



Australian
Human Rights
Commission

everyone, everywhere, everyday

Independent review of aid effectiveness

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Australian Human Rights Commission Submission
to the independent panel

2 February 2011

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the Independent Review of Aid Effectiveness.
2. The Commission is Australia's national human rights institution.¹ For some years, the Commission has participated in activities convened under Australia's aid and development program – in particular, human rights technical assistance programs in China and Vietnam. The Commission has also run programs relating to disability issues in Pacific Island countries, and provided assistance to AusAID and DFAT on an *ad hoc* basis in other countries.
3. This submission **recommends that a human rights-based approach to development be fully incorporated into the design and delivery of Australia's aid program.** This would be consistent with international developments, particularly those emerging out of the major UN reforms that commenced in 2006 (following the World Summit).
4. The Commission **further recommends that consideration be given to the development of a Strategic Partnership between AusAID and the Commission in relation to technical assistance on human rights as part of the aid and development program.** This would provide greater opportunities for AusAID to utilise the expertise of the Commission in advancing its development work, including by enhancing the capacities of local institutions and, in particular, national human rights institutions (NHRIs).
5. The Commission notes that many of the elements of a human rights-based approach already exist in different programs and activities administered by AusAID. For example, a number of activities are targeted to particularly vulnerable groups (such as people with disabilities), include a focus on gender equality, support the development of local institutions with transparent governance, and are conducted through participatory and consultative processes.
6. This means that the application of a human rights-based approach to the aid program would require a moderate (as opposed to a radical) shift in the current approach and methodologies adopted by AusAID.
7. The Commission is confident that adopting a human rights-based approach across all relevant aspects of the aid program would add to the robustness of the aid program and contribute further to its sustainability and effectiveness. It would have the additional benefit of greater harmonisation between the AusAID program and the efforts of other providers of development assistance (such as UN country teams and the development agencies of other countries -

¹ The Australian Human Rights Commission was established in 1986 to protect and promote human rights in Australia. The Commission is established and operates in compliance with the *Principles relating to the Status of National Institutions (known as the Paris Principles)* as endorsed by the UN General Assembly in Resolution 48/134 - 20 December 1993.

many of whose work is already guided by a human rights-based approach). This is likely to contribute to more effective development outcomes.

2 Human rights, development and poverty eradication

8. In 2000, the international community agreed to the Millennium Development Goals (MDGs), providing concrete, numerical benchmarks for tackling extreme poverty.² The MDGs are central to Australia's aid program.³
9. In order to accelerate progress towards the MDGs, the international community made a series of commitments to improve the effectiveness of global aid. Those commitments are captured in the Paris Declaration to which Australia is a party.⁴ The Paris Declaration objectives of reducing poverty and inequality, increasing growth, building capacity and accelerating progress towards the MDGs cannot be met if human rights are not addressed.⁵ Mary Robinson, the former UN High Commissioner for Human Rights, observed:

Aid is only effective if it achieves good development results, and good development results are not possible if gender inequalities persist, environmental damage is accepted, or human rights are abused.⁶
10. The Declaration requires the international community to give attention to substantive policy areas and cross-cutting themes including human rights.⁷
11. Human rights have been recognised as integral to achieving the MDGs because they provide a framework for addressing the inequality, discrimination, exclusion and powerlessness that are often at the root cause of poverty.⁸ Ensuring full participation of all segments of society in decision making processes, increasing efforts to reduce inequality and eliminate social exclusion and disadvantage and respecting, promoting and protecting all human rights have been identified as ways to accelerate progress towards the MDGs.⁹
12. There are a number of reasons why a human rights framework is viewed as critical to increasing aid effectiveness. These include that such a framework:

² United Nations Development Programme, What are the Millennium Development Goals?, available at <http://www.undp.org/mdg/basics.shtml>.

³ AusAID Annual Report, 2009-2010, p 17.

⁴ The Paris Declaration on Aid Effectiveness, 2005 (Paris Declaration).

⁵ OECD GOVNET, *Human Rights and Aid Effectiveness: Key Actions to Improve Inter-linkages*, 2008, available at http://www.oecd.org/document/29/0,3746,en_2649_34565_43490845_1_1_1_1,00.html.

