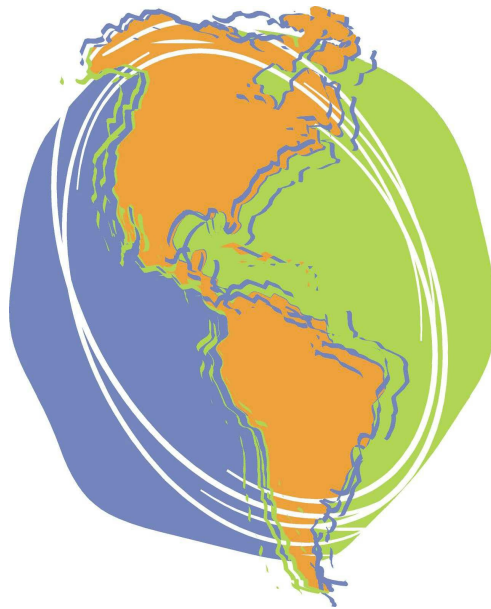


ACTIVE DEMOCRACY:

Citizen Network for the Implementation of Summit Commitments

2008 REPORT ON FINDINGS and
PUBLIC OPINION in CANADA



CIVIL SOCIETY PARTICIPATION IN THE

SUMMITS OF THE AMERICAS

This report was prepared by the Canadian Foundation for the Americas (FOCAL), with financial support from the Canadian International Development Agency (CIDA). The Active Democracy Network and its regional programs also appreciate [the support](#) of the Organization of American States (OAS/FEMCIDI); the Summit of the Americas Secretariat [at](#) the OAS; the Open Society Institute; and the National Endowment for Democracy.

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I. Executive Summary

The Canadian Foundation for the Americas (FOCAL) is the national coordinator for the Active Democracy: Citizens Network for the Implementation of Summit Commitments, hereafter the Network, which consists of leading civil society organizations in 21 countries in the Western Hemisphere, including Canada. Since the early beginnings of the project in 2001 up until December 2008, FOCAL has had key roles in the formation, establishment and leadership of the Network's Hemispheric Coordination Team (HCT), along side current HCT team members [Corporación Participa, a Chilean](#) civil society organization (CSO) and the Instituto Venezolano de Estudios Sociales y Políticos ([INVESP](#)), [a Venezuelan](#) CSO.

The Network set out to assess progress and setbacks in governance in four areas of Summit of the Americas themes [in](#) the 21 participating countries over 2006-2007 four thematic areas:

- (1) access to public information;
- (2) freedom of expression;
- (3) local government and decentralization; and
- (4) civil society participation in governance.

These thematic areas have been identified by the project team as areas where member governments of the Organization of Americas States (OAS) have consistently made commitments to strengthen baseline conditions in the text of the Plans of Actions of the past two Summits of the Americas.

The perception of national civil society with regard to developments in these four areas was a core research component. The findings and recommendations generated by each national report are intended to [generate a critical reflection of the state of democracy in the region, and inspire further Inter-American focus on organizational accountability for democratic results.](#)

In its role as national coordinator for the Canada research, FOCAL implemented a research methodology that was developed by the projects hemispheric coordination team, with technical input from thematic and methodology experts from the region.¹ FOCAL commissioned background research into observable changes in the legal or normative frameworks of relevance to the four themes over the period January 2006 to December 2008.² FOCAL also reached out to over 300 Canadians from civil society and public policy institutions to invite their participation in the evaluation process through the completion of surveys and interviews intended to capture their perception of progress or setbacks in each of the four themes.

¹ See Appendix 1: Note on Methodology steps in Canada. The methodology manual guiding the implementation of the project in each participation country can be accessed at <http://www.sociedadcivil.net/tag/metodologia/>

² See Appendix II: List of Observable Activities researched by thematic area.

Fifteen Canadians agreed to participate on experts panel formed for each area.³ The expert panels convened together with other stakeholders in a symposium held in Ottawa by FOCAL on May 15, 2008 to discuss Canada's progress in implementing certain Summit commitments based on their daily experiences and knowledge of with developments in these four areas of governance in Canada.⁴ The event brought together individuals with practical experience in the four thematic areas under investigation, as well as experience applying a gender perspectives, garnering valuable insights into the Canadian government's progress to date on the four themes.

In summary, Canadians surveyed and who attended the May 15 thematic working group discussions felt that though Canada had an enviable baseline of democratic structures and institutions distinguishing it from most countries in the Americas, many legal and normative developments in Canada between January 2006 and December 2007 ran counter to the spirit of strengthened access to information, freedom of expression, decentralization and civic participation embodied in Summit Declaration and Plans of Action. This report provides the highlights and analysis of the legal and normative changes over the period, as well as the following recommendations for improvement synthesized from the research and May 15 meeting notes.

Access to information

- The Canadian government should follow up on the recommendation of the Parliamentary Task Force to extend access to information regulation to private companies that receive public funding or deliver public services.
- The government should include a public interest clause in its access to information legislation, as recommended by the Office of the Information Commissioner, in order to ensure cost does not prohibit access to critical public information.
- The government should review the needs of marginalized communities' access to information in Canada, in the light of its decision to close SchoolNet.

Freedom of Expression

- The Canadian federal and provincial governments should review the use of human rights legislation and commissions as tools for censorship used by interest groups with the view of protecting freedom of expression while promoting respect for visible and religious minorities in the public discourse.
- The Canadian federal government should refrain from tightening control over information through additional anti-terrorism legislation.
- Canadian law enforcement agencies and prosecutors should recognize the right and need for journalists to protect their sources and independence and not attempt to use the material they gather for prosecution or law enforcement.
- The federal government should reverse its decision to make arts funding contingent on the art's compatibility with mainstream political views or the contested criteria of public morality.

³

⁴ See Appendix III: Expert Panels & List of attendees to May 15 meeting

- Federal, provincial and municipal law enforcement should respect the rights of demonstrators to assemble and protest without police interference, threats, surveillance, infiltration or intimidation.

Decentralization, Provincial and Municipal Government

- The Canadian government's \$33 billion "Building Canada Plan" for 2007-2014 for infrastructural development in cities and municipalities is a step in the right direction, but is under-resourced. The federal government should cooperate more fully with provincial and municipal authorities to ensure Canadian cities and their residents do not fall behind, even as they continue to grow.
- Cities and municipalities should continue to make more of their services, key information, and governance information available to citizens on the Internet via their web sites.

Civil Society Participation in Governance

- All levels of Canadian government should seek to engage and support civil society organizations on a long-term basis and provide predictable funding opportunities that are not vulnerable to the frequent shifts in government policy.
- The federal government should loosen the restrictions on advocacy activities for registered charities, which in effect silence or limit their ability to participate and influence policy development.
- The federal government should reverse the policy that cut funding offered to advocacy organizations in 2006 by Status of Women Canada. The new partnership fund created under the Women's Program in effect limits the capacity of these organizations to advocate policy change.

