

SUBMISSION TO THE INDEPENDENT REVIEW OF AID EFFECTIVENESS

The Human Rights Council of Australia Inc

The Human Rights Council of Australia Inc (from now HRCA) is a private non-government organization which promotes understanding of and respect for human rights for all persons without discrimination through adherence to the International Bill of Rights, and other human rights instruments, internationally and within Australia.

The objectives of the HRCA are:

- to promote a better understanding and the implementation of human rights
- to monitor and make public the performance of governments in complying with their international human rights obligations
- to contribute particularly to the promotion and protection of Human Rights in Australia and the Asian-Pacific region
- to promote the further development of Australian policy with respect to human rights

HRCA has been a pioneer in the elaboration of the human rights-based approach to development and has been influential on the policies of United Nations and national development agencies.¹ These agencies include the UNDP, UNICEF, and the development arms of the governments of Finland, Sweden, Ireland, New Zealand and Germany. HRCA has also designed, facilitated and/or delivered training programs on the rights-based approach to development in Australia, Cambodia, India, Japan, Nepal, the Philippines, South Korea and Thailand in our region, as well as in Switzerland, Germany, the Netherlands, Denmark, Norway, Sweden, Finland and Yemen.

Background to the submission

Australia has an enviable human rights profile internationally. No country has a perfect record and Australia has adopted a new human rights framework and is drafting a new national human rights action plan to address perceived inadequacies in its protection of human rights. One area where Australia's

¹ See The Human Rights Based Approach and the United Nations system, UNESCO Strategy on Human Rights, 2006 and The Rights Way to Development: A human rights approach to development assistance, Human Rights Council of Australia Inc 1995

performance might be improved is the effectiveness of its aid. HRCA welcomes the current review as an opportunity to achieve that improvement.

This submission into the effectiveness of Australia's aid program draws on two major documents from the Development Assistance Committee of the Organization for Economic Co-operation and Development, *The Paris Declaration on Aid Effectiveness, 2005* and *Aid effectiveness and human rights: strengthening the implementation of the Paris Declaration, 2006*. It also takes into account the policies of bilateral and multilateral agencies and best practice in the implementation of the human rights-based approach to development, including the Council's own contribution to the field.²

The Paris Declaration on Aid Effectiveness laid out five key principles that were the basis for commitments by donors and developing countries:

- Ownership: Partner countries exercise effective leadership over their development policies and strategies, and coordinate development actions.
- Alignment: Donors base their overall support on partner countries' national development strategies, institutions and procedures.
- Harmonisation: Donors' actions are more harmonised, transparent and collectively effective.
- Managing for results: Donors and partners manage and implement aid in a way that focuses on the desired results and uses information to improve decision-making.
- Mutual accountability: Donors and partners are accountable for development results.

The principles in the Paris Declaration are directly relevant to the organizing principles of Australia's aid program to:

- Accelerate economic growth
- Foster functioning and effective states
- Invest in people
- Promote regional stability and cooperation

HRCA submits that integration of a human rights approach to development will contribute to the effectiveness to all four of these organizing principles [Recommendation 1].

The human right approach to development cooperation

In the early 1990s HRCA developed and released an analysis of development and human rights and recommended a framework for a human rights based approach to development. At that time almost all donor agencies focused on a definition of human rights as exclusively, or at least principally, civil and political rights and on negative conditionalities associated with violation of these rights. Others accepted the broader definition found in international law but then claimed that all their programs and projects designed to accelerate growth and invest in people were addressing economic and social rights.

² The HRCA submission starts from the assumption that there is no necessity to argue for the key principles in the Paris Declaration. Neither does the submission enter into details on how the arguments put forward in the paper on strengthening the implementation of the Paris Declaration were originally put forward in the HRCA report to AIDAB back in 1994.

Considerable policy development since those years has meant that these claims could not be sustained. There has there been a considerable amount of work done on the substantive content of economic, social and cultural rights, on the clarification of what the obligation of states are for the realization of economic and social rights. The link between these obligations and the development process has been brought into sharper focus. This has contributed to the widespread acceptance by NGO, bilateral and multilateral development agencies of the human rights based approach to development over the last decade. There are too many examples in development experience over the past decades where the focus on economic growth has served to enrich a minority elite with little or no impact on the level of poverty in the population.³ The most drastic example in today's headlines is the case of Egypt which has enjoyed a huge level of economic support from USAID with little impact on poverty in the country and where, far from promoting human rights, the aid has served to entrench a dictatorial and undemocratic regime.

