

Caritas Australia

Submission to the Joint Committee on Foreign Affairs, Defence and Trade

Human Rights and Aid

Introduction

Caritas Australia is the official overseas relief and development agency of the Catholic Church in Australia. It provides assistance to poor communities in over 30 countries and is part of the international Caritas network, with a presence in 190 countries. Caritas Australia operates primarily through partnership with local organisations. It also has an operational presence in Cambodia, East Timor and Bougainville.

For many years a great number of aid activities have been loosely described as advancing human rights, to such an extent that it is quite common to hear “development” being equated with the implementation of human rights. Previous parliamentary inquiries have gone over some of this territory when requesting information from AusAID as to which Australian aid activities are human rights related. So far no clear statement has emerged as to what delineates a human rights project from other aid projects.

There is a much greater consensus now, particularly since Foreign Minister Downer enunciated a conceptual framework, for why human rights matter in overseas aid, even if there continues to be confusion as to what constitutes a human rights outcome. Even among the governments of developing countries, as well as the World Bank, it is now relatively easy to find agreement on the importance of implementing human rights as well as other aspects of governance. But without a clear notion of which human rights are being referred to, and in what circumstances they might be implemented, and by whom, the debate tends to be vague and rhetorical.

The reasons for this advance in acceptability of universal standards by governments are also unclear. However it is more likely to be a product of globalisation, particularly of the need to attract foreign direct investment, than of United Nations activities or lobbying by governments or NGOs. Consequently we can expect those countries with growing economies (eg East Asia) to increasingly adopt human rights standards, but not those with stagnant or retreating economies (eg sub-Saharan Africa).

Governments are also responding to a remarkably widespread common understanding among their citizens that human rights should be implemented in their countries. Even in the most remote locations, where education levels are low and poverty is rampant, people know and understand that they should be able to elect their representatives, be free from

arbitrary authority and torture and to have access to schools and health facilities. Again, this is a product of globalisation.

This paper addresses only one aspect of the terms of reference. Within Term of Reference 2 it will outline a few essential issues in “the utility of differing aid instruments and channels” by exploring what type of program actually advances human rights in developing countries.

The basis of human rights

Human rights are an essential element of the liberal/capitalist ideology which underpins almost all governance of modern states. In the context of bringing millions of people out of poverty through social and economic change their importance can scarcely be overstated. Human rights are not expressed in indigenous societies, Asian philosophies, or even in Western countries prior to World War 2. The phrase “human rights” only emerged during World War 2 as people started to think about the post war period and how war might be avoided in the future by establishing international norms.

Human rights are also an important aspect of Catholic thought because they give expression to, and make concrete, human dignity. All human beings are equal because they are all children of God. This fundamental Christian belief has survived for two millennia and now sees its influence result in global norms such as human rights. His Holiness Pope John Paul II has repeatedly stressed the need for human rights and the crucial links with the Church’s Social Teachings.

The Catholic Church teaches that human beings have a right to goods and their distribution to serve the Common Good. This understanding is the basis of economic, social and cultural rights in the modern world. These rights have been held back from sufficient elaboration by the international community but they are fundamental and deserve greater attention.

The key principles of religious freedom and the right to a cultural identity are becoming more and more important, especially for marginalised people. The rise of ethnic nationalism, partly as a result of religious and cultural insecurity in the face of rapid globalisation, can be viewed as a result of failure to implement these important rights.

Human rights are not a panacea for development. As with all laws they reflect the times of their origin. The rights incorporated into the current conventions are highly gendered – ie they reflect a male perspective and are exceptionally weak on women’s rights. The two key conventions, the ICCPR and the ICESCR demonstrate the cold war ideological split. All the instruments need updating but such is the state of UN politicisation that most human rights advocates fear to do this in case certain governments take the opportunity to wind the clock back and weaken these first tenuous efforts at creating international standards for the behaviour of states.

Neither do human rights comprise a coherent package which can be implemented easily as a whole. Some rights will conflict with others. There may be conflicts with tradition and domestic laws, between ethnic groups, or between men and women. Some development activities will dispossess certain groups, or cede national sovereignty. Arbitration between competing rights requires an independent judge and legal system. Consequently the incorporation of human rights into domestic laws needs time, widespread education and the rule of law.

