

December 22, 2008

The Honourable James Flaherty
Minister of Finance
Department of Finance Canada
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Minister Flaherty:

Re: 2008 consultation with respect to the "Official Development Assistance Accountability Act"

Thank you for the opportunity to provide input on this first consultation required of Finance Canada under the "Official Development Assistance Accountability Act". Both the Halifax Initiative and the Canadian Council for International Co-operation (CCIC) appreciate the good faith demonstrated by Finance Canada in holding consultations within six months of the adoption of the Act, and in extending the consultation period due to the delayed start-up. It is, however, unfortunate that the consultation is scheduled for a period when many who might wish to comment are perhaps pre-occupied with the holiday season.

This is the first occasion under which any Department has consulted with groups in relation to the Act. Accordingly, we have chosen to provide both extensive feedback on the consultation process and to provide some broad principles for Finance Canada to consider in terms of how Canadian policy at the IFIs might be made consistent with the Act. We will be keen to see how Finance Canada's spells this out in its next annual report to Parliament on the Bretton Woods Institutions. This submission also complements two Briefing Notes that CCIC will submit independently and should be read taking these Briefing Notes into account.

We have not provided specific comments on the three suggested areas – debt relief, arrears clearance and the International Development Association – as requested, since we are concerned that significant limitations in this consultation process do not allow for meaningful input into specific directions for Finance and the decision-making process for the Minister of Finance.

We hope that consultations related to the Act will be iterative, with Finance Canada looking over time to strengthen the process, the outcomes of the process and the corresponding implications for Canadian policy and activities in the Bretton Woods Institutions.

Yours sincerely,

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ANNEX

1) Suggestions for strengthening the consultation process mandated by the Official Development Assistance (ODA) Accountability Act;¹

A meaningful and constructive consultation should be timely, open, transparent, informed and iterative. It should be used to both listen to, as well as consider, a diverse range of ideas, experiences, knowledge and expertise with a view to developing and designing the best public policies, and ultimately better programmatic outcomes. It represents an opportunity for deepening the level of dialogue between stakeholders and the government.

We are concerned that the consultation process launched by Finance Canada fails to meet several key qualities that would enable meaningful input and dialogue in relation to the Act. We propose below some suggestions for consultations that would meet the obligations of the Act and result in useful engagement on the areas of ODA implemented by the Minister of Finance. Halifax Initiative members, and we are sure other civil society stakeholders, would be prepared to meet and agree on a process for meaningful and realistic consultations during the next two years. The following principles and qualities should be taken into account:

*i) **Timely** – with sufficient notice, and conducted within relevant timeframes for key decisions by the Minister*

- Early notice – We strongly encourage the government to provide advance notice of the consultations mandated by the Act, and perhaps a timetable for consultations over the next two years. Relevant documentation should be distributed well ahead of any internet-based consultation and physical meetings, with sufficient time for groups to prepare informed and informative submissions. A fixed timetable, avoiding times such as Christmas and summer vacations, will allow interested stakeholders to better anticipate the event and prepare their input.
- Timely consultation – Timely consultations ensure that the views and opinions exchanged in the consultation have an opportunity to inform the policy process. We recognize the good faith Finance Canada has demonstrated in holding a consultation so soon after the adoption of the Act and an election. However, we are dismayed that Finance seemingly failed to take into account early proposals that were made to make these consultations substantive and meaningful. The Act requires the Minister of Finance to be “of the opinion” that his decisions on ODA meet the three tests of the Act. A timely consultation at this early stage in implementing the Act would focus on how the Minister and the Department intends to be assured that these tests are met in the context of allocations to the International Development Association (IDA) and its other ODA allocations. A timely consultation would then structure an open and transparent engagement with stakeholders that focuses on key issues in Departmental assessments of its upcoming allocations prior to making these decisions.