The issue here links directly to the fourth pillar of the Australia aid program to promote regional stability and cooperation. Regional stability depends on institutional permanence and Australia contributes in a major way through its institution-building efforts including through the Asia Pacific Forum of National Human Rights Institutions. However, there is too little emphasis in building up institutional permanence that involve a whole of government approach in both partnerships and the building of linkages with civil society organizations and the citizenry at large. This is where the human rights framework can play an important role since it provides a 'commonly shared and globally agreed normative and legal framework' and 'a series of practical tools and established programming approaches for applying the framework to development efforts'.⁴

To take each of the principles in the Paris Declaration, human rights are intricately linked in that 'strengthening domestic accountability between recipient governments and their own citizens is essential for ensuring effective use of aid to produce sustainable development outcomes'⁵; human rights 'establish that there should be national or citizen-based (rather than just government) ownership'⁶ to ensure the sustainability of the development effort; the acceptance of a human rights-based approach to development by numerous multilateral and country-based donor agencies provides the opportunity of greater harmonization of donor activities; the human rights framework can ensure that national mechanisms supported by donors are aligned to national development priorities which in turn are assumed to –and should – promote and protect the human rights of the citizenry; and managing for results requires effective analysis and evaluation that can be based on the realization of human rights.

The effectiveness of aid intervention can often be undermined by definitional issues. The term 'governance' was quite controversial in the negotiations over the eventual Cotonou Agreement between African developing country governments and the European Union. A human rights analysis, based as it is on an agreed international legal framework, takes out some of the definitional difficulties. This relates to the nature of negotiations between partner countries and the need for a sustained dialogue to agree on human rights outcomes. The political difficulties so often cited over discussions about abuses of civil and

³ A notable exception is the extraordinary fall in poverty in the PRC during the last two decades

⁴ *Aid effectiveness and human rights: strengthening the implementation of the Paris Declaration* Marta Foresti, David Booth and Tammie O'Neil, Overseas Development Institute October 2006 for the Development Assistance Committee of the OECD

⁵ *Ibid* p ix

⁶ *Ibid* p x

political rights may very well be eased through the adoption of an approach which injects mutual obligations to the realisation of human rights – including economic and social – in dialogues between partners [Recommendation 6].

Another obstacle to sustainability is ‘the narrow technocratic focus on financial and budgetary processes and institutions’⁷ when dealing with institutional and governance issues. Indian civil society organizations have shown that participation by communities in provincial or state budgeting can often address corruption and wastage much more effectively than the MOUs between donor governments and the developing country partner. There is now a good body of documentation on such efforts in linking human rights and budgeting. Accordingly the allocation of funding to such programmes should be increased and not taken out of the limited human rights funding grants process. This is one of many examples where the democratic urge can be enhanced through the use of human rights and AusAID has the opportunity of fostering more such initiatives through increased funding of human rights NGOs [Recommendation 7].

Sectoral issues can also be addressed through a human rights prism. The traditional perception of the HIV/AIDS epidemic is that it is a health issue. In a number of instances shifting the focus to treating HIV/AIDS as a human rights issue – a violation of human rights and discrimination – has strengthened public health policies, encouraged the participation of affected populations, enabled a more complex range of interventions and resulted in improved treatment. Australia has a number of experts focusing on the right to health and the University of NSW, for example, has an annual programme on the right to health for domestic and international professionals. Australia has taken a leadership role in efforts to combat HIV/AIDS – and addressing the human rights issues of discrimination has been central to these efforts. The adoption of a human rights approach to development will enable AusAID to tap this expertise.