II. Introduction

The present report on the implementation in Canada of mandates assumed by the participating governments of the Organization of American States at the 2001 and 2005 Summits of the Americas is part of a hemispheric analysis currently taking place in 21 Latin American and Caribbean countries. The Active Democracy: Citizens Network for the Implementation of Summit Commitments (the Network) monitors the implementation of commitments in four thematic areas: (1) access to public information; (2) freedom of expression; (3) local government and decentralization; and (4) civil society participation in governance, all over the period 2006-2007.

On the Nature of the Summits of the Americas Mandates

The Network's methodological focus takes into account the nature of the mandates and commitments signed during the processes of the Summits of the Americas. The methodology also incorporates the perception and opinions of Canadians with regards to progress and setbacks surrounding democratic governance issues that consistently feature in Summit Plans of Actions.

The Quebec Plan of Action and the other multilateral declarations from the Summits include agreements on a set of actions to be carried out by governments. The commitments described are of a general nature. They contain few concrete and/or specific tasks directed toward achieving goals in a given period of time. Nor are they explicit with regard to the actors who should be involved.⁵ For this reason, these plans are "general mandates of a permanent nature."

The Summit mandates compel governments to carry out actions that will contribute to and are consistent with the fundamental objectives agreed upon at the Summits. Similarly, the Summit mandates require that governments permanently refrain from carrying out activities that are contrary or detrimental to the specific commitments. The EIGC allows a periodic evaluation of these general mandates of a permanent nature, according to the importance which the CSOs and thematic experts assign to what each government has done, in a given period of time, in each one of the themes or commitments being monitored.

Civil society has an important role in inspiring governments to bring this vagueness "down to earth" by taking actions each year that will lead to the attainment of the objectives defined in these commitments. Similarly, it has a right to critically evaluate these sets of activities, since they effectively constitute a sign of the government's fulfillment of the agreed commitments.

⁵ These characteristics differentiate them radically, for example, from the commitments relative to the fulfillment of the Millennium Development Goals (MDGs) established by the United Nations. The predominant verbs in the MDGs are active and concrete, e.g.: "will strengthen", "will promote", "will work toward", "will support", "will seek to", "will drive".

Consequently, the Active Democracy methodology consists of both a qualitative assessment and quantitative index of indicators for evaluation by national experts and civil society organizations, who will critically assess the specific actions through which each government has put into practice the general commitments undertaken at the Summits.

This approach will allow the Network to focus its support and its criticism of the governments of the Americas in undertaking democratic processes and/or actions in relation to Summit mandates, however vague. It is the position of the Active Democracy Network that if governments commit themselves to democratic principles, they must also be accountable for developing coherent activities and policies in accordance with those general declarations. Hence, the need for a systematic look by civil society and independent experts at concrete actions that would help the Network judge progress and fully exploit the Summit of the Americas as the premier space for advancing democratic governance in the region.

Project Background

In its early stages, under the leadership of the PARTICIPA Corporation of Chile, the project was directed toward the promotion of the participation of civil society organizations (CSOs)⁶ in the Inter-American system, and was a pioneer in organizing the submission of proposals from civil society for the consideration of governments at the Second Summit of the Americas in Santiago, Chile in 1998.

In its second phase, led by the PARTICIPA Corporation, the Esquel Group of the United States and the Canadian Foundation for the Americas (FOCAL), a set of activities—both at the national and the hemispheric levels—were developed with the aim of promoting the participation of organizations and social networks in the Summits process. A series of consultations was carried out with the CSOs in order to formulate proposals for the Third Summit of the Americas held in Quebec City in April, 2001.

This cycle of consultations was centered on the themes of strengthening democracy, creation of prosperity, and the realization of human potential, and was developed in 18 countries: Argentina, Barbados, Brazil, Chile, Colombia, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Dominican Republic, Trinidad and Tobago, and Uruguay. The result was the formulation of 243 proposals for

⁶ Civil society in this report is understood as “the forms of autonomous association, vis-à-vis the market and the State, whose objective it is to claim rights, express opinions, influence decisions which affect the community and control the authorities. This sphere is self-generating and intervenes through existing public communication and institutionalized participation mechanisms. A fundamental condition of its development is that it requires institutional frameworks to reproduce itself and preserve its freedom of action (...) Those who form civil society do not aspire to exercise directly either political or economic power, but rather to have an influence on—especially through public communication—state institutions, political parties and the private environment.” Informe de Desarrollo Humano 2004: El poder: ¿para qué y para quién?, United Nations Development Program (UNDP-Chile) 2005, pp. 218-219. This definition includes academic entities, opinion centres, and various social organizations dedicated to the promotion and defense of rights, among other things.

government action or improvement, representing the consensus of 900 CSOs, which were presented to the governments within the framework of the Quebec City Summit. More than half of those recommendations were included in the Summit's Plan of Action.

Following an evaluation of this process, the projects' hemispheric coordination team, which is rooted in strong civil society leadership in Latin America and the Caribbean, made the decision to develop a formal monitoring mechanism for tracking the degree of compliance on the part of the governments of certain mandates related to democratic governance in the Quebec Plan of Action. To this end, a methodology was devised that enabled the project to extend its coverage to 21 countries: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Paraguay, Peru, Trinidad and Tobago, the United States, Uruguay and Venezuela.

Hence, a third stage, the "Civil Society Follow-Up Strategy for the Implementation of the Quebec Plan of Action", was coordinated between July 2002 and March 2005 by PARTICIPA, FOCAL, the Regional Coordination for Economic and Social Research (CRIES), the University of the Andes of Colombia, and the Inter-American Network for Democracy (RID). The central objective was to move toward greater specificity and methodological rigor in monitoring and promoting compliance with the Quebec Plan of Action's theme of strengthening democracy by improving and broadening citizen participation. More specifically, the Network decided to monitor Summit mandates related to:

- Access to public information,
- Freedom of expression,
- Local governments and decentralization,
- Strengthening of civil society participation,
- Judicial reforms and access to justice.

These results were included in the Hemispheric Report 2005,⁷ which was brought to public attention at both the Monterrey Special Summit as well as the Fourth Summit of the Americas at Mar del Plata.

Impact of the "Civil Society Follow-up Project"

As pioneers and long-time advocates focused on civil society participation in the Inter-American system, the Network can point to the following areas of impact over the years on relevant national, regional, and Inter-American governance issues:

- Dissemination of information about the Summits of the Americas process in 21 countries of the Caribbean, Central America, the Andes region and the Southern Cone.
- Definition of the baseline situation with respect to civil liberty themes in 21 countries with respect to the themes being monitored, including achievements and challenges.