⁶ Mary Robinson, speaking at the workshop *Strengthening the Development Results and Impacts of the Paris Declaration through Work on Gender Equality, Social Exclusion and Human Rights*, March 2008, London.

⁷ Paris Declaration, para 42; OECD GOVNET, *Integrating human rights into development: Donor Approaches, Experience and Challenges*, 2006; see also for example UK Department for International Development, *Realising Human Rights for Poor People*, Target Strategy Paper, 2000.

⁸ United Nations General Assembly, *Keeping the promise: united to achieve the Millennium Development Goals*, 17 September 2010.

⁹ United Nations General Assembly, *Keeping the promise: united to achieve the Millennium Development Goals*, 17 September 2010.

- places an emphasis on improving accountability of government, service-providers and other duty-bearers
- has a focus on reducing dependency
- is based on agreed standards for assessing development performance
- creates legitimacy and consistency through a voluntary, normative and universal framework
- has a focus on stronger institutions and policy frameworks rather than on direct service delivery
- allows donor flexibility to tailor aid to specific country or cultural situations.¹⁰

13. The importance of integrating human rights into development cooperation has been strongly emphasised at the international level. As the *In Larger Freedom* report of the former UN Secretary-General notes:

Not only are development, security and human rights all imperative; they also reinforce each other. This relationship has only been strengthened in our era of rapid technological advances, increasing economic interdependence, globalization and dramatic geopolitical change. While poverty and denial of human rights may not be said to “cause” civil war, terrorism or organized crime, they all greatly increase the risk of instability and violence. Similarly, war and atrocities are far from the only reasons that countries are trapped in poverty, but they undoubtedly set back development. Again, catastrophic terrorism on one side of the globe, for example an attack against a major financial centre in a rich country, could affect the development prospects of millions on the other by causing a major economic downturn and plunging millions into poverty. And countries which are well governed and respect the human rights of their citizens are better placed to avoid the horrors of conflict and to overcome obstacles to development.

*Accordingly, we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights. Unless all these causes are advanced, none will succeed. In this new millennium, the work of the United Nations must move our world closer to the day when all people have the freedom to choose the kind of lives they would like to live, the access to the resources that would make those choices meaningful and the security to ensure that they can be enjoyed in peace.*¹¹

¹⁰ OECD GOVNET, Integrating human rights into development: Donor Approaches, Experience and Challenges, 2006; see also Marta Foresti, David Booth and Tammie O’Neil, Overseas Development Institute, *Aid effectiveness and human rights: strengthening the implementation of the Paris Declaration*, October 2006; see also United Nations Development Programme, *Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users’ Guide*, March 2006 which sets out agreed indicators for measuring and evaluating human rights-based approaches to development.

¹¹ Report of the Secretary-General, *In larger freedom: towards development, security and human rights for all*, 21 March 2005, paras 16-17, available at <http://www.un.org/largerfreedom/chap1.htm>.

14. Recent years have also seen increasingly close partnership between agencies such as the United Nations Development Programme (UNDP) and the Office of the High Commissioner for Human Rights. As the UNDP Administrator, Helen Clarke, has stated:

The three pillars of the UN - peace and security, development, and human rights - are closely interlinked. UNDP's development work sits in that context. Human development embraces the range of social, economic, cultural, and political rights defined by the international community.

...

UNDP is presently heavily engaged in looking at how progress on the MDGs might be accelerated, even in the face of all the current challenges to development. We want to base our efforts on thorough national and sub-national analysis of the structural, social, and economic causes of development successes or failures – including understanding which groups have been excluded from progress and why. Clearly a gender perspective needs to be applied to the review. After all, it is in areas where women's needs and status have low priority that the MDGs struggle the most to be met. Recognizing that also directs us to rights issues more generally. The denial of human rights, and the persistence of exclusion, discrimination, and a lack of accountability are barriers to the pursuit of human development and the MDGs.¹²

