



TRANSPARENCY INTERNATIONAL AUSTRALIA

Affiliate of Transparency International, the coalition against corruption

The link Between Aid and Human Rights

Transparency, Accountability and Human Rights

Submission to the
Joint Standing Committee on
Foreign Affairs, Defence and Trade
Human Rights sub-Committee

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1. Introduction

This brief submission argues that there are links between a lack of respect for human rights and corruption, and both are the product of weak or poor governance due to a lack of accountability and transparency.

In this context, corruption has a serious undermining effect on the ability of any Government to meet peoples Social and Economic Rightsⁱ, and it undermines the Right to Developmentⁱⁱ. There is strong evidence that corrupt governments do not respect human rights, undermining not only the above Rights but also Civil and Political Rightsⁱⁱⁱ.

In terms of practically supporting Human Rights in countries where Australia focuses its aid, the Governance programme should be seen as an important tool. Alongside this, more practical measures can be taken to ensure that Australians know about the current law and avoid corrupt dealings by better and active enforcement of the *Bribery of Foreign Public Officials Act*^{iv}. Recent OECD agreements to further reduce the potential for corruption via Export credit and Insurance agencies should be implemented.

2. Background

TI Australia gave evidence to the Human Rights sub committee on 5 February 1998 concerning the Regional dialogue on human rights. This previous submission and evidence gave the committee comprehensive information on Transparency International and TI Australia's role in the region. We will not resubmit this background again, except to repeat that we agree that, like human rights, the issue of corruption is a very sensitive one and that, to minimise the scope for friction, it should be addressed wherever possible through practical assistance and dialogue rather than public statements or project conditionality.

We also note, that some major multilateral lending organisations have taken the issue of Governance, transparency and accountability more seriously in the past few years, and by doing so have persuaded aid recipient governments to review and examine the legal frameworks and practice.

“The fight for human rights and the fight against corruption share a great deal of common ground. A corrupt government that rejects both transparency and accountability is not likely to be a respecter of human rights. These two issues are inextricably linked and interdependent. The elimination of corruption and the strengthening of human rights both require a strong integrity system. The experience of the international human rights movement suggests that, as in promoting and protecting human rights, the primary responsibility for strengthening the national integrity system rests with civil society”.^v

But, fighting for human rights is not the same as countering corruption. Clearly, there is evidence of countries with little corruption but with poor human rights records – and likewise countries with considerable corruption, but reasonable human rights records. But ‘the exception proves the rule’ still applies: poor governance due to a lack of accountability and transparency on the part of Government, breeds both gross corruption and human rights abuse.

3. Human rights, transparency & corruption

Transparency and accountability on the part of any government, has positive effects in reducing corruption and in improving all aspects of human rights. The willingness to open processes and decisions to public scrutiny and to permit an active civil society, is a

significant curb to excesses and abuses by those in power, both in Government and business.

Conversely, the absence of transparency and accountability usually leads to corruption (among other evils), which has a particularly devastating effect on social and economic rights. The Right to Development is also denied when efforts to assist the poor with basic services and infrastructure are distorted by corrupt officials seeking the sort of project through which they can make personal financial gains. Unfortunately, there are too many examples of nations which have useless prestige projects, problems with inappropriate technical solutions (invariably imported), and piles of rusting expensive machinery, plant and equipment, while the poor live without the simplest of amenities and services, which would cost a fraction of what has been spent on white elephants.

Working for social and economic rights as a mean to reduce poverty and to support the right to development is the focus of Australia's – and most other aid programmes. This makes the obligation to work for improved transparency and accountability not optional, but a critical component of both aid and human rights. Without transparency and accountability, the sustainability of aid inputs is put at risk.

Political and civil rights are often blatantly disregarded when local individuals and organisations speak out and challenge the abuse of social and economic rights caused by the corruption. By doing so, they are challenging both the State and the elite who benefit from the lack of transparency – and thus putting their civil and political rights to the test^{vi}.

This reflects comments made in the Inquiry's *Issues Arising* document, that without 'good government' aid that focuses on development is often wasted. Likewise, a similar point is made in saying that respect of human rights is a force to provide stability, moderate political behaviour and ensure government accountability and effectiveness.

4. Promoting Human rights through Aid and trade

4.1. The Governance programme as an important tool

While support is given by TI Australia to use of the three aid instruments mentioned in the Inquiry's Terms of Reference (project aid; micro-credit and debt reduction) we recommend that the AusAID Governance programme be seen as a key instrument for advancing human rights in relation to transparency and accountability. As already noted above and in the Inquiry documents, good governance is a prerequisite for development aid funds applied at the project level to be effective. Likewise it is a requirement for improved respect for human rights. At a most basic level, human rights requires the law to be administered fairly and equally to all, without discrimination, corruption or bias.