¹ In addition to this submission, we also refer you to our comments related to our interpretation of the bill, Halifax Initiative Coalition, “Policy Brief: Implications of the “better aid bill” for the BWIs and EBRD”, June 2008, on-line: <http://www.halifaxinitiative.org/index.php/Factsheets/1095>

ii) Open – *enhancing equal opportunity for access, while providing for more effective engagement with civil society*

- Web consultations as an important tool within a broader consultation strategy – Using the web in the current consultation to ensure the greatest possible accessibility to interested stakeholders is an important tool. It ensures that a broad array of groups can submit their views to Finance. However, it should not replace face-to-face sessions with a representative group of civil society and business leaders selected by their peers. Web consultations alone do not offer any forum for dialogue and discussion in which participants feel their views have been heard and considered.

A web-based consultation would ideally follow a face-to-face session where the Minister clarifies some important issues in meeting the tests of the Act and relates these to impending key areas of decision. In any web consultation it is essential that all stakeholder contributions and all government responses are posted in real-time on the web site. Without this basic transparency, which is technically possible, consultation is virtually meaningless, with the quality of input substantially less. Effective consultation is iterative and is the result of engagement with each other, including among stakeholder groups.

- Informing relevant constituencies of consultation – We strongly encourage Finance Canada to develop a strategy for better notifying interested stakeholders about future consultations. Finance should develop and maintain a list of interested groups who have participated in previous consultations related to the World Bank and IMF or who have met with the Canadian Executive Directors at the Bank and Fund.

iii) Transparent – *clear with respect to process and purpose and with feedback to those who contributed views*

- Process – For this consultation, Finance Canada has provided a brief overview of three areas in which the government channels Canadian ODA to the World Bank and IMF: bilateral and multilateral debt relief, arrears clearance, and its contribution to IDA. It is not clear, beyond being ODA-able, what approach was used to determine the structure of this consultation. There is also no indication of the goals of the consultation in relation to the other obligations of the Act.

In our view, a more meaningful consultation for both stakeholders and Finance would be thematic (debt relief, climate change, extractive industries, infrastructure) or institutional (IDA or the Poverty Reduction Growth Facility, prior to subsequent replenishments).

As noted above, it is also not clear how Finance has interpreted the Act in terms of what it means for the Department's own due diligence, nor how these consultations will be used to inform that process.

- Submissions – Full and timely public access to the submissions themselves and the list of individuals / groups consulted by Finance Canada is an essential quality of any meaningful consultation. In the current consultation this is not the case, nor is it clear whether even a summary setting out the views of those submissions will be made public. For example,

following the four regional consultations for the National Roundtables on Extractive Industries in Developing Countries, organized by the Department of Foreign Affairs, DFAIT posted all written submissions and presentations on-line, as well as a brief summary reflective of the views expressed at the consultations.

- Feedback mechanism – Good practice in consultations, for both face-to-face and web-based consultation processes, includes a transparent feedback mechanism. This demonstrates a commitment to dialogue and to creating better public policies for the benefit of all. Consultations with no feedback mechanism quickly lose credibility and become perfunctory. It is unclear how the views submitted to Finance in this consultation will be used to inform the opinion of the Minister in developing Canadian public policy with respect to the World Bank and IMF, in the annual report to Parliament on the Bretton Woods and Related Agreements Act and in the Annual Report required under the Act. For example, in developing the Performance Standards, the International Finance Corporation developed a matrix that compiled all the comments received and explained how each input was addressed in the policy revision, or equally why it was not accepted². We suggest that Finance in its reporting obligations adopt the approach that this model takes.

iv) Informed – with substantial preparatory and follow-up documentation (both internally and in reporting the process) allowing stakeholders to assess current practice and reflecting how key inputs have been considered and weighed.

- We appreciate that this is the first consultation of its kind, however, the consultation would benefit greatly from the provision of more detailed background documentation. For example, Finance Canada could consider providing the following information:
 - Preliminary information indicating how the purposes of ODA, set out in the Act, are starting to shape existing and future policy.
 - A comprehensive review of the institutions to which Finance Canada allocates ODA to indicate which World Bank and IMF bodies are subject to the Act. The consultation documents should at the very least identify all of the World Bank and IMF entities to which Finance Canada has contributed ODA, and perhaps more specifically highlight the institutions to which it has contributed over the past year. For example, while Canada has channeled ODA to various facilities and trust funds at the World Bank and IMF in previous years, beyond IDA, none of these are referenced in this year's consultation.
 - A review of current policies and practices at these institutions to establish a baseline against which to assess whether the three purposes of ODA in the Act are being met, and where they exceed or fall short of the Act. This will help guide and inform Canadian policy in the different areas.
 - As noted above in point iii) additional procedural information relating to the current or future consultation and how submissions will be used to inform the Minister's opinion prior to the release of the next installment of funds.