⁷ Hemispheric Report 2005, www.sociedadcivil.net.

- Broadening and strengthening, in some countries, of the dialogue between government and civil society regarding the deepening of CSOs' participation in national, regional and hemispheric environments.
- Dissemination and advocacy strategies in various forums of the Inter-American System, such as the activities related to the Summits of the Americas process as well as to the OAS General Assemblies.
- Broadening and strengthening of alliances with other networks and CSOs.

Current Work Plan and Active Democracy Methodology

The current phase of work, generating National Reports, began in May 2007 is coordinated by the project's hemispheric coordination team, PARTICIPA, FOCAL and INVESP. The guiding vision continues to be strengthening CSOs' participation in the Inter-American processes, and, more specifically, CSO presence at the next Summit of the Americas to be held in Trinidad and Tobago, April 17-19, 2009. The crux of activities to be conducted in each of the 21 participating countries, including Canada, will focus on three central objectives:

1. Consolidating and broadening the hemispheric network of civil society organizations.
2. Reporting on and supporting the fulfillment of specific mandates related to the strengthening of democracy in the region.
3. Establishing between CSOs and governments in order to implement the mandates of the Summits of the Americas.

The current work plan and Active Democracy methodology consists of three strategies:

Strategy 1: Evaluation of compliance with Summit commitments

This evaluation has been carried out in 21 countries: Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, the United States, Uruguay and Venezuela. Its goal will be to monitor the commitments of the Summits of the Americas in four thematic areas:

- Decentralization and local governments.
- Access to public information.
- Freedom of expression.
- Strengthening of civil society participation.

Strategy 2: National government-civil society alliances

This strategy entails developing a National Alliance between CSOs and government representatives in 12 of the 21 countries after the generation of the National Reports. The objective is to develop a joint working agenda, centered on concrete actions that may contribute to the implementation of the commitments in the four thematic areas being monitored by the project.

Strategy 3: Advocacy and dissemination

This strategy presents the achievements of the Summits of the Americas monitoring process of the themes related to democratic governance to national and regional audiences in the 21 countries and seeks to broaden citizen participation in the process. It is intended to improve the quality of dialogues in the forums for civil society participation institutionalized in the OAS and in the Summits process.

Evaluation in Canada

As in the other 21 countries, the Canada Report on access to information, freedom of expression civic participation in governance and decentralization over 2006-2008 was generated by adapting a research methodology developed by the projects hemispheric coordination team⁸. In Canada, the research team conducted background research into each theme, distributed surveys and convened working group discussions with national experts for their feedback on legislative and other developments in Canada related to each theme over the period January 1, 2006 – December 2007. The team developed a list of observable activities of relevance to developments in the thematic areas in Canada over the research period and prepared background reports on “observable activities” by consulting official documents and other sources of information.⁹

Parallel to this process, the research team conducted primary research on the observable activities by sending requests for interviews and information by e-mail and phone to officials in government agencies with pertinent jurisdiction regarding the activities that it had carried out in the 4 EGCI research areas. Individuals from each of the government agencies or ministries with jurisdiction over each thematic area were contacted between March and April 2008. Ultimately, none participated.

Two hundred and ninety Canadian experts and or representatives of civil society organizations and research centers in Canada were invited to responded to surveys and participate in the research discussions on the themes. Ultimately the participation rate was less than ideal, an experience that was a common challenge for many participating country teams, and twenty-five people agreed to sit on evaluation panels for each of the four themes.¹⁰

The preliminary research contained in the background papers was opened up to discussion in a May 15, 2008 meeting and participants gave their feedback on the extent to which Canada had fulfilled its Summit commitments in the four themes, as presented to them.¹¹ These discussions were recorded by rapporteurs assigned to working groups on each of the four themes, and are synthesized in the following report.

⁸ See detailed methodology published in “Active Democracy: Manual for the Development of an Evaluation Index of Government Compliance” at <http://www.sociedadcivil.net/centro-documental/>

⁹ See Appendix List of “Observable activities” or research questions and indicators investigated per thematic area.

¹⁰ See Appendix X: Participants in Canada Research by thematic area of expertise.

¹¹ See following section “On the Nature of Summit Mandates”

A quantitative component of the research methodology involved asking participants to assign a quantitative value of between +3 and -3 to summarize their opinion of the extent and direction of changes from the baseline situation in each theme on January 1, 2006 up until December 31, 2008.¹² Fifteen people participated in this portion of the evaluation on anonymous terms, and the completed questionnaires were sent to the project's methodology expert in Chile for processing.

The quantitative evaluations from each country form the basis of the hemispheric Evaluation Index of Government Compliance (EIGC) as well as the project's hemispheric report. This Index is constructed by taking an average score for each theme by country (as a function of the scores of each evaluator), and then forming an aggregate score of the information collected. This index provides a comparative framework summarizing the perception of national publics, and allow for comparisons, with regards to the degree of compliance and implementation of the mandates of the Summits in the four in the 21 participating countries.

¹² See Appendix II: List of "Observable activities" or research questions and indicators investigated per thematic area.

III. Evaluation Index of Government Compliance (EIGC)

The application of the Evaluation Index of Government Compliance component of the Active Democracy methodology in Canada involved asking evaluators to assess the degree to which a set of actions¹³ carried out—or not—by the government indicate progress toward strengthening basic elements of good democratic governance in each of the thematic areas of interest. In this way, with a fixed goal in mind (for example, full recognition of freedom of expression) the EIGC captures the opinion of national experts and civil society regarding government policy and activity that allow the country to move in that direction. Important products of the evaluation also include recommendations on avoiding others that go against the principles or goals expressed in that mandate.

Baseline Results in Canada for evaluation period 2006-2007

In assessing observable government activity since the Quebec City and Mar Del Plata Summits to strengthen decentralization and local government, access to information, freedom of expression and civic participation in governance, Canadian experts and civil society evaluators generally agreed on the following baselines:

- In efforts to strengthen provincial, municipal and federal governance mechanisms in Canada (management and modernization systems, transfer of technical and financial competencies, etc.) there has not been much progress of substance over the period 2006-2007. An important exception is the weight given to evidence of strengthened women's participation in local and federal governance processes. There have also been key improvements in the transfer of responsibilities, financial resources and technical capacity from federal to local levels, as well as with respect to and valuation of cultural diversity.
- Canada evaluators judged that, in the area of **access to public information**, much of the observable government activity over the period was somewhat detrimental to achieving the general objective of full access to public information, specifically in terms of certain developments in legislation, effective access to information on senior public authorities, activities and finances of private companies offering public services, and access to information in violations of human rights. More positive developments are notable in effective access to information about electoral expenses, on state activities and on lobbying activities respecting the Executive and Legislative branches.
- There was not much significant activity to promote fuller **freedom of expression** in Canada over 2006-2007 overall. However, objective possibilities for citizens, and particularly women, to express themselves may ultimately have been expanded and changes over the period in the application of censorship, limitations and or sanctions have a strong likelihood of contributing to greater freedom of expression in Canada.
- In the area of **civil society empowerment**, evaluators judged that there were no new significant developments beyond the status quo to promote civil society participation; the consensus was more negative with respect to legal changes affecting civil society

¹³ For specific indicators measured see Appendix II on page listing thematic components, sub-components and observable activities.

participation, and more positive with respect to government-CSO relations in practice (e.g. provision of information to civil society) as well as government support for civil society participation in the Inter-American system.

