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HUMAN RIGHTS QUARTERLY

Engaging a Pariah: Human Rights Training In Burma/Myanmar

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ABSTRACT

The people of Burma/Myanmar have suffered for two generations under military dictatorships. Their economy, legal and social orders, cultural diversity, and political freedoms have all steadily declined during that time. The country's human rights record is considered by many to be one of the worst world-wide. In the West, responses have ranged from diplomatic condemnation, to the imposition of economic sanctions, and to the withdrawal of aid and international cooperation. Countries in the region, on the other hand, have been typically less robust, more accepting of assertions of sovereign rights and concerned to promote engagement and dialogue rather than isolation and punishment. Neither approach appears to have had any discernable impact on the attitude of Myanmar's military government or on the plight of its people. Aung San Suu Kyi remains under house

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arrest, her pro-democracy party banned, and its members persecuted; the rule of law is non-existent, and the once flourishing economy is in terminal decline. New strategies to break the impasse are now being contemplated in both the West (more conditional engagement) and the East (more strident conditionality). This article analyzes a controversial Australian human rights initiative that ran in Myanmar from 2000 to 2003, which might be considered a forerunner to these new "third way" approaches. The article describes the objectives, nature, composition and implementation of the program; it assesses its advantages and disadvantages, its risks and potential, and explores some of the criticisms and praise the program engendered. It also provides a detailed backdrop against which one might draw some tentative lessons in terms of the protection and promotion of human rights in both the specific context of Myanmar, and also, by implication, in the global community's approach to intransigent, pariah states.

I. INTRODUCTION

Australia's human rights training program for government officials in Burma/Myanmar,¹ which ran from 2000 to 2003, was an innovative, albeit modest, attempt to address the widespread abuses of human rights that have marked Myanmar's military governments since they took power nearly fifty years ago in late 1958.² No full account of this program has ever been published before. The program's structure and content was simple; it comprised of a series of workshops for Myanmar government officials on international and domestic human rights topics to be conducted in-country by human rights specialists on an intensive basis and used sets of printed materials and

1. Throughout the article we generally adopt the UN approach of referring to the state as "Myanmar," though "Burma" is also used, especially where organizations (such as the Australian Department of Foreign Affairs and Trade (DFAT)) themselves prefer the term.
2. First, by way of a "caretaker government" from 1958–1960 and thereafter, until the present day, under various guises and titles. There is a huge body of documentation and literature on the struggle for democracy and respect for human rights throughout this period. In addition to those sources cited throughout this article (especially, Steinberg, *infra* note 32), other noteworthy accounts include: AUNG SAN SUU KYI, *FREEDOM FROM FEAR* 167–272 (Penguin Books 1995)(1991); Josef Silverstein, *Burma's Struggle for Democracy: The Army against the People*, in *THE MILITARY AND DEMOCRACY IN ASIA AND THE PACIFIC* 69–87 (R.J. May & V. Selochan eds., 1998); CHRISTINA FINK, *LIVING SILENCE: BURMA UNDER MILITARY RULE* (2001). See also *Human Rights Yearbooks on Burma*, produced since 1994 by the National Coalition Government of the Union of Burma, available at <http://www.ncgub.net>, as well as the annual country reports and special reports produced by Amnesty International, available at <http://www.amnesty.org>; Human Rights Watch, available at <http://www.hrw.org>. For more general commentary and analysis on Myanmar, see Free Burma Coalition, available at <http://www.freeburmacoalition.org>; the daily updated survey and "clippings service" of stories from news services worldwide at BurmaNet, available at <http://www.burmanet.org>.

readings gathered from sources outside the country that related directly or indirectly to the human rights problems existing in Myanmar. The program had a relatively short lifespan, and any assessment of it must take account of this. The Australian government suspended it in June 2003³ after the 30 May 2003 Depayin incident, in which pro-government groups, coordinated by the government, attacked opposition leader Daw Aung San Suu Kyi and her NLD supporters.⁴ In the months that followed it was hoped that more propitious circumstances might develop and allow the program to be resumed. However, it was eventually discontinued because of the non-conducive political situation that prevailed after 2003.

This article, which is written from the perspective of two people who were intimately involved in the project, seeks to describe, explain, and reflect upon the initiative from its conception through its delivery and to its precipitate conclusion. In terms of the deployment of our discussion, we have chosen an inductive approach. We try to explain and analyze the details of the program, and, from those particulars, lay the foundation for drawing out more general principles. While we do indeed make our own conclusions and offer certain opinions as to ways forward, we expect that others will draw both additional and different conclusions based on what they read here.

The article is essentially divided into three principal parts. The first provides an account of the origins, rationale, and political context of the initiative. The second focuses on the actual implementation of the program—its nature and form—and the practicalities of its delivery. Finally, the third part addresses the benefits of and problems with the program, as well as drawing out some of the lessons learned. It also seeks to place the whole experience within the context of the latest developments within Myanmar and also within the framework of the international community's shifting attitudes as to what can and should be done about the continuing and unacceptable level of human rights abuses in Myanmar.

