



**International Commission of Jurists Canada
Commission Internationale de Juristes Canada**

Submission for Global Affairs Canada's International Assistance
Review Consultations

July 2016



The Honourable Marie-Claude Bibeau, Minister of International Development and La Francophonie
International Assistance Review, Development Policy Planning Division
Global Affairs Canada
125 Sussex Drive
Ottawa, ON K1A 0G2

July 29, 2016

Dear Minister,

As the Canadian Section of the Geneva-based International Commission of Jurists, our organization welcomes this opportunity to participate in Global Affairs Canada's international assistance review consultations. We also support Canada's focus on fostering sustainable international development and poverty reduction and using the 2030 Agenda for Sustainable Development as a framework for action.

Ours is a longstanding organization that is part of a global network committed to upholding the rule of law, human rights, and judicial independence. ICJC's members come from all levels of the legal profession –from law students to judges-, and many have substantial expertise in international legal issues.

Since its founding in 1958, ICJC and its members have undertaken a range of activities in line with our mandate, including international trial observation, participating in the development of new international legal standards (e.g. through the drafting of the United Nations Basic Principles on the Independence of the Judiciary), organizing international exchanges between members of the legal profession, and hosting educational events and training activities. For example, we ran a large-scale project on the Independence and Impartiality of the Judiciary in South-East Adriatic countries that trained over 400 judges and involved more than 90 Canadian judges from all jurisdictions. We have also supported ICJ Geneva in its work, which has included human rights investigative missions; launching development programs to facilitate access to justice; convening major conferences and expert panels on cutting edge international legal issues, including those related to economic, social, and cultural rights; and playing a critical role in international legal developments, including the establishment of the International Criminal Court. Since 2011, one of our ICJC directors, Michèle Rivet, has served as Vice-President of ICJ Geneva.

We would be pleased to work with Global Affairs Canada on the prioritization of the rule of law and access to justice in Canada's international development activities going forward. Working with ICJ Geneva, ICJ Canada would be keen to play a role in this area, particularly in relation to projects in the Middle East, South East Asia, East Africa, and Latin America.

Thank you for considering our submission, and please do not hesitate to contact us.

Sincerely,



Errol Mendes, President, International Commission of Jurists Canada



Janine Lespérance, Executive Director, International Commission of Jurists Canada

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International Assistance Review Submission

Support for Rule of Law as an International Development Goal

Much has been achieved since 2000 when the UN adopted the eight Millennium Development Goals (MDGs), but evaluation of the MDG's has demonstrated that economic growth in itself is not an adequate measure of development or poverty reduction where issues of inequality, discrimination, insecurity and abuse of basic rights exist. The 2030 Agenda recognizes that inclusivity, equity and justice are core to sustainability and with its Sustainable Development Goals (SDGs) provides a universal global agenda that has the potential to be truly transformative.

While in the preamble to the 2000 MDGs the international community undertook to strengthen democracy and rule of law, no specific rule of law goals were set within the MDGs. Subsequent resolutions of the UN General Assembly, most recently in 2012¹, have recognized that

“the advancement of rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development all of which in turn reinforce the rule of law”².

These high level international policy commitments to rule of law have been buttressed by experience at the national level within developing countries. A review of MDG country reports highlighted the importance of addressing rule of law, including having enabling legislation, effective enforcement mechanisms and grievance resolution processes, to achieve MDG targets in the identified development sectors.

It is not surprising then that rule of law figured prominently in the discussions and conferences leading up to the development of the 2030 Agenda. Several policy discussion papers added voice to a chorus of countries and international and civil society organizations recommending the

¹ Declaration of the High-level meeting of the General Assembly on the Rule of Law at the national and International levels, A/67/L.1*(2012); UN General Assembly, “the Future We Want,” A/RES/66/288(2012)

² Ibid 5

incorporation of rule of law into the goals of the post- 2015 development agenda as a goal in itself as well as an enabler of the other SDGs. Rule of law was seen as essential to realizing equitable growth, inclusive social development and environmental sustainability and ultimately to the achievement of the justice envisioned in a truly transformative development agenda. The SDGs of the 2030 Agenda reflect this need and vision for global justice.