² 2005 "Issues and Options for Improving Engagement Between the World Bank and Civil Society Organizations." Washington, DC: External Affairs, Communications and United Nations Affairs, Environmentally and Socially Sustainable Development Network, Operations Policy and Country Services Network, The World Bank.

v) *Iterative* – consultation is an ongoing process, not a singular event.

- Deepening the dialogue between civil society and government – Good dialogue and deliberation encourages regular interaction, promotes mutual respect, and generates trust between parties that their respective opinions have not just been heard, but weighed and considered. We have submitted the above commitments with this in mind and with a view to enhancing the current process.

CCIC will be proposing that individual departmental consultations be complemented in a cross – departmental assessment of ODA as a whole, building upon the findings and experience of each in implementing the Act. Halifax Initiative members support this approach.

2) Following the principles of a rights-based framework³

Both the Canadian government, as a member of an inter-governmental public institution, and the International Financial Institutions (IFIs) have international legal obligations to respect the full range of human rights consistent with member states' obligations under international law. As such, the policies and practices of the IFIs and Canada should not undermine the ability of governments to meet their international human rights obligations, but rather help them respect, protect and fulfill these obligations.

The adoption of the ODA Accountability Act now situates these international obligations, which were receiving scant attention, in national law.

In practice, this means that established and accepted human rights standards are the guiding principles behind development policy and practice. It also means that development occurs in tandem with the progressive realization of fundamental freedoms and human rights – including the reduction of poverty - rather than at the expense of the respect for, protection and fulfillment of these rights.

Only an explicit human rights-based approach to the implementation of Canadian ODA spending and development policy will be consistent with the government's own human rights obligations and the three tests called for by the Act – namely, that it contributes to poverty reduction; takes into account the perspectives of the poor; and is consistent with international human rights standards.

This rights-based framework has a number of implications for Canadian policy at the Bank and Fund. Below we identify a number of broad considerations that can be used to inform and guide Canadian policy at the IFIs. Since this is the first consultation, and there are a number of shortfalls in how it has been designed, we have chosen to start by laying out a broad framework

³ The ideas drawn on in this section of the paper come from Halifax Initiative Coalition, "Risk, responsibility and human rights – Taking a rights-based approach to trade and project finance", Discussion Paper, July 2004, on-line: http://www.halifaxinitiative.org/updir/Final_HR_discussion_paper.pdf and Brian Tomlinson, "International Human Rights Standards and Canadian ODA: Implications and issues of the Canadian ODA Accountability Act", Canadian Council for International Co-operation Briefing Note, November 2008.

of guiding principles for how the government should interpret the Act with respect to its engagement at the IFIs.

At a minimum, Canada should do the following:

- *Exercise due diligence* - The provision of Canadian ODA through the programs and policies of the IFIs, must not undermine human rights in countries where IFI programs are implemented. In our view Canada in its representations at the IFIs must explicitly take account of the impacts of IFI programs on the immediate fulfillment of civil and political rights, and the progressive realization of economic, social and cultural rights. Where the Canadian government can exercise choice and direct its resources within the IFIs, these resources should strengthen and not undermine the rights of citizens within recipient countries. For example, it should avoid policies that deregulate labour standards or that constrain a national government's ability to meet its people's rights to food, health, water, etc.
- *Give priority to the most marginalized* - Canadian ODA channeled through the IFIs should be assured that it is focused on the most marginalized and vulnerable in society, including those living in extreme poverty, women, indigenous peoples and other excluded social groups. In practice, at the IFIs, this means assessing how the IFIs are prioritizing the poorest and most fragile countries (inequalities between nations), and the distributional impacts of IFI policies on the poorest peoples (inequalities within nations and regions).
- *Address the constraints that people face to claiming their rights* – IFI programs should be geared towards addressing the needs of the most marginalized and vulnerable, as identified in country and citizen-generated development plans and objectives. This means building country systems to better enable governments to identify and consult with vulnerable groups, identifying the social, environmental, and economic challenges and constraints that these groups face in claiming their rights, and gearing policies and development projects to filling those gaps.