II. ORIGINS OF THE PROGRAM

A. The Diplomatic Antecedents

The idea for the initiative arose out of regular conversations that the Australian Foreign Minister, Alexander Downer, had at the ASEAN-plus Ministerial

3. Kimina Lyall, *Downer Limits Response to Suu Kyi's Detention*, AUSTRALIAN, 6 June 2003, at 9.

4. On which incident see, Amnesty International, *Myanmar: Justice on Trial*, AI Index ASA 16/019/2003, 30 July 2003, available at <http://www.amnesty.org/library/index/engasa160192003>.

Meetings since the mid-1990s with his Myanmar counterparts, first U Ohn Kyaw and subsequently U Win Aung. The actual program was the result of long negotiations with the Myanmar government during 1999, carried out by the then Australian Ambassador, Lyndall McLean. During these talks, Australia explicitly set out what it sought from the program, namely an opportunity to expose government officials and others to Myanmar's human rights obligations under international law.⁵

It was possible to undertake such an initiative at that time because the Myanmar military leadership itself was disposed to give this and several other unprecedented proposals the green light. In particular, then Secretary One of the State Peace and Development Council (SPDC) General Khin Nyunt, personally initiated around this time a number of moves by the military regime that allowed it, it seems, in order to test the environment for change. These moves included, internationally, the resumption of activity in Myanmar by the International Committee of the Red Cross (ICRC) in 1999; the acceptance of a new Special Envoy of the UN Secretary-General in 2000; the acceptance of a new UN Special Rapporteur for Human Rights in 2001; the commencement of a dialogue on forced labor with the International Labor Organization (ILO) in 2000, and the acceptance of a Japanese-proposed program on structural adjustment of the economy in 2000. Domestically, in 1999 Khin Nyunt also personally instigated the launch of the privately owned, English language newspaper, the *Myanmar Times*, which significantly improved the flow of information available to the people of Myanmar.⁶

It was within this context that the Australian human rights training concept was developed. It was one of a number of areas in which the Australian government was endeavoring to engage with the Myanmar government. Other proposals included the assignment of an Australian Federal Police counter-narcotics officer to the Australian Embassy in Rangoon, allowing Myanmar officials to attend an ASEAN Regional Forum meeting on regional security in Australia for the first time, and high-level Australian attendance at an Interpol Meeting in Rangoon in 1999, a meeting that was boycotted by several other Western countries.

These proposals had, as a starting point, a belief that certain quarters in the Myanmar bureaucracy exhibited sufficient interest in cooperating under international law to make organizing such a program feasible. In particular, the Myanmar Police Force and parts of the Ministry of Home Affairs had

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5. In fact, the notion of states' obligations under international law was a key feature of the workshops, and this was made explicit in the use of the term in the some of the official workshop titles.
 6. A useful summary of developments can be found in the annual survey of Asian affairs in Asian Survey. Specifically for this period, see Donald M. Seekins, *Burma in 1999: A Slim Hope*, 40 *ASIAN SURVEY* 16 (2000); Tin Maung Maung Than, *Myanmar (Burma) in 2000: More of the Same?*, 41 *ASIAN SURVEY* 148 (2001); Tin Maung Maung Than, *Burma/Myanmar in 2001: A Year of Waiting*, 42 *ASIAN SURVEY* 115 (2002); Allen L. Clark, *Burma in 2002: A Year Of Transition*, 43 *ASIAN SURVEY* 127 (2003).

carried a prominent interview with Chris Sidoti, which was the first publicity given to the workshops inside the country.¹⁰ A few weeks later, the *Myanmar Times* carried a speech given by the Australian Foreign Minister, Alexander Downer, in Australia, in which he explained his rationale for undertaking this human rights training initiative.¹¹ Interestingly, there was relatively little censorship of either article, according to *Myanmar Times* staff at the time. By the end of the first phase of the program in late 2002, the Myanmar side—which had begun by insisting that no publicity be given to the program inside Myanmar—was preparing press releases for their own official media.¹² Aside from the concerns that this amounted to the Myanmar government exploiting the program for its own propaganda, this action certainly added to the transparency of the program. This was important given that human rights had so long been something of a taboo subject. Subsequently, the Australian Broadcasting Commission was permitted to film—but not record—the workshops.¹³

B. THE KEY FORCES THAT SHAPED THE INITIATIVE

1. The Australian Government's Motivation

The central objective of the program from the Australian government's perspective was to provide training in human rights law to officials and lawyers in the relevant government agencies and quasi-civil society organizations (including the Myanmar Bar Council), who together would constitute the

of Burma, the Shan Women's Action Network, the Human Rights Education Institute of Burma (Chiang Mai, Thailand), and the Burmese Lawyers' Council, in Bangkok. During the preparation of Phase 2 of the program, the consultants also met with the Shalom Foundation and the United Nationalities Alliance, which comprised representatives from a number of ethnic groups including the Shan, Mon, Kachin, Rakhine, Karen, and Karenni peoples.

