

REDRESS MECHANISMS GOVERNING THE HUMAN RIGHTS PRACTICES OF TRANSNATIONAL BUSINESS



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Outline of Presentation

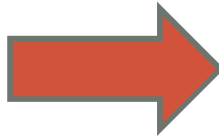
1. Project overview
2. Key outcomes
3. Partner organisations
4. Vedanta case study
5. Policy lessons

The 'Australian Approach to Development'

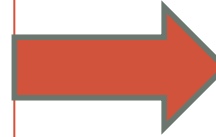


Australian Government

AusAID



Australian
businesses
operating in
the
economic
South



Local
Communities
and workers



The Australian government funds a number of agencies, that in turn either directly or indirectly fund the activities of Australian businesses overseas. These activities impact local communities and workers. Sometimes, negative impacts warrant redress.

Project concerned with:

- the urgent need to provide vulnerable workers and communities with more effective means of defending their human rights
- concerned with instances when human rights are violated by businesses based elsewhere
 - Eg. Mining in Indonesia by Australian companies
- ➡ Big jurisdictional barriers to making traditional legal claims

Key Outcomes

1. **Explain** how the various functions and powers of contrasting 'redress' mechanisms:
 - a) affect the strength of regulatory systems
 - b) promote long term change in business behaviour
2. **Develop** a regulatory reform 'best practice' model
3. **Share** this model with regulators, governments, aid agencies, NGOs and other key players in international human rights

Partner organisations in this 3 year project:



Vedanta Case Study



**Vedanta Case Study,
Orissa, India,
involving the remote
Kondha tribal people**

*Ash covering the
neighbouring land
from the aluminium
refinery*



*Deforestation
resulting in the loss
of traditional
livelihoods*



Protests held by the Kondha people wanting to avoid a similar fate and retain their traditional means of livelihood – the forest.



*Success at last
after losing 14
separate local legal
and administrative
decisions.*

- In 2008 a OECD UK National Contact Point determination lead to two major shareholders selling shares in Vedanta.
- In 2009 the Indian Minister for the Environment intervened.

Analysis

- Communities attempt to use multiple legal, non-judicial and administrative avenues to seek redress for human rights breaches, both in their local jurisdictions and in international jurisdictions.
- Parties suffered from compounded barriers.
- Barriers overcome with the assistance of numerous supportive parties - local and international NGOs, lawyers.
- *However*, only a short-term and limited win attained with great personal loss.

Lessons from the UK

What worked?

- This case demonstrates the importance of a proactive National Contact Point (NCP), willing and able to conduct investigations and generate findings even in the absence of company engagement.
- At present the Australian NCP lacks the willingness, resources and appropriate expertise to play this role.



Outstanding issues for UK reform

Key gaps



- Weak pressure in home country for companies to engage and comply with NCP findings
- Poor links between UK and host country processes meaning that the NCP entered the process extremely late in the game, and has contributed little to strengthening access to local remedies or to sector wide policy/practice

UK Proposals

- Some UK NGOs are lobbying for the establishment of a new statutory body: a **Commission for Business, Human Rights and the Environment**
- It is proposed that the Commission would have the following roles:
 1. **Coordination** – outreach within the UK, and cooperative arrangements with offshore regulators and human rights networks
 2. **Capacity building** – training, research, information sharing, policy development
 3. **Dispute resolution** – a mandate to receive, investigate and settle complaints against UK parent companies relating to abuse in other countries.



Implications for Australia

- Creation of a 'Commission' style body may be unrealistic in the Australian political environment, given the lack of political support for corporate accountability agendas in the past.
- Instead, it might be more fruitful to focus on reform to the activities of (and relationships between) existing entities.

Implications for practice and reform

- There are some important ways in which existing arrangements could be strengthened:
 - **Enhanced** powers of investigation and adjudication for available *forum/s for redress* through which dispute resolution and remediation can be pursued
 - **Support** for provision of *financial and technical development assistance* for capacity building within systems of redress in host countries
 - **Improved** coordination between relevant agencies/organisations, in BOTH home and host countries
 - **Strengthened** local and international alliances between actors committed to prioritising human rights agendas

Feasibility?

- Some of these changes could be brought about by changes to policy and practice within existing organisations.
- Others would require changes to organisational mandates, powers/resources and structure.

Question: what reform priorities would be both feasible, and make a difference?