IV. Compliance with Mandates in the National Setting

The most basic step in the methodological process of this project was identifying the mandates that guide the work. Specifically, to what promises are we referring when we say that we are evaluating governments' Summit commitments? What did the governments declare that they would do at the Quebec City (2001) and Mar del Plata Summits (2005) and the Special Summit in Monterrey in 2004 (Nuevo Leon)? What promises and declarations issuing from the Summits empower civil society organizations and citizens to hold governments accountable for the next steps, that is, the actions required for implementation of those promises and declarations?

The following sections of this report identify the commitments found in the text of the Summit plans of action in the four areas of interest:

- A. Decentralization and local government;
- B. Access to Public Information;
- C. Freedom of Expression; and
- D. Strengthening Civil Society Participation.

The fulfillment of commitments in each of these areas in Canada is then described and analyzed, integrating background research and expert feedback on the observable measures of implementation.

The analysis includes key recommendations for strengthening democratic governance in each area of interest.

A. Decentralization and Local Government

Commitments from the Quebec City Plan of Action¹⁴

In recognition that adequate citizen participation and political representation constitute the foundations of democracy and that local governments have a significant presence in the daily lives of citizens, the 34 governments committed to:

“To strengthen democracy, create prosperity and realize human potential, our Governments will:

- *promote mechanisms to facilitate citizen participation in politics, especially in local or municipal government;*
- *promote the development, autonomy and institutional strengthening of local government in order to promote favorable conditions for the sustainable economic and social development of their communities;*
- *strengthen the institutional capacity of local governments to allow full and equal citizen participation in public policies without any discrimination, facilitate access to those services fundamental to improving citizens' quality of life, and strengthen*

¹⁴ Quebec City Plan of Action (English) [http://www.summit-americas.org/Documents%20for%20Quebec%20City%20Summit/Quebec/PoA%20FINAL%20public%20April%2021%20\(eng\).doc](http://www.summit-americas.org/Documents%20for%20Quebec%20City%20Summit/Quebec/PoA%20FINAL%20public%20April%2021%20(eng).doc).

- decentralization and the integral development of these services in part through commensurate and timely funding and initiatives that permit local governments to generate and administer their own resources;*
- *promote sharing of information, best practices and administrative expertise among local government personnel, associations of local governments, community associations and the public, in part by facilitating access to information and communications technologies by municipalities and by encouraging cooperation and coordination among national, sub regional and regional organizations of mayors and local government;*
 - *stimulate international cooperation in training directors and managers of local government; Support convening a meeting in Bolivia of ministers or authorities at the highest level responsible for policies on decentralization, local government and citizen participation in municipal government...*¹⁵

Decentralization, Provincial and Municipal Government in Practice in Canada over 2006-2007

On the theme of local governments and decentralization, the perception among stakeholders and experts interviewed was that Canada had not made much progress toward its Summits of the Americas commitments. In other words, with January 1, 2006 as the baseline, much of the legislative and normative developments in this area since then and through December 31, 2008 had negative implications for governance in this area.

Canada has a very relatively sophisticated written constitution recognizing the federal and provincial governments as being separate, but equal. They are relatively independent entities with their own powers and policy jurisdictions, but these cannot be altered without their consent. Local governments, on the other hand, are creations of the provinces and territories; they derive their powers from provincial and territorial law, therefore they can be altered at any time, without their consent. This translates into local governments being abolished or amalgamated at the whim of the province or territory, municipalities being directed to change their financial structures, local governments losing or gaining powers and responsibilities, and changing the methods of electing local officials. Given the diversity of communities across Canada, be it in cities or rural areas, Aboriginal or non-Aboriginal jurisdictions, this type of power structure is not always viewed positively.

A common criticism is that more services are being devolved to local governments without the necessary funding accompanying this transfer of power. The precise functions of these entities vary across Canada, but broadly encompass: local policing and firefighting services, public transportation, industrial and economic development, and the management of public utilities such as water and sewage services. Generally, cities and municipalities rely on property taxes, license fees and fines for their own sources of

¹⁵ In July 2001, the Declaration of La Paz established the High-Level Inter-American Network on Decentralization, Local Government and Citizen Participation (RIAD). This body is dedicated to ensuring that the commitments made to strengthening local governments and democracies are not just declarative. High-Level Inter-American Network on Decentralization, Local Government and Citizen Participation (RIAD) http://www.planalto.gov.br/riad/static/RIAD/What_is_RIAD.pdf

income. The latest publication on consolidated provincial, territorial and local government revenue and expenditure, shows a total revenue of \$377,713 million, with \$321,685 million being raised by local entities themselves.¹⁶

Given the importance of municipalities and cities in providing services, Prime Minister Paul Martin pledged to finance a \$7 billion deal for cities, over ten years, to be financed by GST rebates. He had hinted at consulting with mayors in the budget process and included additional funding for specific programs such as language training for new immigrants, support for urban Aboriginals, development of environmental technologies and support for voluntary sector organizations.¹⁷ However, his government lost the 2006 election.

The present government's response was its "Building Canada Plan," which has committed to giving \$33 billion for infrastructural development in cities and municipalities. This is to be done over the period 2007-2014, provided this government remains in office for this period of time.¹⁸ The plan will be primarily financed by a municipal GST rebate, a gas tax fund, a federally contributed 'Building Canada' Fund and Provincial-Territorial Base Funding.¹⁹ However, apart from certain infrastructural projects that have already been approved, this funding is fluid, and subject to federal approval. Thus, the amount sounds formidable, but the details surrounding project approval and how cities/municipalities are to bargain to procure this funding, are less than clear publicly. It appears that the present government of Canada has a plan for nation-wide development, but local governments can only procure funding, conditional upon what the federal government has highlighted as a priority.

