François Desriaux, editor of the French journal *Santé & Travail*. "It also plays a very dynamic activist role. It has become a channel for new union members looking for assistance in defending a noble cause that, in principle, is unrelated to political differences." The result is that "it has become unbearable for some employers," remarks Daniel Sanchis from the consulting firm Degest.

### Compensating for information asymmetry

"Since the end of World War II, French law has provided that employee representative bodies may seek help from experts on technical and specialised issues so that elected representatives and employees' committees are able to have a clear picture of the situation and make informed decisions," says Sanchis. Works councils employ accountants in order to decipher financial statements. Similarly, in the instance of a reorganisation within the workplace or a hazard that could impact the health of employees, CHSCTs can request an expert assessment from an authorised firm in order to analyse the situation and the repercussions on the company's employees. It represents an indispensable tool that can compensate for information asymmetry between employee representatives and company directors – who can always resort to large consulting firms and a battery of tax specialists and lawyers ...

These expert assessments are often deemed too expensive for the employer. For a small SME, a twenty-day expert assessment can cost up to 30,000 euros. For a big corporation, the cost of the assessments required can be 100 times this. But this amount is still marginal compared to the company's other expenses. In 2012, the expert assessments carried out by the CHSCT of the SNCF (France's state-owned railway company) cost a total of four million dollars – an amount that is not as exorbitant as it sounds when we learn that the company spent more than 140 million euros on external communication contracts.<sup>2</sup> "The challenge for an ergonomics expert is to find a way to avoid waste," remarks Daniel Sanchis. "Absenteeism due to illness, work-related ailments and occupational cancers costs an enormous amount. SNCF's restructuring projects will only create more health problems for employees, and who is going to pay? Social security because companies are not liable for these costs!"

"It's a mistake to think that we are going to win the economic battle by gambling on the cost of labour," remarks François Desriaux. "We need to be creative and inventive in our approach, and draw on the collective intelligence of employees. This requires more flexibility, more cooperation, more discussion, and thus more democracy and social dialogue. This is not where we are currently heading."

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[2] According to the European Court of Auditors, 2011 figure.



# “It pays for companies to be transparent with both employees and NGOs.”

## INTERVIEW WITH BERNARD SAINCY

Bernard Saincy founded the French social consulting firm “Innovation Sociale Conseil” and is a specialist in corporate social responsibility. He has held several managerial positions within the French union CGT, where he was in charge of environmental issues, and later became the director of corporate social responsibility for the French corporation GDF Suez. In this interview he discusses the role of information in regards to companies, their employees and civil society.

**EDF and GDF, France’s public electric and gas companies, created in 1946, have had a reputation for being companies in which employees and unions have historically had a strong voice, and were involved in management decisions – more so than private firms. How true is this?**

“Involved in management decisions,” is a bit strong. There has historically been a good level of consultation of employees and trade unions both in the companies’ central and local branches. But it could not really be called co-management: employee representatives and trade unions have been called upon for consultation purposes only. But it is true that compared to private companies, EDF and GDF executives have traditionally been more generous in sharing information with their employees.

**How does it benefit a company to keep employees informed?**

If workers are not informed, it’s hard for them to understand how the company works or have a sense of its economic and financial situation. Private firms don’t often spontaneously provide their employees or unions with a lot of information, forcing them to seek it out themselves, which can prove to be very difficult. They may come across problems that had been intentionally hidden by



their executives, but sometimes they fall into the opposite trap, overestimating the importance of an issue because their executives hadn't felt it necessary to tell them about it. The result is that companies end up with a scandal on their back because they failed to give people enough information to enable them to make up their own minds. I think in the end it pays for companies to be as transparent as possible with their employees.

**Does the same go for public information, information intended for civil society?**

It's a bit different because unions and employees are in a position where there might be very specific information that concerns them directly, particularly regarding staff conditions, human resources, and safety issues. In the case of EDF and what was formerly GDF, however, we are also talking about potentially hazardous industrial plants, so it's essential that locals are also informed.

The two companies are particular in that they have always had a very strong union culture, and they still do today despite a downward trend. Overall, unions have an excellent hold on the situation of the company at all levels. They have members in all branches of the company sharing information. They also have a degree of freedom that allows them to publicly raise delicate questions. It can be dangerous when there is no transparency around what is going on in hazardous industrial plants and employees are silenced and don't dare report problems. It becomes not only dangerous for them but dangerous for everyone else. There's a strong link between freedom of expression within a company and safety.

Although the history and strong union culture that made EDF and GDF stand out in the past is no longer what it used to be, there's still no comparison between what goes on in these companies and what goes on in other firms.

**In the case of EDF and GDF, are employees only interested in these two main issues: the company's situation and human resources, and safety? Or have they also expressed interest in issues that concern French society as a whole, particularly those to do with the environment, energy and technology choices?**

They have – particularly in regards to the French nuclear programme. In the 1960 and 1970s, the majority of employees agreed on the proposal to develop a nuclear programme, seeing it as an opportunity to ensure national independence, but there was extensive debate about the path to take, whether to choose gas-cooled reactors or pressurised water reactors. Interest in ecological issues – often linked to safety issues – didn't come until later with the massive environmental disasters that occurred in the seventies and eighties, and has gradually gained importance over the years.



**What has been the concrete manifestation of this in companies like EDF and GDF?**

Employees and unions have brought up the role of renewable energy. Trade unions have shifted from a 100% nuclear stance to demanding a nuclear/renewable energy mix.

**There are currently questions floating about the future of big energy companies such as EDF and Engie (ex GDF Suez). Have employees expressed a renewed interest in being involved in these companies' business strategies? There has been, for example, heated debate over the Hinkley Point nuclear project in Britain, even within EDF itself.**

Employees are concerned about the outlook of the companies they are working for as well as the technological choices these companies are making, not only because they are issues that concern everyone, but because the implications on them and on their living and working conditions are very real. It makes sense that they want to take part in these discussions. The Hinkley Point project is an extremely serious issue for EDF – is this the way of the future or is it a risk that should not be taken? Everyone in the company has put in their two cents worth.

**Does the management enter into discussion with its employees?**

To some degree. EDF and Engie respect the labour law, particularly when it comes to informing and consulting their employees . . . which can't be said for all companies. But it is still a far cry from co-management. Ultimately, it is the management that calls the shots, not to mention the shareholders . . .

**What has been the role of the French state in these companies, and how has it changed?**

After the liberalisation of energy markets and the semi-privatisation of EDF and GDF, the French state now owns 84% and 33% of these companies respectively. It used to be ubiquitous: the government commissioner sat on the EDF central works council and made all the decisions. It was a bit like the SNCF (France's state-owned rail company) is now: the state gave free rein to how the company was managed when things were going well but they took over as soon as there was a problem, and made all the important decisions. But the state no longer plays such a role in EDF and Engie. It is still present but primarily as a shareholder. There are still occasionally crucial decisions where it calls the shots, such as that concerning the Hinkley Point project.

**Both EDF and GDF were initially public companies whose horizons stopped at the French border. They then changed tack and acquired companies from all over the world, becoming global multinationals. What is the stance of unions in this regard? How have they adapted to this new reality?**

Initially, the unions of EDF and GDF fought against their companies moving into the international arena, arguing that it was not their role. But gradually they

were forced to change their position, agreeing to certain foreign investments provided they were not speculative and that they brought something to the company. There is now a relatively sophisticated level of coordination between the companies' different unions around the world thanks to modern methods of communication, physical meetings and international federations and confederations. There are also international mechanisms such as European Works Councils and Global Framework Agreements and their steering committees.

**Are employees in EDF/GDF's international committees kept informed and consulted to the same degree as they are in France?**

EDF and Engie provide information to international unions through Works Councils or the Global Framework Agreements, but this information is inevitably more general and less detailed than that provided at national level. In any case, it is very hard for these companies to hide things due to the way in which trade unions share information. NGOs also provide unions with a lot of information.

**Are unions interested in information provided by NGOs, particularly those working on environmental issues? Do they use this information?**

Each stakeholder has something to contribute. The Grenelle Environment Forum, held in 2007 in France, was a turning point. NGOs and unions group worked harmoniously together, helped by the fact that the nuclear issue was kept out of the discussion. Since then, there have been an increasing number of partnerships between trade union confederations and NGOs, which opens up avenues that unions may be less familiar with, such as biodiversity. However, things don't run quite so smoothly when NGOs want to touch on issues that concern the actual work of employees, which in the case of EDF and Engie, are energy issues. This of course shouldn't stand in the way of discussion: an outside perspective can also be useful to trade unions: when they are locked into one-on-one discussions with executives it can restrict their outlook on certain subjects.

It should be said that although unions and NGOs are continuing to work together, there was a period where they were less involved, which began in 2009 with the economic crisis, prompting unions to refocus on social issues. Unions became reinvested in environmental issues with COP21, which marked a turning point.

**Are there also examples of three-party institutionalised dialogue between unions, NGOs/environmental NGOs and directors?**

As far as CSR is concerned, many companies work in liaison with both NGOs and with trade unions . . . but not necessarily with both at the same time. Some companies hold "stakeholder meetings" with NGOs and unions, as we did at GDF on energy poverty. But usually executives prefer bilateral dialogue.



**You were Engie’s director of corporate social responsibility. From the viewpoint of corporate management, is it useful to have external information, particularly from NGOs? Is genuinely open and constructive dialogue possible?**

What is certain is that we could be doing a much better job than we currently are. It’s important for a company to think ahead. Most of the time companies only enter into dialogue with NGOs when there is a problem, after a scandal. If there has been no previous dialogue with these stakeholders, it can be very difficult to bring them on board. All major projects and schemes need to be discussed beforehand, and as early as possible in the process. The company is obviously not going to put all its cards on the table, but in order to create a climate of trust, there needs to be as much transparency as possible. I think things are moving in this direction, because it’s a very basic notion – prevention is better than the cure. There will of course always be aspects of NGO arguments that seem unreasonable or over the top, but most of the time there are many points that are perfectly valid, some of which they may not have taken into account. Dialogue should be ultimately seen as a positive thing. For companies, it’s the safest path to take.

*Interview by Olivier Petitjean*



# COUNTERPOWERS



# A Swiss Perspective on Injustice

GÉRALDINE VIRET, PUBLIC EYE

For fifty years, the Swiss organisation Public Eye, formerly known as the Berne Declaration, has been fighting for equitable development and demanding human rights be respected worldwide. Its focus: to disclose, denounce and offer solutions.

**A**sk any member of Public Eye, formerly known as the Berne Declaration,<sup>1</sup> why they have remained loyal to this organisation for so long, and the replies are all variations of the same thing: they all mention the Swiss organisation's steadfastness and diligence as well as its pertinent approach, which is based on the belief that in order to create a fairer world, it's important to start in your own country by challenging irresponsible practices and the fundamental systemic problems that encroach upon the underprivileged people of the world. For nearly fifty years, Public Eye/the Berne Declaration has been casting a critical eye on the impacts of Swiss policies and companies on poor countries. Through advocacy, campaigning and investigative work, it fights against injustices caused by the Swiss system, demanding that human rights be respected and justice be brought to all.

The financial sector, agrochemicals, the pharmaceutical industry, food, commodity trading – these are just a few of the problematic economic sectors in which Switzerland plays a leading role and which highlight the excesses of extreme globalisation. Public Eye is set on looking at what others would prefer was kept in the dark, publicly denouncing the wrongdoings that impact on the poor communities of the world, and coming up with concrete measures to address these issues. We are not only acting on behalf of our 25,000 members; we are also working hand in hand with them, because we believe in the power of collective action and the change that each individual is capable of bringing about. It's for this reason that we attach great importance to the job of providing information

[1] Members of the Berne Declaration approved this name change at the General Assembly held in Berne on 21 May 2016. See [www.publiceye.ch](http://www.publiceye.ch) for more information.



ADAM JONES / CC BY-SA 2.0

and raising awareness, as it is often necessary to “understand in order to take action”. We work both within Switzerland as well as with international networks and in collaboration with unions and other NGOs.

### **A declaration striving for economic justice**

From its inception as the Berne Declaration in 1968 to its renaming in 2016, our organisation has gone through a lot of changes, becoming more professional over the years while remaining true to the vision and values of its founders. But how was this NGO, so distinctive in the Swiss landscape, created? In the 1960s, the main Swiss organisations active in development issues were closely aligned with the church. The work they were doing reflected their philosophy; to fight poverty by implementing projects in the Global South intended to foster the kind of economic development that industrialised countries had experienced a century earlier. Influenced by liberation theology, however, a progressive fringe group working in this field saw this path as a dead end. For those that shared this view, like the Geneva-based vicar André Bieler, any development of the Global South required, first and foremost, doing away with their dependence on former colonial powers or on countries, which, like Switzerland, had industrialised alongside those powers. Rather than attempting to alleviate the effects of poverty in poor countries, these deeply humanist theologians and intellectuals decided to address the cause. They wanted to “take action right here”, in the lion’s den that was then called postcolonial imperialism, so as to create the political conditions needed to “fight hunger and poverty and defend human rights and dignity.”<sup>2</sup> In

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[2] Quoted from the original Berne Declaration, published in March 1968.



1968, a working group drafted the Berne Declaration, putting down on paper what this movement in the making was striving to achieve.

The declaration intended to raise awareness and prompt changes in Switzerland's official policies. It requested that the Federal Council allocate the equivalent of 3% of its gross domestic product (GDP) to development aid – the same percentage that the Confederation had put towards its military budget, contested by those who “wanted to support life, not death”. Other than this direct financial support, the initial founders and signatories of the Berne Declaration appealed to the Swiss government to implement the “political changes needed” to ensure fairer relations between Switzerland and so-called developing countries.

### **A brazen approach that caught on**

Nearly 10,000 people signed the Berne Declaration, giving rise to a movement whose institutionalisation gave birth to Switzerland's leading independent NGO. In the seventies, the movement was known for its hard-hitting action: the hunger strike and sit-in at the Federal Palace during a Switzerland-Third World Conference, the “Nestlé Kills Babies” campaign, which denounced the outrageous way in which the food giant was promoting infant formula in African countries, the introduction and promotion of Tanzanian (Ujamaa) fair trade coffee, and “jute bag action” aimed at supporting a responsible economy in Bangladesh. These actions, which fused positive solutions with a spirit of protest, fuelled Swiss political debate in the late seventies to a degree that went beyond the hopes of even those driving the movement. A new form of action had been created – bold, brazen and assertive – and it was being successfully wielded to change development policy.