All too often there are calls from institutions and interested parties for the cessation of aid programmes to countries where human rights are systematically denied. HRCA supports the Australian policy of dealing with each situation on its merits and in ceasing aid only when and to the extent that the aid may be reinforcing the denial of rights or the regime responsible for that or where ceasing aid is thought to be a factor in reinstating the rule of law. Negative conditionalities have seldom proved themselves effective in the promotion and protection of human rights.⁸ The advantage of adopting a human rights approach to development is that in such cases, Australia can point to its policies in support for state institutions governed by a commitment to the realization of human rights. This can provide the opportunity of supporting ‘fragile states in meeting their human rights obligations’⁹ and a more positive dialogue, based not on differing national perspectives but on shared values reflected in agreed international standards.

In April 2010 the Attorney-General launched Australia’s human rights framework. This included the establishment of a Parliamentary Joint Committee on Human Rights. This Committee was to scrutinize legislation for compliance with Australia’s human rights obligations. AusAID reports to the Parliament through the relevant Minister. In the spirit of participation and as required by adherence to the international human rights framework, Australians are entitled to know about the effectiveness of

⁷ Ibid p 6

⁸ South Africa is one exception. Burma shows that sanctions do not necessarily work. Iraq demonstrates how sanctions in fact can cause far more harm than good.

⁹ Op cit p 21

Australia's aid programme. HRCA recommends that AusAID for report to the Parliamentary Joint Committee on an annual basis [Recommendation 5]. The Council believes that this reporting will help to build and strengthen public support for the aid program and will encourage a greater focus on its impact on the full enjoyment of human rights.

Human rights and Australia's aid program

This section addresses some issues directly related to AusAID policy on human rights that have not been dealt with above. Since 1992 HRCA has been involved in occasional discussions with AusAID over Australia's human rights programme. The professionalism of AusAID staff cannot be questioned and the difficulties that it has faced over numerous policy demands from various governments cannot be ignored. However in the field of human rights, HRCA has questioned the legitimacy and adequacy of some of AusAID human rights policies.¹⁰ We commend the commitment to ranking civil and political rights equally with economic, social and cultural rights. As discussed above, there has been considerable progress in the acceptance of the nature of state obligations under the International Covenant on Economic, Social and Cultural Rights. The AusAID policy on human rights states that "... The aid program will continue to undertake activities that directly address specific economic, social, cultural, civil and political rights"¹¹. This harks back to the claim that everything that AusAID does promotes economic and social rights. As we argue above, this is a contentious position that can no longer be sustained.

The section on human rights dialogue points out that these dialogues are 'normally carried out through diplomatic channels'¹². HRCA contests this practice. It contrasts with the far more transparent human rights dialogues conducted with China in 1991 and 1992 and with Vietnam in 1995, where the Australian delegation was not a diplomatic delegation working through diplomatic channels but a mixed group representing the parliament and a range of expertise in human rights and in the dialogue partners. These dialogues resulted in major public reports that promoted accountability, frankness and substance and contributed to far more understanding of the human rights situations in these countries. Human rights dialogues should be conducted on the original model of these early dialogues, not the present model. Further, as a means of legitimizing human rights, it is essential that human rights be an intrinsic part of the development dialogue for reasons enunciated above. A yearly 'diplomatic dialogue' is unlikely to bring about measurable results.

"AusAID will continue to link closely with other arms of the Australian Government"¹³. HRCA was grateful to the then AIDAB for assistance in exploring donor practices in Papua New Guinea in 1993-4. The Police Project was held up as exemplary in promoting human rights and certain aspects were indeed admirable. The training of police and military personnel in developing countries is a project which necessarily involves a number of government departments. Despite past efforts by a number of Australian human rights NGOs, human rights have not featured in such training except in a most rudimentary fashion.

HRCA recommends the building of human rights expertise through AusAID [Recommendation 3]. This expertise can then be offered to other government departments include Defence and State police

¹⁰ See Appendix 1.

¹¹ www.ausaid.gov.au/keyaid/humanrights.cfm

¹² Ibid

¹³ Ibid

forces. Just as with the aid community there is considerable resistance about considering human rights as a benefit to policing. An often heard comment is that human rights is another 'cross-cutting' issue and simply a fad. HRCA has argued strongly against this perception of human rights. The police in Northern Ireland is an example where human rights has been accepted as a benefit to policing as this quote from Assistant Chief Constable, Duncan McCausland testifies.