The Federation of Canadian Municipalities (FCM)

The Federation of Canadian Municipalities (FCM) is a primary civil society local governance actor, founded in 1901, with more than 1,600 members, representing Canada's largest cities, small urban and rural communities, and 18 territorial and provincial municipal associations. In a recently conducted survey of 2,000 Canadians, the FCM found that the average Canadian believed municipalities lacked adequate resources needed to face governance challenges. Furthermore, the average Canadian believed that it was the responsibility of the Federal Government to remedy this deficiency.²⁰ Some of the key findings from the survey indicate that over 90 per cent of respondents say that the federal government should provide financial support to assist municipal governments with infrastructure issues and 67 per cent of Canadians feel that any surplus should be used to fund areas in need, as opposed to lowering taxes. Sixty-eight per cent said they would support the idea of the GST being increased to 6 per cent if the extra funds were used to support local infrastructure, while 84 per cent agreed that the federal government

¹⁶ Statscan, <http://www40.statcan.ca/101/cst01/govt51b.htm>

¹⁷ Justin Thompson, "Chase the Bouncing Loonie: Cities vie for a New Deal," CBC News online. February 3, 2004.

¹⁸ <http://www.buildingcanada-chantierscanada.gc.ca/plandocs/booklet-livret/booklet-livret09-eng.html>

¹⁹ Ibid.

²⁰ FCM Press Release, "Largest-ever survey on Municipal government shows Canadians want Federal Support for Cities and Communities," April 15, 2008. <http://www.fcm.ca/english/View.asp?mp=560&x=811>

should provide financial assistance to municipal governments to deal with smog and greenhouse gas emission targets, and 85 per cent said that federal government should be helping smaller and rural communities to deal with their economic challenges. Seventy per cent of Canadians believed that eight cents out of each total tax dollar they pay is not enough to pay for the services provided by municipalities and 80 per cent agreed that municipal governments need to have greater access to other means of generating revenues in addition to property taxes.²¹

ICTs are being adapted for local government use and there appears to be a high degree of connectivity across Canada. Most cities and municipalities have a web site, with the standard “Who we are,” “Services” and “Get involved” buttons. What is less clear is how effective this tool has been in facilitating democracy and better governance.

Women in Local Government

Women are 52 per cent of the Canadian population but only 21.7 per cent of municipal councilors in Canada. Still, Canada’s municipal councils have a higher percentage of women than the House of Commons (20.7 per cent). However, of 152 communities surveyed by the Federation of Canadian Municipalities (FCM) in 2004, 86 per cent said they did not have an equal number of men and women on council and 14 per cent reported they had no women on municipal council at all.²² The FCM believes that 30 per cent participation by women on municipal councils is required by the year 2026. The United Nations defines 30 per cent as the minimal percentage of women required for government, to reflect women’s concerns. In Canada, women currently represent 13.5 per cent of mayors and 23.2 per cent of councilors, for an average of 21.7 per cent. Canada has a total of 5,320 women out of a total of 24,480 mayors and councilors, meaning that 2,024 more women need to be in elected office to reach the UN’s 30 per cent target.

The FCM’s *Getting to 30% by 2026* project has two components: a mobilization tour and a workshop series. The focus of the mobilization tour was to build support for increasing women’s political participation, by using the national media to raise awareness, and also by building local networks for change. FCM Past President, New Glasgow Mayor Ann MacLean led the mobilization tour. The recommendations outlined in the project plan were based on brainstorming strategies developed by a variety of community stakeholders at each of the workshops. At present, Canada ranks 45th of 189 countries for the number of women in national politics, placing the country behind Sweden (45 per cent), Finland (38 per cent), Argentina (35 per cent) and Germany (32 per cent), based on 2006 Inter-Parliamentary Union Table on Women in National Parliaments statistics.

Some of the strategies recommended by the *Getting to 30% by 2026* report were: promoting community discussion about the role of women in municipal governments, demystifying the process of municipal governance, providing information about running for public office, starting campaign schools to provide mentoring and training to women,

²¹ “Key Results from the FCM-Strategic Counsel Survey,” April 15, 2008.
<http://www.fcm.ca/CMFiles/skeys1PFA-4172008-8817.pdf>

²² “Women in Municipal Politics” <http://www.fcm.ca/english/policy/big.pdf>

familiarizing them with the political skills, strategies and tactics necessary for running and winning a campaign. Recruiting women of diverse backgrounds, ensuring gender balance policies, making politics more respectful instead of adversarial and derisive, supporting professional opportunities for women within municipal organizations, encouraging local employers to give incentives to their female employees for volunteering on councils, and supporting women through better pay/childcare/elder-care policies.²³ In Canada, at the federal level, at least one-third of Liberal candidates in the next election will be women, said the party. The governing Conservative party has made no such declarations, while the New Democratic Party has 41 per cent of its caucus constituted by women, presently the highest ratio in Canada, at the national level.

Aboriginal governments and governance

It is said that Canada hosts a third-world country within its ‘developed nation’ boundaries. The condition of Canada’s Aboriginal reserves are characterized by poor health facilities, contaminated drinking water, low economic development, high teen suicide rates, among other indicators. The current government has voiced its concern that the money being spent on reserves is wasted due to corrupt and inefficient governance so funding is therefore awarded contingent upon conditions met in governance agreements. The latest Federal Budget awarded \$70 million over two years to establish a new framework for aboriginal economic development by the end of 2008, \$70 million over two years for First Nations education in support of agreements between the federal government, provincial governments and First Nations communities, \$147 million over two years for First Nations and Inuit health programs, \$330 million over two years to improve access to safe drinking water in First Nations communities, and \$43 million over two years to improve child and family services on reserves.²⁴ However, this top-down approach to financial management and governance may be replicating past mistakes by imposing non-Aboriginal practices over traditional Aboriginal governance practices that have more resonance with these populations.

The Assembly of First Nations (AFN) has consistently maintained that First Nations Reserves are underfunded and subject to colonial government structures, ill-suited to Aboriginal cultural traditions. The current National Chief of the AFN called the 2007 federal budget a “bitter disappointment for First Nations and a missed opportunity for all Canadians.” He cited research done in 2007 by the Study of Living Standards, which found that, if investments were made to bring First Nations education levels to be on par with the rest of the population, Canadians would see an additional \$71.1 billion added to the national economy. Under the current system, however, First Nations students receive an average of \$2,000 in resources less than students in mainstream schools.²⁵

²³ For an in-depth look at the key findings/strategies for streamlining women into the municipal political process, see “Getting to 30% by 2026,” available at <http://www.fcm.ca//CMFiles/wreport1UDO-3262008-929.pdf>

²⁴ Federal Budget, 2008, Highlights. CBC News Online, February 26 2008. <http://www.cbc.ca/news/background/budget2008/>

²⁵ “AFN National Chief Calls the Federal Government Budget a ‘Bitter Disappointment’” February 28, 2008. <http://www.afn.ca/article.asp?id=4029>

