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主 論 文 の 要 旨

論文題目

Project Design of Law and Justice Assistance for
Enhancing People's Access to Justice in Fragile States
-Lessons Learned from the Experiences of Australian Law
and Justice Assistance to Solomon Islands-

氏 名

高橋麻奈 (TAKAHASHI Mana)

論 文 内 容 の 要 旨

How can donors design effective law and justice assistance projects for enhancing access to justice? Law and justice assistance is defined as one kind of international development assistance which is conducted by donor organizations, including multilateral and bilateral development agencies, for assisting developing countries in establishing efficient and effective justice systems. To effectively provide aid to a recipient country, donor organizations must formulate a tangible blueprint for legal reform that accounts for the recipient's needs, social context, and economic conditions while meeting global standards. However, it is difficult to evaluate the impact which is caused by international aid from external donors in terms of how it works and functions in the recipient society. Even if donors believe they are supporting the recipient, aid brings with it the possibility of unintended negative consequences. There is a paradox with development aid. How should aid donors take and handle these risks in law and justice assistance? Through analysis of an empirical case, this project studies the impact of social constant, which means factors and related conditions consist of the society and cannot be changed eternally, such as geography and social infrastructure. This thesis also explores a role of project management method in

law and justice assistance, which can be related to aid effectiveness for enhancing the right of access to justice in fragile states.

As an empirical case, this thesis explores the series of law and justice assistance which was deployed in Solomon Islands during 2003 to 2017. In order to consider both internal and external influence of aid project, this research also examines the Australian way for designing development assistance and its policy as a leading donor in the region. This thesis explores law and justice assistance under the Regional Assistance Mission to the Solomon Islands (RAMSI) as a regional collective mission and following a bilateral assistance project by the Australian government, the Solomon Islands Justice Program (SIJP). RAMSI is the first regional collective mission in the post-conflict Solomon Islands to rebuild the nation state after the Tension, which was an ethnic conflict on Guadalcanal Island. RAMSI has already been studied and evaluated comprehensively in various dimensions as an unusual world case. Previous researches on RAMSI have given a focus in terms of not only huge and comprehensive approach but also peace keeping mission to restore law and order. As one of the major parts of RAMSI, donors implemented law and justice assistance to enhance the court and judicial system. Law and justice pillar of RAMSI has been significance as a long-term commitment after the transition to the bilateral program. This thesis focuses on law and justice assistance for judicial system mainly to consider and evaluate the impact of the aid program upon the society of Solomon Islands.

Also, since the research destination of this thesis is Solomon Islands, this research considers social context and characteristics of the state to determine a scope of this research. In light of the criteria, Solomon Islands is classified into fragile states due to some conditions which are Least Developed Country (LDC), post-conflict, and Small Island Developing States (SIDS) in the Pacific region. Fragile states have significant definitions

and causes which distinguish as specific countries. Among those, SIDS share common features, and have to live under a range of resource constraints. Geography and related conditions is unchangeable, because geography itself is a constant component of consisting of a society. Therefore, aid providers have to give special attention to such features.

To answer the main research question of “How should donor organizations deal with social constants to design and implement law and justice assistance for enhancing the right of access to justice in fragile states?,” this research analyzes effective method of designing law and justice assistance based on three key concepts, which are law and justice assistance, fragile states as a significant target of law and justice assistance, and project management as a method of implementation. Also, in order to clarify the gap between two major actors, which are a donor and a recipient, this thesis demonstrates with regard to program impact on the case for both actors, through empirical case analysis. This thesis incorporates a range of different methodological approaches, but mostly qualitative analysis based on socio-legal and empirical approach.

This thesis has been broken down into seven chapters. Chapter one provides an overview of this research methodology, including the research background and approach, conceptual framework underpinning it, the data collection and fieldwork process, research constraints, and matters relating to the validity of the findings. Chapter two clarifies a core conceptual framework for this whole research project, based on three key concepts and their definitions, which are law and justice assistance, fragile states as a major recipient of law and justice assistance, and project management. The method of designing law and justice assistance in fragile states context is a substantial one extending beyond the focus on development assistance as well as law and development study taken in this thesis. Chapter two also break down each key concept into details and provide insight and approach of each in this thesis.