Rule of law as important in and of itself

Goal 16 of the SDGs, to *“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”* is essentially a rule of law goal. Rule of law is required as a framework to achieve and maintain peace and good governance and is inherent to the achievement of equal access to justice. Access to justice in its broadest sense reflects and encompasses the need to ensure equality, inclusion and accountability in the implementation of all the other SDGs if development is to be truly sustainable.

Rule of law as an enabler for achieving other development goals

Rule of law is also critical as an enabler of other development goals and as a process to achieve their desired development outcomes. To be achieved the proposed poverty-reduction, education, health, environment, economic growth, innovation and equality SDGs all require legislative frameworks informed by public engagement that include effective and equitable regulations and implementation mechanisms; capable, inclusive, responsible and transparent institutions; accessible, fair and transparent dispute resolution processes and reliable enforcement mechanisms; and an empowered civil society able to claim their rights to resources and services and to demand accountability of those responsible for the implementation of the SDGs.

Supporting the implementation of Goal 16 and integrating rule of law elements into the implementation plans of Global Affairs’ other assistance priorities will not only contribute to the achievement of the desired outcomes but also help ensure they are equitable and inclusive. Rule of law creates an enabling environment for development ensuring mechanisms are in place to facilitate access to justice and other development outcomes. Governance structures operating within a system of rule of law ensure participation, transparency and accountability. Each implementation plan for Global Affairs priorities should therefore include the establishment of effective legal frameworks, the strengthening of governance and legal institutions and the empowerment of citizens, including, women, the poor and the marginalized.

In fragile states, rule of law initiatives can strengthen key institutions and provide stability for the state to build on. Empowering civil society to engage in law reform, to enforce their rights and to

hold duty bearers accountable helps ensure that the poorest and most vulnerable have a voice and the ability to share in the benefits of development, including in health care, education and economic growth. Effective legal frameworks and empowered women are particularly critical to promote and protect equality rights. To be sustainable, clean economic growth requires fair laws and regulations that facilitate investment, protect the environment and encourage labour practices that promote and protect labour rights, particularly for women and children. Further, the legal system needs to be able to deal with disputes that may arise in a transparent and predictable manner and decisions need to be enforceable.

Canada, the rule of law, and development

Canada has a legacy and culture of rule of law with a constitutional democracy including a charter of rights and strong independent institutions. Good governance and rule of law have been cross cutting priorities in Canada's Overseas Development Assistance (ODA) and it has extensive experience working with partners in developing countries and countries in transition to support rule of law initiatives through ODA peace-building, governance and access to justice projects. These have included projects which strengthen governance institutions and processes (parliaments, executives, public service, ministries of justice, the judiciary ,the bar, prosecutors, legal aid, ombudsmen, election support, policing); strengthen laws and law reform processes (policy development and, drafting of election laws, constitutions, commercial laws, labour laws, environmental laws, criminal codes and criminal procedural laws); and, promote civil society engagement (policy development, supporting elections, public advocacy initiatives, human rights training).

We can make a difference internationally by facilitating partnerships with key Canadian organizations (parliaments, legislatures, municipal governments; government ministries including the Ministries of Justice; the judiciary and regulatory bodies; bar associations and other civil society organizations engaged in law reform and the promotion and protection of rights) and sharing our experience in developing effective legal frameworks, building strong institutions and empowering citizen engagement. These rule of law initiatives will not only support the achievement of the the poverty reduction results envisioned in the proposed priority areas for Global Affairs' international assistance but importantly will help ensure that Canada's assistance contributes to the broader inclusivity, equity and justice goals of the 2030 Agenda.