The AFN has advanced policy frameworks related to: a) The recognition of First Nations governments, and b) Collaborative First Nations/Crown Relations. Currently, First Nations jurisdictions are regarded akin to municipalities. This practice contradicts that Aboriginal Affairs is the jurisdiction of the Federal Government and treaties have historically characterized relationships between Aboriginal groups and non-Aboriginal rulers. The division of powers between the provinces and the federal government has led to some tenacious issues to navigate (mainly land settlements) but most legal experts maintain that the Federal Government has the right and responsibility to intervene in such matters under Section 91(24) of the Constitutional Act, 1867.²⁶

The AFN has called for Reconciliation and Recognition of First Nation Governments affirming Treaty and Aboriginal rights, consistent with the Right to Self-Government section 35, *Constitution Act, 1982*. The AFN called for Sustainability and Structural Change by Implementing First Nation governments including:

- substantial reform of the fiscal relationship between the Federal Crown and First Nations to end fiscal discrimination in favour of sustainable transfers based on real rates of growth;
- support for nation-building through capacity building and institutional development measures developed jointly with First Nations; and,
- federal policy renewal and machinery of government changes in the form of elimination of the *Indian Act* and the Department of Indian Affairs.

The previous suggested that the Aboriginal Right to Self-government was already contained within section 35 of the *Constitution Act, 1982*. This government has not repeated or followed up on this idea.

Canada has not endorsed the United Nations' Declaration on the Rights of Indigenous Peoples (2007) and actively lobbied for others to do the same. This refusal contrasted with the previous government's call at the Fourth Summit of the Americas in Mar del Plata (2005) to intensify and conclude negotiations for the prompt adoption of the *American Declaration on the Rights of Indigenous Peoples*.²⁷ This policy change was confirmed in April 2008 when Canada said it would desist from negotiations on the Declaration, but reserving the right to comment on the final text. The United States is the only other country in the hemisphere to adopt this approach.

Recommendations on Decentralization and Local Government

The following are recommendations and proposals generated in Working Group discussions held with FOCAL in May 2008.

²⁶ http://laws.justice.gc.ca/en/const/c1867_e.html#distribution

²⁷ <http://www.summit-americas.org/Quebec-Indigenous/indigenous-eng.htm>

- Canadians can learn from international election systems/processes. There is a concern about lack of knowledge in upper echelons of government on how elections function on the ground. More research on this issue is needed.

B. Access to Public Information

Commitments from the Quebec City Plan of Action

In the Quebec City Plan of Action the participating governments pledged that, in order to increase public institutions' transparency and accountability, they will work together:

*“to facilitate cooperation among the national institutions responsible for guaranteeing [...] free access to information, with the aim of establishing best practices to improve the administration of information held by governments about individuals, facilitating citizens' access to this information.”*²⁸

Canada's access to information framework is consistent with that of other democratic countries. To expand the right to information, which was vaguely established in the *Canadian Charter of Rights and Freedoms*, Canada enacted the *Access to Information Act* (AIA) in 1983. The AIA's purpose is to “provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.”²⁹

Therefore, the Canadian framework on access to information is not only clearly stated, but it is also explicitly based on the principles of right of access and government transparency and accountability. Although the right of access to information was initially only defined for Canadian citizens and permanent residents, with other categories left up to the discretion of the government, in practice the right is extended to any person residing in Canada. This includes underprivileged people such as temporary workers, refugees, and illegal immigrants. Additionally, there is no need to give any justification for the request, as the AIA stipulates that requests should be processed exclusively on the basis of the information they are requesting.³⁰

However, a significant barrier does exist: each request costs a token amount (\$5 Cdn), but behind that small fee are undetermined additional costs to access (preparation of reports, printing, etc.).³¹ At the same time, the fees collected for the 2006-2007 fiscal year covered less than one per cent of the cost to comply with the access to information requests.³²

²⁸ Quebec City Plan of Action can be found at www.oas.org.

²⁹ Access to Information Act, RSC 1985, c. A-1, s. 2.1.

³⁰ *Ibid.*, s. 4.

³¹ *Ibid.*, s. 11.

³² Info Source, “Privacy Act and Access to Information Act Bulletin Number 30 – Statistical Tables,” Government of Canada, 2008, <http://infosource.gc.ca/bulletin/2008/bulletin03-eng.asp#Toc182879762>

Pursuant to the stated objectives, the AIA identifies 19 government departments (ministries), 130 government agencies, and 95 publicly-owned corporations and wholly-owned subsidiaries that must comply with the Act.³³ Every one of these institutions is mandated to have a designated Access to Information and Privacy Coordinator to deal with information requests.³⁴

The AIA does not confer this obligation on non-public entities that receive public funding or perform public functions. In the past two years, several proposals have been floated to change this—through task forces, electoral platforms, and parliamentary commissions—but no progress has been registered in this respect.

The AIA contains both exclusions (categories of information that the government is not obligated to provide) and exemptions (entities that are not obligated to comply with the AIA, at least not in all cases). A perceived weakness of the act is that there is no comprehensive ‘public interest’ override to nullify these exceptions.³⁵

Between December 2006 and September 2007, the AIA was amended for the second time in its history. This was done purportedly in order to comply with the *Federal Accountability Act*, a law born as a consequence of a government sponsorship scandal and the subsequent Gomery Inquiry. However, the amendments indicated that the Canadian government was not strongly committed to the “limited necessary exceptions” clause of the AIA’s purpose. While the changes in legislation added 19 new institutions to the list covered by the AIA, they also almost doubled the existing number of exemptions (from 13 to 23) and added two new exclusions. While the government that passed the amendments deemed these new exceptions necessary to anti-corruption legislation, the Information Commissioner of Canada’s independent watchdog for Access to Information matters called them “not justifiable.”³⁶

Recent news reports indicate that the government has been exploiting loopholes in the current exception regime, inserting unnecessary additional steps that allow answers to requests to be delayed, often *ad infinitum*. The AIA states that the institution that receives the request shall grant access within 30 days, unless the case needs information from another government institution.³⁷ This creates a lot of maneuvering space in which requests can be forwarded and re-forwarded, ultimately delaying a response and allowing for government blacklisting of requests. This situation has aggravated the access to information backlog in recent years as the number of requests that are completed in 30 days or less as a proportion of total requests is down four per cent since 2005.³⁸

³³ Access to Information Act, Schedule I, Schedule II and Administrative Compilations.

³⁴ Access to Information Act, Schedule I, Schedule II and Administrative Compilations.

³⁵ Office of the Information Commissioner of Canada, *Response to the Report of the Access to Information Review Task Force - A Special Report to Parliament* (Ottawa: Public Works and Government Services Canada, 2002), 64.

³⁶ Office of the Information Commissioner of Canada, *Information Commissioner Annual Report, 2006-2007* (Ottawa: Public Works and Government Services Canada, 2007), 12.