### **Blowing the whistle on bank secrecy**

In their declaration, the founders of the Berne Declaration stressed the need for Switzerland to “give up certain privileges” and appealed to policy-makers to take the bull by the horns and implement a vision of the world that would bring justice to all. In 1977, in the wake of the Chiasso scandal,<sup>3</sup> the Berne Declaration launched a popular initiative that boldly confronted Switzerland's then-sacrosanct bank secrecy in order to fight social inequality, corruption and tax evasion in countries of the Global South. In 1984, a resounding defeat at the polls put an end to the popular initiative. It was effectively rejected by three quarters of voters following an aggressive campaign carried out by banks and the Swiss government against the “Marxisation” of the Swiss economy. Despite this failure,

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[3] In April 1977, a major scandal broke out at the Chiasso branch of Credit Suisse, which revealed the extent of the bank's dubious operations, which basically consisted of money laundering in order to escape Italian tax authorities. The directors of the Zurich bank, who had been aware for years of the underhanded operations going on in its establishment, refused to put a stop to it, instead choosing to tacitly encourage it.

the initiative at least succeeded in putting the issue of banking secrecy and its bloodsucking impact on poor countries on the federal agenda. But it went no further than this for three decades. In the late nineties, the Berne Declaration fought to bring another dream to life: that of an automatic exchange of tax information – an idea that even the most supportive politicians then considered unattainable, for both their generation and that of their children. It took the 2007-2008 financial crisis to put the brakes on neoliberal madness and switch to a healthier paradigm. Now the dream has become the international benchmark, which even Swiss banks have had to adapt to. Although there is still a long way to go to ensure the poor actually benefit from this progress, time has proved the Berne Declaration right, as well as all those that predicted tax evasion would eventually become a top global issue. We believe that other causes we are fighting for today will also eventually achieve similar breakthroughs.

### Fighting the resource curse

“In a few decades, we will view the plundering of natural resources as we view colonisation or slavery,” predicts Green MEP Eva Joly in a documentary denouncing the social and environmental repercussions of a copper mine in Zambia shamelessly exploited by the Swiss giant Glencore.<sup>4</sup> We share this view and will do everything we can to denounce the resource curse that has fallen upon countries with an abundance of natural resources, imprisoning them in a poverty that is as extreme as it is paradoxical. In 2011 we published *Swiss Trading SA*,<sup>5</sup> the first book ever on the Swiss commodities sector, which highlights the role Switzerland has played in this scandal at a time when few journalists were interested – or had time to be interested – in this issue.

The figures are staggering: in an unprecedented report published in 2014,<sup>6</sup> we revealed the extraordinary amount of natural resources purchased by Swiss traders from the top ten exporting countries in sub-Saharan Africa. Between 2011 and 2013, firms in Geneva and Zug spent at least 55 billion dollars on oil, i.e., the equivalent of 12% of these countries’ revenues – among the poorest in the world – over the same period. These shady transactions take place behind the scenes, in contexts characterised by weak governance and rampant corruption. By revealing the major role Switzerland plays in commodity trading, as well as pointing out the inherent problems of this difficult area, we have succeeded in putting this issue on Switzerland’s media and political agenda.

[4] Alice Odier and Audrey Galley, *A qui profite le cuivre*, France, 2011. The documentary was awarded the Albert Londres Prize in 2012, the most prestigious French journalism award.

[5] Berne Declaration, *Swiss Trading SA. La Suisse, le négoce et la malédiction des matières premières*, Lausanne, En Bas, 2011, 2<sup>nd</sup> ed., 2012.

[6] Study carried out by BD, Swissaid and Natural Resource Governance Institute: “Big Spenders: Swiss Trading Companies, African Oil, and the Risks of Opacity”, 2014.



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### The need for visionary solutions

Due to lack of transparency around commodity trading, it can be tedious work trying to get to the bottom of what's really going on. And even more tedious trying to convince the political world to establish tougher laws, despite the reputational risk Switzerland is currently running on the international stage. It requires a visionary approach. It requires putting forward bold, concrete solutions – even if they are unlikely to come to light in a context still characterised by a belief in corporate-controlled voluntary initiatives and self-regulation. In 2014, we set up a fictitious authority – the Swiss commodity market supervisory authority (RHOMA), and went as far as to sketch out its history and governing laws.<sup>7</sup> The secretary general of STSA, the Swiss commodity trading umbrella organisation called it a “nice marketing gag, intended to generate a bit of buzz”,<sup>8</sup> choosing to see it as a subtle attempt to lure in funds (we are almost entirely funded by our members) rather than an attempt to break away from a system for which millions of human beings pay the price every day.

### Disclose, denounce and offer solutions

We are currently facing a crisis in the mainstream media: foreign correspondents are few and far between. Although investigative journalism is still respected, more often than not it is confronted with the reality of inadequate funding and the army of lawyers and “communicators” that companies build up around themselves so as to keep their business secrets under wraps. In such a context,

[7] Inspired by FINMA, the Swiss Financial Market Supervisory Authority, ROHMA has a comprehensive web site: [www.rohma.ch](http://www.rohma.ch).

[8] Stéphane Graber, cited in *La Liberté*, 2 September 2014.

sinking your teeth into an issue like a “dog with its bone” has become a luxury that only NGOs can afford. Or is it? In April 2016, the International Consortium of Investigative Journalists (ICIJ) shed light on the shady practices of offshore finance, highlighting in particular the complicit role that Swiss banks and corporate lawyers play by creating infrastructures for offshore tax evasion and by hiding dubious business practices, particularly in the commodities sector, as well as covering up money laundering. The 2.6-terabyte trove of information that came to be known as the Panama Papers provided serious ammunition power and served to illustrate the importance of our message: there is still a long way to go before Switzerland puts an end to the atavistic and predatory practices that have given it its unfortunate reputation over the last forty years.<sup>9</sup>

Public Eye is not a madhouse – far from it – it constitutes a point of reference for all kinds of experts and journalists in search of social justice and equity. This description of the organisation that I have worked for over ten years fills me with pride and enthusiasm. But this doesn’t mean that I have a distorted sense of its importance – at the end of the day the Berne Declaration or Public Eye, this “small” Swiss NGO – is just a tiny grain of sand in the generously-oiled cogs of a machine creating limitless, endless injustice. Yet we need this grain of sand, as we do so many others, to imagine and create a fairer world.

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[9] Switzerland is second only to Hong Kong in the number of active intermediaries working with Mossack Fonseca.



# SOMO, a Resource Centre on Transnational Corporations in the Netherlands

## SOMO

Established in 1973 in the Netherlands, SOMO is a unique research centre on multinational corporations that aims to serve civil society. It plays a key role in a number of international networks.

**I**n the early 1970s, large groups of Dutch people declared themselves in solidarity with the reform politics of the Chilean President Allende. The process of democratising the Chilean economy was threatened by the manipulations of multinational – mainly American – corporations with interests in Chile. The violent overthrow of the Allende government in 1973 elicited mass fury against “the multinationals”. Several “Third World” organisations and sympathisers then decided to establish a research organisation to monitor the activities and interests of these multinationals. This led, in 1973, to the establishment of Stichting Onderzoek Multinationale Ondernemingen (SOMO): the Centre for Research on Multinational Corporations.

SOMO is fully independent and is not part of a government, corporation or other social organisation. By carrying out research targeted at change and strengthening cooperation, it wants to give social organisations worldwide, and in particular in developing countries, the opportunity to promote sustainable alternatives and to offer a counterweight to the damaging strategies and practices of multinational corporations. Knowledge is a powerful driver of change. To achieve lasting change, knowledge should be integrated in all kinds of actions, from awareness-raising to case support of complaints. This is the work of SOMO: to integrate knowledge with action with regard to multinational corporations.

SOMO presumes that in order to affect positive social change, it must employ four interrelated strategies.

1. Provide civil society with access to reliable alternative information;
2. Strengthen networks between like-minded organisations to create a broad societal base;
3. Build the capacity of civil society organisations to conduct critical research and integrate the resulting knowledge with action and
4. Engage relevant target groups with prospects for action:
  - governmental policy makers
  - corporate board members and managers
  - other stakeholders, such as consumers, employers, shareholders, media and education.

SOMO focuses with its global activities primarily on the support of organisations in civil society which have comparable objectives to SOMO – while maintaining its unique role as a research centre on multinational corporations and its focus on research that contributes to the evidence base necessary for change. These include the following organisations: trade unions, development organisations, environmental organisations, campaigning organisations, human rights organisations, consumer organisations, organisations for sustainable investors, gender organisations and international networks focusing on corporate accountability, socio-economic change, fair trade and fair tax systems.

## Research

SOMO's own research has been so far organised into six programmes,<sup>1</sup> which are targeted at achieving sustainable change and strengthening cooperation.

- **SOMO's Food and Land programme** promotes respect for labour rights, community rights, and the right to food, drawing connections between the food system's various stakeholders, including workers, farmers, food corporations, and supermarkets. For instance, in 2015, SOMO exposed social ills associated with sugar in its report *Bittersweet*. The report describes the negative environmental and socio-economic consequences of sugar cane production, featuring a case study on the Malawian sugar industry, and its sole producer, Illovo Sugar (Malawi) Limited, a subsidiary of UK-headquartered Associated British Foods. SOMO exposed violations of labour rights, human rights, and community rights linked to sugar production, including occupational safety and health hazards, precarious employment, union busting, and land-grabbing. SOMO's work on the sugar supply chain is part of an on-going effort to address unfair trading practices of European supermarkets and sub-standard working conditions in

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[1] With its new strategic plan, SOMO's programme structure will be slightly adjusted, bringing together under one umbrella our programmes on Energy and Extractives and Multinationals in Conflict-Affected Areas, along with our work on land, into a programme on Democratic Control of Natural Resources. Other programmes will be renamed to better reflect their aim: Human Rights and Grievance Mechanism will become Rights, Remedy, and Accountability, while Production and Consumption will become Sustainable Supply Chains. Our work on food will be integrated into this latter programme.



retail supply chains. SOMO's Food and Land programme has also long played an important watchdog role, monitoring and exposing the disappointing truth behind the sustainability certification scheme Rainforest Alliance.

- **SOMO's Economic Justice programme** aims to fundamentally change the economic system so that it serves the public interest and facilitates equitable distribution of resources. In case studies and other research, SOMO illustrates how the current economic system is rigged to ensure private gains while socialising losses. SOMO exposes the negative impacts of mechanisms and frameworks – taxation, trade, investment, and finance – that undergird the system.

Last year, SOMO made important new contributions to its growing body of research on the role of the Netherlands in facilitating international tax avoidance, and the effect of corporate tax avoidance on economies and societies. In April, SOMO published the report *Fool's Gold* which showed how Canadian mining company Eldorado Gold is destroying the Greek environment while dodging taxes through the use of a complex web of Dutch and Barbados mailbox companies. As part of SOMO's commitment to open data, the methodology and data used for *Fool's Gold* were published on SOMO's website. As hoped, it has already been put to use by another organisation – based in Ireland – that is working on tax avoidance. In another report, *Tax-free Profits*, SOMO showed how mailbox companies shape the geography of foreign direct investments (FDI), with relatively small economies like the Netherlands seemingly leading the way. In reality, much of this investment simply flows through the country via mailbox companies of large corporations which push the tax burden onto workers and smaller companies, and deprive countries of much-needed revenue.

SOMO also played a key role in intensifying the debate around international investment and investment protection, including the investor-state dispute settlement (ISDS) mechanism, which enables foreign investors to bring investment claims against states for public interest measures that may affect profits. Along with members of the Fair, Green, and Global Alliance, SOMO published a report in January highlighting the Netherlands' role in the problem. *Socialising Losses, Privatising Gains* showed how more than 10% of all known investment treaty claims are filed using Dutch Bilateral Investment Treaties (BITs), the vast majority brought by mailbox companies with no substantial operations in the Netherlands. In a significant victory, the Dutch Minister of Foreign Trade and Development publicly expressed her agreement with key concerns raised in the report and committed to taking measures to stop mailbox companies from abusing Dutch investment agreements. The government announced a review of all Dutch bilateral investment treaties with developing countries.

The report was just one piece of a broad collaborative effort to inform the public and policymakers about ISDS, especially in relation to its proposed inclusion in



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the Transatlantic Trade and Investment Partnership (TTIP). Throughout the year, SOMO participated in numerous actions, public debates, and lectures around both ISDS and TTIP. Similarly, SOMO provided the Dutch parliament a briefing on the little known Trade in Services Agreement (TiSA) – currently being negotiated between the EU and 22 other World Trade Organisation members – which aims to liberalise trade and investments across almost all service sectors.

- **SOMO's Human Rights & Grievance Mechanisms Programme** works to improve access to remedy for people who experience adverse impacts resulting from business activities. SOMO devotes particular attention to non-judicial grievance mechanisms – a key element of the UN Guiding Principles on Business and Human Rights (UNGPs – as a potential avenue for remedy. Working closely with Fair, Green and Global Alliance partner Both ENDS, in 2015 SOMO supported representatives of the Ngäbe-Bugle people, an indigenous group in Panama, in a complaint regarding the Barro Blanco dam, the construction and operation of which would flood Ngäbe-Bugle land. The complaint, filed by the Panamanian organisation Movimiento 10 de Abril (M10) and the Cacica General of the Ngäbe-Bugle, was the first to make use of the new joint grievance mechanism of the Dutch and German Development Banks (FMO and DEG respectively), which have helped finance the dam. In April, the mechanism's independent panel issued its report, concluding that the banks had violated their own policies, failing to adequately assess the risks to indigenous rights and the environment before approving the loan.

- **SOMO's Natural Resources Programme** analyses the impacts, business structures, and supply chains of extractives agricultural companies. Apart from looking at individual companies, their investors and clients, the programme also



uses a systems approach, which analyses the business interactions between the minerals, energy, and finance sectors and investigates how the interests of large players maintain an unsustainable energy system.

The programme also looks into supply chains and human rights impacts of renewable energy producers, such as hydrodams. Land grab and community consultation are important themes in the Natural Resources programme. A major pillar of the programme form our activities on multinational corporations in conflict-affected areas, raising awareness of the role and responsibilities of companies operating in the context of conflicts, pushing them to act responsibly and in a conflict-sensitive way. Working with local partners, SOMO aims to build the knowledge and capacity of communities in areas affected by conflict to claim and defend their rights, and to monitor companies and hold them to account. In 2015, for instance, SOMO worked extensively with three partners in the Democratic Republic of Congo on issues related to mining and extractives in the country.

- Many common products – from mobile phones to computers to t-shirts – are made under inhumane and dangerous conditions without regard to labour rights or environmental standards. SOMO's **Production and Consumption Programme** works closely with organisations and partners to ensure that companies are held accountable for the conditions and impacts of their supply chains. SOMO advocates for improved regulation, practices, and policies that advance respect for the rights of workers and communities involved in production processes.

## Networks

SOMO participates in a number of coalitions and networks. For some networks it plays a coordinating role, in others it is a member of the steering committee. SOMO hosts three (inter)national NGO networks: the Dutch MVO Platform, OECD Watch and GoodElectronics. SOMO's goal is to strengthen cooperation between NGOs in order to influence the social, environmental, human rights and economic impact of multinationals and their contribution to sustainability and poverty eradication. Knowledge developed by members of the networks can easily be shared with other members and common strategies are developed to influence policymakers, corporations and other stakeholders.

\* **MVO Platform** is a coalition of 30 Dutch organisations that share a common interest in promoting corporate accountability. Hosted by SOMO, MVO Platform includes a wide range of organisations, from labour unions to human rights groups to environmental and consumer organisations.

\* **OECD Watch** is a global network with more than 100 member organisations in 50 countries, that share a common goal of improving corporate accountability. OECD Watch focuses on the OECD Guidelines for Multinational Enterprises,

tracking and evaluating their effectiveness as a corporate accountability tool within a broader effort to strengthen international regulatory frameworks for corporate conduct. OECD Watch is a key source of information for civil society on the OECD Guidelines and its mechanism for resolving conflicts involving alleged corporate misconduct.