Chapter three examines the Australian law and justice effort as a part of Official Development Assistance (ODA) and its fundamental strategy as a foreign policy, in order to clarify the main features of the Australian approach of law and justice assistance. The main purpose of the chapter is to clarify uniqueness the Australian law and justice assistance, compared with other bilateral donor organizations. This chapter analyzes the policy framework of Australian aid on law and justice within two decades with comparative perspective, based on Schimmelfenning's framework for rule of law assistance as well as Nicholson and Hinderling's analysis of donor's role as a previous research. Also, through exploring Australian strategy on aid as well as law and justice assistance, this chapter described the Australian law and justice assistance narrative which has been figured based on the regional security interest and geographical contiguity. Then this chapter implied future pathways of Australian law and justice assistance under the new aid paradigm which emphasis on economic development for Australia as principle legitimacy for Australian aid, and have possibility to influence on law and justice assistance narrative in terms of traditional objectives for peace and stability in post-conflict states.

Chapter four explores one empirical case of law and justice assistance, the Regional Assistance Mission to Solomon Islands (RAMSI), and follows the Solomon Islands Justice Program (SIJP) and its implementation process to consider how both the primary actors, Australia and Solomon Islands, were engaged in the process. This thesis focuses on experiences of receiving huge aid program in Solomon Islands. On the other hand, this chapter considers how Australia engaged in RAMSI's implementation process. This chapter reviewed the series of law and justice assistance in Solomon Islands, after the Tension during 1998 to 2003. RAMSI often attracts attention as a regional collective intervention to the failed states; however, it was not simply a peacekeeping mission but a more substantial

package of development assistance programs designed to achieve a restoration of the rule of law and governance. This empirical case presented the world unexampled aid program on law and justice assistance itself, which covered comprehensive justice system in a pluralistic country. In order to examine the impact of law and justice assistance in Solomon Islands, this chapter looks at the key factors of law and justice assistance under RAMSI and SIJP.

Chapter five analyzes RAMSI and SIJP's impact towards donors based on how Australia implemented RAMSI and three key viewpoints of aid effectiveness. This chapter also explores the extent Australian approach on law and justice assistance was appropriate in accordance with the social and geographical context of the Solomon Islands. Then this chapter aims to clarify the progression of the Australian experience and RAMSI's unclear term and characteristics in Australian aid history. Since the terrorist attack in the USA in 2001 and Bali in 2002 had happened, non-traditional terrorism has come to the forefront in the world security. Australia had started to consider the policy for the Australia's war on Terror. The tension in Solomon Islands, which might be a threat to jeopardize regional security, also triggered a reconsideration of Australia's strategy for regional security and a concept of intervention in a post-conflict state. This chapter highlights the transition phases of law and justice pillar of RAMSI and following SIJP, as a critical point in the process of project implementation. This chapter applied the perspective of consistency in a process of project transition to Australian experiences, to consider how a challenge of law and justice assistance led to an appropriate method to overcome the problem of fit for establishing project coherence and consistency through drawing lessons learned from the Australian experiences.

Chapter six turns to analysis of law and justice assistance in the Solomon Islands from a broader perspective, including the recipient's viewpoint and comprehensive evaluation of

RAMSI and SIJP, and actual condition of access to justice and judicial fragility after the deployment of RAMSI in Honiara city. The author explored the real situation of current Honiara from the end-user's perspective, regarding the context of access to justice among people. Chapter six analyzes how the policy approach of RAMSI and SIJP suited the context of Solomon Islands. Through analyzing interview responses and the author's own personal observations from field work in Honiara as primary data, this chapter considers how the policy approach of RAMSI and SIJP are appropriate in Solomon Islands. Also this chapter examines the fact of paradox. There are still many problems on law and justice in local level, while RAMSI achieved a big success on restoring law and order in Solomon Islands. This chapter lead suggestions connected with core elements of accessibility of justice for people. This chapter also highlights how really people are feeling about RAMSI's legacy, which is hard to find out through literature and evaluation from the donor side. Suggestions based on data also give some indications toward the appropriate method of project design. From these perspectives, the main purpose of this chapter is to clarify the answer to the question of appropriateness for the project approach.