3 The Common Understanding of the Human Rights Based Approach to Development Cooperation

15. A human rights-based approach to development is based on agreed international human rights standards. It views poverty as a direct result of disempowerment and exclusion.¹³ A rights-based approach focuses on redressing the discriminatory practices and inequalities that impede development progress by supporting empowerment, participation and capacity building. A rights-based approach focuses as much on *how* things are done as *what* is being done.¹⁴
16. International consensus has developed about the meaning of a rights-based approach to development. This consensus is captured in the *Statement of Common Understanding of the Human Rights Based Approach to Development Cooperation* that has been adopted by UN Agencies. The Common Understanding states that:

¹² United Nations Development Programme, Speech by UNDP Administrator Helen Clark, *Helen Clark Addresses National Human Rights Institutions*, 23 March 2010, available at <http://content.undp.org/go/newsroom/2010/march/helen-clark-address-to-the-committee-for-the-protection-and-promotion-of-human-rights.en;jsessionid=axbWzt...?categoryID=593043&lang=en>.

¹³ Australian Council for International Development, *Millennium Development Rights: How human rights-based approaches are achieving the MDGs, Case Studies from the Australian aid and development sector*, 2009.

¹⁴ Australian Council for International Development, *Rights in Sight: Australian aid and development NGOs on human rights*, July 2009; see also Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions On A Human Rights-Based Approach to Development Cooperation*, 2006.

- all programmes of *development co-operation, policies and technical assistance should further the realisation* of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
- human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
- development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.¹⁵

17. The *Common Understanding* also identifies the following elements that are 'necessary, specific, and unique to a human rights-based approach' to development.

Elements of a human rights-based approach to development

- Assessment and analysis identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realisation of rights.
- Programs assess the capacity of rights-holders to claim their rights and of duty-bearers to fulfill their obligations. They then develop strategies to build these capacities.
- Programs monitor and evaluate both outcomes and processes guided by human rights standards and principles.
- Programming is informed by the recommendations of international human rights bodies and mechanisms.

Other elements of good programming practices that are also essential under a human rights-based approach include that:

- People are recognised as key actors in their own development, rather than passive recipients of commodities and services.
- Participation is both a means and a goal.
- Strategies are empowering, not disempowering.
- Both outcomes and processes are monitored and evaluated.
- Analysis includes all stakeholders.
- Programs focus on marginalised, disadvantaged, and excluded groups.
- The development process is locally owned.
- Programs aim to reduce disparity.
- Both top-down and bottom-up approaches are used in synergy.
- Situation analysis is used to identify immediate, underlying, and basic causes of development problems.

¹⁵ United Nations Development Group, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies*, 2003.

- Measurable goals and targets are important in programming.
- Strategic partnerships are developed and sustained.
- Programs support accountability to all stakeholders.

18. The Commission notes that in the past AusAID has stated that it had not adopted a rights-based approach to aid and development because it believed that there was not an agreed understanding of what constitutes a rights-based approach.¹⁶

19. This approach is no longer sustainable having regard to the common international understanding identified above.

4 The AusAID program

20. AusAID's primary objective is: "to assist developing countries reduce poverty and achieve sustainable development, in line with Australia's national interest".¹⁷

21. The Australian aid program is organised around four themes: accelerating economic growth; fostering functioning and effective states; investing in people; and promoting regional stability and cooperation.¹⁸ AusAID also has two cross-cutting themes; gender and anti-corruption.

22. AusAID has also stated that:

"development and human rights are interdependent and mutually reinforcing".¹⁹

The Commission agrees fully with this characterisation.

23. Even though AusAID has not adopted a rights-based approach, we note that it currently delivers programs across a number of sectors which promote, directly or indirectly, the rights of disadvantaged and marginalised groups. For example:

- the 2010/11 Aid Budget makes addressing gender equality and support for women's full participation in economic, social and political life a priority²⁰
- the 'Development for All' policy seeks to ensure that people living with disabilities are included in and benefit from all Australian aid programs²¹

¹⁶ Submission from the Australian Agency for International Development to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade on its Inquiry into the Link Between Aid and Human Rights, *Putting Things to Rights: The use of Foreign Aid to Advance Human Rights in Development Nations*, February 2001.