³⁷ Access to Information Act, ss. 7, 9.

³⁸ Info Source, “Bulletin 30.”

In May 2008, the government closed down an online database that tracked access to information requests, and, in the case of completed requests, would allow database users to access the originally requested information themselves. The closed database was not only a good example of full government disclosure, but it also allowed users to see information without formally requesting it, enhancing access and reducing redundant costs for people requesting information and for the government.

While the AIA states that obstructing access to information requests is an indictable offence, punishable by steep fines and incarceration, this is difficult to enforce. More “passive” forms of non-compliance, such as sloppy record-keeping, are impossible to punish. Non-standardized records, an endemic problem in the Canadian government, may unnecessarily delay access to information and even make it impossible to comply with requests.³⁹ In case the person that requested the information is dissatisfied with how their request was treated, the Office of the Information Commissioner (OIC) is the first recourse for complaint. The OIC not only handles complaints, but also publishes yearly reports and papers on issues of interest. In the last two years, the heads of the institutions that receive failing grades from the OIC have had to attend a parliamentary hearing to explain the grades.⁴⁰ While this is not a formal sanction, it is a considerable stick to initiate compliance with information requests. However, the OIC has also complained in the last two yearly reports of a mounting workload and the absence of additional funding, pointing to the underlying cause of lack political will on the part of the government to enhance the public’s access to information.⁴¹

The last important development in the last two years has been an attempt at comprehensive reform of the AIA. The *Open Government Act* (OGA), first tabled at the end of 2005, is meant to adapt the 25-year-old AIA to the existing reality. However, when the Conservative Party took power in early 2006, the OGA was banished to legislative limbo. Even the name change (*Open Government* vs. *Access to Information*) belies a significant difference: the AIA puts the onus on the citizen to find something out, while the OGA puts the onus on the government to be as transparent as possible of its own accord. Too often, the government hides behind an Access to Information request, referring even simple questions to the AIA even if the formal process is not necessary; ironically enough, the AIA may have become a way of institutionalizing an informational barrier between the government and the citizens.

Access to information, women, and women’s rights

The AIA does not make distinctions based on the sex of the person that requests information. The steps involved in the request and the subsequent provision of the information contain no theoretical or practical sex-based restrictions. The Canadian

³⁹ Access to Information Review Task Force, “The Access to Information Act and Record-Keeping in the Federal Government,” National Archives of Canada, 2001, <http://www.atirtf-geai.gc.ca/paper-records1-e.html>

⁴⁰ OIC, *Annual Report 2006-2007*, 13.

⁴¹ Office of the Information Commissioner of Canada, *Information Commissioner Annual Report, 2005-2006* (Ottawa: Public Works and Government Services Canada, 2006), 15-16. OIC, *Annual Report 2006-2007*, 97-98.

government has recorded no visible initiatives to specifically promote access to information or training in its use by women.

Although the laws regarding women and access to information do not make distinctions either for or against, budgetary policy in the last two years may have. Status of Women Canada, the government agency in charge of the promotion of women's rights, lost a large part of its operating budget, forcing it to close 12 of 16 offices across the country. Simultaneously, it received a large injection of cash for grants and programs run by third parties, including women's rights organizations. It is difficult to evaluate if information about issues like birth control or violence against women is better provided by a network of government centres or by non-governmental partners, but developments in the last two years point to a government preference for the latter.

In October 2006, the then Status of Women Minister Bev Oda created a political storm by dropping the word "equality" from SWC's mandate. This had immediate consequences, as it precluded women's advocacy groups from receiving SWC funding – instead, emphasis was put on service-oriented projects (training, housing, etc.). The government's role in providing or enabling the provision of information specific to women and women's rights was obviously diminished with this policy decision. In August 2007, Oda was replaced by new Status of Women Minister Josée Verner. As of April 2008, the word "equality" has returned to SWC's mandate, and more importantly, to its funding guidelines.

In addition to boosting funding for third-party programs through the Women's Community Fund, the 2007 Federal Budget created a new line of funding, the Women's Partnership Fund. This program, while comparatively modest, is designed to create partnerships on women's issues between non-governmental and public institutions. This suggests a renewed interest on the part of the government in participating in women's issues.

Effective Access to Public Information

The *Access to Information Act* is Canada's freedom of information legislation. The Act came into force in 1983 and gave Canadians the broad legal right to information recorded in any form and controlled by most federal government institutions. The Act provides government institutions with 30 days to respond to access requests. Extended time may be claimed if there are many records to examine, other government agencies to be consulted, or third parties to be notified. The requester must be notified of these extensions within the initial timeframe. Of course, access rights are not absolute, they are subject to specific and limited exemptions, balancing freedom of information against individual privacy, commercial confidentiality, national security, and the frank communications needed for effective policy-making. Such exemptions permit government agencies to withhold material, often prompting disputes between applicants and departments.

Information on state activity

On April 11, 2006, the Government of Canada introduced the *Federal Accountability Act* and Action Plan to make government more accountable, this was granted Royal Assent on December 12, 2006. The *Federal Accountability Act* and Action Plan sets out to strengthen accountability and increase transparency and oversight in government operations and includes a draft bill to amend the *Access to Information Act*. Most notable is Bill C-2, an Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability.

Some of the notable administrative changes in the last few years include:

- Information Commissioner offered the President of the Treasury Board (the minister designated to ensure the effective administration of the Act throughout government) cooperation in the realization of necessary changes.
- Establishment of a new profession in information rights (i.e. access to information and privacy) administrators in Canada. Two of Canada's associations of access and privacy administrators (CAPA and CAPAPA) came together to spearhead an initiative to develop core competencies and a certification process for the new profession.
- An advisory working group of nine recognized access to information and privacy rights experts from across Canada, chaired by the Information and Privacy Commissioner of Alberta, was formed to oversee the development of national professional standards and to propose a process for certifying and overseeing the new profession. The Quebec association of ATIP professionals (l'Association sur l'accès et la protection de l'information) has lent its support to this initiative and is represented on the working group.
- Creation of right to know week (in 2007, from September 28 to October 5). The goal was to help Canadians be more aware of the existence of the right of access in Canada and to better appreciate how essential this right is to a healthy democracy
- Creation of a backlog reduction plan, for which additional investigators were approved in January 2006, for fiscal years 2006-07 to 2009-10. There was a delay in fully implementing the plan outside the Commissioner's control, in securing the office accommodation necessary to house the new investigators.

The implementation of Federal Accountability Act has drawn some criticism:

- Lack of government action toward its platform commitments during election campaigning
- Failure to implement reforms suggested by John Reid the Federal Information Commissioner to the Access to information Act, these included forcing public officials to create a paper trail to document their decisions; reducing the amount of government information that was classified as exempt from scrutiny and providing a public interest "injury test" on all exemptions.