The capacity of governments must be strengthened to collect baseline data on vulnerable people, challenges and constraints, and to monitor the evolution of policy impacts, outcomes and results on these populations over time. Governments and IFIs must be assured that rights-holders are informed about their rights. They should strengthen the mechanisms that citizens have for claiming legal protection of those rights as well as national mechanisms for accountability and effective remedies for redress (including non-judicial mechanisms) for those whose rights have been violated.

- *End policies that discriminate against individuals* – As noted above, while all individuals hold rights, not all individuals can claim these rights because of lack of access to required resources, capacities or legal protection. Over the past three decades, IFI policies have been particularly discriminatory by forcing governments to cut expenditures on key essential public services, such as health care, education, public transit, water, sanitation and access to fuel and electricity, to privatize many of these services, to cut subsidies and introduce user fees. Macroeconomic fiscal and monetary policies have also had unnecessarily restrictive deficit-reduction and inflation-reduction targets. Such targets prevent developing countries

from growing their economies and expanding public spending. This, in turn, has disproportionately disadvantaged the poor and vulnerable groups in developing countries and has undermined the ability of country governments to meet their own human rights obligations.

Canada should use its voice in IFI governing bodies and at the country program level to make strong representations against IFI policy conditionalities that constrain a national government's spending on social programs aimed at meeting people's rights to food, health, water, etc. or that restrict a country's choice for more expansionary, but still feasible, alternative fiscal and monetary policies.⁴ Instead, it should favour a borrower-lender relationship based on mutually agreed arrangements that help to guarantee respect for shared obligations under international human rights law and probity in public financial management. The obligation to respect, protect and fulfill human rights is a legal obligation, not a condition of an aid transaction, and subject to due diligence and mutual accountability.

- *Be accountable and participatory* – A commitment to respecting rights demands accountability. This necessitates institutional mechanisms that are accessible, transparent and effective, and decision-making structures that allow for the full participation of individuals and groups in making decisions that affect them. Meaningful consultation and participation guarantees people's rights to access information, to participate in the conduct of public affairs, to freedom of association and expression and to peaceful assembly. It allows citizens to be heard, to express their views, to make decisions, raise issues and becoming ongoing participants in all dimension of development affecting their lives.

World Bank and IMF practices must change to restore national, democratic decision-making and ownership over policy-making that allows stakeholders to consider the implications of various policy options and their trade-offs. Stakeholders should include other relevant government ministries, independent economists and academic specialists, elected officials, national civil society and labor unions. In meeting the obligations of the Act, it is our opinion that the Minister must demonstrate how Canada has been an advocate in decision-making fora at the IFIs for democratic ownership of development policies and process that are arrived at in open, transparent and inclusive country-led consultation processes, rather than through closed door negotiations between IFI officials and country governments.

In terms of participation, the Act's three tests oblige Canada to avoid, where possible, support for Bank aid-funded projects that have not given an opportunity to the communities directly affected, as well as civil society organizations in affected countries, to participate actively in decision-making in a free, prior and informed way. Canada should be assured that the IFIs have sought and obtained the free, prior and informed consent of indigenous peoples before financing or supporting projects on their traditional lands.

⁴ See, for example, *The Macroeconomic Implications of MDG-Based Strategies in Sub-Saharan Africa*, John Weeks and Terry McKinley. Policy Research Brief # 4. October 2007. On-line at <http://www.undp-povertycentre.org/pub/IPCPolicyResearchBrief4.pdf> and *Pro-Growth Alternatives for Monetary and Financial Policies in Sub-Saharan Africa*, Robert Pollin, Gerald Epstein and James Heintz. Policy Research Brief # 6. January 2008, on-line at <http://www.undp-povertycentre.org/pub/IPCPolicyResearchBrief6.pdf>.