¹⁷ AusAID Annual Report 2009-2010.

¹⁹ AusAID, Human rights and Australia's aid program, at <http://www.aisaid.gov.au/keyaid/humanrights.cfm>.

²⁰ Budget 2010-2011, Australia's International Development Assistance Program: A Good International Citizen, Statement by the Hon Stephen Smith MP and the Hon Bob McMullan MP, 11 May 2010, at http://www.budget.gov.au/2010-11/content/ministerial_statements/aisaid/html/index_aisaid.htm.

- in 2009, the Hon Bob McMullan MP, the former Parliamentary Secretary for International Development Assistance, noted the benefits that had come from a regional and international shift from a charity-model to a rights-based approach to disability. He noted further the value of having an international human rights convention to provide:

a comprehensive set of articles that take us beyond non-binding international standards to formally binding legal obligations.²²

24. AusAID has also already begun to implement a rights-based framework for some programs.
25. For example, AusAID has adopted a new international development strategy for HIV.²³ The strategy recognises that the HIV/AIDS epidemic will only be stopped when countries address laws and policies that impede access to prevention and treatment services. For example, people who inject drugs are sometimes reluctant to use health and support services for fear of prosecution and stigma or police may raid needle and syringe exchange programs. The AusAID strategy outlines the steps AusAID will take to help partners amend laws to better align drug control and harm reduction activities, implement supportive laws and policies and encourage participation of law enforcement agencies in harm reduction programs.²⁴ This strategy aligns with a rights-based approach because it analyses the inequalities and discrimination which have an impact on the realisation of human rights. It also seeks to identify and implement long-term and sustainable strategies to redress those practices.
26. Despite these developments, AusAID does not have a specific policy requiring all programs and projects to be consistent with the rights-based approach to aid and development. The current ad-hoc approach to rights-based programming does not maximise the effectiveness of the Australian aid program.
27. For example, the 2009 Annual Review of Development Effectiveness found that although gender equality is a key principle of Australia's aid program, gender equality work in AusAID projects is largely peripheral and rarely influences strategic direction.²⁵
28. Formalising a rights-based approach throughout the Agency would ensure that all human rights, including those relating to gender equality, are considered as central to policy and project design and in project delivery.

²¹ AusAID, Disability in Australia's aid program, *New budget measure- Disability: Fair development accessible to all*, at <http://www.aisaid.gov.au/keyaid/disability.cfm>.

²² The Hon Bob McMullan MP, Parliamentary Secretary for International Development Assistance, *Disability and development in the Pacific*, 22 October 2009 at http://www.aisaid.gov.au/media/release.cfm?BC=Speech&ID=2249_5589_1118_3821_3916.

²³ AusAID, *Intensifying the response: Halting the spread of HIV: Australia's international development strategy for HIV*, April 2009.

²⁴ Case study taken from Australian Council for International Development, *Millennium Development Rights: How human rights-based approaches are achieving the MDGs, Case Studies from the Australian aid and development sector*, 2009.

²⁵ AusAID Office of Development Effectiveness, *Annual Review of Development Effectiveness 2009, Improving basic services for the poor*, 2010.

29. The 2009 Annual Review of Development Effectiveness also identified concerns about the sustainability of benefits beyond the life of specific projects.²⁶ Research has shown that projects that adopt a rights-based approach are more likely to lead to sustained positive change because they tackle the underlying causes of poverty and disadvantage and create new systems of accountability.²⁷ Rights-based approach projects are more successful at attaining impacts that lead to sustained positive change. In particular, rights-based projects:

- improve the quality of assets (environmental, economic, social, physical) gained
- increase the likelihood of those assets being retained over a longer period of time
- reduce vulnerability by addressing inequitable power relations
- reduce social exclusion by linking citizens to the state directly and including the marginalised in decision making fora
- improve access to justice by challenging traditional social and cultural norms
- ensure livelihood diversification
- increase knowledge and skills and develop the ability to transfer those skills outside the project
- increase protection against discrimination
- improve people's confidence to act and make changes in their lives and well-being by focusing on the structural causes of poverty.²⁸

4.1 Improving the effectiveness of the AusAID program through a rights-based approach

30. The Australian Human Rights Commission recommends that AusAID adopt a human rights-based approach across the agency, including in both policy and program development and in project delivery.²⁹

²⁶ AusAID Office of Development Effectiveness, Annual Review of Development Effectiveness 2009, *Improving basic services for the poor*, 2010.