Within the Governance programme, the focus given to improving transparency and accountability and countering corruption should be seen as a positive move to support economic and social rights, and no less important than direct project interventions. For example, where Australian Aid is funding rural water supplies, it is appropriate that there is limited opportunity and access for officials to distort the tendering process and cause wastage of resources in other aspects of the water and sanitation sector. While, conditionality may not be the most effective means to ensure this, support (by Australia or other aid partners) to aspects of improved governance in the sector could be considered.

Finally, under the Governance programme, ongoing and significant support should be given to national organisations within developing nations, both Government and civil society, involved in improving transparency and accountability and in reducing corruption. As mentioned above, practical assistance and dialogue are the preferred means. Such

support would be positive in terms of delivery of social and economic rights, but would lead to a stronger civil society and better use of aid resources. It is noted by many, that a strong civil society is a powerful tool in protecting human rights.

4.2. Procurement and AID

We welcome AusAID's amendment in 1998 of its procurement rules in line with the recommendations made by the OECD's Development Assistance Committee, requiring all contracts to contain a specific anti-bribery clause.

4.3. Application of Australia's anti-bribery provisions

Corruption takes two parties, one of which is often resident in a developed (and usually aid giving) country. In 1995, the OECD with strong TI support, recognised the link between corruption and under-development and in 1996 initiated a process to out-law bribery of foreign public officials by all OECD member countries.

In 1999 Australia passed laws against the use of bribery by Australian companies as means to gain commercial advantage overseas^{vii}. This law was the culmination here of the OECD process, and made to ensure that overseas trade did not hinder social or economic development by allowing bribes and corruption to distort market forces and rational development decisions.

However, this new law has yet to be used and is not yet widely known. Apart from TI Australia's work (which rather limited by resources and the availability of volunteers), we are not aware of any government programme to promote awareness of the new law. There is currently a need to make the law known among all businesses operating overseas. This would be an additional tool in ensuring that Australian trade does not participate in illegal processes that work counter to the Right to Development, or undermining Social and Economic Rights. Such a step would be consistent also with the recent OECD-DAC recommendation that AusAID and EFIC align their work in developing nations to ensure consistency of aid policy.

We recommend that measures are taken to make all Australian companies involved overseas trade aware of this new law. This could be done by publication (in print and on a website) and e/mailing out of an appropriate Guideline and by providing the opportunity to attend training seminars. TI Australia would be willing to give support to such a programme.

4.4. Complying with International Agreements on Export Credit and Insurance

The requirement that all EFIC clients make full disclosure of commissions and payment at every drawn-down of a loan is fully endorsed and a valuable anti-corruption tool. However, we believe this does not go far enough in ensuring compliance with the new law or in alerting companies to the existence of the new law.

The export credit and export credit insurance agencies of OECD countries agreed on 6 December 2000 that henceforth they would a) inform all applicants of the legal consequences of bribery in international business transactions b) invite written statements from all companies applying for coverage, stating they have not, and will not, engage in bribery and c) If bribery is established, the agency will deny coverage or reject claims for indemnification and will refer the case to the judicial authorities. Please see attached statement from the OECD.

We recommend that EFIC quickly takes measures to ensure that it is among the first to comply with this agreement, as a means to alerting Australian companies to the Bribery of Foreign Public Officials act, and the seriousness with which the Australian Government views overseas bribery.

5. Summary of Recommendations

- The Governance programme should be seen as a key instrument to promote human rights.
- Within the Governance programme the focus given to improving transparency and accountability and countering corruption should be seen as a positive means to support economic and social rights.
- Ongoing and significant support should be given to national organisations in the countries where Australian aid is active. Both Government and civil society organisations involved in improving transparency and accountability and reducing corruption, should be assisted with funding, training, capacity strengthening as well as moral and political support.
- We recommend that all Australian companies involved overseas are made aware of *Bribery of Foreign Public Officials Act* and given advice on means of compliance, by publication of a suitable document and access to a training seminar.
- In line with recent OECD agreements on Export credit and insurance schemes, EFIC should invite written statements from all companies applying for coverage, stating they have not, and will not, engage in bribery. If bribery is established, the agency will deny coverage or reject claims for indemnification and will refer the case to the judicial authorities.

TI Australia 25 January 2001

ⁱ *International Covenant on Economic, Social and Cultural Rights*, Adopted and opened for signature ratification and accession by the UN General Assembly, resolution 2200A (XXI) of 16 December 1966

ⁱⁱ *Declaration on the Right to Development* Adopted by UN General Assembly resolution 41/128 of 4 December 1986

ⁱⁱⁱ *International Covenant on Civil and Political Rights* adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

^{iv} *Criminal Code amendment: Bribery of Foreign Public Officials Act, 1999*

^v *Corruption and Human Rights: A Crucial Link* by Laurence Cockcroft 19 October, 1998

^{vi} *Corruption and Human Rights* by Kivuthu Kibwana, Centre for Law and Research International, Kenya. 9th IACC. This paper briefly describes the fate of those in Kenya who stand up against the authorities for 'land grabbing' or by using the press to question the integrity of the courts.