\* **GoodElectronics** is an international network of some 90 organisations, unions, activists, researchers, and academics who share an interest in improved protection and respect for human rights and the environment in the global electronics industry. GoodElectronics calls on companies and governments to take action to improve the electronics production cycle, from the mining of minerals used in electronics products to the manufacturing process to the recycling and disposal of electronics waste.

In 2015, SOMO was also a member the European Coalition for Corporate Justice (ECCJ) and of the Tax Justice Network.

## Services and Knowledge Centre

SOMO also provides services to other social organisations. Independent, reliable research on corporations – information and analysis about their practices and policies, structures and investors, financial flows and tax payments – is essential for civil society in its efforts to improve corporate conduct. SOMO's corporate research specialists provide external clients with the facts and analytical information they need to make informed and strategic decisions about dialogues, campaigns, or partnerships involving companies. The corporate research team also provides technical research assistance to other SOMO programmes, making use of corporate databases such as Bloomberg, Reuters Eikon, Orbis and LexisNexis to gather and analyse data, and to develop new research methodologies.

## Looking ahead

In SOMO's 2015 Annual Report, Managing director Ronald Gijsbertsen reflects on SOMO's achievements over the past years:

*“We have made enormous strides in recent years in making the case that multinational corporations have a responsibility to respect human rights wherever they operate, both in their own operations and in those to which they are linked through business relationships. This principle, once so vigorously contested, has now gained widespread acceptance.*

*“But it is up to us to ensure that this important change in thinking is accompanied by enforcement power and real change in practice. Going forward, SOMO will intensify its focus on the need to complete corporate self-regulation – which we*



have decisively shown to be ineffective – with laws and legally binding agreements that include strong sanctions. We made that point very clearly last year in our innovative report *From moral responsibility to legal liability?*, which details Zara’s resistance to Brazil’s efforts to stamp out modern day slavery in its supply chain. We also responded to a promising new opportunity at the international level, making an important intervention at the first meeting of the UN Human Rights Council’s new working group on transnational corporations. We are pleased to be part of a diverse coalition of civil society groups and movements around the globe pushing for a strong, legally binding treaty that would impose international human rights obligations on multinational corporations.

“Another welcome change can be seen in the area of trade and international development. For many years, SOMO has shown how policies on trade profoundly impact development goals like poverty alleviation and environmental sustainability. Five years ago, SOMO and its partners in the Fair, Green, and Global Alliance were virtually alone in the Netherlands in calling attention to trade’s impact on development and pushing for better coherence of trade policy with development policy. Now there is a large and growing recognition in the Netherlands, and in other donor countries, that trade and development are inextricably linked: the two issues now fall under one Ministry in the Dutch government. Another example: five years ago the problem of investor-state dispute settlement (ISDS) in trade agreements was virtually unknown. Now it is the subject of vigorous debate in both policy and public arenas.

“These cases demonstrate a key lesson we have learned over the years: change is never linear, nor constant. It is a complex process that requires equal parts patience and agility, a vision for both short-term shifts and long-term impact, and an array of different strategies. Awareness of this complexity informs our commitment to building strong, heterogeneous civil society networks and to providing external services to civil society groups and public institutions with diverse approaches.

“It also informs the different strategies, stakeholders, and decision-makers addressed in our own programmes. For example, citizens and governments take centre stage in our programme on Economic Justice, focused to support mobilisation to counter dynamics that lead to private gains and public losses. Workers and multinational corporations at the top of supply chains feature most prominently in our programme on Production and Consumption, which addresses labour rights issues by applying a multiple pressure point strategy that involves consumers, sectoral initiatives, investors and management. In our Human Rights and Grievance Mechanism programme, we engage with affected local communities on the one hand and high-level policymakers at the United Nations, the Organisation for Economic Co-operation and Development, and development banks on the other. SOMO’s added value is the ability to link the different levels of influence, from the local grassroots level to the global institutional level. Similarly, some of our

*work – like our briefing on the European Commission’s Capital Markets Union Action Plan or our research on the financialisation of Apple – is intended to plant seeds of awareness raising from which change will grow. Other work, like the collaboration with Senegalese partner Lumière Synergie pour le Développement to support communities that have been adversely affected by the construction of a coal-fired power plant – is intended to secure material change, as swiftly as possible, for people suffering from corporate human rights abuses.*

*SOMO’s programmes use diverse strategies and approaches, yet they all reinforce each other to help strengthen civil society to claim their rights, challenge the unsustainable strategies and practices of multinational corporations, and promote sustainable alternatives.”*



This article is based on excerpts from SOMO’s 2015 annual report and other SOMO documents.



# Business and Human Rights: The Failure of Self- Regulation

ERIKA GONZÁLEZ, JUAN HERNÁNDEZ ZUBIZARRETA (OMAL)  
AND MÓNICA VARGAS (TNI), GLOBAL CAMPAIGN TO DISMANTLE  
CORPORATE POWER AND END IMPUNITY

The “Global Campaign to Dismantle Corporate Power and Stop Impunity” is an initiative of social movements and communities from all over the world affected negatively by corporations. It seeks to denounce the “architecture of impunity” that benefits corporations, and is fighting for a binding international treaty which would give human rights precedence over trade regulations. Another project is that of a “Peoples’ Centre”, which would document corporate abuse and offer alternatives.

“Self-regulation does not work. We need binding regulations. Now.” That was the message of Alfred de Zayas, the United Nations (UN) Independent Expert for the promotion of a democratic and equitable international order. He was addressing the Catalan Parliament as part of a day dedicated to “Transnational Corporations and Human Rights: the road to binding regulations”, referring to the obligation that corporations have to respect human rights wherever they operate. Surprising as it may seem, given that human rights are now universally recognised, there is a total void in effective protection at international level. This article will explain what this lack of protection means, and how a global process of mobilisation can change this situation by putting forward real alternatives.

One of the principal characteristics of capitalist globalisation is the clearly asymmetrical relationship between transnational corporations and the people. Thus an unequal relationship has been created between corporations, whose interests are reflected in public policy, and the rest of the population, who see their rights being subordinated to the power of the major multinationals. This is the new *lex*

*mercatoria*; the interests of the transnational corporations are very effectively safeguarded through contracts, trade regulations and multilateral, regional and bilateral investment agreements and by the decisions of international arbitration tribunals, such as the World Bank's International Centre for the Settlement of Investment Disputes (ICSID). And yet no mechanisms exist to protect the rights of peoples or of Nature.

At a global level, the United Nations Conference on Trade and Development has identified more than 3,400 free trade agreements and treaties to protect investments, which involve *binding legal frameworks*.<sup>1</sup> In Europe, this issue gained prominence in the media during the controversial negotiation with the United States on the "Transatlantic Trade and Investment Partnership" (TTIP), and the "Comprehensive Economic Trade Agreement" (CETA) between the EU and Canada. These highlighted the erosion of democracy inherent in a secret negotiation process. Criticism also focussed on specific aspects of the treaties such as regulatory cooperation promoting downward harmonisation of wages and social and environmental standards or the arbitration mechanisms between investors and states, whereby transnational corporations can sue states if they consider their interests are being undermined.

These are very real issues for the majority of countries in Latin America, Africa and Asia, under pressure from the United States and European Union to sign similar treaties. But such agreements would undermine regional dynamics that could potentially strengthen the economies of poorer countries. This was what happened to the Andean Community, which split after signing bilateral treaties with the USA and the EU. And yet it is difficult for these countries to say no to such agreements, as illustrated by the ultimatum the EU recently gave to a number of African countries, requesting they sign the Economic Partnership Agreements (EPAs) and approve their provisional entry into force (pending ratification by their parliaments). If countries refuse, they risk an unsustainable increase in customs duties on European imports, which will have immediate and negative consequences for those countries that have specialized in the export of raw materials.<sup>2</sup>

We will not go into the profoundly contentious and anti-democratic nature of the trade and investments regime, as there is already extensive literature available on the subject.<sup>3</sup> What interests us here is to highlight the contrast between the binding regulations that protect the interests of investors, and the fragile legal framework represented by international human rights law, which is incapable of "resisting" the power of the *lex mercatoria*. This discrepancy is even more

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[1] See: <http://investmentpolicyhub.unctad.org/IIA>.

[2] See for example: <http://aitec.reseau-ipam.org/spip.php?article1554>.

[3] The site <http://bilaterals.org/> monitors all bilateral and multilateral trade agreements and treaties across the world.



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striking when one considers that voluntary standards or “codes of conduct” are the way in which multinationals are being requested to respect human rights. In addition to the fact that this essentially results in a privatisation of justice, through the existence of arbitral tribunals that overrule national legislation or international law, this asymmetry is also evident in the obstacles faced by communities and individuals attempting to assert their rights. That is where there is an inherent and systemic violation of human rights and the rights of peoples and the environment in the operations of transnational corporations. A real “Architecture of Impunity” is established,<sup>4</sup> and the dispossession and appropriation of the commons goes on.<sup>5</sup> Unfortunately, there are countless examples of impunity and many lives have been lost due to “accidents” caused by the unbridled quest for cost-cutting and by repressing the voices of the people: Bhopal in India, Rana Plaza in Bangladesh, the destruction of the Niger Delta by oil companies like Shell, the environmental disaster caused by Chevron-Texaco in the Ecuadorian Amazon and by Vale in Brazil, the Marikana massacre in South Africa ... the list goes on.

However, resistance to this situation has remained strong. It began firmly rooted in the local but has increasingly taken on a regional and international dimension. The Global Campaign to Dismantle Corporate Power and End Impunity,<sup>6</sup> comprises 200 organisations and social movements in Africa, Asia, Europe and the Americas. One of its main precursors is the Bi-regional Enlazando Alternativas

[4] Zubizarreta, Juan H. (2015). “The New Global Corporate Law”, *State of Power*, 2015. <https://www.tni.org/en/briefing/new-global-corporate-law>.

[5] See: George, S. (2015). *Los usurpadores. Cómo las empresas transnacionales toman el poder*. Barcelona, Editorial Icària.

[6] See: <http://www.stopcorporateimpunity.org>.

Network between Europe, Latin America and the Caribbean.<sup>7</sup> Among the different actions undertaken by the network, it is worth highlighting the Permanent People's Tribunal, a descendent of the Russell Tribunal. The Tribunal has enabled communities affected by European transnational corporations in Latin America to have their voices heard and denounce violations in coordination with European civil society organizations. The sessions and hearings in Vienna (2006),<sup>8</sup> Lima (2008),<sup>9</sup> Madrid (2010),<sup>10</sup> and Geneva (2014)<sup>11</sup> exposed the wrongdoings of a whole host of European corporations from a number of different sectors. Companies such as Repsol, BP, Shell, HSBC, Glencore, Suez (today Engie), Rabobank, BBVA, Unilever, Telefónica, Andritz, Benetton, Unión Fenosa-Gaz Natural, Iberdrola, Veolia, Thyssen Krupp, Syngenta, Bayer, Endesa, Louis Dreyfus, Nestlé, and others, were repeatedly singled out, condemned for systematically violating human rights. Further analysis also led the Tribunal to denounce lobbying within European institutions and governments, which actively defend the interests of private European corporations.

The Enlazando Alternativas Network, comprising various organisations and networks, decided to form a global movement to curb the impacts and impunity of multinationals. That is how the Global Campaign to Dismantle Corporate Power and End Impunity came about. Launched in 2012 with the aim of compiling peoples' experiences and complaints, and creating spaces for resistance and alternatives, the intention was to extend the network beyond Latin America and Europe to the rest of the world.

As well as focussing on popular mobilisation and solidarity, the Global Campaign also developed the International Peoples' Treaty on the Control of Transnational Corporations,<sup>12</sup> as a political instrument that lays the foundations for an alternative vision of the law and justice "from below". It also aims to provide a context where communities and social movements can join forces and reclaim the public space, hitherto occupied by corporate powers. It thus has two dimensions: a legal aspect and a section focussed on alternatives. This latter includes a number of relevant experiences, demands and practices that seek to reclaim democracy and re-establish the importance of the public interest, rebuild sovereignties and defend collective rights, and demonstrate that alternative economies can and do exist.

In regards to the legal dimension, the main objective of this initiative is to subordinate the juridical-political architecture that sustains the power of transnational

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[7] See: <http://enlazandoalternativas.org>.

[8] See: <http://www.enlazandoalternativas.org/spip.php?rubrique49>.

[9] See: <http://www.enlazandoalternativas.org/spip.php?rubrique50>.

[10] See: <http://enlazandoalternativas.org/spip.php?article983>.

[11] See: <http://www.stopcorporateimpunity.org/declaration-hearing-of-the-permanent-peoples-tribunal-geneva-june-23rd-2014>.

[12] See: <http://www.stopcorporateimpunity.org/wp-content/uploads/2015/02/PeoplesTreaty-ES-dec2014-1.pdf>.



corporations to human rights norms and rules. The Peoples' Treaty focuses on two main strategies.

The first of these strategies is being put into practice within the UN Human Rights Council, aiming to reclaim the multilateral space that has been taken over by transnational corporations. By asserting that international human rights law is hierarchically superior to national and international trade and investment norms, the campaign aims to establish binding regulations that force transnational corporations to respect human rights. Since the 1970s, monitoring transnational corporations has been a problematic issue for the United Nations. There has been a number of unsuccessful attempts at establishing mechanisms that would force corporations to respect human rights,<sup>13</sup> the most recent being that carried out by the Working Group created by the Sub-commission for the Promotion and Protection of Human Rights – the United Nations Norms on the Responsibilities of Transnational Corporations and other Business Enterprises, approved by the Sub-commission in 2003.<sup>14</sup> The corporate world's reaction was to produce a document, signed by the International Chamber of Commerce and the International Organisation of Employers, stating that the Subcommittee's project undermined both human rights and the rights and the legitimate interests of private business. It also stated that human rights obligations were the responsibility of states, not of the private sector, and it called on the United Nations Commission on Human Rights to reject the project approved by the Subcommittee. The Commission abandoned the project in 2005. Voluntary standards were set up instead, requiring companies to self-regulate: the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011.

What is most striking about the Guiding Principles is that they comprise no legal obligation whatsoever, thus leaving the regime of impunity totally intact. In light of this, a declaration was made at the United Nations in 2013, initiated by Ecuador and backed by the African Group, the Arab Countries Group, Pakistan, Kyrgyzstan, Sri Lanka, Bolivia, Cuba, Nicaragua, Venezuela and Peru, which proposed binding regulations. In 2014, thanks to pressure from these governments and civil society, solidly aligned through the Global Campaign and the Alliance for the Treaty,<sup>15</sup> the Human Rights Council took a historic step, adopting Resolution 26/9<sup>16</sup> which established an open-ended Intergovernmental Working Group, whose mandate consisted of the creation of a legally binding instrument for the regulation of transnational corporations and other businesses in international law and human rights.

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[13] See the work of the Europe-Third World Centre (CETIM), which has comprehensively monitored these processes (<http://cetim.ch/>).

[14] See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/164/25/PDF/G0316425.pdf?OpenElement>.

[15] See: <http://www.treatymovement.com/>.

[16] See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/55/PDF/G1408255.pdf?OpenElement>.

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# The Permanent Peoples' Tribunal (PPT), an International "Opinion Tribunal"

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Over the last few years the PPT has become increasingly focussed on the abusive practices of transnational corporations all over the world.