10. *Spreading the Right Word*, MYANMAR TIMES, 30 Oct. 2000, at 7.
11. *Australian minister defends "unique" foreign policy approach (edited extracts from Mr. Downer's speech at the opening of the Castan Centre for Human Rights Law)*, MYANMAR TIMES, 4 Dec. 2000, at 6.
12. See, e.g., *Workshop on Human Rights and Responsibilities Opened*, NEW LIGHT OF MYANMAR, 23 July 2002, available at [http://www.myanmar.gov.mm/NLM-2002/enlm/July23.htm#\(5\)](http://www.myanmar.gov.mm/NLM-2002/enlm/July23.htm#(5)); with respect to reporting on workshops run by the Myanmar Human Rights Committee itself, see *Workshop on Women's Human Rights Held*, NEW LIGHT OF MYANMAR, 8 Jan. 2003, available at http://mission.itu.ch/MISSIONS/Myanmar/03nlm/n030108.htm#Workshop_on_Womens_Human_Rights_held_. This reporting by the official press was factual, if minimal, and without comment, but it was quite accurate and did not seek to inject any bias.
13. See *Australia Sponsors Human Rights Workshops in Burma* (Australian Broadcasting Corp. television broadcast, 16 Aug. 2001), transcript available at <http://www.abc.net.au/7.30/content/2001/s347795.htm>.

embryonic administration of any future human rights implementation and monitoring system. Australian policy-makers believed that one way to achieve this particular goal was to expose Myanmar officials to the experiences of their Asian counterparts through the Asia Pacific Forum on National Human Rights Institutions, a meeting of existing or prospective Human Rights Commissions in Asia, which Myanmar officials attended regularly from 2000. The goal of building capacity for the eventual formation of a human rights watch-dog body in Myanmar became a subsidiary, but nevertheless important, element of the program. The Myanmar government canvassed the idea in negotiations beforehand,¹⁴ indicating that it wished to set up a Human Rights Committee consistent with the UN adopted Paris Principles that set out operating guidelines for such bodies.¹⁵ This was an unexpected step for a country that was being accused on all sides of widespread human rights abuses. It was likely that this decision was influenced by the example of the Indonesian Human Rights Commission,¹⁶ as, at that time, the Myanmar government still tended to see Indonesia as a political model.

2. The Bilateral Political Context of the Program

From the outset, the Australian government endeavored to ensure that the initiative would reinforce Australia's wider policy objectives. This was true in relation to Myanmar, especially its voiced concerns over human rights abuses in the country.¹⁷ It was also important that the initiative was not inconsistent with domestic and international perceptions of its support for the UN human rights conventions, particularly since Australia's attitude to these conventions was coming increasingly under attack.¹⁸ While the Aus-

14. During negotiations undertaken in Rangoon Aug. 1999.

15. The Paris Principles were developed by the OECD and adopted by the U.N. in 1993. See National Institutions for the Promotion and Protection of Human Rights, G.A. Res. 48/134, U.N. GAOR, 48th Sess., U.N. Doc. A/48/49 (20 Dec. 1993). For the text of the Principles, see the Annex to OHCHR, *Fact Sheet No.19, National Institutions for the Promotion and Protection of Human Rights* (Apr. 1993), available at <http://www.unhcr.ch/html/menu6/2/fs19.htm#annex>.

16. See *infra* note 41.

17. See Les Luck, Item 9: The Question of the Violations of Human Rights and Fundamental Freedoms Anywhere in the World (20 Mar.-28 Apr. 2000), available at http://www.dfat.gov.au/hr/hr_violation.html; Hon. Alexander Downer, Making a Real Difference to Human Rights, Address Before the Castan Centre for Human Rights Law (20 Nov. 2000), available at http://www.dfat.gov.au/media/speeches/foreign/2000/001120_hr.html; Alexander Downer, Human Rights in Australia's Foreign Policy, Address at Consultations between the Department of Foreign Affairs and Trade and Non-Governmental Organizations on Human Rights (30 July 2002), available at http://www.dfat.gov.au/hr/speeches/960730_downer_dfat_ngo.html. See generally Australian Department of Foreign Affairs, *Burma Country Brief* (Jan. 2007), available at http://www.dfat.gov.au/geo/burma/burma_brief.html.

18. See David Kinley & Penny Martin, *International Human Rights Law at Home: Addressing the Politics of Denial*, 26 MELB. U. L. REV. 466-77 (2002); Hillary Charlesworth, Madelaine Chiam, Devika Hovell & George Williams, *Deep Anxieties: Australia and the International Legal Order*, 23 SYDNEY L. REV. 423, 433-34, 436 (2003).

tralian government did not want the program to be seen by the Myanmar government as simply providing another opportunity for Australia to criticize Myanmar for its violations of international human rights principles, it was necessary to ensure that the program would not shy away from relevant human rights issues. Consequently, the Australian government made attempts to design the program in such a way as to outline some steps that Myanmar needed to take in order to observe their obligations under the human rights conventions to which it was a party, and also, more generally, to articulate why protecting and promoting international human rights standards was in Myanmar's best interests.

The program was feasible in terms of Australia's foreign policy, because, according to the government, its objectives were long-term and self-consciously limited. The government took care to claim only that the workshops might be expected to extend awareness of human rights issues within the country's bureaucracy and not that they would necessarily bring about immediate improvements in Myanmar's human rights situation. It was in this vein that Australia's Foreign Minister, Alexander Downer, proclaimed that Australia harbored "no illusions about the difficulty of promoting change in Burma."¹⁹

At the broadest political level, the launching of the program was essentially a matter of establishing mutual trust. Crucial factors in the process of securing Myanmar government agreement to the proposal included dispatching a high-level, respected and independent consultant to engage in technical discussions about the type of training to be provided. It was also crucial that the government be absolutely transparent, reasonable, and focused about the content and format of the workshops, which included making known to the Myanmar government the content of the teaching materials in advance.²⁰ In order to secure the prior agreement of the Myanmar leadership to the content of the human rights training, the exercise was pitched in terms of the universally accepted human rights instruments, namely the Universal Declaration on Human Rights, and the separate hu-

19. Press Release, Alexander Downer, Minister of Foreign Affairs, Australian Government to Continue Human Rights Training in Burma (25 May 2001), available at http://www.ausaid.gov.au/media/release.cfm?BC=Media&ID=8637_899_6425_6920_5972 (this media release is fairly typical). Similarly, in a speech he gave for the Castan Centre for Human Rights Law, Downer stated "I would be the last to inflate the prospects of turning around the very poor situation in Burma." Downer, *Making a Real Difference to Human Rights*, *supra* note 17.

