

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS DEFENCE AND
TRADE
INQUIRY INTO THE LINK BETWEEN AID AND HUMAN RIGHTS
SUBMISSION BY THE CENTRE FOR DEMOCRATIC INSTITUTIONS
AUSTRALIAN NATIONAL UNIVERSITY

General Comments

Before coming to the work of the Centre in this field, it may be helpful to make some general comments about human rights issues.

Human Rights instruments use a range of words to describe human rights. These include the terms universal, indivisible, inalienable, interdependent and interrelated. The terms have become mantra-like and this aspect can perhaps obscure their significance. It is worth focusing on the significance of these terms for the purposes of this inquiry.

Most attention has been devoted to the concept of *universality*. Human Rights are about human beings and are based on the acceptance of the concept that all human beings are fundamentally alike and are endowed with the same rights by virtue of being human beings. This does not deny the existence of cultural differences between people but those differences do not impact on entitlement to basic human rights and fundamental freedoms.

Increasing attention is being paid to the concept of *indivisibility*. There has been a tendency, particularly in the popular press, to refer to human rights in a narrow sense as only civil and political rights. This unhelpfully obscures the fact that the more immediate concern of the majority of people in developing countries turns on the attainment of economic, social and cultural rights. There is a need to refocus the popular understanding of human rights to accept the indivisibility of all rights. There can be no hierarchy of human rights. Official Development Assistance (ODA) has a particularly helpful role to play in this regard.

The term *inalienable* should not be taken for granted. Claims from leaders that their people have agreed to forego some human rights in order to attain others cannot be accepted as legitimate. While there may well legitimately be different strategies towards the goal of promoting human rights, these cannot include the proscription or suspension of some human rights in favour of others. The claim that civil and political rights cannot be 'granted' until economic rights have been achieved is unacceptable.

All human rights are *interdependent* and *interrelated*. These concepts are of particular relevance to ODA programs. The linkages between the various

human rights are complex and deep. We often become aware of the links through trial and error in development strategies. Economic rights prove difficult to deliver if not accompanied by political rights. Peoples' rights are dead letters if individual rights are not respected. Civil and political rights are hollow if economic, social and cultural rights are not being attained progressively. Gender rights can be the key to unlocking other rights.

It is submitted that a lesson to be drawn for ODA is the need to avoid compartmentalising projects. If one thinks of a project only in terms of infrastructure or only in terms of health, then it is likely that other impacts on the project or of the project will be missed. ODA needs to take a broad view of its influences and impacts.

The Right to Development

The Inquiry is understandably examining the UN Declaration on the Right to Development. The Right to Development has been criticised on two main grounds; that it is a 'new' right and that it is a people's right rather than an individual right.¹ Both criticisms are short sighted. The Right to Development might be a newly articulated right but it encompasses numerous aspects of the economic, social and cultural rights widely accepted by the international community. It puts them in a development context because that is a way of making the right best understood and most relevant, especially to people in developing countries.

It is important that there should be caution in the creation of new rights so that the focus on traditional rights is not lost². But we should not assume that 'new' rights are necessarily in competition with traditional approaches. The new approach to human rights as envisaged in the Right to Development may be a means of improving commitment to human rights internationally.

The fact that the Right to Development is a right of peoples does not disqualify it as a human right. The Right to self-determination is a universally accepted human right described in common Article 1 of the two Covenants. The fact that it is a right that devolves on people rather than to the individual does not vitiate its force or applicability.

The difficulty with the Right to Development lies in the inherent problem of trying to legislate for economic well being, whether in international instruments or in domestic law. Economic results cannot be achieved by putting them in the language of entitlement and obligation. The International Covenant on Economic, Social and Cultural Rights understood this dilemma and therefore made the economic and social results subject to progressive implementation. The obligation is to strive towards fulfilment of these rights while observing a

number of immediately enforceable requirements relating to such issues as non-discrimination.

