Submission No 40

Inquiry into Human Rights and Good Governance Education in the Asia Pacific Region

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Response to Additional Questions of 29 May 2003
from the Joint Standing Committee on Foreign Affairs, Defence and Trade
Human Rights Sub-Committee
Inquiry into Human Rights & Good Governance Education in the Asia-Pacific Region

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General Statement

A number of the additional questions directed by the Human Rights Sub-Committee to the Castan Centre for Human Rights Law relate to the national coordination of human rights institutions, education and policy. Before responding directly to each additional question in turn, we would like to set out the Castan Centre's general position on the issue of national coordination.

There is a genuine need for a national forum of some kind to improve knowledge exchange between the key players in human rights education. It will assist improvements in both the method and substance of human rights teaching and research and, through that, positive human rights outcomes in Australia and the region. What form this national body should take – a National Centre for Human Rights Education and/or a National Coordination Council and/or a National Policy Consultation – is less certain. On balance, the Castan Centre supports a National Centre for Human Rights Education ahead of the other institutions mentioned. Even in that case, there remain a number of issues to be resolved regarding the potential efficiency and effectiveness of such a Centre. The preferred entity is one that achieves its aim, improving the quality and impact of human rights education, with the minimum administrative burden.

Human rights education (including education related to good governance) is complex; much remains unknown as to the causal links between education modes, substantive content and positive human rights outcomes. It is for this reason Castan Centre members continually reassess their approach toward the teaching of human rights law as they

attempt to meet the Centre's core objective, namely, *to promote and protect human rights through the generation and dissemination of public scholarship in international and domestic human rights law.* There is also considerable interaction between this teaching and the Centre's research activities. Our institution, and, presumably, others, would be assisted in both endeavours by a national body or network that facilitates the exchange of knowledge in furthering the general understanding of cause-and-effect in human rights education.

With a judicious choice of members and structure, a national human rights education body might broaden the range of Australian stakeholders in human rights. From the Castan Centre's perspective, the four primary groups that should be represented in any national organisation are: tertiary institutions; peak school or education bodies; State and Commonwealth public agencies and community, or non-governmental, organisations. By focussing on human rights *education* in the first instance, a national body comprised of members from these groups might evolve toward being able to advise, to some degree, on human rights *policy* as its members gradually develop a shared understanding of the nature of human rights. In any case, there is a demand, not to mention a need, for human rights education first and foremost, as indicated by the positive feedback the Castan Centre has received in response to its human rights law education of DFAT officials over the past several years.

The approach described above is recommended over one which seeks to directly establish a peak policy body. In the Castan Centre's experience, human rights is a much contested field; there are significant differences between key players (especially between government agencies and NGOs) when it comes to interpreting human rights law and policy in Australia and internationally. Arriving at a coordinated, unified policy position, while retaining a broad stakeholder base, would be extremely difficult and a questionable use of resources. Far better, given these circumstances, to consolidate a network around an issue such as education on which shared objectives are possible in the short to medium term, rather than establishing a peak body likely to have only the intermittent backing of human rights research and education practitioners. It should also be borne in mind that a truly successful network will, over the long-term, alter the nature of the policy discourse within its sector.

In devising a national structure able to assist the long-term promotion and protection of human rights in Australia and the Asia-Pacific region there is some use in considering the lessons offered by existing institutions. One institution worthy of analysis is the Asia Pacific Forum of National Human Rights Institutions, especially in regards the way it achieves its objective to *expand mutual support, co-operation and joint activity among*

member institutions. From the education sector, it might be worth examining entities such as Education Network Australia (primarily for the method by which it fosters knowledge exchange) and the Australian Council for Education Research. There are a number of other examples where a combination of government and institutional funding and support are used to establish organisations aimed at improving expertise in, and the scope of, a particular field of knowledge.

Finally, consideration needs to be given to the location of any national body. Will it be grafted onto an existing institution or will it be an entirely separate structure, with its own secretariat? Will it have a permanent 'home'? And, if so, where? The Castan Centre does not have any clear position on these questions, but believes that the issues raised in the preceding paragraphs need to be kept in mind when evaluating the location options.