20. Press Release, Chris Sidoit (sic), Human Rights Commissioner, Reporting on Visit to Myanmar (Burma) (5 Aug. 1999), available at http://www.hreoc.gov.au/media_releases/1999/99_31.html (issued on Sidoit's return to Australia reporting on his discussions with the Myanmar government and with the National League for Democracy Vice Chairman Tin Oo). See also InternationalReports.net, Human Rights Training Takes Off in Myanmar, available at <http://www.internationalreports.net/asiapacific/myanmar/2003/humanrights.html>.

First, there was both an individual and collective conviction that meaningful engagement in respect of human rights disputes was exceptionally important. All of the trainers believed, and do believe, that engagement can be an effective way to advocate and manage change in the face of recalcitrance. The trainers did not then, nor do they now, consider it to be the only way. However, in certain circumstances, engagement can be an effective alternative to disengagement, especially where the latter strategy is not yielding the desired results.

Second, in terms of professional vocation, all the trainers were, and are, both human rights educators and lawyers.²⁷ Thus, as regards the former, engagement by way of teaching—teaching human rights in particular—is a central part of what they each do. Engagement in the form of instruction in human rights and human rights law provides a forum within which one can explain, discuss, and promote knowledge and understanding of human rights. This is particularly useful in engaging those with whom one disagrees. In this respect, the dilemmas and moral choices before the trainers should not be underestimated, but, like other academics who have worked in Myanmar, the trainers concluded that there was a need for what the program had to offer that they, in running the program, could help to satisfy.²⁸ Further, because the trainers were lawyers, they placed emphasis on the role and the rule of law as an important (though not alone sufficient) vehicle for the implementation, promotion, and protection of human rights, both at the broad level of social and political order, as well as at the level of day to day practice.

Third, drawing on both of the above, the consultants had a degree of empathy with the phenomenological proposition that opening lines of communication with a “pariah state” on human rights issues, which took the form of workshops that encourage debate and discussion (and not just instruction), is to take the first step on the path to what Risse and Sikkink categorize as the “the socialization of international human rights norms.”²⁹ That is, by entering into discourse on human rights, renegade governments, despite themselves, become entangled in a process of internalization of human rights norms that starts with dismissal and denial and progresses through various stages of defense, distinction, and assimilation.³⁰ At least one way in

27. All the above trainers are legally trained and either full-time or part-time university academics.

28. As Craig Reynolds puts it in his reflections upon very similar dilemmas regarding his own experience of academic engagement in the country—there is “a hunger for scholarly exchange that I believe the international community must try to satisfy”. Craig J. Reynolds, *The Ethics of Academic Engagement with Burma*, in *BURMA/MYANMAR: STRONG REGIME, WEAK STATE* 123, 135 (Morten Pedersen, Emily Rudland & Ronald May eds., 2000).

29. Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* 1, 1 (Thomas Risse, Stephen Ropp, & Kathryn Sikkink eds., 1999).

30. *Id.* In the chapters that comprise the remainder of the book, a number of authors provide empirical studies of how this process is borne out in practice in such countries as Chile, Guatemala, Indonesia, Kenya, Morocco, the Philippines, South Africa, Tunisia, Uganda, and a number of Eastern European states.

human rights regimes, the standards they set, and the obligations that they impose, although some specifically focused on women's rights and on the rights of children. Each workshop had approximately twenty-five participants (comprising roughly one-third women), who were principally middle-ranking civil servants. Initially, they were drawn only from the Rangoon offices of the Ministries of Home Affairs and of Foreign Affairs, and the Office of the Attorney-General, but after the first round of workshops, participants from across the country and from other ministries. Those ministries included labor, education, immigration, and the Department of Social Welfare, as well as judges and court administrators from the Supreme Court, police officers, prison officers, university professors and social workers. There were also representatives from a number of so-called civil society organizations,³² including the Myanmar Women's Affairs Committee, Myanmar Maternal and Child Welfare Association, the Myanmar Red Cross Society, the Myanmar Medical Association, the Myanmar Bar Association, the Myanmar Chamber of Commerce and Industry, and the arch-propagandist United Solidarity Development Association. All participants were chosen by the relevant participating agency, whether this was the government itself or a government-supported civil society organization.

The one governmental agency notably absent was the military. This omission was the result of a deliberate strategic decision on the part of the Australian government, reflecting its concern to avoid a repeat of the politically embarrassing Australian involvement in training the military in Indonesia.³³ (This had previously been criticized by the Australian government, then in opposition, when the TNI was strongly implicated in human rights atrocities that accompanied East Timor's struggle for independence). Exclusion of the military was not, therefore, due to any particular principled opposition to offering human rights training to the Myanmar military.³⁴

32. Though invariably referred to as NGOs, these organizations are in fact arms of the state, having little or no independence from the government. For analysis of the history and dimensions of the destruction of civil society in Myanmar see David Steinberg, *BURMA: THE STATE OF MYANMAR* 98–122 (2001).