The Permanent Peoples' Tribunal is basically a meeting where respected representatives of civil society come together in a court setting and, referring to international law, legally denounce offences they deem reprehensible. Jury members give testimonies before a panel of judges who manage and mediate the "trial". The rulings have no binding effect but arguments are based on the legislation in force and are passed on to authorities. The PPT is a descendant of the Russell Tribunal (founded in 1966 by Jean-Paul Sartre and Bertrand Russell), which indicted the US government for war crimes in Vietnam.

## 1 ) What is the Permanent Peoples' Tribunal?

The Permanent Peoples' Tribunal was set up in 1979 by the Lelio Basso Foundation. Lelio Basso became particularly concerned by impunity in Latin America in 1986. Along with other organisations, his foundation played an instrumental role getting this issue addressed by international law. Through the tribunal, he questioned the legal basis of programmes run by the World Bank and the International Monetary Fund, and scrutinised the terrible Bhopal gas disaster at a Union Carbide (now Dow Chemical) plant in India. **Over recent years the PPT has become increasingly focussed on transnational corporations and their role in human rights violations.** In collaboration with the International League for the Rights and Liberation of Peoples, they have worked over the last six years primarily on this issue, exploring international law for avenues that would enable reining in corporate power.

The six-year bi-regional session (Latin America, Caribbean / Europe) on TNCs and free trade agreements ended with the April 2010 cycle, and now other issues are being explored such as the situation in Palestine and Burma, and environmental issues in general. (There have also been other PPT sessions on multinationals and human rights, such as that held in Mexico in 2012, on Canadian mining companies [2014] and sessions in Asia on the "living wage" in corporate supply chains in the apparel and electronics industries.)

As pointed out by Gustave Massiah, a PPT panel member, if rights are being violated and the organisation defending the victim(s) is sufficiently credible, all cases will be heard. **If the PPT decides against running a full session, they can still provide legal support and assistance.** So any victim of a proven rights violation can be heard before the PPT.



## 2 ) How does it work?

- **Referral by an organisation** (there is no eligibility criteria except the representativeness of the organisation and truth of facts).
- **Investigation period** (voluntary experts, testimonies, investigations into communities). This phase usually takes about a year. The Tribunal decides with the plaintiffs on the venue and duration of the trial.
- **The accused is called to the hearing.** The permanent members are currently trying to find a way to provide the accused with a court-appointed lawyer, because so far there has been only one that has agreed to participate in the trial.
- **Creation of a panel of judges made up of eight to twelve people**, at least half of whom should be qualified legal experts, selected from a list of judges drawn up by the Tribunal secretariat, comprising sixty members, of thirty-one different nationalities.
- **Examination of the case.** The Tribunal examines the facts that have been provided and those that its investigations have exposed. It bases its decisions on the general and conventional rules of international law, particularly those relating to human rights and the right of peoples to self-determination. A public hearing is held where sentences are passed.
- **The International League for the Rights and Liberation of Peoples informs international institutions and the United Nations of judgements made.** As the PPT is attached to the Lelio Basso Foundation, it has consultative status with the Economic and Social Council. Judgements are made public nationally: at this stage it is up to citizens' organisations to draw on the judgment in order to ensure rights are recognised.

## 3) What does the PPT do for communities whose rights have been violated?

Gustave Massiah underlines the fact that **a PPT judgement will not result in any penalties, nor will there be any compensation for victims.** Its goal is to support the marginalised voices of a community, **enable the movement to gain greater recognition** and to call on international public opinion. The PPT can't go any further than an indictment. But it can back up its indictment with legally-founded arguments. Its actions are another building block in the work being done by international civil society and, thanks to media coverage, gets the abuse out in the open. Its judgements expose the appalling situations for which corporations and even governments are responsible.

## 4 ) What is the impact of its judgements?

It's hard to measure its impact on international institutions and accused companies. But it has helped a Brazilian community reach a compromise with the Brazilian company Pescador, which requested that the case not be brought before the PPT. Greenpeace also based one of its campaigns on a PPT sentence



(that against Union Carbide). Gustave Massiah compares the Tribunal to a “tiny stream” fuelling a large-scale media campaign.



*Text by Héloïse Squelbut (2010). Source : <http://www.agirpourlesdesc.org/francais/comment-faire-respecter-les-desc/agir-aupres-des-multinationales/article/le-tribunal-permanent-des-peuples>*



The Resolution was adopted, despite strong opposition from the United States and the European Union, which did everything they could to derail the process, particularly during the Working Group's first session in 2015. Fortunately their attempts were unsuccessful, and the Working Group's second session will take place in October 2016. The Global Campaign has developed proposals based on the work done for the International Peoples' Treaty. The Treaty's demands have been submitted to the UN via internal consultation mechanisms, in order to ensure that the binding UN mechanism responds to the specific needs of the communities and collectives affected by major corporations. For example, it proposes that the instrument focus specifically on companies that, precisely because of their transnational nature, are economically and legally adaptable and use their complex structures to evade national and international laws and regulations. It also states that the instrument should include all human rights, detailing specific obligations, as well as regulations that undertake to protect particularly vulnerable or affected groups, including young people, children, women, migrants, indigenous peoples and human rights defenders. Other essential points include: the importance of extra-territorial obligations; reaffirming the hierarchical superiority of human rights regulations over and above trade regulations; establishing civil and criminal liability of companies and their directors, and the collective responsibility of companies for the activities of their subsidiaries, suppliers, licensees and subcontractors. Establishing obligations for regional and international economic and financial institutions is also among the proposals made, as is protecting the negotiators themselves from any influence from the private sector.

Obviously, the instrument can't be binding without mechanisms monitoring its implementation. Another key proposal of the Global Campaign is thus to set up a World Court on Business and Human Rights, which will back up national, regional and international mechanisms. The Court would be responsible for hearing, investigating and judging claims made against transnational corporations. A Committee would also be established to ensure that states and corporations are complying with obligations and respecting the treaty. Complementarily, the Campaign also undertakes to set up a Monitoring Centre on Transnational Corporations, which would analyse, investigate, document and investigate companies' practices and their impact on Human Rights.

The other strategy proposed by the Peoples' Treaty involves creating a Centre that differs from the UN-based Centre in that it would be managed and run exclusively by social organisations, critical sectors of academia and affected communities. This would represent a step towards reaffirming the sovereignty of peoples. The Campaign believes that we can't simply wait for states to do something about transnational corporations through such channels as the UN; we need to start by putting objectives in the Peoples' Treaty into action.



SCALVENZI BENJAMINE CC BY 2.0

Creating the Centre is a collective decision and should be built “from below”, from the communities and movements involved the campaign. They need to orchestrate alternatives and actions against the overall system of impunity that allows transnational corporations to get away with so much. An internal consultation process is currently underway in order to lay the foundations for such a space. Its objectives include awareness-raising, providing support for social, political and legal processes, creating tools for training and support, systemising research and documenting cases, and teaming up with organisations that are already documenting cases.

These are obviously all long-term processes, which involve confronting economically-powerful players that are facing the potential collapse of the very architecture of impunity that many of them are built on. It is therefore necessary to protect the spaces that have been created through the work of hundreds of organisations, networks and social movements across the planet. This is a very serious endeavour, requiring many hands, much wisdom, bravery and imagination. We owe it to ourselves and to the victims of the transnational corporations. There is no turning back.



## LINKS OF INTEREST ON THE PEOPLES' TREATY AND THE BINDING TREATY

- International Peoples' Treaty on the Control of Transnational Corporations. <http://www.stopcorporateimpunity.org/wp-content/uploads/2015/02/PeoplesTreaty-EN-dec2014.pdf>.
- 8 Proposals for the new legally binding International Instrument on Transnational Corporations (TNCs) and Human Rights. <http://www.stopcorporateimpunity.org/wp-content/uploads/2015/07/CampaignSubmission-EN-jul2015.pdf>.
- Video of Alfred de Zayas on Free Trade Agreements, transnational corporations and the dangers for democracy. <https://www.youtube.com/watch?v=tEkI6FALU-s>.
- CETIM article. <http://www.cetim.ch/miren-a-j-ziegler-a-de-zayas-y-otros-sobre-la-necesidad-de-lograr-que-las-transnacionales-rindan-cuentas-sobre-las-violaciones-de-dh/>.
- More information about the 31<sup>st</sup> Regular Session of the Human Rights Council (29<sup>th</sup> February to 24<sup>th</sup> March 2016). <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/31RegularSession.aspx>.
- Report of the Working Group on Transnational Corporations and other Businesses and Human Rights, under the mandate of the creation of a Legally binding Instrument. [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.50\\_S.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.50_S.docx).
- Mobilisation of the Global Campaign in March 2016 (Human Rights Council). [www.stopcorporateimpunity.org/la-movilizacion-de-los-pueblos-vs-la-impunidad-de-las-transnacionales-converge-ante-las-naciones-unidas/?lang=es](http://www.stopcorporateimpunity.org/la-movilizacion-de-los-pueblos-vs-la-impunidad-de-las-transnacionales-converge-ante-las-naciones-unidas/?lang=es).

## The Annual Report, Through the Lens of Civil Society

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Every year, corporations publish their “annual report”, which basically consists of financial information for shareholders. Most of them now also publish a “sustainable development report”, which covers the company’s social and environmental impacts. But the principle remains the same: the company’s executives and its communication department choose which information they wish to include, flaunting their good points and glossing over any problems. In these reports they include beautifully presented upward-sloping curves, enthusiastic testimonials from so-called “collaborators”, a “corporate responsibility” barometer and pro-active sustainable development initiatives. All the thorny questions, the criticism, the shady side of business are swept under the carpet.

It’s no wonder that NGOs have been wanting to produce their own “alternative annual report” on the business operations of corporations working in particularly dubious areas, beginning with the oil giants. In the early 2000s, Friends of the Earth International published several “annual alternative reports” on Shell, entitled “The Other Shell”.<sup>1</sup> Between 2009 and 2011, a coalition of NGOs that included Amnesty International, the Sierra Club, Friends of the Earth, Amazon Watch and Corporate Accountability International, joined forces and produced an “alternative annual report” on the American oil company Chevron entitled “The true cost of Chevron”,<sup>2</sup> which goes into Chevron-related controversies all over the world.

In France, the Multinationals Observatory produced its own “2015 annual report” of four of France’s biggest corporations: Total,<sup>3</sup> Engie (ex GDF Suez),<sup>4</sup> EDF<sup>5</sup> and Areva.<sup>6</sup> These four “alternative reports” include contributions from journalists, activists, NGOs and others, with the objective of getting a more comprehensive and accurate picture of what these companies are doing – from the point of view of society as a whole (including these corporations’ employees) and not only from the viewpoint of executives and shareholders. Because these corporations should ultimately be judged on their performance in public interest issues – climate and environmental issues, inequalities, democracy, etc. – and not only in terms of private interest and financial goals.

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[1] See <http://www.h-net.org/~esati/sdcea/shellfailingchallenge.pdf> (2002); [https://www.foe.co.uk/sites/default/files/downloads/behind\\_shine.pdf](https://www.foe.co.uk/sites/default/files/downloads/behind_shine.pdf) (2003); <https://milieudefensie.nl/publicaties/rapporten/lessons-not-learned> (2004).

[2] <http://truecostofchevron.com/reports>

[3] <http://multinationales.org/Climat-fiscalite-droits-humains-environnement-le-veritable-bilan-annuel-de>

[4] <http://multinationales.org/Energies-fossiles-dividendes-grands-barrages-et-liberalisation-le-veritable-669>

[5] <http://multinationales.org/Schizophrenie-d-Etat-le-veritable-bilan-annuel-d-EDF>

[6] <http://multinationales.org/Le-veritable-bilan-annuel-d-Areva-au-dela-de-la-crise-industrielle-le-cout>



# Cetim: Getting the UN to Take Action on Corporate Human Rights Abuses

MELIK ÖZDEN, CETIM

The Geneva-based organisation Cetim, which has consultative status with the United Nations Economic and Social Council, has for years been helping victims of TNCs get their claims heard in the UN system.

“**T**here is no such thing as a developed world and an under-developed world – there is only a single badly developed world.” This conclusion marked the creation of the Europe–Third World Centre (Cetim) in Geneva in 1970 – a research and study centre focussed on the origins of the clearly flawed western model of development, which works in liaison with social movements from both the Global North and Global South. Cetim has, from its very beginnings, paid particular attention to transnational corporations (TNCs) and the ways in which they have contributed to this badly developed world. In 1975 it published the book *Mal-développement*, which exposed the harmful role played by these corporations – in regards to the kind of goods they produce (which don’t meet the needs of the people concerned), unfair trade and increased inequality. And since the nineties, their power has only intensified with the onslaught of financial capital, the adoption of various international standards that favour TNCs (multilateral and bilateral trade and investment agreements in particular), their promotion by international institutions as the sole agents of development, and the wide-scale privatisation of public services to their advantage.

Cetim’s work is focussed on two areas: discussion and reflection on economic and political power, with the publication of books on this subject (more than 150 to date). The books deal with North–South relations and development issues, and aim to provide the public with the means to understand the world and suggestions on ways to change it. It has been publishing books on TNCs



UN PHOTO/JEAN-MARC FERRE CC BY-NC-ND 2.0

since the seventies, including a small book published in 1978 on the corporation Brown-Boveri, which was the target of a lawsuit in Brazil due to its illegal business practices and its participation in a global electricity cartel. Cetim also published *L'Empire Nestlé* in 1983.

Its work is also focussed (through its consultative status with the United Nations Economic and Social Council [ECOSOC] on supporting social movements in the Global South to make use of the UN's human rights protection mechanisms, and contributing to the development of new international standards in this area. Cetim has worked with farmers' organisations, trade unions and organisations representing victims and communities affected by TNCs in Colombia, Ecuador, Guatemala, Madagascar, Nigeria, the Philippines and El Salvador. In line with this work, undertaken in liaison with the UN's Human Rights Council, Cetim is now focussing on the proposed binding treaty on the human rights responsibilities of TNCs, following a proposal put forward by the governments of Ecuador and South Africa.

Cetim also has a documentation centre that is open to the public.

### **Defending victims of TNCs . . .**

For a long time, Cetim was one of the only NGOs to be accredited to participate in the UN Human Rights Council focussed on economic, social and cultural rights – and not only civil and political rights. The fact that there is no international treaty that specifically addresses the issue of TNCs means that Cetim has to draw on other already-existent UN mechanisms, such as the Special Rapporteurs, independent experts or working groups appointed by the Human Rights Council to examine



the situation in a particular country or focus on a particular right (i.e., the right to food, the right to housing, the right to water, etc.). Accredited organisations may consult Rapporteurs in the event of human rights violations in their area of expertise. Rapporteurs are then supposed to write to the governments concerned and ask them to respond to these “allegations”. The governments then send back their responses, and the allegation and the response (or non-response) are made public. (These documents are available on the Human Rights Council’s website.)