The National Committee for Human Rights Education has proposed the establishment of a National Centre for Human Rights Education to provide national coordination of human rights education. Do you support this initiative? What role do you envisage your Centre, and other similar bodies, playing in this initiative?

The Castan Centre strongly supports the idea of a nationally coordinated human rights education initiative, although this support comes with the caveats outlined in the General Statement above. The Castan Centre would be interested in being a stakeholder in any such initiative. Given its expertise, the Centre is best placed to exchange knowledge on, and support activity related to, human rights *law* research, analysis and education. The Centre is also well placed to act as a direct provider, or coordinator, of human rights law education programs, especially those aimed at Australian and Asian-Pacific public officials. It is important to emphasise that the Centre is not an advocacy body. In this it is similar to other higher education institutions that might have an interest in being involved in some way with a National Centre.

In its mid-term review of the Decade for Human Rights Education, the UN stated that 'non-governmental organizations are key actors' and that there is a 'growing need for increased collaboration and coordination between governmental and non-governmental actors in respect to their human rights activities'. What is your view on this issue? Is there sufficient support for NGO's engaged in human rights and good governance education?

Nongovernmental organisations are key players in relation to the promotion and protection of human rights and in relation to improving our understanding of the nature of those rights. NGOs' great strength is their ability to gather up-to-date knowledge of rights

abuses taking place at national and local levels (both in Australia and overseas) and then to advocate change. They also have the potential to engage with local communities in a way that empowers those communities in their dealings with central national governments. Many NGO-civil society organisations grow out of local communities, in which case they assist self-determination, which in itself is a positive human rights outcome.

While more exploration is needed into the causal relationship between human rights education and outcomes in developing countries in general, and the Asia-Pacific in particular, it would appear that NGOs do have something of value to offer to education initiatives. The investigative work of advocacy-based NGOs such as Amnesty International and Human Rights Watch is obviously important in enhancing the collective knowledge and awareness of the incidence and effect of human rights abuses. In addition, development-oriented NGOs, through their empowerment of local communities, have the capacity to promote economic and social change in a manner that directly improves human rights. Where NGOs of this kind are less successful is in 'scaling-up' their initiatives from the local to the national level and in directly influencing developing country government institutions and behaviours. Clearly, there is the potential here, as well as a need, for a symbiotic relationship between the Australian Government and NGOs to evolve.

There is significant support already within the Australian aid program for the work of NGOs. This support is channelled primarily through the AusAID-NGO Cooperation Program, some Country Programs and AusAID's contracting system. While few activities are explicitly carried out under the banner of human rights education – the Castan Centre and HREOC, which have undertaken key human rights education initiatives in Indonesia, Burma and China, are not NGOs in the true sense of the term – the participatory development model followed by many NGOs is inherently favourable to human rights. Any future mainstreaming of a human rights approach to official development assistance practice (in line with the analysis already carried out by the Human Rights Council of Australia) would further heighten the importance of funding NGO-style participatory development.[1]

A final point to make on this topic is that there is still much to learn about the structure and conduct of the relationship between NGOs and the Australian Government. The aid program, like domestic social welfare programs, highlights some of the difficulties in mediating NGO-government interaction through accreditation and contracting regimes. While the accountability standards imposed on NGOs are often warranted, they can also have the side-effect of diminishing the very strengths of these organisations – such as the

ability to establish informal, yet effective, linkages with local communities – if they are applied in an undiscriminating manner. There is still some way to go before truly effective partnerships that recognise the peculiar character of NGOs are in place.

Other submissions have argued that human rights education should be included as a specific agenda item in DFAT's human rights consultations with bilateral dialogue partners. Should human rights education be given more prominence in our bilateral human rights dialogues? Does DFAT consult bodies such as the Castan Centre in developing the agenda for bilateral human rights dialogues?

Human rights education is an important component of bilateral human rights dialogue – for *both* parties involved. Ensuring both sides have a reasonable level of knowledge of their obligations under international human rights law is a first step toward bringing human rights concerns, as opposed to those of short-term national interest and *Realpolitick*, closer to the centre of bilateral relationships. Human rights education can also be employed as an alternative approach toward positively influencing states that have a poor human rights record (see the comments on engagement in the Castan Centre's initial submission to the Sub-Committee).