So if the Right to Development is not an attempt to legislate for economic development then what benefit does it serve? The main benefit is that it puts the development process into human rights language and thus requires a human rights approach to development. It makes the individual the ultimate subject of development just as the individual is the ultimate subject of human rights protection. It establishes an obligation to ensure that development is consonant with human rights. That obligation is shouldered both by the national government of developing countries as well as co-operating governments and international organisations.³

The Right to Development should create a human rights corrective to development plans. It should ensure that development is of qualitative benefit to the community. It takes development planning beyond the field of macroeconomics and puts the individual back into the equation. So there is little use in building schools if girls are not allowed to attend. There is harm in moving towards land titling systems if tribal people are thus to be dispossessed of their land. There is inequity in building a dam that benefits urban people at the expense of rural people of the area. The human rights approach to development planning thus provides universally applicable criteria by which to judge development proposals.

The Inquiry's attention is also drawn to the useful Report of Arjun Sengupta, the independent expert appointed by the UN Secretary General to advise on the Right to Development. In his report⁴, Sengupta analyses the content of the Right to Development and makes a cogent case for a decision to implement it by concentrating on economic, social and cultural rights such as primary education and primary health care.

Human Rights and Official Development Aid

It follows from the foregoing that human rights have a significant role to play in the development process. The basic objective of development, to overcome poverty, is in itself an important human rights objective. ODA can have a catalytic impact, it can be a means to make available best international practice and it can allow necessary skills transfer to occur.

Development plans need not adopt a human rights agenda as such. The international human rights instruments were not drafted with that purpose in mind. But development plans should be subject to human rights considerations. There is no conflict in this regard as the individual is ultimately the subject of both development and human rights. Human rights norms can act as a checklist

to ensure that development projects do not have unexpected negative impacts. A human rights approach can also act as a corrective to development projects. Projects aimed at encouraging local manufacturing capacity should be designed to minimise the possibility of attracting child labour. Education projects should ensure gender equity. Health projects should be sensitive to privacy concerns.

The checklist approach only works when the officials managing the processes are sufficiently familiar with human rights issues to be able to ask the right questions. AusAID and DFAT offer their staff human rights training and this is to be commended. The best way of integrating human rights sensibilities in ODA management is not to add another bureaucratic form or checklist to the process but to have officials who have an understanding and commitment to human rights managing the process.

Development Assistance can also play a direct role in furthering human rights by undertaking projects that promote human rights, improve governance and strengthen democracy. The Vienna Declaration of 1993 made clear that "democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing."¹⁵ Projects designed to improve the delivery of government regulatory services, justice services and electoral services will all have a positive impact on the development process. The recognition of this fact can be seen in the increasing emphasis devoted to governance projects among donor nations.

CDI - A Brief Overview

Context

Establishing CDI was an initiative of Foreign Minister Alexander Downer that was welcomed by many countries in the region and by Australian institutions of government. The role of the Centre was therefore to try to bring these together in an academically rigorous way. The CDI Mission Statement became 'to harness the best of Australia's democratic experience in support of developing countries' needs for good governance.'

Priorities

CDI priorities are set on the basis of country, sector, needs and by determining areas of Australian comparative advantage.

CDI works only in aid receiving countries and is responsive to Australian Government geographic priorities and therefore works in the Asia-Pacific region. Recent events in the Pacific will refocus greater priority to that region. The main countries for CDI projects are Indonesia, Papua New Guinea, Cambodia, Laos, Vietnam, Solomon Islands, Fiji, Vanuatu, Thailand and the Philippines.

CDI's major sectoral focus has been on Parliaments and Judiciaries. There is also a focus on the related field of Ombudsman, largely because these are key Pacific institutions and because there is growing Asian interest. There is also a focus on civil society to balance the institutional focus. Civil Society projects are aimed at strengthening NGO leadership and media competence. Discussions with civil society groups invariably raised anti-corruption and human rights as the key priorities and so these have been added as thematic areas. While accepting the importance of democracy promotion bodies assisting political parties, in the process of focusing its work CDI has taken the decision not to work directly with political parties.

CDI draws on areas of Australian expertise. Australia has many parliaments - they work effectively and are willing to be involved in international development assistance work as demonstrated by many years of activity in Commonwealth Parliamentary Association projects. The Australian Federal Parliament has been most cooperative in assisting CDI to meet its objectives. The Australian Federal Court has entered into an informal strategic partnership with CDI on several projects. The Commonwealth and NSW Ombudsman offices' assistance can be harnessed and the NSW Independent Commission Against Corruption is prepared to be involved on a fee for service basis. ACFOA has shown itself very keen to work with CDI on civil society projects.