33. Then the ABRI (Angkatan Bersenjata Republik Indonesia), now the TNI (Tentara Nasional Indonesia).

34. Interestingly, Burmese opposition groups (namely both the NLD and the NCUB) suggested to the authors on a number of occasions the need to revise this exclusion of the military on the basis that it was the military that was (and is) responsible for most human rights abuses, not the bureaucracy. Furthermore, the military were included in similar human rights training workshops in Myanmar that were conducted by Premier Oil (a British corporation which at that time had significant commercial interests in Myanmar) in 2001 and 2002. David Kinley was part of the team of trainers who conducted these workshops. See *The Business and Human Rights Management Report: A Study of Eight Companies and Their Approaches to Human Rights Policy and Management System Development*, ETHICAL CORP., Nov. 2004, at 62–64; Carl Mortished, *Premier Oils the Wheels of Change in Burma*, *THE TIMES* (UK), 2 Mar. 2001, at 33.

IV. EVALUATING THE PROGRAM

No detailed public report or evaluation of the program exists in Australia. This is mainly because the program was suspended in June 2003. However, in 2004 AusAID released a largely factual Summary of Phase 1 of the program. It did not contain any qualitative assessment and was not, and did not purport to be, a full evaluation of the program.⁴⁶ Official characterizations of the program's progress or impact were few, aside from various press releases and public statements made by the Australian Foreign Minister (including one substantive speech on the issue),⁴⁷ and a number of comments and remarks made by DFAT and AusAID officials before Senate Estimates Committee hearings.⁴⁸ The only other public assessments of the program were the various media reports following interviews with the consultants and a number of conference papers delivered by the consultants.⁴⁹

At the conclusion of the program's first phase, the Australian government believed that the program had successfully met its admittedly limited objectives and that it should be continued. In October 2002, following his controversial visit to Rangoon the previous month,⁵⁰ Foreign Minister Alexander Downer was evidently sufficiently confident to announce that "our human rights initiative is to be expanded. Beginning early next year [2003], Australia will undertake a three-year program in Myanmar focused on practi-

46. AUSTRALIAN AGENCY FOR INTERNATIONAL DEVELOPMENT, HUMAN RIGHTS IN BURMA, SUMMARY OF PHASE 1 (2004), available at <http://www.ausaid.gov.au/publications>. The Report was prepared by the Castan Centre for Human Rights Law, Monash University.

47. Alexander Downer, Minister for Foreign Affairs, Making a Real Difference to Human Rights, Address at the Castan Centre for Human Rights Law, Melbourne (20 Nov. 2000), available at http://www.dfat.gov.au/media/speeches/foreign/2000/001120_hr.html.

48. For example, after the first year of the program, a senior AusAID official told the Committee

It was assessed that the courses had met their objectives and exposed people to human rights standards and principles. They had succeeded in raising awareness and stimulating discussion and debate. On the basis of that, no significant changes are proposed. We are looking at extending the exposure of people to those very same principles and protocols.

Richard Moore, AusAID, Address Before the Senate Foreign Affairs, Defence and Trade Legislation Committee (6 June 2001), in OFFICIAL COMMITTEE HANSARD, at 360.

49. The following papers were presented: David Kinley, Human Rights Workshops in Burma, Burma/Myanmar Update 2002, Presented at Australian National University (14 Feb. 2002); David Kinley, Human Rights Engagement, The Struggle for Democracy in Burma: Policy Options for Australia, Presented at the Asialink Forum, University of Melbourne (8 May 2003); David Kinley, Supping with the Devil: Promoting Human Rights in Problem Places, Presented at the Fulbright Symposium on Human Rights Education and Peace, University of Melbourne (23 June 2005); Kate Eastman, Human Rights Education and Rogue States—Burma and Afghanistan, Presented at the Australia and New Zealand International Law Association Conference, Wellington, New Zealand (July 2003) (all papers on file with author Kinley).

50. See Chris Johnson, *Gesture, Not Reform, Seen from Downer Myanmar Trip*, REUTERS NEWS, 30 Sept. 2002; Editorial, *No One Should Indulge Burma's Generals*, THE AGE, 3 Sept. 2003.

breaches or produce credible evidence that the accusations were groundless. Simple stone-walling might appear an attractive short-term response, but it was unsustainable in the long term. To this end, both the Australian Embassy in Rangoon and the training team continually urged the Myanmar government to broaden its international engagement on human rights matters by being more open to seeking technical assistance from UN human rights bodies⁶³ and considering accession to other key human rights instruments, such as the International Convention on Economic, Social and Cultural Rights (ICESCR).

The fact that the bilateral understandings upon which the program was based were entirely unconditional also left open the door for Australia to respond appropriately to any adverse human rights developments that occurred over the period of the program. Thus, for example, when Aung San Suu Kyi was, once again, placed under *de facto* house arrest from September 2000 to May 2002, the Australian government continued to protest exactly as it had in the past.