DFAT has not, to this point, directly consulted the Castan Centre in relation to developing the agenda for bilateral human rights dialogues, although there is some informal contact via our education program with DFAT officials and consultations over Burma and other projects.

Were you consulted in regard to human rights and good governance education prior to the commencement of the 59th Session of the UN Commission for Human Rights?

The Castan Centre was not directly consulted by the Australian Government on this issue. Our contact with DFAT on this has been of an educational nature; several Monash Law School students associated with the Castan Centre went to the 59th Session as interns with the Australian delegation.

[1] See The Human Rights Council of Australia Inc. 2001. *The Rights Way to Development: A Human Rights Approach to Development Assistance: Policy and Practice*. Maroubra, NSW: The Council.

How can human rights and good governance education be better incorporated into Australia's broader aid efforts and other interventions in the region (such a peace monitoring)?

The work of the Human Rights Council of Australia on a 'rights way' to development, as well as that of a major initiative entitled the Human Rights Strengthening (HURIST) Program being jointly undertaken by the UN Development Programme (UNDP) and the Office of the High Commissioner on Human Rights, indicate one direction in which human rights education could be better integrated into Australian aid.[2] These analyses argue for a sweeping reconfiguration of the methods by which official aid agencies carry out their business. One suggested change is for aid agencies to focus explicitly in their policy cycles on human rights concerns; that is, questions of initiation, feasibility assessment, project design, project delivery and evaluation should be resolved so as to meet key principles in the international human rights regime. Such thinking could also be extended to the structure and maintenance of donor-recipient relationships. As an example, the UK's Department for International Development has already committed itself to exploring how it can interact with recipient countries under a 'human rights way to development' approach.[3] Under this model of foreign aid delivery the human rights education of both the donor and recipient becomes of major importance.

In relation to peace keeping and monitoring, the training of military personnel in the international standards relating to human rights protection in conflict situations is critical. To its credit, the Asia Pacific Centre for Military Law at the University of Melbourne already provides much of this and enjoys a strong partnership with The Defence Legal Service of the Australian Defence Force. Where a knowledge exchange network would be of benefit here is in ensuring the practical experience gained from operations such as the peace monitoring exercise in East Timor is fed back into the broad discourse on human rights education so as to improve future training activities.

Given that other agencies such as Attorney Generals (and HREOC) also have a role to play in human rights and good governance education, are cross departmental initiatives effectively coordinated?

We are not aware of any significant cross-departmental co-ordination on human rights education, whether self-initiated or facilitated by the Attorney-General's Department,

[2] See the HURIST internet homepage at http://www.undp.org/governance/hurist.htm.
[3] See UK. Department for International Development. 2003. *Departmental Report 2003*. Available on the Internet at http://www.dfid.gov.uk/Pubs/files/dr2003_default.htm. Pp 63-67.

HREOC or DFAT. Greater awareness and understanding of the relevance of human rights issues throughout the bureaucracy in general as well as the specific responsibilities that might be meet by particular agencies is undoubtedly a desired objective.

It has been suggested that the Australian government host a national policy consultation involving Federal and State governments and civil society. Would you consider this a valuable and worthwhile exercise? What do you think would be the desired outcomes?

A national policy consultation will be useful in providing a 'snapshot' of the status of human rights education in Australia and the region. It could also be helpful in kicking off further education initiatives. In line with the position expressed in the General Comment above, the Castan Centre has doubts as to whether a fully consensual policy position would emerge from such a consultation; such an outcome should probably not be expected. What might instead result is a set of strategies, operational ground-rules and funding commitments for future dialogue. A 'sub-optimal' outcome of this kind would not necessarily be a bad thing. On the whole, establishing an ongoing knowledge network around the issue of human rights education may provide more lasting benefits than a one-off policy consultation.

To what extent do human rights institutions in Australia cooperate in regard to human rights and good governance education? Should they be conducting cooperative ventures such as joint public information campaigns?

There are informal research and teaching networks that have naturally built up between the various human rights and good governance educators in the tertiary education sector. These arise via well-established modes of knowledge exchange such as conferences, journals, fellowships and joint research projects. Increasingly, and in line with other changes in higher education, connections are also made through contracted and sub-contracted consultancies and teaching where personnel from different institutions come together in the delivery of stand-alone projects (such as AusAID governance-related initiatives). Cooperative efforts may also take place on an issue-by-issue basis, where one particular institution or set of personnel take the running and utilise their own networks to attempt to build momentum for change in the policy community (i.e. Parliament, public agencies, other tertiary institutions and civil society groups).