Projects

Project selection emerges from discussion with priority targets. CDI adopts, as best it can, the learning generated from decades of ODA capacity building projects. Projects therefore tend to train-the-trainers or to have a focus on a specific target group.

CDI does not replicate AusAID projects but attempts to develop new ideas and methodologies. One example is the use of the technique developed by Australia for Human Rights National Action Plans to assist in the preparation of the Cambodian and PNG Anti-Corruption National Action Plans. Another is the relationship built up with the Indonesian DPR (Parliament). CDI is pioneering new projects in strengthening NGO leadership capacities.

CDI is not a grant giving body. All projects have close involvement from CDI in the planning, design or delivery stage. This creates a limit to CDI's output as it is tied directly to CDI staffing. Hopefully, it also allows for quality to be assured.

The choice of in-country or in Australia training tends to flow from the logic of the project. A major methodology is to encourage networking between the visitors and Australian institutions and this tends to argue for training courses in Australia where the visitor can see a functioning institution at work.

There are projects, however, where an impact can be achieved by holding the training course in-country, especially where the course is conducted by a leading international figure such as Justice Elizabeth Evatt (Jakarta, Manila and Phnom Penh Human Rights Reporting courses), Professor Michael Pryles (Thai Arbitration seminars), Justice Sir Laurence Street (Thailand village mediation course), Justices Beaumont and Emmett (Philippine Judicial Academy), MPs Dr Andrew Southcott and Ms Nicola Roxon (Leadership and Democracy Forum).

Human Rights projects

To date, CDI has undertaken five projects with a specific human rights focus;

- Workshop on Designing and Teaching a Program or Course on Human Rights, Bangkok August 2000
- Workshop on Human Rights Treaty Bodies Reporting, Phnom Penh June 2000
- Human Rights Study Tour by officials and civil society activists from Thailand, October 1999
- Philippines Workshop on Human Rights Treaty Reporting, Manila September 1999
- Human Rights Treaties Implementation Workshop: Jakarta, Indonesia June 1998

The five courses are discussed in more detail on the CDI website at <http://www.cdi.anu.edu.au/projects.html>

The three Human Rights Treaty reporting workshops were aimed at building capacity in both government and civil society ranks. They drew on high quality Australian participation including Justice Elizabeth Evatt, then Australian representative to the UN Human Rights Committee, Professor Hilary Charlesworth of the ANU and Professor Alice Tay and other members of HREOC.

The Bangkok workshop in August 2000 should have a useful multiplier effect as the participants will use the knowledge gained to hold further human rights courses in their home countries.

Participants

The main methods used to determine participants on CDI courses are selection of participants by the local counterpart institution and the identification of participants by mentors at CDI's request. Where local counterparts select participants, CDI first provides guidelines and generalised ideal participant profiles as well as, where appropriate, language testing. Accordingly, the various Human Rights courses all included NGOs as well as government representatives at CDI's request. All Indonesian Parliamentary Secretariat participants undertaking training at Parliament House were language tested and then undertook additional language courses before arrival. CDI normally requires some gender balance but this can prove difficult given the limited number of women in the judiciaries and parliaments of target countries.

Mentors are normally relied on where individuals are provided training outside of a strict institutional framework. This has been the case with media courses, some anti-corruption courses and NGO courses. The mentors include leading figures in the recipient country, Australian diplomatic missions and Australian experts.

Technical Assistance

CDI's technical assistance work is normally undertaken on a separate commercial basis for a fee-paying client, eg:

- Social safety net study (Centre for International Economics)
- Cambodian Senate Study (AusAID)
- AusAID Indonesian Governance Program (AusAID through Anutech)
- Technical Assistance projects were also undertaken to provide future project direction, eg
 - Stephen Sherlock's study of Research Service (PIII) in the Indonesian Parliament
 - John Wood's study of the Thai Ombudsman's Office
 - Michael Pryles' study of the Thai Arbitration Institute
 - Livingston Armytage's study of the Philippine Judicial Academy

Quality Control

The main vehicle for ensuring high quality project delivery is to work with high quality people. Australian providers have been of the highest quality. Program participants have also been selected or profiled as leaders in their field.