One guiding principle developed and adopted throughout the course of the initiative was to try to make the conduct of this workshop program as normal as possible, despite its potentially provocative content. The Australian team did not modify the content of the program or the approach to its delivery because of the difficult political situation in Myanmar or because of any concern that the program might be threatened or discontinued. Furthermore, the team did not seek to soften its treatment of human rights problems just because they were sensitive or controversial. Although it must be said that when such highly charged topics as forced labor, freedom of expression, fair trials, or free elections were raised, the responses by participants ranged from (occasionally) silence to (more usually) animated debate (which usually centered on the credibility of Myanmar's accusers more than any arguments rebutting the accusations), and, most revealingly, disquiet over the situation in Myanmar, or even quiescence with certain allegations. A central, if not explicit, objective of the Australian team was to incorporate into the program all of the important human rights issues relevant to Myanmar's situation. To be sure, the Myanmar government coordinators of the program clearly realized what was happening in the workshops, but they never sought to make any inappropriate requests for changes to format or content. Senior Ministers received daily summary reports compiled by the consultants outlining what topics were covered in each workshop. They were also briefed more generally on the conduct in and progress of the workshops.

63. Such as the office of the Secretary-General, the Committee on the Rights of the Child, and the Committee for the Elimination of All Forms of Discrimination Against Women, to which it already submits periodic reports.

and foreign governments—were especially interested in being briefed on the progress of the program and accepted offers of regular briefings on the program to keep themselves informed. For some, this even meant attending Australia-based workshops mirroring those undertaken in Myanmar and delivered by one of the program's trainers. The consultants themselves also continuously engaged in consultation with a variety of interested groups about the program throughout its duration.⁶⁶

In particular, Australian representatives consulted the NLD and Aung San Suu Kyi regularly about the program and sought their views on it. Aung San Suu Kyi and NLD spokesmen repeatedly, though not always consistently, took the view, publicly and in private, that the workshops were ill-timed, misguided, and "a waste of money."⁶⁷ However, Aung San Suu Kyi was almost alone among the Myanmar people contacted in the course of these consultations in opposing the program,⁶⁸ and even she admitted in 2001 that she had a "positive" discussion about it with Chris Sidoti, one of the members of the Australian training team.⁶⁹ Indeed, at that time—when she was not under house arrest and there were some other positive signs

htm/ view; Kalinga Senevirante, *Australians Debate Myanmar Policy*, *ASIA TIMES*, 11 Oct. 2002; Geoff Thompson, *Australia Hosts Human Rights Workshop in Burma*, Radio Broadcast from Australia Broadcasting Corp. (16 Aug. 2001) (transcript available at <http://www.abc.net.au/pm/stories/s347802.htm>); Press Release, Australian Council for International Development, *NGOs Sceptical of Benefits of Human Rights Aid to Burma* (20 Apr. 2000), available at http://www.acfid.asn.au/pubs/2000_releases/20_April_00_Burma.htm. See also Cho, *supra* note 31; Interview by Tony Jones, *supra* note 31. The initiative was also subject to statements, questions, and debate in the Australian Senate. See, e.g., Bob Brown, *Senate Parliamentary Debates of Commonwealth of Australia* (28 June 2000), in *OFFICIAL COMMITTEE HANSARD*, at 15875; Marise Payne, *Senate Parliamentary Debates of Commonwealth of Australia* (6 Mar. 2003), in *OFFICIAL COMMITTEE HANSARD*, at 9357; Kerry Nettle, *Senate Parliamentary Debates of Commonwealth of Australia* (7 Mar. 2003), in *OFFICIAL COMMITTEE HANSARD*, at 10330. For a more detailed and sympathetic consideration of the initiative by the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade, see generally the Australian Parliament's Joint Standing Committee on Foreign Affairs, *supra* note 26.

66. Chris Sidoti conducted several such workshops in Sydney under the auspices of the Burmese Community Association between 2001 and 2003.
67. See Interview with Mark Baker, Singapore-based Southeast Asia correspondent of the *Sydney Morning Herald*, in *Burma* in Oct. 2002. Baker visited Rangoon to cover Foreign Minister Downer's visit and was one of the few Australian journalists to interview Aung San Suu Kyi directly. Mark Baker, *Downer Faces Burma's Tyrants*, *SYDNEY MORNING HERALD*, 5 Oct. 2002, available at <http://www.theage.com.au/articles/2002/10/04/1033538774051.html>.
68. Her stance was the principal basis upon which many in the expatriate Burmese community mounted a well-organized, if at times monocular, campaign against the program.
69. *Suu Kyi Warming to Rights Seminars*, *SYDNEY MORNING HERALD*, 20 Feb. 2001 (reporting comments by Sidoti). In fact, this degree of flexibility complemented Aung San Suu Kyi's generally pragmatic attitude to dealing with the military regime, in which compromise was a key element where "both sides give as well as take." See *Talking Point with Aung San Suu Kyi*, *BBC NEWS ONLINE*, 14 Feb. 2003, (transcript available at http://news.bbc.co.uk/1/hi/talking_point/forum/2542971.stm).

acknowledged it as such.⁷³ Although the active phase of the program only extended over two and a half years, it did yield some discernable positive outcomes, a number of which might reasonably be expected to have some sustainable, long-term impact. These include:

