



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

INFLUENCE. LEADERSHIP. PROTECTION.

July 28, 2016

Via email: IAReview.ExamenAI@international.gc.ca

IA Review
Development Policy Planning Division
Global Affairs Canada
125 Sussex Drive
Ottawa, ON K1A 0G2

Dear Development Policy Planning Division:

RE: Global Affairs Canada – International Assistance Review Consultation

I am writing on behalf of the Canadian Bar Association's International Initiatives Committee (CBA-IIC) in response to the public consultation on the review of Canada's international assistance policies and programs. The CBA-IIC has examined questions posed in your website consultation from the viewpoint of three issues:

- Governance, pluralism, diversity and human rights
- Peace and security
- Improving on delivering results.

The CBA is a national association of over 36,000 lawyers, judges, law students, notaries and law professors. Among our primary objectives are improvement in the law and the administration of justice, and promoting the rule of law and fair justice systems in Canada and internationally. The CBA membership represents the unique blend of experience in Canada's bijuridical legal system (common and civil law) and a rights-based approach to public policy, legislative development and access to justice.

The CBA has engaged in international development work for over 25 years. We mobilize Canadian lawyers and judges to share their skills and experience to strengthen the rule of law in developing countries and countries in political and economic transition. We work both domestically and internationally to build collaborative relations between the bar, judiciary and government in areas such as law reform, access to justice and the administration of justice.

CANADA’S APPROACH TO INTERNATIONAL ASSISTANCE

Canada’s long-time commitment to supporting democracy, governance, and human rights

Canada has many strengths that align with the 2030 Agenda for Sustainable Development (the SDGs). Canada is a recognized leader in strengthening government, civil society relations and the rule of law, and promoting good governance and diversity. Good governance has been a cross-cutting priority in Canada’s international assistance and Canada has a long standing history of partnering with organizations like the CBA to support developing and strengthening justice systems. This has included projects that strengthen governance institutions and processes (parliaments, executives, public service, ministries of justice, the judiciary ,the bar, ombudsmen, election support, policing), strengthen laws and law reform processes (policy development and drafting election laws, constitutions, criminal codes and criminal procedural laws), and promote civil society engagement (policy development, supporting elections, public advocacy initiatives, legal aid, human rights training). Given its long time commitment to supporting democracy, governance and human rights, Canada is well positioned to align itself with the SDGs by focusing its international assistance efforts in these areas.

Enhance partnerships with Canadian institutions

Canada has historically worked in partnership with Canadian institutions and organizations, including a broad range of civil society organizations, to implement its development assistance agenda. Working with partners, both in Canada and internationally, with a responsive and respectful approach has leveraged a wealth of expertise in Canada and proven to yield more effective development results. Canada should continue to work in partnership with Canadian institutions and civil society organizations strengthening the relationship of trust and respect, and explore more responsive programming modalities.

Institutional strength is key to rule of law and good governance

The CBA-IIC’s experience in working across 30 countries since 1990 has been that, while direct social and economic support to the poorest and most vulnerable can bring immediate relief, strengthening the rule of law and governance through strengthening institutions is critical to bringing sustainable change that favours the poor and vulnerable.

Principles in SDG 16, especially the rule of law, should be prioritized across Canada’s international assistance efforts

The UN 2030 Agenda for Sustainable Development includes SDG 16, which seeks to strengthen the rule of law and “promote just, peaceful, and inclusive societies”.¹ Making this objective a priority in policies and programming will more effectively contribute to the realization of other SDGs, as well as the priorities in the Minister of International Development’s mandate letter. For example, this approach would entail tackling climate change by taking into account its impact on human rights and effects on vulnerable groups.

The principles in SDG 16 should be prioritized across Canada’s international assistance efforts (humanitarian, security, and development assistance), particularly because respect for the rule of law, human rights and inclusive governance are the linchpin of the realization of many other SDGs.

¹ *UNDP Support to the Implementation of Sustainable Development Goal 16*, United Nations Development Programme, January 2016, Accessed online: www.undp.org/content/undp/en/home/librarypage/sustainable-development-goals/undp-support-to-the-implementation-of-the-2030-agenda/.

In addition, to deliver its international assistance more effectively and efficiently, Canada should include the rule of law as a cross-cutting issue in all of its projects, with specific targets and indicators to be achieved by 2030. Emphasizing inclusive governance and the rule of law (including human rights and access to justice) necessitates a longer-term perspective in planning projects, as changing behaviours and attitudes takes time. This is discussed in more detail below.

GOVERNANCE, PLURALISM, DIVERSITY AND HUMAN RIGHTS

The rule of law is a fundamental characteristic of a just society and a condition that enables nations to achieve other development goals. A country's observance of the rule of law is a foundational part of its economic, social and cultural success. Without predictable and accountable government institutions, transparent and equitable dispute-resolution processes, reliable enforcement mechanisms and an empowered civil society, countries lack the certainty necessary to thrive across all levels.

