

**Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade
Human Rights Sub-Committee
Inquiry into Human Rights and Good Governance Education in the Asia-Pacific
Region**

1. The role of human rights and good governance education in the promotion of fair and sustainable social, political and economic development

Human rights and good governance education plays an important role in encouraging fair and sustainable social, political and economic development, but it is a role that cannot be easily quantified. For one thing, causality in development is highly complex.¹ Secondly, education of this kind is an inherently delicate, long-term process and not conducive to predicting immediate outcomes. However, a growing body of evidence suggests several claims can be made for these education programs. This evidence is confirmed by the experience of the Castan Centre and the Centre for the Study of Privatisation and Public Accountability in conducting human rights and good governance workshops in Burma and Indonesia.

The first development benefit gained from education programs is an improvement in human rights and good governance awareness among local decision-makers. The programs instigate and encourage a process whereby public officials 'internalise' international human rights norms. This increases the possibility that public debate might begin to engage with these issues in a way that challenges the more usual focus on immediate, traditional local political concerns. It also has the potential to spark

¹ As evidence of this see the arguments between econometrists over the link between "non-distortionary" policy environments and economic growth in developing countries (see Burnside, Craig & David Dollar. 1997. *Aid, Policies and Economic Growth (Policy Research Working Papers 1777)*. Washington, D.C.: The World Bank, as compared 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).

indigenous pressure for additional structural and institutional change.² In line with that, it can lead to improved links with transnational non-governmental and professional networks that help promote further political and human rights development.

A second benefit falls under the broad umbrella of 'transitional justice'. Education programs ensure the presence of trained officials who are able to capitalise on political regime change when it occurs (even if that change is only obliquely the result of 'internalisation'). This improves the chances of human rights and good governance structures being established and maintained once sufficient political space exists for them to be built. It also helps create professional networks through which local officials can access assistance over the longer term.

Finally, the actual process of human rights and good governance education brings its own benefits into ongoing educational processes. Experience has shown that educators not only instruct participants in the content of international human rights regimes and good governance best practice, they also assist in the process of translating those ideas into locally relevant conceptual frameworks and practice. As such, the success of this sort of engagement must rely on information exchange in both directions.

The above example serves to emphasise an important point about the North-South development relationship. For it is certainly foolish, if not arrogant, to presume Northern states, institutions and attitudes represent the only successful templates for development. There are many dimensions to poverty – economic, social, political and cultural – and equally as many paths toward its alleviation. Sustainable development rests on donors and recipients effectively negotiating agreement over these pathways. This is not achieved through the simple imposition of Northern-based approaches. For example, while core good governance principles such as the rule of law, the enfranchisement and protection of citizens, government accountability and transparent decision-making³ can only be partly open to interpretation, the same cannot be said for economically-related state activities and public sector reforms. Such is the debate over economic theories and development prescriptions, within and between industrialised

² See Risse, Thomas & Kathryn Sikkink. 1999. "The socialization of human rights norms into domestic practices: introduction". In *The Power of Human Rights: International Norms and Domestic Change*, ed. Thomas Risse, Stephen C. Ropp & Kathryn Sikkink. Cambridge: Cambridge University Press.

³ Useful articles discussing the application of good governance to developing countries include: Leftwich, Adrian. 1993. "Governance, democracy and development in the Third World". *Third World Quarterly* 14(3):605-626; Merrien, Francois-Xavier. 1998. "Governance and the modern welfare state". *International Social Science Journal* 50(1):57-68; Moore, Mick. 1998. "Death without Taxes: Democracy, State, Capacity, and Aid Dependence in the Fourth World". In *The Democratic Developmental State: Politics and Institutional Design*, ed. M. Robinson, G. White. Oxford: Oxford University Press.

welfare states as well as between the developed and developing worlds, it cannot be assumed that one set of practices will work equally well in all environments.⁴ Good governance concepts must be seen as having large elements of contestability, without descending into unchecked relativism.

The modes of interaction between deliverers and participants that appear to be evolving in the education programs run by the Castan Centre and the Centre for the Study of Privatisation and Public Accountability balance the need for negotiation against the need to promote international norms. In this respect human rights and good governance education practice has much to offer development programs more generally. Currently in their infancy, initiatives along these lines require further exploration as they build on the lessons just beginning to be learned.