If a specific human rights issue emerged on which there was general agreement in the policy community, but a significant gap in the public's education that needed to be

redressed, then, clearly, a coordinated public information campaign would be of great use. Few issues of this kind present themselves, although rights in the workplace, especially in relation to worker safety, might be a recent, analogous example worthy of examination. The question is whether or not the informal networks described above would have the capacity to generate a broad-based public information initiative. While the Castan Centre is not aware of any clear proof on this one way or another, the sense is that a more formalised network which has legitimacy in the eyes of government and the general public would find such a transition from policy community agreement to public education far easier than might currently be the case.

Do you think it is necessary to establish a national coordination council for human rights institutions with the aim of fostering increased collective programs to advance the shared objectives of Australian human rights institutions?

As discussed in the opening General Statement, a national body that sets itself up as going too far beyond, in the first instance, knowledge exchange on the question of human rights education is likely to be a wasted exercise. There are already a number of well-established bodies that take the lead on specific human rights-related issues – ATSIC, HREOC and the State Equal Opportunity Commissions, ACOSS, the Human Rights Council of Australia, ACFOA – all of which are able to exert significant policy pressure. It is difficult to see how a national peak body is likely to add much more than another bureaucractic layer. The concept of a network, however, offers more flexibility and might assist on an issue-by-issue basis with the formulation of a coordinated response. As suggested in the General Statement, institutions involved in human rights education could especially benefit from network-facilitated knowledge exchange.

Should human rights law be made a compulsory subject in all Australian law schools and be mainstreamed across legal disciplines in law school teaching?

International law should be a compulsory subject on all Australian law school curricula; human rights law is a major component of that subject.

The mainstreaming of human rights law across the discipline already occurs, to some degree, as a by-product of compulsory legal process/professional practice subjects and the discipline's methodology. Fundamental tenets of the Australian legal system which are integral to any Australian law graduate's education – procedural fairness, professional probity, the acknowledgement of judicial authority – also form the bedrock of international human rights law practice. More important than mainstreaming at a law school level is

providing ongoing information and education at a practitioner level – something which is already beginning to occur as a result of the public education relationships between organisations such as the Castan Centre and professional bodies such as the Law Institute of Victoria. These partnerships have the potential to be explored further and could even begin to involve accreditation processes. Keeping the profession abreast of changes in human rights law, and highlighting the links between the discipline and human rights, is of enormous benefit to the promotion and protection of human rights within Australia.

The 2002 National Strategic Conference on Human Rights Education observed that there was a high level of 'illiteracy' in regard human rights education in the workplace. Is there enough focus on the workplace in regard of human rights education? What are you doing in regard workplace education on human rights?

Human rights in the workplace, and reconfiguring work practices in line with international human rights standards, is not a distinct field of study on which the Castan Centre has concentrated, although related areas such as globalisation and gender rights have been examined. The issue of rights in the workplace is the key brief of HREOC and the various State Equal Opportunity Commissions and they would be the institutions best positioned for analysing the need for further workplace human rights education.

In so far as the Castan Centre has engaged with this issue it has been as a consultant and education provider to public and semi-public agencies working in the field of law and human rights. Within the Monash Law School the Centre is also instrumental in providing an increasing number of human rights-related under-graduate and post-graduate subjects. These include subjects relevant to the workplace such as discrimination, gender and public interest law. It is the Centre's strategy to continue to add to the raft of human rights subjects taught at Monash and to establish a Masters in Human Rights Law in the next two years.

ALHR argue that English language ability and the ability to access the internet are two of the most effective tools for accessing human rights and good governance information. What primary and on-going support and training do you provide in this area?

This is not a key role for the Castan Centre. We have, however, worked with English teachers and translators in the course of delivering human rights training to international students and public officials and, through our own ongoing education strategy, are continuing to examine how our use of translators in the education process can be improved.

In international aid work undertaken by the Centre, the use (both potential and actual) of the internet as a source for both primary and secondary human rights material is always a prominent feature. Practical training is provided to our students so as to foster their skills in this area.