Oddly, the special representative on human rights and transnational corporations between 2005 and 2011, John Ruggie, is virtually the only mandate-holder within the UN’s Human Rights Council to have refused to deal with complaints from victims of TNCs as part of his mandate. At the end of his mandate in June 2011, he presented his principles to the Human Rights Council – “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” – which is still only a voluntary mechanism and is non-binding for TNCs. The Human Rights Council then set up two bodies: a “Working Group on the issue of human rights and transnational corporations and other business enterprises” and a “Forum on Business and Human Rights”. The Working Group’s responsibilities are to essentially promote Ruggie’s principles and identify good practices within TNCs. In regards to violations by TNCs, as Ruggie acknowledges was the case in his first report, the Working Group claims that the issue is extremely complex and that they lack the resources necessary to investigate human rights violations by TNCs.<sup>1</sup> The Forum on Business and Human Rights works under the guidance of the Working Group and has a similar mandate except that the Forum is open to TNCs. This in itself raises questions, given that it is an official UN body.

Cetim’s work is also centred on submitting written declarations (case studies) to the Human Rights Council. In 2014, the Cetim thus alerted the Council to the situation of trade unionists in Colombia working in the food processing industry, particularly those protesting against TNCs such as Nestlé and Coca-Cola. A representative from the union Sinaltrainal was able to come to Geneva and give evidence of on-going violations of the labour law and union rights. The representative denounced the killings of more than ten trade unionists and alleged links between Coca Cola and paramilitary groups. Following these revelations, two UN Special Rapporteurs sent an urgent message to the Colombian government. The response that followed was deemed unsatisfactory by the UN Special Rapporteur on extrajudicial executions who denounced “the persistent insecurity faced by several categories of defenders, trade unionists and social activists in Colombia and the high degree of impunity that prevails with regard to extrajudicial killings and death threats”. Finally, in July 2015, the Cetim submitted a complaint against Colombia to the UN Human Rights Committee, citing

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[1] However, after NGOs submitted a number of complaints, and under increasing pressure from civil society, the Working Group agreed to write to the governments involved. Many of these letters were signed by other Rapporteurs or independent experts.

a number of human rights violations as well as the murder of Adolfo Munera Lopez, employee of Coco-Cola and Sinaltrainal union member. The complaint seeks to demonstrate that Colombia is failing to comply with provisions set out in the International Covenant on Civil and Political Rights.

### **. . . to creating a binding international agreement**

At UN level, Cetim has to draw on international conventions and agreements ratified by governments in order to take action. Even when the decision is positive, in the vast majority of cases there is no binding procedure that ensures the decision is enforced. There are only two international bodies that are bestowed with any real power to impose penalties: the UN Security Council and the World Trade Organisation. However, any damage to the “reputation” of governments or corporations within an official forum such as that of the United Nations is sometimes enough to make progress. For instance, when the indigenous Wayana people of French Guiana were attacked by armed gold-miners from Brazil, and the French government would not hear their case, the UN Forum succeeded in finally getting their case heard.

The fact remains, however, that none of these processes are binding – not for governments, and even less so for TNCs. A future international legally-binding instrument on TNCs would rectify this shortcoming. Approved (in slim majority, and excluding western countries) by the Human Rights Council in 2014, an ad hoc intergovernmental working group was set up at the request of the Ecuadorian government in order to develop such an instrument. This was a historic accomplishment after decades of debate and failed attempts by the UN, and was the result of the enormous amount of work put in by social movements. There is of course no guarantee that the working group will be successful given the multitude of pressures and manoeuvres that currently stand in the way of establishing any kind of binding regulations on TNCs.

After taking part in the opening intergovernmental negotiations, Cetim is now involved in the “global campaign to dismantle corporate power and stop immunity”, so that social movements, organisations, unions and representatives of victims and affected communities, particularly in the Global South, can participate in the intergovernmental working group and have their voices and their ideas heard.

In addition, the Cetim is also working with Swiss civil society on the “Responsible Business Initiative”. Switzerland is particularly accountable in that it is the home of a number of TNCs stigmatised for violations committed abroad. The initiative, which takes an approach that is complementary to that of the UN, aims to assist victims of human rights violations committed by TNCs in prosecuting these corporations under Swiss law so that the harmful actions of these corporations, whether these relate to human rights or to the environment, do not go unpunished. The minimum number of signatures required have now been collected and the popular initiative will be put to a national vote in about two years.



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## Ejolt, Mapping Environmental Justice

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Finally, a tool to map ecological movements and resistance spaces across the globe! Ejolt – a network of environmental justice organisations, universities and research institutions – has created a “global environmental justice atlas” detailing over 1,700 environmental movements. With just a click, this interactive, participative map gives you a worldwide overview of conflicts over nuclear energy, water issues, fracking, land, biodiversity, hydrocarbons, and waste management. You can also carry out a search on mega-projects, or search by country, company, product (palm oil, natural gas, uranium, etc.) or conflict type (land access, deforestation etc.).

The Ejolt project (Environmental Justice Organisations, Liabilities and Trade), which is funded by the European Union, brings together over 100 people from 23 universities and social justice organisations in eighteen countries, as well as a number of independent collaborators. For professor Joan Martinez Alier from the Autonomous University of Barcelona, “the Atlas illustrates how ecological conflicts are increasing around the world, driven by material demands fed primarily by the rich and middle class subsections of the global population”.

“The map highlights disturbing trends, such as the fact that 80% of cases entail a loss of livelihood,” the Ejolt network said in a statement. There are also many cases of political repression and persecution of activists. The database also provides details of legal battles won and projects that have been called off. “In this respect it’s a source of inspiration,” remark the network members. “17% of cases on the map are considered environmental justice victories.”

It is also possible to use the mapping tool to create maps that focus on a particular subject or TNC. This was recently done on Chevron (“Chevron’s Atrocities Mapped”<sup>1</sup>), for the 3<sup>rd</sup> international anti-Chevron day.

Ejolt’s work doesn’t end at mapping. Researchers and activists involved in the organisation also keep a global database updated with reports and scientific publications in order to highlight the environmental, health, and safety impacts of TNCs. They also draw attention to the different “valuation languages” – or value systems – of different communities, in order to assess “environmental liabilities” in relation to legal actions, or calculate “ecological debt”. Ejolt also publishes practical guides for communities and groups that wish to initiate legal proceedings and maintains an online resource centre for environmental justice organisations.

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[1] <http://ejatlas.org/featured/chevronconflicts>.

# The Business and Human Rights Resource Centre

## BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE

The Business and Human Rights Resource Centre is a global information website that works on contacting companies accused of abuse or human rights violations and eliciting a response from them, a seemingly simple approach that has often proved effective.

**T**he Business and Human Rights Resource Centre aims to draw global attention to the human rights impacts (positive and negative) of companies in their region, seek responses from companies when civil society raises concerns, and establish close contacts with grassroots NGOs, local businesspeople and others. With offices in London and New York, and regional researchers based in Brazil, Colombia, Egypt, Hong Kong, India, Kenya, Japan, Myanmar, Mexico, Senegal, South Africa, UK, Ukraine and USA, it works with everyone to advance human rights in business and eradicate abuse.

Its missions are:

### **To build corporate transparency ...**

The Business and Human Rights Resource Centre tracks the human rights policy and performance of over 6000 companies in over 180 countries, making information publicly available. It engages with companies and governments to urge them to share information publicly. Its website is the only global business and human rights knowledge hub, delivering up-to-date and comprehensive news in eight languages. Its free Weekly Update e-newsletter has over 16,000 subscribers around the world, including advocates, activists, businesspeople, governments, investors and the UN. Its Company and Government Action Platforms reveal the policy and action of over 90 companies and 40 governments.

### **To strengthen corporate accountability ...**

The Business and Human Rights Resource Centre helps communities and NGOs get companies to address human rights concerns, and provide companies an



opportunity to present their response in full. It systematically follows up on company responses, pursuing companies that fail to respond adequately to allegations of egregious abuse. Advocates and communities thank us for eliciting responses from companies. Companies thank us for providing them the opportunity to present their responses in full.

### **To empower advocates . . .**

The Business and Human Rights Resource Centre amplifies the voices of the vulnerable, and human rights advocates in civil society, media, companies and governments. It releases briefings and analysis, synthesising the work of hundreds of advocates across the world and make recommendations for companies, governments, regions and sectors. It is the global hub for resources and guidance for action by business.

### **Impacts**

Since 2005 we have approached companies over 2000 times to respond to allegations, and in 2014 we approached companies 333 times; over 75% responded.

Our website and Weekly Updates provide inspiring news on human rights progress, as well as an impartial space in which allegations, company responses, and follow-ups to those responses are published alongside one another, helping people get closer to the truth, and encouraging change on the ground.

Our Weekly Updates now reach many thousands of opinion leaders in richer countries, emerging economies and developing countries. Sometimes our response process has led to immediate positive changes in company policy or practice. In other cases it has led to dialogue between the company and those raising the concerns. In all cases it has increased transparency, enhanced public accountability, and provided information to sectors that use their own means to address company abuses: NGOs, governments, the UN, procurement officers, investors, consumers, media.

Our company response process serves as an accessible, informal complaints mechanism in the absence of an effective international mechanism.

Victims, advocates and NGOs thank us for bringing greater international attention to their concerns, for eliciting responses from companies, and for the chance to comment on those responses. Companies thank us for providing them the opportunity to present their responses when concerns are raised, and for posting their comments in full.

Increasingly concerns are raised by NGOs and community groups in the global South. Our regional researchers based in Brazil, Burma, Colombia, Hong Kong, India, Japan, Jordan, Kenya, Mexico, Senegal, South Africa and Ukraine – who



are in close touch with local NGOs and companies – take the lead in seeking company responses.

## Examples

### *Unions win new labour agreement including reinstatement of 12 members – Philippines*

In May 2014, the labour rights group IndustriALL alleged that NXP Semiconductors, a supplier to Apple, had sacked 24 union workers for union activity.

In early August 2014, we contacted NXP and Apple regarding the allegations. NXP denied it had done anything wrong. We also contacted Apple to respond to the criticisms of its reported supplier but it did not respond.

In late August IndustriALL submitted a rejoinder to NXP’s response disputing their claims. We invited NXP to respond again, which it did. It said that: twelve dismissed members of the union’s executive would return to work; the other twelve would receive decent separation packages and become full time trade union activists; wage hikes of 12.25% over three years would be much higher than what the company previously said was possible; and a significant number of contractual workers would be regularized. Most importantly for the NXP workers, the company’s attempt to bust the union (MWAP) was defeated.

IndustriALL wrote to us: “Thanks again for your contribution in MWAP’s victory. You really put NXP on the spot in front of an important audience from the corporate world.”

### *Chevron increases pay for petrol station workers in Cambodia*

In May 2014, hundreds of workers at seventeen gas stations operated by Caltex (part of Chevron) in Cambodia went on strike, calling for an increase in their monthly wage. “They cannot support their family with \$110 since inflation keeps rising,” said the deputy president of the union leading the strike, the Cambodian Food and Service Workers Federation.

We reached out to Chevron’s headquarters for a response about the strike. After repeated exchanges with them including one in which the company said it was negotiating with the workers, it issued a response saying that the negotiations had succeeded.

The company had agreed to a \$20 per month increase in minimum wage for all workers.

A representative of Community Legal Education Center in Cambodia, who was in touch with us about this case, said: “Thank you both so much for everything! The workers are so grateful. This is a small but really important victory. It was really apparent that the engagement with head office helped push this through.” (The “both” in the message refers to us and to UNI Global Union who also helped raise awareness of the strike).

The union President said of the agreement: “Though we are not fully satisfied, this was a success ... This is a step in the right direction.” While the increase in wages was a welcome development, a few days later, a few of the Caltex workers resumed the strike because Chevron had asked them to sign a document



promising not to participate in any further strikes, protests or work stoppages. We continue to highlight the important growth in workers' strikes in Cambodia, and push company headquarters to respond constructively.

*“Conflict minerals” legislation – Dem. Rep. of Congo & USA*

In May 2012 Global Witness requested our involvement in seeking responses from eleven companies and two business associations to its statement raising concerns about industry efforts to undermine implementation of the U.S. Dodd-Frank Act's section 1502. This provision requires companies registered with the U.S. Securities & Exchange Commission (SEC) to carry out supply chain due diligence on any minerals sourced from DRC or adjoining countries.

Global Witness drew attention to the ties of eleven electronics and automotive companies with business associations lobbying against measures to implement the Dodd-Frank Act provision. The statement said that lobbying by the U.S. Chamber of Commerce and National Association of Manufacturers (NAM) had “hampered the completion of the law”, which had “serious implications for the population of eastern DRC”, and added: “To avoid any perceptions of hypocrisy, Global Witness believes it is very important that [these companies] distance themselves from the Chamber of Commerce and NAM . . .”.

We received responses from seven companies and one business association, posted them on our website, drew attention to the four companies that failed to respond, and disseminated all this to the 15,000 – plus subscribers to our Weekly Update. Subsequently, a press release by seven NGOs pointed to our company response process and noted that a few weeks after we approached the companies, “Microsoft, General Electric, and Motorola Solutions took a stand and separated themselves from the Chamber's position on conflict minerals.”

Since that press release called on other companies to follow suit, we then conducted a further round of company responses in June and submitted to the SEC a press release we issued on these responses & non-responses.

Our press release was named by CSRwire in its “Top 3 Report: The Most Read News, Views & Reports for August”. The SEC voted to adopt rules to implement these conflict minerals provisions on 22 August 2012 (we compiled various reactions from NGOs, companies and others to the vote here).

Global Witness repeatedly thanked us and expressed how they valued our involvement, e.g. they wrote: “I think the work you all have done in getting these companies to respond and disavow the Chamber has been so useful . . . You all are amazing!”

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This article is based on official documents from the Business and Human Rights Resource Centre

# Mirador: Deciphering Multinational Corporations

BRUNO BAURAIN, GRESEA

Gresea (Research Group for an Alternative Research Strategy), a Brussels-based organisation, discusses their reasons for setting up Mirador, which provides critical information on TNCs.

**A**fter a decade of analysis and research into multinational corporations, Gresea has launched its Mirador project ([www.mirador-multinationales.be](http://www.mirador-multinationales.be)). It is based on three findings linked to economic globalisation, explained below. The first concerns information on multinational corporations, which despite its abundance, is often difficult to understand or intended only for shareholders. The second issue is related to economic power, which has never before been as concentrated as it is now, wielded by a privileged few. At the same time, it has never been as far removed from the places where wealth is being effectively created. And thirdly, although the battle cry of international institutions is transparency, it seems there is less and less place for social dialogue and economic democracy within companies. Faced with this three-fold phenomenon, the aim of the Mirador project is to breathe new life into citizen debate and discussion on multinational corporations and the dominant role they play in international economic relations.

## Too much information is counter-productive

Ironically, the more information that multinational corporations provide, the less accessible this information actually is. All it takes is a few clicks on the websites of the multinational heavyweights and one is bombarded by an overwhelming amount of economic and financial information. As well as being overly technical, this information doesn't facilitate understanding or assessing the industrial situation of a company, its reasons for restructuring or for a new managerial policy. In addition, independent analysis on multinational corporations has just about fizzled out completely, which is not surprising given that orthodox economists



MICHAEL BRUNK / CC BY-NC-ND 2.0

see the company as an “agent”, whose sole objective is capital appreciation. It is therefore not surprising that the majority of information produced by companies is designed to reassure shareholders. It’s no secret that the Mirador project sits on the other side of the fence when it comes to this ideological positioning, in two respects: The company exists primarily as a set of power relations which sometimes pits owners, managers, workers and even public authorities against one another and, and which sometimes drives them to cooperate. And secondly, the company, however big it may be, can only be analysed in the economic, political, legal and social context of which it forms a part.

