

# AID AND HUMAN RIGHTS

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A SUBMISSION BY

AUSTRALIAN LEGAL RESOURCES INTERNATIONAL

TO

THE INQUIRY ON AID AND HUMAN RIGHTS

*"Invoking the spirit of our age and the realities of our time which call upon the peoples of the world and all States Members of the United Nations to rededicate themselves to the global task of promoting and protecting all human rights and fundamental freedoms so as to secure full and universal enjoyment of these rights"*

The Vienna Declaration and Program of Action, 25 June 1993, fifteenth paragraph of the Preamble

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In carrying out its mandate under its Memorandum and Articles of Association, ALRI is guided by the following principles:

- The International Bill of Human Rights embodies the international human rights standards the realisation of which represents ALRI's ultimate objective.
- These rights, as contained in the international instruments that make up the International Bill of Human Rights constitute one integral set of international legal obligations, and therefore include civil, cultural, economic, political and social rights, as reflected in the Vienna Declaration and Program of Action, which states:

*"5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."*

ALRI's Objectives are:

- **to provide relief to persons in developing countries by assisting to support, promote and develop the Rule of Law and parliamentary democracy in those developing countries through the donation of legal texts and materials, office supplies and equipment, and legal training, education and advice;**
- **to support and promote the recognition and protection of fundamental human rights for persons in developing countries throughout the world;**
- **to assist in the establishment, provision and development of legal and judicial systems and parliamentary democracy and provision of facilities to give effect to these objects.**

ALRI seeks to contribute to the implementation of these rights by focussing on activities in the field of administration of justice, the rule of law and good governance. In so doing, it is guided by the VDPA, which declared that every State should provide an effective framework of remedies to redress human rights grievances or violations; it states, furthermore, that:

***“27. ... The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice”.***

ALRI sees its activities as an integral component of the development process. The United Nations Development Assistance Framework, which is a product of the “Renewing the United Nations” policy of the Secretary-General of the United Nations, announced in June 1997, as well as “The Comprehensive Development Framework,” announced by the President of the World Bank in January 1999, constitute a constructive framework which enables ALRI to carry out its mission.

ALRI endorses the identification of the four participant groups in the development process, made up of Governments, International Inter-Governmental Organisations, Civil

Society and the Private Sector, and the duty of governments to take charge of development strategy and implementation. ALRI will encourage greater cooperation among these groups in order to maximise the benefits that developing countries might obtain from its activities.

ALRI is of the view that, in any statement on aid and human rights, a fundamental condition is a clear and unequivocal understanding of the basic terms used. In this instance, “human rights” must be understood to refer to the entire range of civil, cultural, economic, political and social rights, as set out in the International Bill of Human Rights. These rights share a focus in their common scope and purpose around Article 1 of the UDHR (“All human beings are born free and equal in dignity and rights ...”).

Throughout the evolution of international relations –as reflected in international human rights norms – these rights were always considered as inter-related and inter-dependent. However, for various reasons, not least the Cold War and the global polarization in the post-WWII period, these rights were divided to form the subject of two separate covenants. This separation also affected the mechanism for the realisation of the international obligations created in each covenant.

Their inter-dependence has never been questioned. In 1952 the General Assembly reluctantly agreed to have two such instruments, and in 1950, in the context of the debate then going on with regard to the content of a single, legally binding human rights covenant, the General Assembly had declared that “*the enjoyment of civic and political freedoms and of economic, social cultural rights are interconnected and interdependent*” and that “*when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as the ideal of the free man.*”

More recently, the World Conference on Human Rights (1993) forcefully re-iterated this principle in the Vienna Declaration and Programme of Action, an international political statement unanimously approved by 171 States.

The adoption of the Declaration on the Right to Development in 1986 is another important milestone in the consolidation of the inter-dependent nature of human rights. The debate on the Right to Development may be said to have started in 1969 when the General Assembly adopted a Declaration on Social Progress and Development, [Article 10 of this declaration stated that “*social progress and development shall aim at the continuous raising of the material and spiritual standards of all members of society, with respect for and in compliance with human rights and fundamental freedoms through the attainment of six goals, respectively dealing with the right to work, the elimination of hunger and malnutrition and the guarantee of the right to proper nutrition, the elimination of poverty, the right to health, the right to education, and the right to adequate housing*”]

An important decision was adopted by the General Assembly in 1982, when it recognized that social progress and development were founded on respect for the dignity and value of the human person and should ensure the promotion of human rights and social justice.

The principle of inter-dependence is firmly established in international relations and indeed in international human rights norms, and should form a fundamental consideration in formulating aid policies. The implementation of this principle necessitates the adoption of policies and practices as a guide in the delivery of aid programmes.

The practice of States in delivering development aid has traditionally focused on the support for the realisation of some economic and social rights; indeed this is the statutory objective of a number of specialized agencies established in the United Nations system, in accordance with Chapter IX of the UN Charter. Programmes and policies developed under these agencies were largely sectoral and ‘compartmentalised’. Civil and political rights were not the subject of international development programmes, since these were traditionally considered by some States as ‘internal matters’, and any programme seeking to strengthen respect for these rights was perceived to be an incursion into the sovereignty of the State.