2. The importance of academic institutions in providing human rights and good governance education in the Asia-Pacific region

The identity of the organisation conducting human rights and good governance education can be vital to the ability to achieve the goals set out above. Where programs are to be delivered directly to public officials in developing countries, it is essential that the delivering entity is seen to be independent from foreign governments so that the process is perceived as a genuine transfer of knowledge and expertise, as distinct from regional imperialism or interference in that country's internal affairs. At the same time, actual expertise is paramount and must not be subjugated to other considerations.

Academic institutions are uniquely placed with regard to these twin criteria.

a) Expertise

Specialist centres or departments not only possess the expertise required for programs related to their field, but also have teaching experience and the ability to impart that expertise. That experience, backed by institutional resources, equips academic institutions to deliver innovative and effective teaching in a manner often not available to the private sector. These factors also position academic institutions more favourably than their private sector counterparts in relation to an ability to build and maintain long-term relationships with program participants. The

⁴ See Moore, Mick. 1996. "Is democracy rooted in material prosperity?". In *Democratization in the South: The Jagged Wave*, ed. R. Luckham, G. White. Manchester: Manchester University Press.; Hadenius, Axel. 1992. *Democracy and Development*. Cambridge: Cambridge University Press.

importance of such long-term relationships to the effectiveness of human rights and good governance education programs is addressed in sections 1 and 3 of this submission.

The underlying motivation for academic institutions, being excellence in teaching, research and intellectual development, contrast favourably with the profit motive of private contractors and the policy motive of government agencies in terms of delivering the best quality outcomes incorporating the latest thinking and research in the field.

Appendices 1 and 2 to this submission set out the particular expertise of the Castan Centre for Human Rights Law and the Centre for the Study of Privatisation and Public Accountability. It also describes some of the human rights and good governance education programs run by the two centres, providing an illustration of the important contribution made by academic institutions in this field.

b) Independence

Australian universities are also sufficiently independent from government to avoid suspicions of government interference in the affairs of the target country. The experience of the Castan Centre and the Centre for the Study of Privatisation and Public Accountability in delivering human rights education programs to Burmese and Indonesian officials is a case in point. Those programs, funded through AusAID, particularly target mid-level public officials as the people best positioned to further the realisation of human rights in their countries, consistent with the UN Plan of Action.⁵ The programs are carefully formulated to achieve maximum impact upon and acceptance from the participants, which would be severely constrained if the programs were delivered by entities perceived to be less independent or to be pushing their own agendas.

We therefore commend AusAID's use of academic institutions as a most effective means of delivering human rights and good governance education programs. The important role of academic institutions therefore needs to be borne in mind in formulating future programs.

⁵ United Nations. *Plan of Action for the United Nations Decade for Human Rights Education, 1995-2004: Human rights education – lesson for life*, annexed to UN document A/51/506/Add.1, paragraph 24.

3. Political engagement on human rights versus isolation

The nature of the subject matter of human rights and good governance education dictates that controversy will inevitably arise as to the desirability of engagement with regimes most in need of those educational programs. Nowhere has this 'engagement versus isolation' debate been more apparent than in Burma. In light of its delivery of human rights workshops in Burma over the past two and a half years, the Castan Centre is in a unique position to comment.

In general terms, the argument in favour of isolation is that regimes with poor human rights records ought to be isolated from the international community until such time as genuine human rights progress is made. Proponents of that argument are sceptical of programs aimed at the education of those in a position to affect human rights outcomes in those regimes, on the basis that participation in such programs enables governments to claim genuine efforts to improve human rights in their countries, without making any actual changes. Human rights education, the argument goes, can therefore produce the paradoxical outcome whereby improvements in human rights in a participating country are actually delayed, since participation in the education program meets the public relations goals that would otherwise have required some degree of human rights advancement.