As the newly appointed Champion for Human Rights in the Police Service of Northern Ireland it is my responsibility to promote and encourage human rights.

This is a job I approach with enthusiasm. I have experienced the real practical benefits for the police and the community that such an approach can deliver in my former role as the operational Assistant Chief Constable for Urban Region.

HRCA recommends that AusAID's human rights expertise (once it has been developed) be made available across the Federal and State public services [Recommendation 8]. In the meantime, there is considerable expertise at both federal and state levels in various government departments, statutory bodies and other institutions. The experience in Victoria where the adoption of the Charter of Rights required the development of relevant training programs could be drawn on by AusAID program staff [Recommendation 9].

AusAID also provides very limited funding to projects that are specifically directed towards human rights protection and promotion. The funding available through the Human Rights Grants Scheme (formerly the Human Rights Small Grants Scheme) has been doubled over the past three years but it remains a very small part of the Australian aid programme – around \$3.5m a year. Unlike the development agencies of the Nordic states and some other Western donors, Australia is simply not seen internationally as a human rights donor. As part of Australia's commitment to the promotion and protection of human rights, funding available through the Human Rights Grant Scheme needs to be further increased very substantially. Each year the Scheme attracts far more good projects than it can fund, without there being a very wide promotion of the Scheme. There is no shortage of human rights activities requiring support. The funds in the Scheme should be increased to at least \$15m over the next three years and maintained thereafter at least at that level [Recommendation 7].

References

Aid effectiveness and human rights: strengthening the implementation of the Paris Declaration
Marta Foresti, David Booth and Tammie O'Neil, Overseas Development Institute October 2006

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The Human Rights Based Approach and the United Nations system, UNESCO Strategy on Human Rights, Social and Human Sciences Sector, 2006

Recommendations

1. AusAID adopts a human rights-based approach as elaborated in the UN Common Understanding on the Rights-Based Approach to Development.¹⁴
2. Funding be reinstated within AusAID for a dedicated Human Rights Unit responsible for the training of staff and the evaluation of human rights impact assessments (see recommendation 4). The Unit should come under the direct authority of the Director-General.
3. AusAID develops human rights expertise in all its professional staff and outside contractors. On-going human rights training should be an intrinsic part of a staff member's career requirements.
4. AusAID require a human rights impact assessment and human rights evaluation for all its programmes and funded projects.
5. AusAID should be required to appear and report annually to the Joint Parliamentary Committee on Human Rights.
6. Australia's human rights dialogues with developing countries should include AusAID and the agenda for these dialogues include development issues. This will require training programmes for AusAID personnel.
7. Funding for specific human rights programmes/projects/initiatives should be considerably expanded.
8. AusAID's human rights expertise (once it has been developed) be made available across the Federal and State public services.
9. AusAID research source of human rights expertise at the federal and state levels where this does not exist within the organization.

¹⁴ 1. All programmes of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

2. 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.

3. 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.

APPENDIX 1

Human rights and Australia's aid program

- Human rights are a high priority for the Government. Civil and political rights are ranked equally with economic, social and cultural rights.
- The aid program will continue to undertake activities that directly address specific economic, social, cultural, civil and political rights. A particular emphasis will be on the creation of durable institutional capacity to promote and protect human rights.
- The emphasis will be on the practical and attainable. AusAID, as the Government's aid agency, will pursue practical aid activities in support of human rights. These activities complement and build upon high-level dialogue on human rights. Dialogue on human rights and representations about individual human rights cases will normally be carried out through diplomatic channels.
- The aid program will develop activities primarily as a result of consultations and cooperation with partner countries on human rights initiatives. Regional and multilateral activities will also be undertaken.
- Considerable care will continue to be applied to the use of aid sanctions associated with human rights concerns. The Government will consider such sanctions on a case-by-case basis. Aid conditionality based on human rights concerns would only be used in extreme circumstances since it can jeopardise the welfare of the poorest and it may be counterproductive.
- AusAID will continue to link closely with other arms of the Australian Government on governance and human rights issues. AusAID will also liaise with NGOs and human rights organisations in Australia.