In the end human rights must be made law otherwise they cease to impose real obligations. In essence human rights describe the inalienable duties of states to every one of their citizens in the most basic elements of life.

Aid program activities

Caritas Australia has experience of a number of program types which actively promote human rights. This list is not exhaustive.

1. **Capacity building of local NGOs** – the fostering of civil society organisations so that local organisations can participate in public affairs is crucial to the development of a consciousness about human rights and the skills necessary to advocate for human rights. Capacity building refers to a process of developing skills, understandings, management and resources at the local level so that human rights advocacy can be fully organised, not simply be the product of individuals. There are numerous models of effective human rights organisations in developing countries, well-established training programs and high level back-up is available from international human rights NGOs.

Almost all non-government aid agencies have capacity building programs with local partners in developing countries. However few of them are specifically oriented to human rights, or even to advocacy. The technique of fostering local organisations to undertake developmental activities – eg to dig wells, market commodities, provide public education – is a long-standing one. Involvement in political and social change however is relatively new and confined to only a small percentage of such projects.

In one sense however all NGO capacity building opens up the possibility of local organisations working for human rights, even if this was not part of the original project design plan. Empowerment of local people, through having their own organisations, can often lead to those people demanding social and political change. Most of these activities however are more a fortuitous outcome than a planned outcome.

In recent years AusAID has been more positive in its reaction to human rights advocacy as a planned outcome for NGO capacity building (eg current East Timor program), reflecting current trends.

2. **Governance** – programs which improve government administration so that it is able to resist corruption and special interests is crucial to the future implementation of

human rights because ultimately the organisations of the state which are responsible for human rights implementation need to acquire the capacity to do so. They cannot when they are hostage to individual corruption or special interests. Public service is not well paid in most developing countries and individual public servants often need to supplement their income through bribes or other work.

Governance programs are almost always funded through official aid, by way of contractors. Rarely do these programs involve civil society organisations or the building of better government/civil society relations. Improved governance, which is usually understood to mean more efficient and effective administration, is not human rights implementation in itself. So this is an indirect path to human rights, a building block for later governmental activities which may implement human rights.

To improve their human rights outcomes these programs need to involve civil society organisations more directly.

3. **Development of legal systems and the judiciary** – programs which increase the skills, understandings and knowledge of the legal system are crucial to the implementation of human rights.

Human rights are fundamentally legal rights and must be enforced through law. This cannot be achieved without an independent judiciary and a modern legal system. The drafting of laws is especially important. However, once again these general programs should not be viewed as human rights programs unless there is specific human rights content. The law can also be used to undermine or violate human rights (in South Africa the Apartheid system was entirely legal). Consequently design of legal systems programs must have specific human rights content to qualify as a human rights program.

4. **National Institutions for Human Rights** – programs assisting in the development of National Institutions are prominent in current human rights work funded by AusAID.

National Institutions should have a concrete and valuable human rights role. They should have the ability to mount prosecutions, to advise governments on their human rights obligations as well as provide public education.

In developing countries it would be a mistake to think that a National Institution can implement human rights or even effectively promote a human rights culture on its own. National Institutions can be extremely important, but they are not a replacement for an active civil society. The Indonesian example is a good one, where Komnas Ham is closely linked to human rights NGOs. It does not function alone.

In certain circumstances National Institutions can undermine the role of NGOs. The process of educating politicians and the public about human rights, of inculcating the values of human rights, and providing mechanisms whereby ordinary people can claim

their rights through asserting those rights and winning them from the powerful interests who would prevent this happening, is not a task suited to government agencies. This process was undertaken by civil society in most Western countries, over a considerable period of time. It cannot be short circuited easily.

5. **Human rights education** – programs designed to increase public understanding of international human rights standards. These should take place in schools, although we in Australia have failed on this count, as well as be undertaken by NGOs.

However great care is needed. Human rights are too easily put into a Western/Eastern dichotomy which tends to label them as foreign, even colonial or imperialist. Recent popular movements against globalisation indicate a strong reaction to Western values as perceived through economic globalisation impacts. Human rights are part of an ideological system with its origins in the West and we need to face that fact. But then so is the notion of development. It is essential that local people conduct human rights training and do so with methods that are honest and culturally based. Human rights must not be imposed. They need to be chosen and enunciated by local people. It would be a mistake to implement human rights education from a Western perspective or method, or with the dominance of foreign (Western) personnel.