The emergence of the notion of support for ‘governance’ and the recognition of the need to address ‘human development’ emerged in the eighties, largely as a result of the experiences that had been made by the United Nations Development Programme, that focus on economic and social policies was not sufficient to achieve the objectives of development assistance.

ALRI’s experience, as an organisation that targets the strengthening the rule of law through support for capacity building of institutions responsible for the realisation of civil and political rights, has shown that a considerable need has yet to be addressed in a coherent, strategic approach. Experience in Asia and the Pacific, especially in the recent past, has dramatically shown the importance of strong institutions in the civil and political rights field. The strengthening of these institutions is an essential factor in ensuring stability and sustainability of recipient societies.

ALRI is an organisation which specializes in institution and capacity building in the civil and political rights sector. As such, its work is interdependent on that of other organisations whose focus is on economic and social rights. Bringing about this interdependence is a highly complex process, and ALRI’s experience has shown that much needs to be done to enable this concept to have a meaningful application in formulating aid policy and in delivering projects. Recent experiences, such as the series of three Human Rights Training Workshops in November 2000 in Indonesia, and the human Rights Training for Government Officials in Myanmar at about the same time, though undoubtedly well-intentioned, underline the need for more serious reflection and assessment prior to the formulation, let alone delivery, of such projects.

The inquiry, therefore, may wish to focus on the manner in which an approach that seeks to address needs in the civil, cultural, economic, political and social fields, in offering programmes at the bilateral, regional and international level. An approach based on the principle of inter-dependence of human rights may not be as easy as it appears. The success of activities related to institution building in the civil rights sector, for instance, are difficult to quantify, and progress cannot be measured by applying the same

indicators or benchmarks as in economic and social programmes. There is much dependence on confidence building, and considerable effort is required to address and redress such problems arising from phenomena as corruption. Techniques have to be devised to suit the problems encountered; ALRI, for instance, has found that ‘peer’ education of judges is an effective tool in their training.

In this regard, ALRI fully endorses the approach taken by the Human Rights Council of Australia in its report, “The Rights Way to Development”, and encourages the Inquiry to consider the adoption of the “Manual for a Human Rights Approach to Development Assistance” as a guide in formulating recommendations on aid and human rights.

It is pertinent to recall that this approach is fully consistent with that enshrined in the MOU signed between the Administrator of UNDP and the High Commissioner for Human Rights in February 1998, which in turn led to the formulation of the joint UNDP/OHCHR project known as HURIST (Human Rights Strengthening). That programme is in current implementation. ALRI believes that there should be a necessary complementarity between those activities and the national, Australian aid programme. The convergence of approach by the UNDP and OHCHR has since been further strengthened by the announcement of the Comprehensive Development Framework (CDF) referred to above, by which the World Bank now seeks an ‘inter-dependent’ approach.

In ALRI’s view, therefore, the approach to development and human rights should be based on the following principles:

- development should address all human rights, ie civil, cultural, economic, political and social;
- activities should be designed having in mind the mutual sustainability of the objectives they seek achieve;
- delivery should seek to respect local ownership at all times.

ALRI has the following comments on point 3 of the Inquiry’s terms of reference:

The Human Rights Programme requires re-examination with a view to adapting the activities to present needs; the evolution referred to earlier has made it necessary to ensure the impact of activities in one sector on activities in related sectors. For instance, training of law enforcement officers will need to take into account work conditions of such personnel, including access to education, housing, health, etc. By the same token, the setting up of a national institution, or the formulation of a law contemplating such an institution, may need to be preceded by deeper understanding of customary laws and practices as well as of the economic and social conditions in which such institutions might function. The existence of a human rights programme is, in itself, an admirable initiative, but care must be taken to ensure that, such programmes do not isolate what passes for 'human rights' from the rest of the development activity that it is meant to sustain.

In regard to regional approaches, ALRI is of the view that the aid programme should play a higher profile role in regard to the emergence of regional human rights arrangements in both the Asia-Pacific and the ASEAN contexts.

The absence of a regional human rights arrangement in these two regions, as distinct from the regions of Africa, Europe and the Americas, continues to constitute an obstacle in the successful delivery of aid.

The aid programme can play a major role in the development of a regional human rights context in the Pacific region, by supporting the efforts of civil society in the region. At present there is no inter-governmental framework that focuses on human rights issues, and a stronger civil society can act as a catalyst in bringing about a greater sense of awareness at the inter-governmental level.

The efforts in South-East Asia to bring about a regional inter-governmental arrangement on human rights has been discussed over several years, and dialogue between government officials and civil society has been, on the whole, positive, although as yet not successful in bringing about inter-governmental agreement. Australian aid

involvement should play a higher role than that at present played by other aid partners from other regions of the 'developed' world in this area.

In conclusion, the first step in enhancing human rights through the aid programme is to strengthen the policy formulation consultations within the country, so as to benefit from the rich reservoir of know-how available in Australia's institutions. The collective experience being made will provide a rich basis for the formulation of policies and priorities in neighbouring regions. Secondly, the aid programme may play a greater role in international and regional consultations. ACFOA, in this regard, in close consultation with organisations like the Human Rights Council of Australia, would be well suited to act as a vehicle for this purpose. Thirdly, the present Human Rights Programme would need to be reviewed to ensure, on one hand, greater relevance to the other aid sectors, and, on the other, to focus on specific areas of civil and political rights.

Sydney

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