The converse side of that argument is that there is a very real need for education and guidance of those who do, or who might, implement policies for the furtherance of human rights. If no human rights education is undertaken, the ability to identify internationally recognised human rights norms and to implement appropriate policies for the progressive fulfilment of those norms will be severely curtailed, as will the ability of that government to engage meaningfully at both the domestic and the international level. Knowledge of the workings of international human rights institutions and monitoring and reporting mechanisms, which is vital if real and measurable improvement in human rights standards is to be achieved, would also be very difficult to acquire without educational programs.

Furthermore, such knowledge helps equip developing countries for the future, particularly in the case of countries in political transition or just embarking on the initial steps towards political change (as is apparently the case with Burma). Without these educational programs, there would be a vacuum of skills and knowledge in relation to both good governance and the implementation of human rights that must attend any transfer of power. Human rights and good governance education, by

engaging recalcitrant regimes in such discourse, can and do play a part both in the initiation of change and ensuring that capacity exists for such change to be sustained.

Whilst we acknowledge the sensitivity of engaging with entities with poor human rights records, we submit that the potential benefits for the advancement of human rights of specific educational engagement are too important to disregard in adopting an isolationist position. However, aid agencies as well as the international community must take care to ensure that real progress is being made in countries with poor human rights records, rather than relying merely on the statements of the governments involved or their participation in educational programs.

This once again raises one of the intrinsic problems in the evaluation of human rights and good governance education programs, namely the difficulty of measuring outcomes and identifying the causes of change. The kaleidoscope of domestic and international pressures brought to bear on all polities might ensure that the precise effects attributable to the education programs will never be precisely known. However, the experiences of the Castan Centre and the Centre for the Study of Privatisation and Public Accountability in delivering short- and medium-term courses suggests that the facilitation of a follow-up to educational programs would be extremely valuable in terms of the evaluation of the impact that the courses have on participants and the participants' ability to use their acquired knowledge to implement change, as well as consolidating and reinforcing that knowledge.

At the end of the day, the vital importance of human rights education programs in providing the knowledge and the tools for real progress in human rights significantly outweigh the political sensitivity of limited engagement with governments with poor human rights records.

4. The future role for Australia in providing human rights and good governance education in the Asia-Pacific region

a) Australia's unique 'international broker' role

Australia's experience of North-South relations is unlike that of most other industrialised countries. Although it has long been a strong supporter of the international human rights regime, Australia's location in the Asia-Pacific region means it regularly interacts with states that have different interpretations of those norms. Australian foreign affairs and foreign aid officials, as well as NGOs and

academic institutions, who attempt to sustain support for international human rights norms must do so within the context of the political, cultural and economic realities of the region. This requires well-developed skills in cross-cultural negotiation. The Minister for Foreign Affairs argues that these skills are evident in a distinctively Australian approach toward human rights where pragmatism and idealism are combined in equal measure. While the Minister's sentiments may well be true, more could be done to analyse the composition and value of that 'distinctive approach'. The experience of the Castan Centre and the Centre for the Study of Privatisation and Public Accountability suggests there is some benefit in practical engagement through education programs, but that the limitations of these must also be recognised. Consideration now must be given to whether or not Australia has gained sufficient trust in the region to begin to broaden its human rights activities beyond the educational. This will test the real value of Australia's claim to be a worthy 'international broker' in relation to human rights activities.

Australia finds itself in a similarly unique position in relation to the public policy elements of good governance. Over the past twenty years Australian governments have systematically lowered tariff barriers and engaged in public sector reform. They have attempted to reduce government expenditure and government intervention in the economy while at the same time preserving the social rights of citizens. This has produced an open economy and a welfare state that is neither fully neo-liberal nor fully social-democratic. While sharing features with both US and European tax-transfer and labour-market models, it is distinctively Australian. The comparative strength of the economy and the living standards and social cohesion of the Australian population point to the success of this approach. This underscores the point made in section 1 of this submission that good governance does not prescribe a universal template for reform. Policy-makers in foreign affairs and foreign aid need only look to Australia's own experience to appreciate how, once fundamental elements such as the rule of law are established, good governance can be successfully varied in response to a country's own history, political culture and state-society relations.