- (1) the impact on individual workshop participants, particularly on their understanding of the nature, purpose and potential of human rights laws. Such impact at the individual level was especially important in respect of those present in every workshop who might be called "sleepers"—namely, individuals whose discontent with the current regime was barely disguised in conversations with us, but whose chosen strategy was to sit it out from within, rather than openly resist from without;
- (2) at an institutional level, increased awareness and recognition of Myanmar's human rights obligations among Myanmar government agencies and key local organizations;
- (3) acknowledgment of Myanmar's human rights obligations in education (Yangon University international law curriculum, high school text books) and training (standard Police College training, Civil Service Training Institute, Defence Services Academy courses);⁷⁴
- (4) subsequent indications of the Myanmar government's readiness to improve conditions for protection of human rights by improving official performance in areas such as people trafficking, HIV/AIDS-affected drug addicts, refugee management, child rights and juvenile justice;⁷⁵
- (5) extension of human rights training by the Myanmar government on its own initiative into other geographic areas and with other groups not previously covered in the Australian program, using translations of Australian teaching materials.⁷⁶

An underlying question regarding any assessment of the program's positive or negative impacts was: why did the military regime agree to

73. See, e.g., *Interim Report of the Special Rapporteur of the Commission on Human Rights, The Situation of Human Rights in Myanmar*, U.N. ESCOR, Comm'n on Hum. Rts., 57th Sess., ¶ 16, U.N. Doc. A/57/290 (2002); (Special Rapporteur declares that the human rights workshops "should continue"); *Situation of Human Rights in Myanmar*, G.A. Res. 57/231, U.N. GAOR, 57th Sess., ¶ 1(e), U.N. Doc. A/57/231 (2003), which states that it "[w]elcomes . . . the dissemination of human rights standards for public officials and some non-governmental organizations and ethnic groups through the convening of a series of human rights workshops."
74. Communications to Trevor Wilson by officials from the relevant Myanmar Ministries and agencies.
75. Programs in these areas were launched over the period 2001–2004 by AusAID. See *Aid Activities in Burma*, available at www.ausaid.gov.au; UNHCR, available at <http://www.unhcr.org/cgi-bin/texis/vtx/country?iso=mmr>; UNICEF, available at <http://www.unicef.org/myanmar/>; IDE, available at <http://www.ideorg.org/SectionIndex.asp?SectionID=116>, and attributed privately (in conversations with Trevor Wilson) by these organizations to the breakthrough achieved by the Australian program. See public reports on the web sites of the respective organizations.
76. Information provided to Trevor Wilson by Myanmar officials organizing the training, who indicated that officials from economic and infrastructure ministries as well as a few from Military Intelligence participated in these subsequent workshops.

initiate the program in the first place? In truth, the answer to this question was not entirely apparent. While arguing that it was only to improve the regime's public image is easy, if this was the case it would not have been necessary for the Myanmar authorities to have undertaken the program as systematically or seriously as it was. Alternatively, it might be argued that far from seeing the program in such a Machiavellian light, the regime was very largely indifferent to the whole enterprise, though this does not explain why it would engage in its own separate unpublicized human rights training program. Perhaps the program is best understood within the context of a series of other relatively small but nonetheless liberalizing policy shifts that were introduced around the same time, including the change of policy on forced labor, the opening of an ILO office in Rangoon, the more extensive cooperation with UN special envoys than at any other time in recent history, and finally, the release of Aung San Suu Kyi from house arrest in May 2002. Looking at all these developments together, the regime's agreement to the Australian initiative appears to make some sense, as does the government's approach to the actual conduct of the program.

With regard to the specific initiative of the establishment of the Human Rights Committee, any movement towards regularizing its role might be regarded as modest progress. Professor Pinheiro, as Special Rapporteur, publicly recognized the Committee in his 2002 report to the UN General Assembly. In one of the most detailed accounts of the generally low-public-profile Human Rights Committee's activities, he noted that "capacity-building through a series of successive workshops was appreciated by the government and benefitted, *inter alia*, the research activities of the HRC [Human Rights Committee]." Pinheiro went on to say he "commends all these initiatives aimed at building human rights capacity for government officials and the intention to establish a national human rights institution within the framework of the Paris Principles," to which he added the important rider that "another basic requirement for the promotion and protection of human rights is the freedom to organize, participate in and express oneself through autonomous civil society organizations."⁷⁷

The Myanmar Human Rights Committee still exists, although it has not been active since the turbulent political changes in Myanmar in late 2004, which removed from office some of the highest level sponsors of

77. *Report of the Special Rapporteur of the Commission on Human Rights on The Situation of Human Rights in Myanmar*, U.N. ESCOR, Comm'n on Hum. Rts., ¶¶ 22-23, U.N. Doc. E/CN.4/2002/45 (2002) (in accordance with Commission resolution 2001/15). See also *Interim Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar*, U.N. ESCOR, Comm'n on Hum. Rts., 58th Sess., U.N. Doc. A/58/219 (2003); *Situation of Human Rights in Myanmar*, C.H.R. Res. 2003/12, U.N. ESCOR, Comm'n Hum. Rts., 59th Sess., Agenda Item 9, U.N. Doc. E/CN.4/2003/L.36 (2003).