Chapter seven reflects on these ongoing development assistance programs on law and justice by the Australian government in Solomon Islands, and considers the pathways of project design methods for enhancing local people's right of access to justice. Chapter Seven offers reflections on how approach of designing law and justice assistance project may involve law and justice practitioners, project managers and scholars on law and justice assistance. By conducting field research in Solomon Islands, interview responses presented the fact of paradox. There are still many problems on access to justice in local level, especially a remaining gap for poor and remote people, although RAMSI achieved a big success on restoring law and order in Solomon Islands. Based on this case, this chapter

argues that due consideration of social context influences the probability of success of law and justice assistance, and aid impact has a possibility to work in negative ways in a recipient society. Especially, fragile states have limited alternative ways which could respond to the social changes and unexpected conditions, and this limitation could encompass fatal situations in the state. By bringing the conditions of access to justice in fragile states context to the fore, this thesis also argues the necessity of consideration and monitoring for geography as a social constant should. This thesis also presumes geography as an inevitable risk factor for aid effectiveness and aid impact. In access to justice context, donors should clarify a route of access both internally and externally as well as physical and mental distance among local people for justice service and legislation. Then this thesis concludes that proper project management methods could be a guide post for aid effectiveness as well as help guarantee basic human rights for local people in the law and justice assistance context. Project management method also can manage aid impact on the society, which is the box contains both risk for reversion and hope for development.

Regarding limitations and future research, this thesis examines only one series of case studies of law and justice assistance in a state. Therefore, it might be difficult to generalize the lessons learned from this case to all forms of law and justice assistance in post-conflict states. RAMSI and SIJP are quite a unique case of comprehensive approach to law and justice system in one single country. However, to undertake detailed research into each case is necessary, due to the pluralistic legal culture and social context of recipient countries. Further, this research focuses on the method of project management, and lessons can be applicable for other cases from this perspective. This research hopefully can provide useful insight for future project designers of law and justice assistance. As future agenda for this perspective, the author would like to utilize this case analysis for further comparative

research with other law and justice assistance cases in similar contexts, including access to justice, SIDS, and a post-conflict state.

Also, RAMSI and SIJP finalized in July 2017, and law and justice assistance in Solomon Islands entered into a new phase under Australia's long-term commitment. While many opinions from Australia have admired RAMSI's huge success on restoration of law and order in the country, global society should also see what is real situation and how local people are living in their society. In fact, the capacity of local people is still not enough and Solomon Islands still need to receive external assistance for their own society. Field research data in this thesis also presented a lacked or biased local capacity in judicial institutions for access to justice. In this context, RAMSI's goal was achieved by halves, and still far from self-reliance. Therefore, what happens next has been a critical issue for Solomon Islanders after the full-withdrawal of RAMSI. After 2017, the Australian law and justice assistance will again transition to a new bilateral project under the new structure, in which the Attorney General's Department will be engaged as one of the major bodies responsible for implementation. Australian law and justice assistance to Solomon Islands also will continue, and their long-term aid may strongly affect the relationship between the two countries. RAMSI's farewell probably was not just an end but brought new start-line for relationships on dependency between stakeholders of aid program.

In this journey toward a comprehensive understanding of the proper method of law and justice assistance, the process of restoring justice in a post-conflict society and roles of development assistance become significance to examine external aid impact. In the context of the current development assistance situation under SDGs, in line with the growing importance of the concept of the rule of law and access to justice, global demands on law and justice assistance will increase. Donors will have to engage in more consideration of

effective methods for project management in international development assistance. In this context, the Australian challenge provides lessons not only for the Solomon Islands, but also more broadly for global law and justice assistance in post-conflict societies.