One central underlying strength of Australian involvement in providing human rights and good governance education in the Asia-Pacific region is our international outlook and understanding. Australian educators have a tradition of observing and appreciating a range approaches taken internationally as well as analysing our own balance of 'pragmatism and idealism'. Thus, programs on good governance, for instance, have been able to look at the perspectives taken on improving governance by say, the United States of America, European and British Westminster traditions

rather than teaching solely from a US-centric or Euro-centric view. This has been an important principle of intellectual development in these programs given the underlying notion that we all have rights to both discuss ideas openly and hold differing views.

b) The nature of future Australian aid initiatives

The responses to all the issues raised in this submission have highlighted the current lack of knowledge on the causal relationship between development and human rights and good governance education. Future Australian aid initiatives in this area need to take account of this deficiency. Human rights and good governance education is the polar opposite to easily quantifiable engineering initiatives, for example, where outcomes are known and outputs and risks can be measured; this difference must be recognised in the aid delivery instruments employed.

Limited 'blueprint' projects are not especially appropriate tools for delivering human rights and good governance education. Phased projects that seek to develop rather than pre-empt objectives, outcomes and indicators would be more suitable. Such projects should also provide for follow-up contact and, where possible, an approach toward activity evaluation that encourages reflection by the participants and systematically facilitates the application of evaluation findings to future activities.

Beyond phased projects, there may be some value in experimenting with incorporating human rights and good governance education elements into sectoral investment programs. While this diminishes the level of direct control the aid donor can have over the direction of a specific initiative, it does allow for more beneficiary participation in the pursuit of mutually agreed upon goals.

Outside of stand-alone projects and programs, ongoing activities such as the promotion of transnational linkages between NGOs and professional bodies should be investigated and encouraged. These linkages enable continual, less formal exchanges of information and education which can be instrumental in building upon earlier projects and in forming agendas for future initiatives.

c) Relationship of Australia's human rights and good governance education programs to the UN decade for human rights education

The central focus of the United Nations Decade for Human Rights Education is on the incorporation of human rights principles into ordinary education curricula in schools and vocational training and into community education programs.⁶ However, in the case of developing countries in the Asia-Pacific region, human rights education of key decision makers within governments and local NGOs is a vital precondition if the realisation of human rights is to become a reality. This focus is consistent with the UN Plan of Action with regard to emphasising the training of those "in a particular position to effect the realization of human rights."⁷

While consistent with the Decade for Human Rights Education, Australia's human rights and good governance education programs, including those run by the Castan Centre for Human Rights Law and the Centre for the Study of Privatisation and Public Accountability, play an important role in the development of the Asia-Pacific region independent of the UN Decade. Australia's particular suitability to provide these programs has been noted above, and Australia's focus on the Asia-Pacific region in its international development policies is a matter of public record. For these reasons, we would urge the Australian government to continue the expansion of its human rights and good governance education programs within the region, providing regional leadership beyond that envisaged by the UN Decade and helping to create the conditions necessary for developing countries in the region to instigate their own human rights education programs of the kind contemplated in the UN Plan of Action.

⁶ United Nations, *Plan of Action for the United Nations Decade for Human Rights Education, 1995-2004: Human rights education – lessons for life*, annexed to UN document A/51/506/Add.1, paragraph 10(a).

⁷ *Id.*, paragraph 24.

Appendix 1

The Castan Centre for Human Rights Law

The Castan Centre for Human Rights Law was established in 2000 to meet the need for and interest in the study of human rights law, globally, regionally and in Australia. It seeks to bring together the work of national and international human rights scholars, practitioners and advocates from a wide range of disciplines in order to promote and protect human rights. It does so by way of teaching, scholarly publications, public education (lectures, seminars, conferences, speeches, media etc), applied research, collaboration and advice work, consultancies and advocacy.

Of particular relevance to this inquiry is the Castan Centre's previous and ongoing consultancy work in human rights education in the Asia-Pacific region, as well as some of the Centre's upcoming projects with direct relevance to human rights and good governance education in the region. These are discussed below in parts 3 and 4 of this submission, respectively.

The Centre is named after Ron Castan AM QC (1939-1999), who was a passionate advocate for the recognition and protection of human rights and a distinguished member of the Victorian Bar.