To what extent are the rights of women incorporated into human rights and good governance education programs/projects? What is the percentage of women engaged in programs run by the Castan Centre?

Education on the obligations set out under the Convention on the Elimination of Discrimination Against Women (CEDAW), and on women's rights more generally, is included in the courses taught by the Castan Centre at the Monash Law School and in the projects it has helped deliver to public officials in the Asia Pacific. Over the past three years the latter have included workshops for public officials from, primarily, Burma and Indonesia on issues such as: CEDAW; the Convention on the Rights of the Child; the ILO and Labour Rights; Economic, Social and Cultural Rights; Human Rights and Security and general Human Rights and Responsibilities. The numbers of women participating in these workshops varies from 40-50% of classes in Burma to around 35-40% in the case of the Indonesian workshops.

The majority of academic staff members of the Castan Centre are female and human rights law courses at Monash University regularly have more female than male students. There is also an increasing number of research activities concentrating either explicitly or as a significant part of their overall study on the rights of women, including an upcoming project, still in the early stages of development, on the trafficking of women in South-East Asia.

A number of submissions call for Australia to support a 2nd Decade for Human Rights Education. Do you support such an initiative? What, in your view, could be achieved with an additional 10 years devoted to human rights education?

Mainstreaming human rights education in public agencies, private corporations and community and educational organisations should be the key goal over the next ten years. The question to be answered is whether or not another UN Decade for Human Rights Education can appropriately pressure states through public education and UN reporting requirements so as to assist the attaining of this goal. Bearing in mind the law of diminishing returns might apply to special UN Decades, and given the difficulties in

measuring the impact of the first Decade for Human Rights Education, this is not an easy question to answer. On balance, the Castan Centre's position is that a second UN Decade would not be worthwhile.

Do you consider the lack of a regional human rights mechanism as a significant obstacle to effective and sustainable human rights and good governance education in the region?

The great advantage in having a regional human rights mechanism – along the lines of that promoted by the Working Group on the ASEAN Human Rights Mechanism – is that it brings negotiations over human rights, and the intersection of states with the international legal regime, down to a meso-level where the parties are able to better contextualise their discussions and their decision-making (as occurs in relation to ASEAN itself). Sitting between national governments and the UN system, it offers the opportunity for regional neighbours to exchange information and experience before meeting their international reporting obligations. It is a forum through which those states which have yet to sign up to important international conventions can be encouraged to do so by parties that have a shared understanding of regional concerns. It could also offer another means by which regional civil society groups and NGOs can communicate with state governments. This vision of the mechanism obviously regards it as needing to be well-integrated into the existing international human rights law regime. An institution that saw itself as a regional substitute for the international system is not to be encouraged.

The Centre is currently undertaking research on the questions of whether and how a regional human rights system could be established in Asia.

Despite the plethora of regional human rights and good governance programs described in the submissions we have received, we continue to witness significant and persistent failures in governance and respect for human rights in PNG and certain Pacific nations (such as the Solomon Islands). For example, Professor Mark Turner argues that, in the case of public sector reform in PNG, the failure is not because of a lack of policies or programs but is a problem of implementation (*Submission to Senate inquiry into Australia's relationship with PNG and other Pacific Island countries*). Why have governance programs not worked? Is there a need to redirect or redesign governance programs?

[*An extended answer is provided below to this question. This has been written by Dr Tom Davis and draws on research conducted for the purposes of his PhD,* Governance and Uncertainty: The Public Policy of Australia's Official Development Assistance to Papua New Guinea. *While the fundamental point concerning the need to appropriately enhance*

indigenous ownership of governance reform is one with which the Castan Centre Directors agree, the public policy focus of the response is outside the Centre's usual sphere of activity and, as a result, should be read as the personal opinion of Dr Davis.]

Governance programs to aid recipient countries such as Papua New Guinea have not worked for two underlying reasons. The first is that Australian aid policy is made and implemented in a way that stymies the development of practical knowledge necessary for the effective reform of governance in non-Western states. The second reason is that AusAID's subordinate position in relation to the Department of Foreign Affairs and Trade (DFAT), and the subordination of development assistance to Australian national interest, encourages inappropriate aid policies and discourages attempts to improve the policy-making process.