### Concentration of power and shirking of responsibilities

Charles-Albert Michalet<sup>1</sup> referred to the current phase of globalisation as financial globalisation, which since the 1980s, has had two distinguishing features: a concentration of capital unparalleled in the history of capitalism and an increasing fragmentation of companies. The Mirador project highlights these two trends, among others. Thus out of the first 33 multinational corporations analysed by Mirador researchers, BlackRock and Vanguard, two American investment funds, appear to be the minority owners of 55%<sup>2</sup> and 48%<sup>3</sup> of cases respectively.

Alongside this trend where power is concentrated in the hands of a few, the structure of these companies has also changed, splitting into an increasing number of complex subcontracting networks. In some industries such as construction and

[1] Michalet, Charles-Albert, *Qu’est-ce que la mondialisation?*, Paris, La découverte, 2002.

[2] BlackRock was a shareholder in eighteen of the companies studied on August 19th 2015.

[3] Vanguard was a shareholder in sixteen of the companies studied on August 19th 2015.

apparel, this dispersed structure is even triggering a return of custom work.<sup>4</sup> In the apparel industry, seamstresses in Asia and Eastern Europe now work at home, making clothes for major international brands without any social protection. Globalisation is therefore creating increasingly concentrated economic power, which is also increasingly removed from its countries of production.

### **“More transparency, less economic democracy”**

The other irony is that although the European Commission is full of praise for socially responsible restructuring that “anticipates change”,<sup>5</sup> and that the trend is towards a decentralisation of collective bargaining, shifting from the industry-level to the level of the company, the fact, as mentioned above, that the decision-making bodies of multinational corporations are far-removed, is one of the factors determining the marginalisation of social dialogue within companies. Because they are never confronted with employer representatives invested with real decision-making power in Europe, the role of national works councils and European committees is sometimes reduced to that of rubber-stamping managerial strategies.<sup>6</sup> This trend is another factor making it difficult for workers’ organisations and associations to perform their oversight function both within the company and outside the company.

In light of these findings, the Mirador project has identified several goals.

### **Contextualise economic information**

Although we know, as stated by André Orléan, that the behaviour of financial players is more often guided by imitation<sup>7</sup> than by any kind of economic rationale – “If the company next door is investing in detergent, we are too!” – studying the annual accounts of a multinational corporation may provide a pension fund manager with a basis to assess the potential – or not – of a future investment. However, this information will not enable a trade unionist, a journalist, or a political authority to understand or discuss the industrial strategy of a company. In addition to providing financial and economic information, the Mirador project seeks to situate companies within a historical context and to analyse the consequences of their social, political and environmental choices.

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[4] Custom work, typical of labour relations in the 18<sup>th</sup> century, refers to the commercial relationship between a worker (who is also the owner of his or her tools) and a trader who sells the goods produced.

[5] Green Paper from the European Commission, *Restructuring and anticipation of change: what lessons from recent experience?* Brussels, COM (2012) 7, 2012.

[6] Delteil, Violaine, Dieuaide, Patrick, “Les comités d’entreprise européens dans l’UE élargie : entre outil de gestion et levier syndical”, in *Travail et emploi, multinationales Françaises et relations d’emploi dans les pays d’Europe centrale et de l’Est*, n°123, July-September 2010.

[7] Orléan, André, *Mimétisme et anticipations rationnelles: une perspective keynésienne*, Louvain Economic Review, vol. 52, n°1, 1986.



## **Provide a comparative analysis to get a better overview**

Companies don't like competition. The incessant flow of mergers and acquisitions are proof of this. The purpose of a multinational corporation is either to beat or join its competitors (i.e., agree to share a market). In order to understand the evolution of a company, it is therefore interesting to compare it with its main competitors in a given sector. The Mirador site thus offers more in-depth comparative analysis of different sectors.

## **Provide training on multinational corporations**

Mirador is not just a site that provides analysis on multinational corporations. Gresea's project aims to gradually build up a network of individuals and organisations conscious of the need to understand the effect of corporate power on our daily lives, whether we live in the Global North or the Global South – by definition, these companies know no borders.

In addition to the Mirador website, Gresea researchers offer training modules that provide an overview of the concepts and issues related to multinational corporations. The training modules will focus on the definition of multinational corporations, on their commercial, fiscal and social practices as well as on the history of social struggles created within these companies. The training will also enable participants to familiarise themselves with account analysis. The goal is to progressively enable those who wish to, to join the Mirador network. Becoming an active member of society involves understanding the role globalisation plays in our lives.

# Targeting Multinationals and their Destructive Projects by Tracking the Financial Institutions that Fund them

LUCIE PINSON, AMIS DE LA TERRE AND YANN LOUVEL, BANKTRACK

Why target investors and funders in order to challenge TNCs and their destructive projects? And what is the best way to do this? In France, this has been the backbone of the work being done by Amis de la Terre France since the nineties. And since 2004 they have had the international network BankTrack behind them.

**C**onfronted with the opacity of TNCs and the daunting challenge of controlling them through regulation, a growing number of civil society organizations are turning to the financial sector to gain leverage against their destructive projects. This strategy is not just about maths – a plethora of destructive projects are funded by a relatively small number of global financial players – but is also the response to a shared sense of urgency among those committed to fighting climate change.

We have less than fifteen years to break away from fossil fuels and reinvent an energy system that is more just and fair. If we fail to do so and exceed 1.5°C warming above preindustrial level, it will be the end of life as we know it. But calling for urgent change runs against the interests of multinational corporations, which continue to pursue climate-killing energy projects. To give just one example, no less than 2,440 new coal plants projects are currently under consideration, even though countless scientific studies have shown that we should start closing existing coal plants if we want to have any chance of keeping warming below 2°C.



Not only would such projects exacerbate the climate crisis; they would also suck out precious financial resources – to the tune of a trillion dollars – which should be going into a genuine energy transition. Targeting investors and funders is thus not only a means to prevent destructive projects from going ahead; it also contributes to shifting resources towards a just transition based on 100% renewable energy.

## From public finance to private finance

Until recently, few organisations paid attention to the role of funders and financiers and their part in large infrastructure projects. It was only in the 1990s that this topic began to become “institutionalised” in civil society organisations, primarily in the Global North – even though these organisations were involved in international networks and dedicated to social and environmental justice across the globe. In France, only Amis de la Terre (Friends of the Earth France) made it the backbone of their work, seeing it as a crucial step in transitioning towards sustainable societies. This strategy was based on the simple observation that behind every mine, dam, and fossil fuel or nuclear power plant in the global South, was money from financial institutions in the Global North. At the time, challenging the allocation of financial capital was seen primarily as a matter of international North-South solidarity, rather than a way to gain leverage in the fight against climate change.<sup>1</sup>

Initially, campaigns targeted public financial institutions such as the World Bank, development banks, or export-credit agencies (such as Coface in France) in order to stand in the way of local projects that would result in negative social and environmental impacts.

In the 2000s, the same organisations, now experts at tracking public finance across the globe, began to look into the role of private finance, and particularly of private commercial banks (so-called “universal banks” in France). These were playing a major role in destructive schemes, injecting funding and investments into TNCs. It seemed logical that they should be the next targets. The BankTrack network was created in 2004 precisely with this objective. As with campaigns targeting public financial institutions, only a small number of NGOs monitored private banks on an on-going basis. Most NGOs would only target banks as part of a specific project.

Even today, although private banks represent a much larger share of capital than that of public donors, there is still a need to monitor the policies and fund-

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[1] These same organisations and their network partners also campaigned early on for public and private financial institutions to defend and promote human rights, fiscal transparency, and to stop funding the arms industry, etc. This article only covers campaigns on climate and energy issues.

ing of public financial institutions. Many projects that carry great risks would not attract private funding without a public credit guarantee. Public financial institutions prepare and open new markets for private players – as in the case of market mechanisms – and they are also able to deny economic realities and bail out whole economic sectors in order to artificially protect the profit rate of private financial institutions.

In turn, fossil fuel investors have also become the target of civil society divestment campaigns. Pension funds, local authorities, universities, etc. were among the first targets, challenged by local “fossil free” groups and the wider 350.org movement. Other major private investors, such as insurance companies, are next in line. Given the huge potential of this strategy to advance their cause, an increasing number of civil society organisations are now targeting the financial sector to gain leverage against the destructive projects and operations of multinationals.

### **From project funding to sector funding: an effective counter-power?**

Although the end goal of activists and NGOs has always been to put a stop to all forms of dirty energy projects, their campaigns have always targeted specific projects. Several successful outcomes in France include: Société Générale pulling out of the Ilisu dam project in Turkey, 2009; BNP Paribas giving up the Belene nuclear plant in Bulgaria, in 2010, Société Générale pulling out of the Kaliningrad nuclear project, in Russia, in 2014; Société Générale withdrawing from the Alpha Coal mining project, in Australia, in 2014, followed by a commitment by all French banks not to fund any coal project in the Australian Galilee Basin; and lastly, Crédit agricole pulling out of the Plomin C coal plant project, Croatia, in September 2015. All these victories – some of which might be called historical, as in the case of Alpha Coal, after a year of intensive campaigning alongside Bizi! and Attac – illustrate the commitment of Amis de la Terre France to support partner organisations’ and their campaigns throughout the world.

However, beyond supporting local action against destructive projects that could be compared to our own European large-scale infrastructure projects, better known in French as “*Grands Projets Inutiles et Imposés*”, a key initial objective of these campaigns was to develop and implement ambitious, effective climate and energy policies at global level. This requires recognising the role public and private financial institutions play in contributing to problems. This may be a relatively easy task for public institutions, which are in theory accountable to citizens and subject to a development mandate, but this is much more daunting for private banks. The latter have always refused to take on any responsibility for the projects and operations they fund, pointing the finger at the companies themselves or even at public donors. For instance, BNP Paribas justified funding the giant Tata Mundra coal plant in India (2008), stating that the project



had the support of the World Bank. BNP Paribas claimed that due to the fact that it had not established investment policies of its own at the time, it trusted the International Financial Corporation, which had already developed its own project analysis guidelines.

The big bang for French banks did not take place before 2011-2012, when all the majors banks – BNP Paribas, Crédit Agricole, and Société Générale – adopted policies on a number of controversial sectors (mining, nuclear plants, coal and gas power plants, fossil fuels, etc.). This represented a major breakthrough for banks which had hitherto refused to take on any form of responsibility for the impacts of the operations they were funding – mentioning only the greenhouse gas emissions of their own offices and retail agencies, but never referring to the GHG emissions (which were of course significantly higher) of the projects they were funding. However, there is still much debate about the effectiveness of these policies and whether they are sufficiently ambitious.

The main shortcoming of these policies is that instead of excluding whole sectors, particularly dirty energy (fossil fuels, nuclear, large dams), from their funding range, they only produced a set of funding guidelines and criteria. This means that they basically fund everything except the worst of the worst.

Any improvement brought by the International Financial Corporation guidelines and the Ecuador Principles – which had been used as a reference by some French banks for project funding decisions – is thus relatively small, although not insignificant: by adopting their own policies, French banks have paradoxically become more exposed to NGO campaigns, since activists can now compare banks and lay on targeted pressure in order to get them to adopt additional exclusion criteria.

Buoyed by our success in putting an end to individual coal projects, and riding the wave of COP21 and its call for climate action, our overall aim is to put a stop to all coal industry funding and investments. A number of public financial institutions, as well as banks and private investors, have already committed to divesting from the coal and fossil fuel sectors. Although there's still a long way to go before the French financial industry actually plays an active role in moving towards sustainable societies, the country's largest banks have all put an end to funding new coal mines, and have established more restrictive criteria for funding coal-fired power plants. And a major breakthrough is that banks now include criteria in their sector policies that serve to blacklist certain companies altogether. Despite the fact these criteria are vague and imprecise, which will make their implementation opaque and arbitrary, and fall far short of what is required, they open new campaigning opportunities for achieving a complete break away from coal, as a first step towards the end of all dirty energy.

## Our campaigns' drivers and conditions

While some use financial and economic arguments to attempt to convince financial institutions to stop funding controversial sectors, others such as Amis de la Terre France take a moral line. Their strategy is always the same: they use the media to target the reputation of financial players, highlighting the discrepancy between their commitments on the one hand and their actual practices on the other.

Public financial institutions must be consistent in their actions and refuse to fund activities that contradict their development mandate, that violate human rights, or that contribute to climate change. Private institutions are especially protective of their reputation, since they like to convey an image of responsible players. In either case, civil society is entitled to making its voice heard. On the one hand, anyone, as a client and consumer, can “vote with its feet” by boycotting irresponsible private financial institutions and by putting their money in ethical banks. On the other hand, as saver and taxpayer, anyone is entitled to demand that public funds be used conscientiously. They are also entitled to denounce the absurdity and perversity of a system where financial institutions supposed to protect our future actually fund and invest in future risks.

Are reason and common sense enough to guarantee success? Unfortunately not. We also need to highlight injustice, inequalities and unacceptable situations in order to gain the public's support and acknowledge the need for change. If we don't do this, we face losing all credibility. We thus need a two-pronged strategy. Drawing on the media is key. One of the greatest achievements in France was the publication of the “carbon ranking” of French banks (with Crédit Agricole at the top of the list) in the Economy section of *Le Monde* in 2010; and the 2012 documentary on greenwashing broadcast by the investigative TV programme *Cash investigation*. The documentary included 30 minutes on Crédit Agricole and the campaign arguments of Amis de la Terre France, and also mentioned the Pinocchio prize awarded to the bank in 2010. In response, Crédit Agricole published a methodology and an estimate of its financed emissions, which, although disputed, was a first for this sector. The other part of the strategy is, of course, radical citizen activism and civil disobedience, always based on principles of non-violence.

We also need access to information, which is the biggest challenge. In the absence of transparency, it is no mean feat trying to monitor the presence of financial players in controversial sectors. The sprawling structure of international financial institutions is only matched by that of the very multinationals they fund and their operations across the planet. NGOs have had no choice but to internationalize and join or create international networks, in order to be able to gain information on the projects being funded. In spite of the recent rise of Chinese banks, Western banks are still among the top funders of fossil fuels, and it is thanks to



local organisations in Asia, Latin America, Africa, etc. that NGOs in the Global North have been able to blow the whistle on BNP Paribas, Barclays, Deutsche Bank, Morgan Stanley, and other funders of destructive projects. Without such networking, financial institutions would be free to do their dirty business out of the public eye. A key challenge is therefore to facilitate access to information, by pressuring legislators to make publication of financial data obligatory, and lay bare the hypocrisy of those who oppose it in the name of protecting “trade secrets”. Because it is a myth: financial data is actually readily available, provided you pay the full price for obtaining and processing the information, which many NGOs cannot afford to. It takes a few thousand euros to unveil the financial liaisons between major international banks and multinational corporations, this information safely stored in international financial databases.

To conclude, targeting financial players can be an extremely powerful strategy to thwart destructive projects and drain the cash companies need to continue with environmentally and socially destructive projects. But in order to achieve any real victory, it is clear that ultimately governments themselves need to play an exemplary role, and rein in private financial institutions with more effective regulations.