Castan Centre human rights education projects

a) Burma – Human rights and international law training program

The Castan Centre has conducted some fifteen human rights workshops in Burma since July 2000. The workshop participants were middle-ranking bureaucrats and Burmese NGOs, being those best positioned to further the realisation of human rights in their country, consistent with the UN Plan of Action.⁸ The workshops comprised a mixture of lectures, seminars, case studies, role plays and group exercises and focused on the practical implementation of Burma's responsibilities under specific international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child – an approach that is also consistent with the UN plan of action.⁹

⁸ United Nations, *Plan of Action for the United Nations Decade for Human Rights Education, 1995-2004: Human rights education – lessons for life*, annexed to UN document A/51/506/Add.1, paragraph 24.

⁹ Id paragraph 3.

The Burmese workshops are a vital source of knowledge for administrators in a regime universally recognised as a poor performer in terms of the protection and promotion of human rights. By providing both a general introduction to human rights under international law and a specific focus on the practical implementation of certain human rights obligations, key individuals and groups are equipped to promote change. Over the course of the workshops the nature and specificity of subject matter covered has progressed significantly, such that issues such as political change, freedom of expression, forced labour and child soldiers are openly discussed and international material (from NGOs and UN agencies, for example) that is critical of Burma's human rights record is made available to participants. Of course, no amount of human rights and good governance education can produce the political will to promote such change, but providing the necessary legal, intellectual and practical tools is a vital precondition to positive change.

b) Indonesia – Human rights in Australia short courses

In 2001 and 2002, the Castan Centre delivered two intensive human rights courses to a select group of Indonesian officials in Australia. The courses comprised seminars, guest lectures, specifically tailored site visits, group exercises and the development of action plans to be implemented in the participants' respective official capacities. The participants, numbering 15 in 2001 and 19 in 2002, were drawn from the Ministry of Foreign Affairs, the Ministry of Justice and Human Rights, the Ministry of the Attorney-General, members of the judiciary, the police, the media, universities and NGOs. This broad range of participants enables penetration of a large portion of government and civil society when the participants return to Indonesia to pass on and implement their acquired knowledge. A broad spectrum of human rights subjects were addressed in the courses, including the nature, form and operation of international systems of human rights law and direct comparative studies of the implementation of human rights norms in Australia and Indonesia.

c) Department of Foreign Affairs and Trade – International human rights workshops

The Castan Centre is currently part-way through the delivery of a series of six human rights workshops to officials from Australia's Department of Foreign Affairs and Trade in Canberra, to be completed in 2003. The objective of the series is to enable

the participants to acquire or develop the skills of identifying, evaluating and using human rights materials and to apply those skills to diverse situations. Presenters from DFAT and NGOs are incorporated into the course to enhance its practical focus.

The DFAT participants are taught the general theory of international law and international human rights law, including how it is enforced and how it translates into the Australian legal system. The courses also include an exploration of the practical application of human rights, including in negotiations, in the context of economic globalisation, and in dealing with complaints.

This program differs from the programs relating to Burma and Indonesia in that it is aimed not at key decision makers in the target countries, but at Australian diplomats and departmental officers serving those countries either in the host country itself or through formulation and application of foreign policy in relation to the host country. The intention is to ensure that the actions of Australian diplomats and those responsible for implementing foreign policy take into account international human rights norms and the human rights obligations of both Australia and the host country, thus triggering a modification of behaviour of the kind contemplated in the UN Plan of Action¹⁰ and encouraging the realisation of human rights in the host country.

¹⁰ Id paragraph 9.

Appendix 2

The Centre for the Study of Privatisation and Public Accountability

The Centre for the Study of Privatisation and Public Accountability was established in 2001 in response to a lack of understanding of the legal and social implications of privatisation. The Centre investigates crucial questions that concern the relationships between government and community in a privatised state. A multi-disciplinary approach is being taken by researchers at the Centre in examining legal and policy aspects of privatisation, regulation and public accountability.

The Centre is currently undertaking research activities in a range of areas relevant to the Inquiry concerning:

- Mechanisms for improving public accountability across a range of managerial, legal, political, administrative and market mechanisms.
- Public sector reform through the contracting-out of government services, privatisation of State Owned Enterprises as well as other options potentially relevant to Asia Pacific countries
- Governance requirements in the context of reformed utility markets, contracting for government service provision, and partnerships with private and not-for-profit entities
- Private Sector Development Strategy for developing countries

A significant part of the Centre's work involves consultancy work with governments in the region to run good governance education programs for their public service officers on issues such as improving public accountability and transparency, strengthening and streamlining the operations of public sector organisations and reducing corruption. A range of relevant programs have been undertaken by the Centre since its inception.