In teasing out these arguments, the first point to make is that the (essentially Rational[4]) Australian aid policy formulation process is predicated on the existence of 'magic bullet' solutions to development. It is difficult, however, to conclusively prove the existence of a good governance 'magic bullet'. For example, the governance model promoted by the World Bank[5] is one idea that has been heavily promoted as being successful – and it is fair to say some of the ideas embodied in that notion of good governance do have value. Maintaining the rule of law, for example, is a major element in the World Bank's definition and also an important precondition for protecting individual human rights. Transparent public decision-making, also promoted, is likewise a prerequisite for public probity. Both principles are imbued with significant practical and moral worth. Yet when the Bank attempts to expand its definition of good governance beyond core values such as these so as to include a range of neo-liberal economic policies, many of which are contentious even in the industrialised world, normative and evidentiary problems result. To take one example, the regression equations conducted by World Bank econometrists on the relationship between economic growth and governance (as defined by proxy indicators that can be justly characterised as 'neo-liberal') are repeatedly cited in Australian policy documents advocating governance reform, yet their conclusions have been questioned by numerous analysts and must be regarded as remaining open to debate.[6] Even where robust causal connections can be made out – as in De Soto's argument that capitalist-driven

[4] 'Rational' here refers to Herbert Simon's (1955) argument that there was a series of steps a policy-maker in an ideal world would follow in order to arrive at the most effective response to a problem. See Simon, Herbert A. 1955. "A Behavioural Model of Rational Choice". *Quarterly Journal of Economics* 69: 99-118.

[5] See especially World Bank. 1998. *Assessing Aid: What Works, What Doesn't and Why.* New York: Oxford University for the World Bank.

[6] Compare Burnside, Craig & David Dollar. 1997. *Aid, Policies and Economic Growth (Policy Research Working Papers 1777).* Washington, D.C.: The World Bank, with Hansen, Henrik & Finn Tarp. 2000. "Aid Effectiveness Disputed". In *Foreign Aid and Development: Lessons Learnt and Directions for the Future*, ed. F. Tarp. London: Routledge. (Both cited in initial Castan Centre submission to the Sub-Committee).

poverty eradication in the developing world requires property systems that both protect and enable capital – it is no easy matter to explain how these are to be translated into policies appropriate to the governance environments of individual developing countries.[7] Even one of the World Bank's senior economists, Stephen Knack, in his influential study on the importance of governance factors to 'convergent' development, placed a major caveat on the reading of his results:

> The policy prescription flowing from the [finding] that institutional reform is key to the ability of poor nations to catch up to the leaders may at first glance appear simple and obvious: reform institutions to enhance the rule of law and security of property. Unfortunately, matters are not in reality as so simple ... [8]

As Charles Polidano has noted, and in contradiction to development bank theorising, often it is localised contingency factors that turn out to be the most important determinants in the success or failure of reform (and its impact on development).[9] In spite of this, Australian policy-makers cling to the assumption that the World Bank interpretation of good governance has universal applicability.[10]

The problems with the Australian aid policy process also extend to the nexus between formulation and implementation. As was pointed out thirty years ago by Pressman and Wildavsky, and is now axiomatic, fully successful policy implementation is rare.[11] It is for that reason the public policy discipline, such as it is, emphasises the need to expect outcomes that are *satisficing* rather than optimal. Australian domestic experience bears out the axiom. It also supports the argument that policy processes which separate formulation from implementation – that seek 'magic bullet' solutions without adequate reference to the real-life environments in which they eventually will be applied – struggle even to *satisfice*. To paraphrase Amartya Sen, policy theorising in these circumstances is likely to have an inadequate informational base.[12] It is hardly surprising, therefore, that Australia's governance reform initiatives in Papua New Guinea regularly fail. While the Australian Government, through AusAID, *does* have a role to play in ensuring PNG has a mode of

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[7] See de Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. London: Bantam Press.

[8] Knack, Steve. 1996. "Institutions and the convergence hypothesis: The cross-national evidence". *Public Choice* 87: 207-228 at 221.

[9] Polidano, Charles. 1999. *The New Public Management in Developing Countries (Public Policy and Management Working Paper no. 13)*. Manchester: Insititute for Development Policy and Management, University of Manchester: 11-14.