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# How to Get Big Brands to be Accountable for Global Supply Chains: The Role of Information

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Several organisations and networks take a sector-specific approach in blowing the whistle on social and environmental abuse associated with global supply chains.

In many sectors, economic globalisation has been synonymous with offshoring production from industrialised countries to emerging markets (beginning with China). Along with this trend has been the emergence of multinational corporations managing big global brands, and which rely on increasingly long and globalised supply chains, particularly in the garment industry (Gap, H&M, Zara, etc.), the electronics industry (Apple, Nokia, Samsung, etc.), the agri-business industry (Nestlé, Unilever, etc.) and the retail sector, which combines all of the above (Walmart, Carrefour, etc.).

According to a recent study by the International Trade Union Confederation, these big global brands employ only about 10% of their workers in a direct employment relationship. For example, Carrefour declares about 300,000 employees worldwide, which is already a considerable amount, but if we factor in its various subcontractors and direct and indirect suppliers all over the world, this figure would be more like three million ... Yet for the hidden workforce in these subcontractor chains, the conditions are generally substandard compared to those in a direct employment relationship. The conditions can even verge on unacceptable.

It is well known that the globalisation and internationalisation of supply chains has been all about a race to the bottom – big brands that sought to locate their production in countries where they could pay employees the bare minimum and could dump their rubbish in someone else's backyard. The result has been a succession of scandals and disasters, the most symbolic being the 2013 Rana Plaza disaster in Bangladesh, which resulted in the deaths of more than a thousand textile workers. Yet these corporations are still intent on hunting out the best bargain. Since the wage rate has increased in China, many of them have moved onto more financially appealing destinations such as Vietnam, Cambodia and even Ethiopia.

## Sector-specific action

It didn't take long for organisations and networks to emerge condemning the social and environmental abuse associated with these global supply chains. In the nineties there was a large-scale campaign against sweatshops, targeting,



ABIR ABDULLAH / CC BY-NC-ND 2.0

among others, the brand Nike. One of the most well-known campaigns is the Clean Clothes Campaign, (represented in France by the *Éthique sur l'étiquette* collective<sup>1</sup>), which has been active in twenty European countries since 1989 and works with similar organisations in North America.

Information and awareness raising play an important role in what these groups and networks do.

First of all, they provide consumers with information on the conditions in which the items (clothes, electronic gadgets, etc.) they purchase are being made or manufactured. Consumers are also encouraged to contact the companies concerned and ask them to change their practices, or even go the whole hog and boycott certain brands. This way, the companies behind these global supply chains find themselves caught between pressure from consumers (usually those in the West) and pressure from their own workers and human rights organisations.

These networks and groups also inspect the real working conditions in the factories of suppliers and subcontractors – these major corporations may have “social-responsibility-washed” their brands (codes of conduct, ethics policies, factory audits, etc.) but this doesn’t necessarily mean things have changed on the ground. Social audits in factories are anything but reliable because investigators usually let owners know ahead of time that they will be coming, and because there is generally no consequence or follow-up on negative reports. The work of some Chinese NGOs such as China Labor Watch,<sup>2</sup> is focussed on

[1] <http://www.ethique-sur-etiquette.org>.

[2] <http://www.chinalaborwatch.org>.

field missions, where they send investigators disguised as employees to see what is really going on inside factories (in this case, electronics factories) and report back on exploitative conditions. Generally-speaking, NGOs feel that the best way to ensure that workers' rights are being respected and that these big brands are honouring commitments is to have independent trade unions in factories, which is, unfortunately, extremely rare.

Another issue NGOs are dealing with is that of traceability, especially when it comes to subcontracting. It used to be that the owners of these big brands didn't know, or didn't want to know, and definitely didn't want anyone else to know exactly which factories were supplying them. This is how the French groups Carrefour and Auchan were accused with having garment factories working for them in the Rana Plaza building, which they denied, citing "unauthorised" sub-subcontracting (one of their suppliers used a sub-subcontractor in order to carry out an order). After the 2013 disaster, the Accord on Fire and Building Safety, signed by big brands, unions and NGOs, includes an obligation on transparency and traceability detailing which Bangladeshi garment factories are supplying which brands.

And lastly, another important issue is encouraging workers to circulate information among themselves. The Asia Floor Wage Alliance,<sup>3</sup> backed by the Clean Clothes Campaign, links up researchers and workers from various countries in Asia so as to establish a standard method for calculating a "floor wage" in these countries, and highlight the gap between the floor wage and the actual minimum wage these workers are being paid. Establishing a calculation method and a demand that is the same for the whole continent is also a way to avoid low-wage competition between countries.

Another NGO working in this area is the French organisation ReAct (*Réseaux pour l'action collective transnationale* – Transnational collective action networks),<sup>4</sup> which works on mobilising and linking up workers of the same company or communities affected by it in different countries, like the residents living around or working in Socfin (Bolloré) plantations in Africa and Cambodia, and employees working at various Teleperformance call centres or ST Microelectronics factories around the world.

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[3] <http://asia.floorwage.org>.

[4] <http://projet-react.org/v2>.



# Public Interest Watchdog Groups: Empowering Citizens to Make Informed Decisions about Technology

FRÉDÉRIC PRAT, INF'OGM

Nuclear energy, GMOs, electromagnetic waves . . . the list of potential hazards goes on. There have been an increasing number of public interest watchdog groups over recent years, which seek to provide independent, practical information on new technologies and health-related and environmental issues.

**W**hether it be in the area of nuclear energy, nanotechnology, GMOs or mobile phones, decisions in the technological and scientific world are often made without consulting civil society, and more often than not, are influenced by those with stakes in the industry.

This is due to the preconception that discussions concerning such decisions are reserved only for experts. Civil society consequently plays little or no part in these processes. And the decisions of experts often reflect the viewpoint of those who have an interest in putting a new technology on the market.

Yet European civil society is ready to talk on equal terms with these experts, and to veer them towards more “systemic” decision-making processes. It is urging them to pull their heads out of their laboratories and the world of profitability figures and consider the numerous repercussions of these technologies on society. In order to act as a counterweight, and to be fully empowered in this role, civil society needs access to “public interest watchdog groups”, run by those acting in the public interest, and who are uninfluenced by the industry.



## **What is a public interest watchdog group?**

A public interest watchdog group is a group of independent professional scientists and/or citizens, which, by taking an analytical approach, seek to empower citizens to act in the public interest (and theoretically, in the earth's interest) in response to prospective technologies.

The main goal of watchdog groups, which include paid employees or volunteers, and which operate independently of financial and corporate lobbies, is to produce and distribute information that is analysed and contextualised, which the general public does not usually have access to (or if they do, often lacks analysis). The aim, other than just making this information available, is to incite debate and potentially take a stance on a given topic.

Of course, popular science journals do exist. But how can they assure us of their ability to anticipate the consequences of decisions regarding technology on society and on the environment? And how can the public be sure they are really independent?

## **Public interest watchdog groups provide information before and after decisions are made**

These watchdog groups should be providing information early in the decision-making process: their role is to inform citizens of the consequences of choosing a particular technology, a choice that should be made after assessing the costs and benefits to society. Yet in order to make this assessment, it's important that the costs and benefits are of the same nature. It is impossible to make an assessment in a context where it is individuals that reap the benefits of a given technology and a larger group that bears the costs. It is therefore important to make these assessments using different calibrated measurement systems and by providing a comparative analysis of the facts and figures.

Watchdog groups should be active BEFORE any decisions are made. But they should also play a role AFTER decisions are made, so as to report on the consequences of decisions regarding a given technology and ring any alarm bells if necessary. This decision could then be reviewed.

## **The EU's role in public interest watchdog groups**

In theory the European Union seeks to encourage citizen participation, including that of civil society. It has supported (albeit modestly) the development of "Science Shops" through its "Science and Society" programme. The EU could continue in this vein and provide official support for citizen groups concerned by a given technological-scientific issue, providing them with the means to carry out research and giving them a role in the decision-making process, as



the “alternative information provider”, giving politicians a “second opinion” before decisions are made.

### **Inf’OGM – a French watchdog group on GMOs**

The French organisation Inf’OGM has been providing unbiased information on Genetically Modified Organisms (GMOs) since 1999 and on seeds since 2013, uninfluenced by lobby groups or political parties.

Inf’OGM follows international news, compares information, ensures its sources are reliable, and translates evidence in other languages, in order to produce concise, accurate, well-referenced information on all GMO issues written in plain, accessible language.

All this information is updated on a daily basis. Inf’OGM is in direct contact with local and international networks (local and municipal authorities, organisations and associations, legal experts and researchers).

Inf’OGM has become a benchmark organisation for the anti-GMO movement, providing them with both scientific evidence and economic and legal information, as well as detailing the social, health and environmental consequences of using Genetically Modified Plants (GMPs) and industrial seeds. Inf’OGM was heard by a parliamentary commission, prompted questions in the French National Assembly and played an influential role in subsequent amendments made to the French GMO legislation in 2008. The group also works alongside local councillors, among others. Other citizen watchdog groups have emerged in France which, despite the fact that their ambitious goals outweigh their modest resources, are still working in the “public interest” in various fields including nuclear energy, mobile phones, nanotechnology, pesticides and waste, to name just a few.

## Overview of “Public interest watchdog groups” in France

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At the instigation of Inf’OGM, fifteen French watchdog groups met up several years ago for a day of discussion. Below are several excerpts from the report.

What is immediately obvious is that the overall focus of watchdog groups is health, in the broad sense of the word. All organisations also uphold a “certain ideal in regards to society and democracy”. Hence the belief in providing “meaningful and relevant” information, which often seeks to break away from the conventional framework (“dominant paradigm”) in order to create a society that is more caring and more humane, and where everyone is entitled to express their opinion BEFORE decisions are made on technology or scientific issues.

Some watchdog groups with specialised skills and equipment (laboratories) are producing information, making specialist assessments and giving “second opinions”. CRIIRAD, which works on nuclear energy issues, is one such organisation. Another is CRIIGEN, active in the field of GMOs, among other issues. But the majority of organisations play an “information-provider” role, deciphering, contextualising and translating articles. Some groups are particularly proactive and seek out “emerging” issues (like VivAgora did with nanotechnology and synthetic biology). And some groups, like Inf’OGM, play a real journalistic role, carrying out original investigations.

Irrespective of how they do it, the information they produce is reliable, accurate, fact-checked, and equips the reader with (non-violent!) ammunition to take action. As being informed and taking action are intrinsically connected, many watchdog groups have integrated an action component into what they do, while others have chosen to concentrate exclusively on providing information.

It has now become difficult to install a waste incinerator in France because of the work done by CNIID (now called Zero Waste France), which assisted in shutting down two thirds of France’s incinerators in the 2000s. There is now a stricter legislation on GMOs and a moratorium imposed in France because of the action taken both by voluntary crop-busters and watchdog groups such as CRII-GEN, Inf’OGM and Rés’OGM Info. The reason that France’s public health regulations concerning radiation have changed, and that certain individuals are now under investigation after their claims that the Chernobyl cloud “stopped at the border”, is because CRIIRAD played a crucial role in setting the ball in motion ... And there are many more examples of the instrumental work watchdog groups are doing to instigate change.



It is reassuring to know that there is a long list of battles undertaken by organisations, with the assistance of watchdog groups, and by the watchdog groups themselves, and that a number of these battles have been successful. Over the course of the one-day meeting, the various watchdog groups noted that although they might differ in their approach and in the issues they were focussed on, they were often united in their objectives. Yet another good reason to join forces and continue working together.

# The Importance of Independent Expert Opinions: Three Examples

OLIVIER PETITJEAN, MULTINATIONALS OBSERVATORY

Various forms of “citizen science” are an effective way to deal with the negative effects of corporate power. The results of independent expert opinions on radioactivity levels, diesel emissions and water quality in Brazil illustrate their importance.

**I**n order for citizens, communities and public authorities to be able to deal with multinational corporations and assess their impacts, it’s crucial that they have access to relevant scientific knowledge and information. How else can they prove that a company’s operations are polluting the natural environment and creating health and environmental hazards? How else can they weigh up the benefits and the disadvantages (in terms of safety, for example) of a new product or technology on the market? How else can they make a well-informed judgement of the benefits and risks of an infrastructure or industrial development project that a company wishes to undertake?

And yet there is often a serious imbalance in the availability of scientific information required for people to form their own opinions, which ultimately benefits companies. In the end, they are free to promulgate “their” figures without anyone standing in their way. There are several reasons for this one-sidedness: the fact that companies have more financial resources than others, their growing influence on the scientific sector, and the very way in which administrative and decision-making processes are carried out, which hardly ever include a for-and-against process, consulting experts with different viewpoints. Added to this is a certain ideology of progress held in high esteem by both politicians and corporates, who tend to write off the “simple” opinions of “ordinary” people, and their knowledge of their own environment and their lives, favouring the scientific and technological knowledge of engineers.



## A desperate need for independent expert opinions

In most countries, licences and permits authorising new mining projects, drilling sites, factories, infrastructures, shopping centres or other projects are based on the results of impact assessments, which are usually carried out by the project promoters themselves. It is often difficult for public authorities – let alone citizens' organisations or traditional communities that oppose these projects – to check the information provided or to obtain a second opinion. Even when the public is consulted, it is often a superficial process that doesn't encourage active participation. This is often because the crucial decisions have already been made.

Similarly, "trade secrets" generally make it impossible for NGOs and the public to access information provided by chemical or pharmaceutical companies to obtain marketing authorisations for their products (drugs, pesticides, GMOs, etc.).

Companies not only employ their own scientific experts with R&D budgets that are significantly higher than those available to public scientific or academic establishments, but also enjoy a growing influence within these establishments due to cuts in public spending and a culture of encouraging private sector partnerships. The result is that even public research is increasingly dependent on corporate money. The various public health scandals that have emerged over recent years are a clear illustration of a relationship between science and business that has become too close for comfort. On the other hand, partnerships between scientists and NGOs are undervalued – seen as offering little in the way of career prospects or professional recognition.

Fortunately, local communities and NGOs committed to fighting transnational corporations and their negative effects often develop their own forms of "citizen science". Citizens working on these issues are often able to appropriate highly technical issues and challenge corporate arguments. They might themselves monitor air or water quality, or assess the ecological integrity of ecosystems. They know how to initiate legal proceedings in order to force companies to acknowledge and do something about the negative impacts of their operations. Sometimes these citizens are backed up by professional academics and scientists. It would be valuable to have more joint ventures of this type, involving scientists, civil society and the public.

The following examples illustrate just how important it is to have access to independent expert opinions.

### The Criirad

The Criirad (Commission for Independent Research and Information on Radioactivity) was established in France in May 1986, in the aftermath of the Chernobyl catastrophe, by a group of citizens that wanted to know the truth

about the real level of radioactive contamination in France. The Criirad's work is independent of the French state, the nuclear industry and political parties. It has its own testing laboratory thanks to donations made by individuals. It also carries out assignments for local authorities, which assist in covering its on-going costs.