Centre for the Study of Privatisation and Public Accountability projects

a) Indonesia

The Centre has conducted short course training in governance and public sector reform for Indonesian public officials through the following range of programs:

Accountability in Public Sector Management course (this eight week AusAID supported program was delivered twice in Melbourne, 2001). The program aimed to

both improve the understanding of international models and norms in public sector accountability, as well as improve accountability through better consideration of a wide range of managerial, legal, administrative, social and market mechanisms.

District and Provincial Planning course (this thirteen week AusAID supported program was delivered twice in Melbourne/Adelaide in 2001, in conjunction with the University of South Australia). The program aimed to improve the capacity of local and regional public sector managers to undertake planning and reform challenges in their home organisations with a greater appreciation of how decentralized planning and economic development mechanisms operate in other jurisdictions around the world.

District and Provincial Planning course (a series of six brief two week programs were also led for AusAID in Indonesia through 2001 in conjunction with the University of South Australia). The objectives of these programs were similar to those above.

Strategic Planning for Local Authorities course (two brief executive programs were undertaken in Melbourne / Adelaide / Sydney and were aimed at Chief Executive Officers of Local Government organisations. These programs had similar objectives to the abovementioned planning programs and were conducted in 2001.

All Centre programs aim to provide a mix of lectures, workshops, syndicate exercises, discussions and practical considerations such as action plans, and are framed around models of accountability and around good governance models such as the Manila Declaration¹¹. The programs have been broadly oriented to the promotion of appropriate change within the context and cultural priorities of the home country. Throughout these programs, the course content, case studies, action planning and assignment challenges have all been significantly reshaped and progressively developed in light of feedback, observations and assistance from participants and course presenters.

In addition to these programs, Centre staff have undertaken twenty previous international public sector reform programs for Indonesian executives, and have presented to over one hundred programs over the past decade.

¹¹ Commonwealth Innovations (1999) Manila Declaration on Governance, Vol 5, no 3, p8, 1999.

b) Thailand

Short course training and development for Thai public officials was provided through the conduct of a *Decentralisation, Participation and Civil Society* program in Bangkok, Thailand, in June 2001. (This four week program was aimed at providing senior executives from around the Thai public sector with public sector reform and participation/consultation skills. It was the fourth course in a series, with earlier programs being delivered in both Melbourne and Bangkok.)

(c) Philippines

Additional good governance work by Centre staff has included the provision of a teaching program on *Private Sector Development Strategy* direct to the executive staff of the Asian Development Bank, Manila, Philippines. This series of programs was completed in conjunction with Tasman Economics Pty Ltd, and covered around one half of the Bank's middle and senior managers. The presentations focussed on private sector development strategy challenges for the ADB's member developing countries. The series outlined the roles of government in ensuring that a strong and effective 'enabling environment' was provided to support private market development as the engine of economic growth.

Holmes, Janet (REPS)

From: Committee, JSCFADT (REPS)
Sent: Friday, 6 December 2002 3:40 PM
To: Holmes, Janet (REPS)
Subject: FW: Submission to JSCFADT Inquiry

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-----Original Message-----

From: Thomas Davis [mailto:Thomas.Davis@law.monash.edu.au]
Sent: Friday, 6 December 2002 3:27 PM
To: Committee, JSCFADT (REPS)
Subject: Submission to JSCFADT Inquiry

Dear Sub-Committee Secretary, Human Rights Sub-Committee,
Joint Standing Committee on Foreign Affairs, Defence and Trade

Please accept the attached submission and cover letter from the Castan Centre for Human Rights Law and the Centre for the Study of Privatisation and Public Accountability regarding the Inquiry 'Human rights and good governance education in the Asia Pacific Region'.

Please note the hard copies of these documents are following in the mail.

Yours sincerely

Tom Davis
Project Manager
Castan Centre for Human Rights Law