The rule of law involves not only consistent application of rules. As defined by the UN Secretary General, it requires legal processes, institutions and substantive norms to be consistent with human rights, including the core principles of equality under the law, accountability before the law and fairness in the protection and vindication of rights.²

How can Canada best help implement SDG 16 and promote inclusion, respect for diversity, and uphold human rights?

Rule of law a thematic priority and cross-cutting issue

As stated above, ***the CBA-IIC recommends that the rule of law be recognized as a priority area as well as a cross-cutting issue in Canada's future international development assistance.*** While strong rule of law is an end in itself, it is also a critical enabler to achieve other SDGs. With the rule of law and human rights fully integrated in its programming, Canada would promote inclusion and respect for diversity, and uphold human rights through all of its areas of work. Canada could increase human rights protections around the world by linking the rule of law to its international assistance work. In some countries it is often easier to discuss support for the rule of law than to address human rights protection directly, such as the CIDA-funded, CBA-implemented, China Criminal Justice Reform and Advocacy project. There, the project focused on improving the rule of law by taking an incremental approach to criminal law reform, such as by protecting lawyers' procedural rights when discussing rights of the accused.

Canada could also address multiple aspects of SDG 16 by focusing on access to justice for the poor and vulnerable (especially women and children). This would entail support for developing legal frameworks, strengthening institutions and human rights and legal empowerment approaches.

This could be done by working with justice systems, customary or alternative dispute resolution, and civil society. With a bijuridical legal system and long tradition of respect for the rule of law and human rights, Canada is well positioned to share its experiences and support legal processes and institutions that respect and promote substantive norms that are consistent with human rights. Canada's *Charter of Rights and Freedoms* is one example of our human rights protections that can be a model for other countries. The South African Bill of Rights was largely modelled on the Canadian *Charter*. CIDA supported a project implemented by the CBA to develop test case litigation before South Africa's Constitutional Court that helped shape the protections afforded in the Bill of Rights. Canada's international assistance must continue to draw upon our strong human rights legal framework and institutions in this manner.

² United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary General*, S/2004/616 (August 23, 2004) at para. 6.

Non-state actors and civil society participation key to rule of law

Canada could support civil society organizations, including bar associations in other countries. An informed, empowered and engaged civil society that represents the diversity of society is integral to the promotion of strong rule of law governance institutions. In many countries, bar associations are an important pillar of a functioning legal system, so a strong bar is effective in promoting the rule of law as it often bridges gaps between the state and civil society. This is especially true for access to justice and promoting consultations between government, civil society and business enterprises. An Evaluator commented in a 2008-2012 CIDA Governance Program Evaluation on a CBA implemented project in Tanzania entitled Strengthening Access to Justice:

The CBA and the Tanganyika Law Society and other local partners have strengthened access to justice for the groups and people with which they have worked. The Tanzanian civil society organizations have been able to benefit from the program. The most significant achievement for this project is that end-beneficiaries used what they learned to advocate and promote changes in law and legal aid.³

Countries of focus selected based on commitment to SDG 16

The CBA-IIC suggests that Canada's international assistance could have the most impact by selecting countries of focus and partner countries based on stated commitments to meeting SDG 16. These may be countries in development or transition in the following conditions:

- Undergoing or planning significant policy, legal and judicial reform, including institutional reform.
- Seeking support for the development of an SDG enabling framework through:
 - Legislation based on international law standards and strong public engagement;
 - Accessible and fair dispute resolution mechanisms;
 - Institutional capacity development; and
 - Empowered civil society (and women, the poor and marginalized) that demands accountability.

Strengthening the rule of law requires long term investments

Achieving the objectives of SDG 16 requires a long-term investment. To be successful, Canada must recognize the need for long-term commitments that allow for institutional strengthening and paradigm shifts required in rule of law and governance projects. CIDA's *Partnerships with Canadians Governance Program Evaluation: 2008-2012* notes that "national ownership"⁴ of a country's strategic priorities is not an established fact. It requires the "attainment of a relationship of trust and of mutual accountability between the donors and the recipient authorities."⁵ Support for these projects should continue even in challenging environments, including countries affected by conflict.

³ Canadian International Development Agency, *Partnerships with Canadians Governance Program Evaluation: 2008-2012*, at p. 59.

⁴ Recognized as one of the five principles of the 2005 Paris Declaration on Aid Effectiveness.

⁵ *Supra*, note 3, at p. 49.

PEACE AND SECURITY

Canada has a long tradition of working for the peaceful resolution of conflicts. In countries such as Afghanistan, Canadian peace-building efforts have included strengthening police capacity, providing human rights training and building legal awareness. In post-apartheid South Africa, Canada worked on constitution building to ensure a peaceful democratic transition from apartheid. More recently, programs in the West Bank and Gaza, Mali, South Sudan and Sri Lanka have focused on strengthening governance and legal institutions and processes, human rights advocacy and citizen engagement to promote peace and stability. To respond to global peace and security challenges, Canada should look to international law, including international humanitarian law principles to frame its approach to strengthening international peace and security.