[10] See AusAID. 2000. *Good Governance: Guiding principles for implementation.* Canberra: Australian Agency for International Development

[11] Pressman, Jeffrey L. and Aaron Wildavsky. [1973] 1984. *Implementation: How Great Expectations in Washington Are Dashed in Oakland: Or, Why It's Amazing that Federal Programs Work at All (3rd ed.).* (First published 1973). Berkeley: University of California Press.

[12] Sen, Amartya. 1999. *Development as Freedom.* New York: Knopf.

governance capable of fostering sustainable development, the effect of this involvement is significantly diminished where aid initiatives are devised in a policy environment dominated by Australian needs (even if formal consultation with PNG officials occurs) yet are implemented in the specific context of PNG politics and society. The gulf between the makers and the intended beneficiaries of those policies is so great that failure is almost inevitable.

The tendency of the Australian program to separate policy formulation from implementation is reinforced by the major implementation tools employed by AusAID, namely, contracted-out projects. Arguments in favour of this delivery approach focus on the way it enables the agency to buy in specialist expertise and the way it helps ensure accountability and transparency. Certainly, the Australian Government is justified in wanting those things, most especially accountability. Foreign aid is notoriously fungible and there can be little doubt that endemic official corruption and, perhaps more commonly, inept public financial management in countries such as PNG create serious concerns in this respect. A query needs still to be raised, however, as to whether contracted-out projects successfully address these concerns over the long term, and whether they assist in reaching the broad policy goal of effective governance reform.

AusAID's project and contracting system has only a limited capacity to provide adequate feedback to central policy-makers. It is also restricts the space available for more 'bottom-up' policy initiatives to arise from aid beneficiaries (although some latitude is built into the system through the Small Grants Schemes run out of the AusAID Posts). Private Australian managing contractors are the parties charged with delivering projects and programs and so are the conduits for policy information, even though they have no formal policy role. In accord with the dictates of the profit imperative, they tend to focus on meeting specific contract and reporting milestones rather than broader policy objectives or processes. This is adequate when delivering relatively straightforward projects able to be described via clear performance indicators, but is flawed in respect to complex governance reform. Not only does accountability for aid policy failure become muddied under this system, but there is also a significant chance that much of the knowledge necessary for effective future policy remains in the hands of the managing contractors and their sub-contractors.

AusAID attempts to overcome the imbalance in development knowledge produced under its contracting system by seeking project designs that impose stringent monitoring and reporting requirements on managing contractors. The nature and extent of these requirements become, not surprisingly, the source of significant friction between the two parties. Ultimately, the considerable effort that goes into monitoring and reporting, not to

mention the negotiations over those issues that take place beforehand, is indicative of a deep problem in Australian aid policy implementation. The contracting system as it works in the Australian aid program (and in spite of the way in which it supposedly links in with an over-arching Results-Based Management system) has resulted in a situation where no-one – AusAID, the managing contractors, the sub-contractors or the even the counterpart government officials – has a *real* stake in achieving sustainable development outcomes as opposed to specific contract performance indicators. Even given the use of Logical Frameworks Analysis, too much faith is put into the ability of project designs (which are also contracted out) to link indicators with outcomes; too much is expected of monitoring in lieu of hands-on management. Contracts are blunt tools with which to achieve difficult objectives such as improved governance (and human rights) outcomes, using them to hand over the *management* of aid project delivery to private third parties simply compounds the problem.

The conclusion to be drawn from this analysis is that, for successful governance reform to start taking place in countries such as PNG, the process by which aid policy on governance reform is designed and delivered must be improved; there is little point in continuing to search for a one-off 'magic bullet' solution which will then be delivered through a contracted-out project. Just as aid recipient governments may require reform, so too is the governance of Australia's aid program in need of positive change. In pursuit of this, and as the submissions to the Senate Inquiry on PNG indicate, implementation is important, but only in so far as it is a key component of overall policy formulation.

