



Brotherhood
of St Laurence

Working for an Australia free of poverty

ACCSR 2008 Annual Conference - Sydney

Raising the Bar: Leading Sustainable Business in 2008

Session 4: Human Rights

1. I would like to begin by thanking the traditional owners of the land we are on, the Gadigal People of the Eora Nation, and pay respect to their elders, past and present.
2. I would also like to thank ACCSR for the opportunity to speak and congratulate them on identifying human rights as a critical issue for sustainable business in 2008.
3. I would like to acknowledge Patrick Earle, from the HRCA, who was unable to be here today, but had input my comments. Patrick was involved in the GSL case.
4. The OECD guidelines for Multinational Enterprises outline what OECD member governments agree are the basic components of responsible business conduct. They are supported by governments, business, labour and some civil society groups. Their complaint mechanism makes them a unique 'soft law' tool. Every signatory government appoints a National Contact Point to promote the Guidelines and investigate when cases are raised using the complaint mechanism. A mediated outcome and a comprehensive public statement is sought.

Why we initiated the complaint.

1. In 2005, the Brotherhood of St Laurence in partnership with 4 other NGO's, the Human Rights Council of Australia, Children out of Detention, the International Commission of Jurists (based in Geneva) and Rights and Accountability in Development (UK), raised a case against Global Solutions Limited using the complaint mechanism of the OECD Guidelines for Multinational Enterprises.
2. The human rights and health concerns about the arbitrary detention of asylum seekers, and particularly children, were well documented

by respected organisations including HREOC, Amnesty International and the UN.

3. It was our view that the Government had failed in its duties to abide by international standards in relation to the arbitrary detention and treatment of asylum seekers. In addition, the Government had ignored or rejected the concerns of international human rights accountability mechanisms (UN Committee on the Rights of the Child, UN Working Group on Arbitrary Detention)
4. The Government had contracted out the management and day-to-day operations of the detention centers to GSL through a Public Private Partnership. It was our view that even though the Government was failing in its responsibilities, GSL had a moral responsibility to uphold human rights principles and practice, and a responsibility to operationalise its own publicly stated commitments to human rights.
5. In short, we felt that the company may be more willing to engage and address human rights than the government of the day

Aim of the complaint

1. To advise, influence and change the policy, practice and day-to-day operations of GSL in relation to the detention and treatment of asylum seekers, to ensure their core business was carried out within a human rights framework.
2. To seek the release of children and the end of mandatory, arbitrary detention, beyond the limits imposed by international standards.
3. To gain better treatment for those detained including *inter alia*: provision of information to detainees, access to timely and appropriate psychiatric and mental health services, food related concerns, detainee watch / observation mechanisms and the use of solitary confinement.
4. To raise awareness with the company of human rights and improve their policy, practice and governance including: staff training, stakeholder / community engagement processes, improved accountability and transparency and independent monitoring of operational procedures and guidelines
5. To highlight that international standards are relevant to the actions of companies, and these standards are valuable in enhancing corporate conduct and reputation.

6. To demonstrate that international human rights standards apply, regardless of public private partnerships and contractual arrangements with government. Companies have choice, and decisions concerning operational practices should be guided by knowledge and understanding of relevant international human rights standards.

Lessons learned

1. Human rights standards do have something valuable to say to corporations. They can inform and influence a companies approach to core business, in this case, the business of detention, and assist in decision making and risk management.
2. When Governments contract out services and enter into PPP's, lines of accountability and responsibility become too easily blurred. This is a problem / risk for both business and government.
3. Understanding and operationalising human rights standards is not always easy for business. To address this there is a need to build awareness and promote human rights, in a practical way, to both business and government.
4. The OECD Guidelines for MNE's complaint mechanism proved a very effective mechanism, in this case, to enable a mutually beneficial dialogue and mediation between human rights organisations and companies.
5. 34 agreed outcomes were reached in mediation. This was achieved by:
 - Willingness of GSL to participate. CEO and Head of Public Affairs, directly involved, not their lawyers. But it took time to get to this point. At the outset there was considerable hostility between the parties. As the CEO of GSL said, "when a letter comes across your desk on Federal Treasury letter head outlining claims by five NGO's of human rights abuses in your business, it does capture your attention"
 - Australian National Contact Point (ANCP) willing to accept a highly sensitive case. Despite placing limitations on the scope of the complaint, ANCP did not use this as an opportunity to reject the case outright

- All parties entered the process in good faith. An environment of trust, confidentiality and professionalism was established early in the process
- Process and timeframes were clearly established at the outset
- ANCP invited and actively encouraged both parties to provide additional information and expert opinion during the initial determination stage
- All parties were shown equal treatment, recognition and authority
- Both parties contributed to setting the agenda for mediation. The mediation was genuine, significant time was allocated and there was scope for robust discussion of sensitive issues.
- Compromises had to be made
- ANCP forwarded his final statement to both parties for comment prior to making public
- In recognition of the public private partnership (PPP), ANCP forwarded final statement to relevant government departments, including: Attorney General, Department. of Immigration, Commonwealth Ombudsmen, HEREOC)

In short, this was a best practice example of effective engagement, and it is recognised internationally as such.

- Political will, good faith and a highly effective response from the NCP were very important in this case. A further demonstration of this was the agreement by GSL and the ANCP to allow the case to be documented as a case study. This is now used to build capacity amongst NGO's globally and to help allay fears amongst the business sector about engaging in the complaint process.
6. One lesson that warrants further consideration is the effectiveness of the OECD Guidelines to address breaches of the principles when the operations of enterprises are structured through a PPP. The blurred lines of responsibility arising from public private contractual relationships runs the risk of impeding the implementation of the Guidelines if enterprises choose to diffuse their responsibilities based on contractual relationships with government and compliance only with national law.

Additional key points

1. Good luck and timing plays a role in many successes, and there was an element of luck and strategic use of the media, public opinion and timing in this case.

2. The right people, the right timing can all be seen as fortunate elements. Our decision to lodge the case to coincide with the Palmer Inquiry and subsequent media and community interest, no doubt assisted.
3. However, this should not take anything away from other factors mentioned, namely the effective functioning of the NCP, and a willingness of all parties to engage in constructive dialogue, even when it's a sensitive issue, such as human rights.
4. The Brotherhood of St Laurence is an active member of OECD Watch, an international network of NGO promoting corporate accountability and advice to the OECD Investment Committee. In response to a request from the European Social Investment Forum, four fact sheets on the OECD Guidelines for Multinational Enterprises have been developed. The third fact sheet assesses adherence to the OECD guidelines human rights provisions.
5. I was very saddened to learn of the recent death of Peter Olszak, CEO of GSL. Without Peter's willingness to get involved I doubt we would have achieved the outcome we did. I express condolences to his family and colleagues.
6. For further information on the GSL case, publications, the OECD Guidelines for Multinational Enterprises and opportunities to work with the Brotherhood of St Laurence or OECD Watch, please contact:

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