The rule of law as a conflict prevention approach

This would also include supporting initiatives in fragile states or countries in transition that are building inclusive democracies and the rule of law as a means of conflict prevention. By prioritizing SDG 16 (strengthening governance and rule of law) in the delivery of international assistance, Canada could engage in programming from a conflict prevention lens. For example, support to justice systems like formal and informal dispute resolution mechanisms can help prevent the escalation of conflict and fragility. This would lead to states that are able to mediate and balance competing interests among groups in society.

DELIVERING RESULTS

The following are suggestions on how Canada can make its international assistance delivery more efficient, effective and innovative.

How can Canada foster development innovation?

Alternative approaches to measuring progress: Canada must be willing to test various methodologies to measure change in the development context, such as Outcome Mapping and Theory of Change, as the current Results-Based Management Logic Model approach does not always lend itself to measuring non-linear change resulting from development projects.

Facilitating collaboration and knowledge-sharing: Funds could be made available for Canadian and local partners to develop links with other ongoing projects, to increase project results where possible and appropriate. A flexible and responsive approach would allow partners to be innovative and maximize synergies between Canada supported projects ongoing at the same time in a given country.

Cross-sector partnerships: In a similar vein, Canada could support cross-fertilization between sectors such as civil society, legal systems and the private sector. Innovative consortiums should be encouraged. Government agencies, non-governmental organizations and businesses with development experience should be encouraged to work together to bring different perspectives to a particular development problem. Canada should ensure that processes for design, transparency and accountability are in place to ensure the interests of communities are integrated and human rights are protected. Particular care is needed where the private sector is engaged.

Who should Canada work with to deliver its international assistance objectives? How can Canada best work with them to deliver its international assistance objectives?

Involving Canadian membership organizations in technical assistance: Member-based organizations such as the CBA are positioned to leverage its resources and expertise through Canadian technical assistance. However, the true value of technical assistance provided by Canadian organizations must be recognized, as well as the intensive management required to

ensure that assistance is designed and delivered appropriately. A higher level of management, including technical expertise in that management is needed for rule of law technical assistance projects.

Collaboration with and between institutions and civil society organizations: Canada should continue to work with a broad range of civil society organizations, while supporting linkages between related organizations in Canada and internationally (such as bar associations, legal aid organizations, ministries of justice, judiciaries). Collaboration is necessary to achieve systemic change in the legal sector to ensure access to justice and to strengthen the rule of law. Supporting exchange between Canadian institutions and organizations and their peers brings the depth of expertise across an institution to Canada's development assistance efforts. This includes facilitating collaboration and knowledge sharing within projects and between organizations.

Engaging young lawyers: Canada should continue to engage young Canadians through youth internship programs, and consider increasing funding. Stipends have not kept up with inflation and increased costs of living in some countries. As a result, young interns struggle to find secure and acceptable lodgings and in many instances have contributed their own funds to bridge the financial gap. This risks excluding low-income young Canadians who are starting their careers and paying off heavy student loans. The International Youth Internship Program provides young people with early professional experiences in international development, while providing value-added support to our partners in developing countries.

Diversify funding mechanisms, critically examine RFP process: If Canada wishes to engage more Canadians in its international assistance efforts, it should re-examine funding mechanisms, such as the Request for Proposals (RFP) process. The current RFP process fails to encourage collaboration between institutions, and is extremely challenging for organizations to respond in a manner that does not drain a significant amount of its limited resources. The RFP process favours management companies or larger organizations with dedicated proposal writing teams, which may not bring the best expertise to a project. Canada should consider diversifying funding mechanisms, support more responsive, collaborative approaches, and revise the Request for Proposals process to simplify the process, increase the time to respond, and permit organizations to engage in discussions.

Overhead: The current overhead allocation of 12% for contribution agreements fails to provide for the associated costs in implementing a project. Canada should review its policy on overhead and adopt an approach that recognizes the actual project management costs to an organization. With larger, more complex member organizations, such as the CBA, 12% is a significant reduction in the previously more accurately assessed FRAU rates. There is a risk to losing capable, experienced institutions in international assistance efforts if organizations cannot manage the costs. The low overhead also prohibits participation by smaller civil society organizations, limiting the diversity of Canadian society that Canada engages with to support international assistance.

The CBA-IIC would welcome an opportunity to discuss with you the importance of including the rule of law as a priority theme cutting across all of Canada's international development assistance efforts, as well as other suggestions raised in this letter.

Yours truly,

(original letter signed by Kimberly Inksater for William Louis Ryan)

William Louis (Mick) Ryan, Q.C.
Chair, CBA International Initiatives Committee