Some suggested reforms to the Australian aid policy process as it relates to good governance include:

- Restricting the use of Managing Contractors to the implementation of governance programs/projects for which it is possible, and appropriate, to have quantifiable goals and performance indicators (for example, IT institutional strengthening);
- Enlarging the management role of AusAID officers in relation to less-quantifiable, long-term governance reform initiatives in recipient states. This increases the direct responsibility on AusAID officials to achieve long-term outcomes and assists them in that task by ensuring the agency retains important development knowledge able to be fed back into an iterative policy process;
- Improving the range and quality of the links between Australian officials and their counterparts in recipient governments and community organisations (thus improving the chances of 'bottom-up' policy-making being recognised);

- Fostering an expansion of the aid policy community – a first step could be implementing a number of the recommendations (especially Recommendations 19.2-19.6 and 20.3) on this issue put forward in the 1997 Simons Report – so that the policy discourse is opened up to more experimental ideas concerning the relationship between the developing world and the industrialised world and the mainstreaming of the international human rights regime within foreign aid practice.

Bringing about change of this kind may require a fundamentally different political and bureaucratic environment than currently exists. There is some suspicion that AusAID would have far greater room to move on these issues if it were an independent government agency – as the Australian Development Assistance Agency (ADAA) was in the 1970s – rather than a sub-agency under the DFAT portfolio. On the downside, as an independent agency it would lack access to the political influence of DFAT in the course of negotiations with recipient governments and in the annual fight to secure the agency's budget (after all, there is little domestic political capital in protecting foreign aid funding). By contrast, a key benefit of independence would be the ability to reform the governance of the Australian aid program free from the immediate influence of DFAT's own bureaucratic needs and free from short-term national interest considerations. Achieving the last of these would greatly expand the range of aid policy ideas considered and would open up the process whereby policy is made.

Not only is national interest explicitly included in AusAID's mission statement (counter to the recommendation in the 1997 Simons Report), it is also a key measure by which the success or failure of aid expenditure is assessed by the Commonwealth Parliament. While some consideration of the national interest is, obviously, important in aid decision-making and assessment, its presence also raises several problems. The first is that the national interest, as interpreted by DFAT, must involve some short-term analysis of security, even though that might take place alongside longer-term strategic thinking. Effective development, however, cannot be conceived of in such a short-term manner without threatening to disrupt longer-term poverty alleviation efforts. (The least contested finding of Burnside and Dollar's 1997 study was their conclusion that aid given on the basis of donors' own strategic interests was usually ineffective.)[13] Many genuine development opportunities may be lost when the aid policy process is sidetracked by security concerns and fails to sufficiently engage with the complexity of Third World development. Further, aid policy that is constrained in this way may itself be implicated in the creation of

[13] Burnside, Craig & David Dollar. 1997. *Aid, Policies and Economic Growth (Policy Research Working Papers 1777)*. Washington, D.C: 31-32.

political, law and order and economic problems, as has been the historical case in PNG; the human cost of this policy failure is significant.

Second, the bureaucratic and political focus on national interest reduces AusAID's capacity and desire to experiment with its own governance and policy structures. The Realist[14] concerns with security reflected in the DFAT definition of national interest are best served by a policy process that favours control over participation, rigid accountability over experimentation. Realism is also the foundation of the organisational discourse that helps bind AusAID to DFAT. It is central to the bureaucratic and political reluctance to risk losing control over even a minor aspect of national security in pursuit of a policy process that might be able to encourage successful governance reform and, through that, improve the chances of achieving what should be the 'one, clear objective' of an aid program: alleviating poverty. Similar reluctance has been in evidence over the entire length of Australia's post-war involvement in foreign aid (with the brief exception of the ADAA experiment in the 1970s).

Altering this state of affairs requires a seismic shift in the Australian aid policy discourse. It requires strategic networking between concerned NGOs and other members of the aid policy community, senior managers in AusAID and elected officials. It is also an area in which public education in human rights and development may have a long-term impact on agenda formation.

As one small push toward rethinking the nature of the governance of the Australian aid program, it is suggested that the examples set by the plethora of independent official aid agencies in the Western world – a list which includes the Department for International Development (UK), the Swedish International Development Agency and the Canadian International Development Agency – begin to be considered and their results and management compared with those of AusAID. No agency has 'solved' the governance dilemma, but some are attacking it with greater imagination than others.

[14] As in Realism – the theory of international relations that regards sovereign states as the principal actors who utilise power to ensure their security in an anarchical international political environment.