At the request of journalists, organisations or citizen groups, the Criirad regularly monitors the radiation levels of nuclear facilities or uranium mines (closed or active), as well as regions affected by the Chernobyl cloud. Early in the 1990s, for example, it revealed that a former site of the Commission of Atomic Energy (CAE) on the Saclay plateau was contaminated. The CAE first denied this allegation but finally admitted that the Criirad was right. The tests carried out by the Criirad have illustrated just how inadequate radioactive testing and monitoring is in France. In the 2000s, Criirad travelled to Niger several times to monitor the impact of the French nuclear group Areva's mining sites. The organisation also works on issues such as radioactivity standards and access to information on French nuclear energy. In 2011, after the Fukushima disaster, it conducted a scientific mission on site and helped set up independent laboratories in Japan.

### **The NGO that uncovered the Volkswagen scandal**

In September 2015, the US environmental protection agency publicly denounced the German carmaker for equipping its diesel vehicles with software used to cheat on emissions tests. The discovery sparked a worldwide scandal and the ripples are still being felt. It has affected all companies in the automotive industry to varying degrees. What is less known is that the whole thing was triggered by the International Council on Clean Transportation (ICCT), an NGO which aims to provide "first-rate, unbiased research and technical and scientific analysis to environmental regulators".

The ICCT had asked researchers at West Virginia University to check the actual emissions of diesel vehicles sold in the USA. Its initial goal was to illustrate the advantage of American diesel emission standards, which are among the strictest in the world. But it was surprised to discover a significant difference between the emissions declared and the results they got testing the cars. The ICCT then informed the American authorities who suspected that Volkswagen had used a software designed to cheat on tests. Discrepancies between the emissions declared by the makers and the actual emissions had been common knowledge for a long time, but it took a non-profit group to get the public authorities to actually do something about it.

### **Assessing the Samarco mining disaster in Brazil**

In early November 2015, two mining dams owned by Samarco (a subsidiary of



Vale and BHP Billiton) collapsed, killing twelve people and provoking a toxic mudslide, with mining waste contaminating the Rio Doce river all the way to the ocean, 850 kilometres away.

The company initially claimed that the mudslide was made up “mostly of water and sand, iron oxides and manganese, and presented no danger to human health, and did not contain water contaminants,” while at the same time the water supply of hundreds of thousands of people was cut off and aquatic biodiversity was being annihilated.

In the aftermath of the disaster the company continued to deny the wastewater was toxic, prompting Brazilian academics to launch a crowdfunding campaign to finance a truly independent study of the water quality and assess the repercussions of the disaster. It should also be mentioned that the Brazilian company Vale has considerable political influence in the country, which raises the question of the Brazilian authorities’ impartiality. The crowdfunding campaign was an out-and-out success, exceeding its target (50,000 real or 13,000 euros) in just a few weeks.<sup>1</sup>

“Considering the vague response of the public institutions and the economic power of those involved [in the Brazilian multinational corporation Vale], it is extremely important to have an independent and impartial report, [on the effects of the disaster],” estimated the scientists that initiated the move. It is all the more important given that the companies, the public authorities, judicial authorities and civil society are currently involved in a fierce battle over the legal liability of the mine owners and the amount of compensation they should be asked to pay.

An independent group assessing the environmental impact of the disaster has been set up with the funds raised. Its web site can be viewed at: <http://giaia.eco.br/>.

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[1] <http://www.kickante.com.br/campanhas/relatorio-independente-de-impacto-causado-pelo-rompimento-das-barragens-de-fundao-e>.

# Assessing “Societal Costs” in Order to Choose the Economic Models of Tomorrow

CHRISTOPHE ALLIOT AND SYLVAIN LY, LE BASIC

The concept of “externalities”, favoured by some economists, has had a growing influence on decision-makers and on the media. Although controversial, it has enabled an increasing proportion of the population to become aware of the hidden costs of something (what is its “real” cost?) as well as its social cost (what is the cost to society?). Just as the idea of the “carbon footprint” altered how we view consumption, externalities could form the basis for strategic indicators on the sustainability of our production and consumption patterns.

**A**ll economic activity has hidden costs that it passes on to society. Thus, the costs of treating radioactive waste and decommissioning nuclear power plants have long remained invisible (or strongly undervalued) when it comes to comparing different energy production scenarios in France. Recent studies show that the intensification of agricultural practices leads to a loss of biodiversity and to the degradation of “eco-systemic services” (plant pollination by bees, for example). Air pollution from the transport and industrial sectors involves health costs that are just starting to be quantified. These examples illustrate various forms of what economists call “externalities”. What do they have in common? In each case, third parties – future generations in the case of nuclear and bees, social security and patients’ families in the case of air pollution – have or will have to pay costs resulting from decisions and practices that are not of their own making. As these costs are not valued by the market, the consumer does not pay for the real cost of a product or service. Part of this real cost is shifted, externalised to others and to future generations. The concept of “externalities” has gained wide currency, particularly in institutions and in



the financial sector. Institutions evaluate externalities at a macro level (national or international) to demonstrate the merits of their proposals (advocacy, public policies, bills, etc.). For companies and their finance departments, the goal is to integrate costs, and especially benefits, which are usually ignored by the market or by their customers, into their accounts and communication strategies: “how do I value the services I provide indirectly, or the benefits related to the use of my products?”

In recent years, we have seen a surge in new international initiatives dedicated to assessing externalities and hidden costs, with suggestive names such as “True Cost” or “True Price”.<sup>1</sup> Their objectives may be to factor externalities into balance sheets (*International Integrated Reporting Council, IIRC*<sup>2</sup>), or to value the eco-systemic services provided by Nature in monetary terms (see for example the *Natural Capital Protocol*<sup>3</sup> or *The Economics of Ecosystems and Biodiversity*,<sup>4</sup> both little known to the wider public). Most are multi-stakeholder initiatives, driven by both public institutions and global corporations, especially large audit firms (PricewaterhouseCoopers now has a commercial offer called *Total Impact Measurement and Management*). They are usually based on a concern for environmental protection and resource conservation. However, they are also controversial, particularly in relation to the fact that they seem to extend the reach of the commercial sphere even further to address environmental problems – an extension that is prone to abuse.

### Side effects and limits of externalities

Most criticism is targeted at the very premise of all these initiatives (apart from a few exceptions, such as the CARE method<sup>5</sup>). Externalities are seen simply as failures of the economic system, a situation easily rectified by integrating them back into that system. In this paradigm, it is possible for corporations to offset their negative externalities, through compensation mechanisms, by enhancing their positive externalities elsewhere, in a totally different context: “I have a polluted river? No worries, I will plant trees or fund a social inclusion programme.” This type of compensation is highly questionable. If pollution has destroyed a fish species in a river, for instance, how can the company responsible for the pollution claim to have “made up for” this loss and cleared its debt towards the rest of society? Such a view is not compatible with the concept of “environmental thresholds”, on which there is now a consensus within the scientific community. Indeed, when environmental degradation is too severe,

[1] See [www.trucost.com](http://www.trucost.com) and <http://trueprice.org>.

[2] See <http://integratedreporting.org>.

[3] See <http://www.naturalcapitalcoalition.org/natural-capital-protocol.html>.

[4] See <http://www.teebweb.org>.

[5] CARE for “*Comptabilité adaptée au renouvellement environnemental*” (Accounting adapted to environmental renewal): <http://www.novethic.fr/empreinte-terre/economie-circulaire/isr-rse/la-comptabilite-environnementale-doit-permettre-la-conservation-du-capital-naturel-138138.html>.

a tipping point is reached – the environmental threshold – which causes irreversible changes, and is therefore impossible to offset at the level of ecosystems or natural regulation mechanisms. The concept of threshold is also relevant in the social sphere, for instance in regards to so-called “poverty traps”, or losses caused by forced child labour.

Valuation methodologies are also controversial, such as the contingent valuation method, which produces valuations through surveys including questions such as, “How much would you be willing to pay to conserve this resource, or reduce the number of victims of this disease?” Such questions obtain significantly different results depending on how informed the respondent is on the issue at hand, their social and cultural background, trends at the time, and how researchers interpret and weigh up responses.<sup>6</sup> This valuation method was first used in the 1970s in the United States to measure the benefits of national parks and quantify the economic interest in protecting them. Increasingly used throughout the 1980s, contingent valuation methods were first implemented on a large scale during the trial following the 1989 Exxon Valdez oil spill, in order to calculate the amount of damages that the company responsible for the disaster would have to pay. In France, they have been used over the last twenty years to produce cost-benefit analyses on major public infrastructure projects, especially in the transport sector. The best-known recent case, the Notre-Dame-des-Landes airport project, is perhaps the one that best illustrates the limitations of this type of valuation method. After factoring in negative and positive externalities, a first cost-benefit assessment concluded that the project would be beneficial – and should therefore be pursued – yet the results of a second, more recent evaluation came to the opposite conclusion.<sup>7</sup> The reason for this discrepancy was the different valuation of the time that would be “gained” by those using a new airport. Aside from the question of which of these assessments was the most accurate, this example illustrates how important or crucial policy decisions are based on figures and valuations of questionable relevance and impartiality, which most citizens are not able to verify, especially since detailed valuation methods are generally not made available to the public, or when they are, it is only after decisions have been made.

Although the scope of externalities is currently expanding (controversially) into the valuation of eco-systemic services, this remains limited to a small number of environmental issues (climate, pollution and other forms of environmental damage). Social externalities are ignored, especially when they touch on issues already valued in some way by the market, such as labour, even though they are also, in fact, a source of hidden costs. For instance, the costs of working con-

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[6] See Jacques Weber, *L'évaluation contingente. Les valeurs ont-elles un prix ?*, Sciences Po-Ceri, July-August 2003.

[7] See Linda Brinke, Jasper Faber, *Examen de l'analyse globale coûts-bénéfices de l'aéroport du Grand Ouest. Comparaison avec des améliorations sur Nantes Atlantique*, Rapport Delft, October 2011.



ditions in Asian or African sweatshops, which are borne by workers and their families, are not considered an externality, but the result of a balance between supply and demand of labour.

### “Societal costs” as sustainability indicators . . .

The concept of “societal costs” seems more useful than the concept of “externalities” both because it doesn’t have the same limitations and partialities as the aforementioned methods, and because it offers an institutional perspective on the issue of hidden costs. German economist Karl William Kapp developed the concept at the beginning of the post-war boom. It can be defined as *all the losses and expenses, direct and indirect, present and future, supported by third parties or by society as a whole because of the social, environmental and health impacts of production and consumption patterns*<sup>8</sup>. In his works, W. Kapp explains that societal costs are not “one-off failures”, but effects inherent to our economic system. Because this system is fundamentally based on the endless pursuit of short-term growth and profits, it both generates increasing environmental and social impacts and shifts the costs of these impacts from those who are responsible for them (companies, individuals, institutions, etc.) to third party individuals or groups. Ultimately, profits are privatised, and costs are socialised. When the damage exceeds environmental or social thresholds, the sustainability of society as such and of ecosystems is at stake.

Societal costs can therefore be used as indicators for the sustainability or unsustainability of our lifestyles. The notion of “footprint” (ecological footprint, carbon footprint, etc.[8]) has already served to raise awareness among different audiences of the negative consequences of our societies’ over-exploitation of natural resources and CO<sub>2</sub> emissions. Much in the same way, an analysis of societal costs could help identify the economic models that should be prioritised and those that should be proscribed in a perspective of social and ecological transition. Ultimately, a “zero societal costs” society would approach the ideal of a circular economy.

Take for example the French dairy sector, which we at Le Basic have experimented with in order to determine societal costs. We calculated these costs on the basis of key environmental and social hidden costs generated by the production, processing and consumption of dairy products. Then we compared these total societal costs to the French dairy sector’s revenue. We calculated this ratio for the dairy industry as a whole, and then for each type of production model separately. The global average ratio was 0.28 euro, i.e., for every euro of revenue, the dairy industry generates 0.28 euro societal costs. This ratio drops to 0.18 euro for organic dairy production and to 0.10 for protected geographical indication (PGI) dairy production<sup>9</sup>. This calculation thus allows for quantification of the dif-

[8] K. W. Kapp, *Les coûts sociétaux de l’entreprise privée*, Les petits Matins / Institut Veblen, 2015.

[9] See our video “L’histoire de Marguerite, ou les impacts sociétaux de la filière lait française” at [www.lebasic.com](http://www.lebasic.com).



ference in environmental or social impacts between different production and consumption models, beyond existing certification systems.

### **. . . at the service of a public interest collective project?**

Based on the initial studies that we have produced for civil society and on our own research and development activities, we now wish to team up with other partners from civil society and establish an “observatory of societal costs”. Our aim is to carve out another approach to societal costs – that is not about refusing to recognise the costs associated with environmental and social impacts, nor about attempting to thoughtlessly monetise everything.

More specifically, such an initiative would:

- Put the concept of hidden costs and societal costs at the service of citizens and stakeholders wishing to encourage the emergence of new, low-impact economic models.
- Improve the accessibility and transparency of information on the societal impacts and costs of our economic activities and our lifestyles.
- Investigate the relationship between the privatisation of value creation and the socialisation of societal costs associated with this creation of value.
- Fuel existing platforms and discussion on sustainability issues in relation to industry sectors and their supply chains and distribution channels.

The initiative could help citizens and institutions to overcome dilemmas that are currently a source of confusion as to the best path to choose for a social and ecological transition (What about geo-engineering? What about agro-forestry? Green tech or low tech? etc.). These choices are both critical and urgent given the challenges we are facing.



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**Without information, democracy cannot exist.** We are being confronted with the emergence of new forms of power – economic powers – that largely escape traditional democratic mechanisms and counter-powers (including the media): transnational corporations. They are having an increasing influence on the world, on our lives and our societies, but we – ordinary citizens, civil society and even public authorities – often lack the relevant information that is required to prompt a genuine democratic discussion on their power, formulate adequate strategies and regulations, and imagine alternative solutions.

This issue of the Passerelle series explores the many issues around the production and dissemination of “democratic information” on corporations, for the benefit of citizens and society at large. The articles in this collection outline the many obstacles that hinder the production of such information (trade secrets, the repression of whistleblowers, media concentration, to name just a few) and illustrate the limitations of transparency mechanisms and reporting obligations that transnational corporations are currently subjected to – i.e., tax systems, lobbying, public subsidies and product labelling. This Passerelle also explores the use of critical information within the companies themselves, particularly among unions. Lastly, it provides an overview of the history and work of a number of organisations, networks and initiatives in Europe and throughout the world seeking to build “information counter-powers” to transnational corporations.

When it comes to confronting corporate power, “fighting by informing” is perhaps just as important as ensuring corporations submit to binding regulations and legal sanction. Not only because all these battles are ultimately inseparable, but also because information allows us to go even further, beyond a purely negative position, by highlighting alternatives to corporations. It is possible to take a different route, and we can do it without them.

### **Ritimo, the Publisher**

The organisation Ritimo is in charge of Coredem and publishes the Passerelle Collection. Ritimo is a network for information and documentation on international solidarity and sustainable development. In 90 locations throughout France, Ritimo manages public information centres on global issues, organises civil society campaigns and hosts awareness-raising and training sessions. Ritimo is actively involved in the production and dissemination of plural and critical information through its website: [www.ritimo.org](http://www.ritimo.org).

### **Multinationals Observatory**

The Multinationals Observatory aims to provide independent online news resources and in-depth investigations on the social, ecological and political impact of French transnational corporations, in a way that is useful for the action of civil society, MPs, businesspeople and communities. The website is published by Alter-médias, a French non-profit organisation that also runs the news website Bastamag.net.



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