In Catholic thought the principle of Subsidiarity gives us the concept that local level initiatives need to be fostered and preferred to imported, higher level initiatives. NGOs, through their partnership arrangements with local organisations are used to this manner of operation. In official aid programs however preference tends to go to expensive consultants, university professors, lawyers and judges rather than local people who know their subject and culture well.

5. **The UN human rights system** – programs assisting the development of the UN human rights system, or NGO advocacy relating to it. The UN Human Rights system is essential to the elaboration of human rights law as well as providing a high level forum for serious violations to be aired.

Despite some notable successes the practical outcomes of the UN human rights system for people from developing countries are mixed. The main problem is that the advocacy technique of embarrassing governments at UN meetings with revelations of abuses in that government's country work best with western democracies. The success rate against developing countries, particularly the poorest countries, is very low. The method of shaming is not sufficiently direct, neither does it offer a strong sanction. The further elaboration of international law is usually of marginal benefit to people from the poorest countries because the law is rarely implemented.

This does not mean we should abandon the UN human rights system. It is in need of fundamental reform and increased resources. In its current form it is politicised, compromised and often ineffective. Unless there is a concerted, collaborative effort to improve its operation action by Australia alone would not be productive.

UN human rights advocacy by NGOs from developing countries can be useful but it is expensive, time consuming and can produce unrealistic expectations. It is something which is best funded through NGOs as it requires extensive networks. It also needs to complement local advocacy work and be part of a comprehensive lobby. Time frames are very long at the UN – in the human rights field approximately ten years is required for any significant human rights initiative to see the light of day.

Final note

The implementation of human rights, particularly economic or social rights such as the right to housing, the right to health or the right to education should not be confused with the implementation of housing, health or education services.

In the old USSR the state was able to build a strong industrial system which produced extensive educational institutions, health services and housing all of which were generally available on an equitable basis. Most of these services were of a low standard when measured against western standards but were superior to those in developing countries.

However, citizens of the USSR could have these services taken away from them for one reason or another and there was little chance of reinstatement, certainly no independent legal system through which rights could be claimed. Consequently there was no right to education, housing or health. There were schools, houses and hospitals but no right of access to every person.

A similar situation exists in Singapore where political opponents of the government are regularly bankrupted by a tame judiciary. In effect you only have access to services if you support the government of the day. There is no right independent of bureaucratic or political fiat.

It is important in the aid/human rights debate that rights are not confused with services. It is possible to have sufficient houses but to have no right to housing; to have sufficient schools but no right to education (a situation occurring in some parts of Australia where schooling in indigenous languages is no longer available). The production of houses or health clinics does not bring about a right to housing or health. The right is part of the social/political system, dependent on other rights being implemented; the house or clinic is simply a building, staffed with certain resources.

Conclusions

- One must be careful not to equate “development” with “human rights”. Not all development activities promote human rights. Some are destructive of human rights.

- Human rights implementation is fundamentally the responsibility of the state. Individuals and groups have rights, the state has duties to implement those rights. Individuals and groups also have duties to one another, and to the state, and these are usually described by national laws. Consequently aid activities that help implement human rights should involve at some point organisations of the state.
- Human rights are fundamentally legal rights and must be inscribed into national law. Activities, such as the provision of health services, do not, of themselves, implement human rights. If access can be denied, on the basis of ethnicity or political allegiance for example, there is no right.
- NGOs cannot implement human rights on their own. However they can publicise abuses and apply pressure to governments to ensure that it is done. Support for human rights NGOs can be crucial to the eventual implementation of human rights.
- Unfortunately the UN is often marginal to the actual implementation of human rights. Its current human rights system is compromised and unlikely to be able to bring reluctant governments into line, particularly if they are the poorest developing countries. Implementation needs to be understood as a product of the national polity, not of international oversight. A fully functioning international human rights structure is required however in order to allow international law to progress and to provide effective mechanisms for complaints to be dealt with where individual states fail to do so.
- Human rights cannot be implemented without an independent judiciary and an effective legal system.
- Governance programs should not involve government agencies alone - they need to involve organisations of civil society in order to improve relationships that can eventually result in the implementation of human rights.

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