the Australian human rights training program, including most significantly, General Khin Nyunt⁷⁸ and Colonel Tin Hlaing, the Minister for Home Affairs. Nevertheless, as recently as early 2005, the Committee has been allocated an office, separate from any Ministry, from which to operate, and Myanmar government advisors worked on a new membership for the Committee that was expected to be formally approved in due course.⁷⁹

A further positive consequence of the Australian initiative was that other organizations soon began sponsoring their own human rights training programs in Myanmar, which complemented those being undertaken by the Australian government. These included programs conducted by the British oil company, Premier Oil, which then had significant business interests in the country, for government officials from Ministries with which it had dealings (principally, the Ministries for Energy, Labor, and the Myanmar Oil and Gas Enterprise), as well as some members of the military.⁸⁰ The Swiss-based, Institut International Des Droits De L'Enfant (IDE) conducted seminars on the Convention on the Rights of the Child with the Ministry of Social Welfare in 2001 and 2002. Also, significantly, from 2002, as mentioned above, the Myanmar government began its own training human rights training programs in other regional centers, such as Sittwe, Myitkyina, and Mawlamyaing, based on the Australian model and using the same course materials in translated form, albeit without any publicity.

The Australian program was a relatively small step in the overall scheme, but it is important to remember that it broke the ice in terms of such topics being dealt with directly in a government-to-government program. As Surin Pitsuwan, Thailand's Foreign Minister at the time, reportedly said in express reference to the workshops, "engagement . . . offers the opportunity to create alternatives . . . even if it means dealing with unattractive people."⁸¹ In the climate of a relatively open attitude to engagement (upon which the workshops both fed and to which they contributed), other organizations and agencies were able to undertake other human rights related initiatives that were not possible before,⁸² including a first-ever visit to the country by a

78. By then, the Prime Minister, but who held the post of Secretary One during the time of the program.

79. Trevor Wilson's conversation with Myanmar government advisor, March 2005.

80. *The Business and Human Rights Management Report: A Study of Eight Companies and Their Approaches to Human Rights Policy and Management System Development*, *supra* note 34, at 56-64; Mortished, *Premier Oils the Wheels of Change in Burma*, *supra* note 34.

81. Greg Sheridan, *Engaging Burma is "Best Way,"* THE AUSTRALIAN, 21 Dec. 2000, at 6. The article goes on to note: "Dr Surin is regarded as one of the most outspoken democracy advocates in any southeast Asian government . . . [and] has been harshly critical of the Burmese regime."

82. In 2002-2003, UNHCR for the first time conducted workshops for Myanmar government agencies involved in managing displaced ethnic communities, using the Australian government workshops as a model. In 2004, UNICEF began a juvenile justice program

delegation from Amnesty International in 2003.⁸³ After the Australian program began, and thanks mainly to more systematic efforts by other organizations such as the ICRC, UNHCR, UNICEF, and the ILO in particular, human rights workers observed and independently reported on some attempts to improve human rights in specific areas, such as prisons, child protection, and forced labor,⁸⁴ which although far from comprehensive and patchily successful, were nevertheless noteworthy.

Also of parallel relevance to the addressing of human rights problems in the country has been the historic out of court settlement reached between the American oil corporation Unocal and a group of Burmese individuals and organizations in December 2004, which ended protracted litigation between the parties concerning allegations of Unocal's complicity in human rights abuses perpetrated by the Myanmar government during the building of a gas pipeline in Myanmar in the mid-1990s.⁸⁵ Although the precise details of the settlement remain confidential, the amount is believed to be substantial and the ends to which the funds will be put include the development of "programs to improve living conditions, health care, and education and protect the rights of people from the pipeline region."⁸⁶ Therefore, considerable potential exists for some substantial human rights benefits to flow from the settlement, although subsequent delays in the execution of its terms mean that it is still not clear what those benefits will be in actuality.⁸⁷

D. Assessing the Problems with the Program

First and foremost, the program simply did not run for long enough. The nature of educative, mind-set changing programs such as these human rights workshops is that they are not short term, but long term projects, in respect of both their duration and impact.

with Myanmar government agencies and others, which is acknowledged as a direct successor to the Australian workshops and which took up subjects that were proposed under the suspended Phase 2 of the original Australian program.

83. See Larry Jagan, *Rangoon Welcomes Amnesty*, BANGKOK POST, 1 Feb. 2003, available at <http://www.burmalibrary.org/Tinkyi/archives/2003-02/msg00000.html>.
84. See, e.g., Reports of the United Nations Special Rapporteur on Human Rights to the Commission on Human Rights, Paulo Sergio Pinheiro, available at <http://www.ohchr.org/english/countries/mm>. See also Int'l Comm. of the Red Cross, Annual Report 2003, 145-47 (2004); Int'l Comm. of the Red Cross, Annual Report 2004, 152-55 (2005), available at <http://www.icrc.org/eng>.
85. See Rachel Chambers, *The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses*, 13 HUM. RTS. BRIEF 14 (2005), available at <http://www.wcl.american.edu/hrbrief/13/unocal.pdf?rd=1>.
86. See Press Release, Unocal, Settlement of Unocal case, December 2004 (13 Dec. 2004); Daphne Eviatar, *A Big Win for Human Rights*, THE NATION, 9 May 2005, available at <http://www.thenation.com/doc/20050509/eviatar>.
87. Clive Parker, *Wrangle Prolongs Allocation of Unocal Payout*, THE IRRRAWADDY, 17 Aug. 2005.