Another vehicle for quality control is the involvement of members of the Consultative Group in various projects in addition to the twice yearly meetings of the Consultative Group, eg

- Geoffrey Barker advised CDI on the research project leading to the publication of *Losing Control*
 - Prof Alice Tay was involved in the visit of the Thai Human Rights Commission group
 - Sir Daryl Dawson is involved in judicial training programs
 - Dr Andrew Southcott participated in the Leadership and Democracy forum in Bangkok in April 2000
 - Bill Gray (formerly Chair of the AEC) designed a number of activities for AEC and CDI to hold jointly
- The ANU Peer Review Group only meets formally once a year but, as with the Consultative Group, there is a strategy of involving them in project work
 - Prof Ian McAllister follows CDI's progress closely
 - Prof Ron Duncan is often invited to speak to visitors on resource management and governance issues
 - Prof Anthony Milner has also given lectures to visiting groups
 - Prof Hilary Charlesworth was involved in teaching human rights courses in Jakarta and Phnom Penh
 - Dr Pamela Thomas is advising CDI on learning circles
 - Assoc Prof Marian Sawer, as head of the Political Science program is jointly hosting a seminar series on democracy with CDI

Mr Downer and AusAID have a formal role involving them in overseeing CDI's activities through the Annual Review process. Mr Downer is personally very interested and gives CDI the benefit of his views, most recently at the mid-point of the initial 3-year period.

An important quality control benchmark is to compare CDI's work with international best practice. To this end, CDI maintains contact with bodies such as the National Endowment for Democracy, the International Institute for Democracy and Electoral Assistance (IDEA), Westminster Foundation of the United Kingdom and King Prajadhipok's Institute of Thailand. CDI engages in a continuing discussion about best practice in this field.

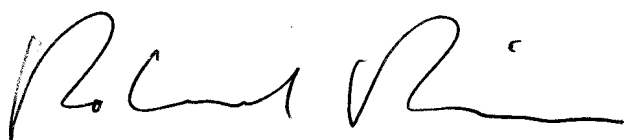
Reporting and Publication

CDI's commitment is to maintain as transparent a system as possible and publish reports on the Web. CDI has a webmaster to keep the webpage up to date. All CDI projects are reported on the web at <http://www.cdi.anu.edu.au>.

It is also an ambition of CDI to publish in this field. In recent years, attention has been drawn to the important link between human rights, democracy and good governance. This link is reflected in several recent resolutions of the United Nations High Commission for Human Rights. The Centre for Democratic Institutions has been at the forefront of thinking on the issue and in 1999 commissioned a research paper on the relationship between human rights and corruption (available on the website). The paper was researched and written by Zoe Pearson of the Law Faculty at the Australian National University. The project was supervised by Professor Hilary Charlesworth, Director of the Centre for Public and International Law, Australian National University and CDI.

The Director of CDI has written;

- *Losing Control: Freedom of the Press in Asia*, co-edited by Louise Williams and Roland Rich. Asia-Pacific Press
- *Death Penalty: an Abolitionist Perspective*, 12 Commonwealth Law Conference proceedings
- *Democracy as Comparative Advantage*, Fulbright Symposium papers, Federation Press (republished in Canberra Bulletin of Public Administration No 98 December 2000)
- *Democracy and International Law: Will the Connection Strengthen?*, forthcoming (Journal of Democracy - Johns Hopkins)
- *Democracy in the Balance*, forthcoming (The Tigers' Roar - ME Sharpe publication)



Roland Rich
Director

¹ See for example Carl Wellman, *Solidarity, the Individual and Human Rights*, *Human Rights Quarterly* 22.3, August 2000

² Philp Alston, *Conjuring Up New Rights: a Proposal for Quality Control* 78 *AJIL* 607 (1984)

³ Roland Rich, *The Right to Development: A Right of Peoples?* in *The Rights of Peoples* 39, 41 (James Crawford ed., 1988)

⁴ UN doc A/55/306 of 17 August 2000

⁵ Section 1, para 8, A/Conf.157/23, 12 July 1993