²⁷ UK Interagency Group on Human Rights Based Approaches, *The Impact of Rights-based Approaches to Development*, Evaluation/Learning Process, December 2007, available at www.crin.org/docs/Inter_Agency_rba.pdf.

²⁸ UK Interagency Group on Human Rights Based Approaches, *The Impact of Rights-based Approaches to Development*, Evaluation/Learning Process, December 2007, available at www.crin.org/docs/Inter_Agency_rba.pdf.

²⁹ This is consistent with the 2001 recommendation of the Joint Standing Committee on Foreign Affairs, Defence and Trade that AusAID adopt a human rights-based approach to guide the planning

31. There are a number of concrete steps that would need to be taken to implement a rights-based approach to development. These include:

- that in the development of all AusAID policies and programs and in the delivery of all projects and activities (either directly by AusAID staff, consultants, partners or through grant schemes), relevant human rights are identified and included throughout development, implementation and review processes.
- the “language of rights” (and references to relevant Conventions, Declarations and other relevant instruments where appropriate) is consistently used in all documents and forms of communication.
- a process is established whereby organisations representing the various rights-holders are consulted from the outset (from the idea stage) through to planning, implementation and monitoring.
- the needs of groups who are often left out and face high levels of discrimination are identified and included at each stage.
- all project activities and information are made available to all likely to be affected, including those with disability, women, children, minority groups etc
- training is provided to all AusAID staff in relation to human rights and human rights-based approaches. A focus on the rights and needs of people with disability and women is specifically included in all training programs.
- where consultants or project partners are involved in the delivery of projects and activities steps are undertaken to ensure they are familiar with the relevant human rights identified and undertake to adhere to the human rights-based approach being implemented by AusAID.
- there is a focus on building local capacity to address issues, rather than building reliance upon aid projects, including through support the development of local institutions, such as NHRIs.

5 Strategic partnerships

32. AusAID and the Commission currently work together to implement a number of projects, most notably:

- the China-Australia and the Vietnam-Australia Human Rights Technical Cooperation Programs

- the *Building capacity and knowledge of Disabled Persons Organisations and government representatives in the Pacific to progress disability issues* project.

33. The China-Australia Human Rights Technical Cooperation Program focuses primarily on the protection of the rights of women and children and of ethnic minorities and legal system reform. Each activity is implemented as a cooperative venture between the Commission and the relevant Chinese organisation and government agency. These programs have received consistently positive feedback from independent reviewers.

34. AusAID has formal strategic partnerships with a number of Australian government departments to ensure departments work in a collaborative and cohesive way to reduce poverty in the Asia-Pacific region.³⁰ The Commission recommends that consideration be given to strengthening the relationship between the Commission and AusAID through a Strategic Partnership.

35. Pursuant to a Strategic Partnership, the Commission could more substantially contribute to the effectiveness of the aid program by, for example:

- working with the NHRIs of developing countries to strengthen those institutions thereby enhancing the sustainability of human rights improvements in those countries
- providing technical assistance directly to government departments and agencies and civil society in developing countries
- otherwise making its expertise and experience in human rights and human rights-based approaches available to AusAID.

6 Conclusion and recommendations

36. In summary, a human rights-based approach to aid and development will improve the quality and effectiveness of aid by achieving better and more sustainable development outcomes.

37. Accordingly, the Commission makes the following two recommendations.

Recommendation 1: That a human rights-based approach to development be fully incorporated into the design and delivery of Australia's aid program.

Recommendation 2: That consideration be given to the development of a Strategic Partnership between AusAID and the Commission in relation to technical assistance on human rights as part of the aid and development program.

³⁰ AusAID, Australian Government departments, available at www.ausaid.gov.au/partner/ozgov.cfm.