- Appointments commission and the lobbying provisions have not been implemented. Treasury Board President Vic Toews told the House of Commons these two components of the Accountability Act are very complicated and require time to draft, and was sent to a parliamentary committee for further study, which as Pat Martin NDP critic on privacy and ethics noted was “death by committee”.⁴²
- Canada needs to enforce freedom of information laws
- Requests take too long to process
- Too many exemptions can be applied and official will do anything they can to stretch these further
- Public interest overrides of the exemptions are too narrow and are seldom applied
- Fees are prohibitive
- Crown corporations and commercialized entities are shielded from access laws
- Tougher laws are needed to combat this trend, at present there exists legislation in this area at the Federal, Provincial and Municipal level, far too confused and lax approach to FOI requests.

Information on the public budget

Electronic copies of every federal budget and budgetary update (the so-called “mini-budgets”) since 1994 are available online and free of charge in the website of the Canadian Department of Finance. Printed copies can be requested, although they cost \$25 Cdn per copy. Budgets are electronically browsable by theme, topic and table of contents. If anything, over the last two years, the electronic versions of the budget have become more comprehensive and user-friendly.

Information on Senior Officials

The *Conflict of Interest Act*, which came into force on, July 9, 2007 prohibits ministers from voting on matters related to their personal gain and ensures Parliamentarians focus on the public interest. Through the Act, Members of Parliament and Public Office Holders are required to report all personal trusts and private interests from whom they derive benefit to the Conflict of Interest and Ethics Commissioner. The Commissioner will make orders prohibiting members from using the trusts for political purposes and has the power to fine violators and hold them accountable for their actions.

Proposed amendments:

- Plan to create a public appointments commission. The public appointments commission is important, as it would help to ensure that there is a process in place to carefully screen public appointments making certain these are not patronage appointments. The Star.com 1/1/08 Richard Brennan

Information on legislative activities

⁴² Ivison, J. “A huge cost factor: Access to information czar’s suggestions sent for further study,” National Post, April 12, 2006.

Both chambers of the Canadian Parliament publish online transcripts, records and orders of business that detail projected, ongoing and concluded items in the legislative process. Hard copies of these documents are not readily available outside of Parliament, but the amount of written material produced by the legislative process makes this extremely impractical. Additionally, all proceedings of both chambers are transmitted live on online radio and television feeds.

However, the material is presented in an unwieldy manner, in a format that is difficult to navigate; the information consists mainly of literal transcriptions that run for hundreds of pages. There is no summary of voting or legislative records for individual Members of Parliament or Senators. This void is filled by grassroots organizations (such as www.howdtheyvote.ca) that summarize voting records and legislative initiatives. Local watchdog groups commonly summarize this type of information about candidates during election years as a way to inform voters about their stances on their key issues.

Information on lobbying activities respecting the executive and legislative branches

The *Federal Accountability Act* will establish a new Commissioner of Lobbying as an independent Agent of Parliament. It will provide the Commissioner with enhanced investigatory powers and mandate to enforce compliance with the proposed *Lobbying Act*. The Commissioner will be able to:

- Verify information on contacts with senior public-office holders that lobbyists submit, and display that information on a Web site;
- Ask senior public-office holders to verify the accuracy and completeness of contact report information that lobbyists submit and, if necessary, report to Parliament the names of those who do not respond;
- Conduct expanded investigations, including the power to summon and compel persons to produce documents relevant to any investigation of possible infractions under the *Lobbying Act* or the *Lobbyists' Code of Conduct*;
- Prohibit any lobbyist convicted of any offence from communicating with the Government as a paid lobbyist for up to two years, if the Commissioner deems it to be in the public interest;
- Publish the names of violators in reports before Parliament; and undertake expanded outreach, education, and communications activities to foster understanding and awareness of the requirements with the public, lobbyists and their clients, and public-office holders.
- Requires lobbyists to record activities with senior public-office holders, including with whom they met, when, and on what specific subject, plus any other information that may be prescribed in regulation. To minimize the administrative burden, the Government, through regulations, will limit these activities to prearranged forms of communication—specifically, in-person meetings and telephone calls. These are the most important forms of communication through which lobbyists conduct business with public officials.
- Prohibits ministers, ministerial staffers, and senior public servants from registering and lobbying the Government of Canada for five years after leaving

office. To ensure fairness, the Commissioner will have the authority to exempt certain individuals from this ban (for example, administrative staff or students employed in a minister's office, or individuals from the private sector who work in the public service for a period on executive interchange), consistent with criteria set out in legislation.

- It will ban any payment or other benefit that is contingent on the outcome of any consultant lobbyist's activity. As a complementary measure, the Government will amend the *Financial Administration Act* to require that all government contracts and agreements contain provisions that prohibit the payment of contingency fees to a lobbyist specific to that transaction.
- Will extend from 2 to 10 years the period during which possible infractions or violations under the *Lobbying Act* and the Code can be investigated and prosecution can be initiated. Within this 10-year period, the Commissioner will have to complete investigations within 5 years of the time he or she becomes aware of the possible infraction or violation. A
- Will double the criminal monetary penalties for lobbyists who fail to comply with the requirements of the *Lobbying Act*.

To date the only legislation of the *Federal Accountability Act* relating to lobbyist in the new *Lobbying Act* that has come into force has been: Sections 88.1, 88.11 and 88.2, which contain provisions concerning members of transition teams. A five-year post employment prohibition on designated public office holders and individuals identified by the Prime Minister as being members of his or her transition team from becoming registered lobbyist once they have left office.

Part of the problem is that lobbying is not properly regulated, and that a self-regulating body would solve much of the industries perceived problems with the public.

Activities and finances of private companies that offer public services

The Government public Bill C-2, entitled *An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability* (the *Federal Accountability Act*), received Royal Assent on December 12, 2006 [S.C. 2006, c. 9] and caused or will cause the following amendments: There also exist some specific exemptions for some Crown Corporations

In April of 2006, the former Information Commissioner submitted a Special Report to Parliament setting out his concerns about the access amendments contained in Bill C-2. Overall, the Special Report expressed the view that the amendments, requiring some previously accessible records to be, henceforth, kept secret (i.e. records relating to reports of wrongdoing and internal audits), were not justifiable. As well, it expressed the view that the special exemptions and exclusions designed for newly added institutions are unjustifiably broad.

Some energy executives reportedly see the national freedom of information law as a threat. "The private sector will not release any information that would reveal the potential

vulnerabilities of its facilities to EIPD for fear that this information could become public under the Access to Information Act, says the review. The authors note that Bill C-2, amends the access law to better protect confidential information about “the vulnerability of... (a) third party's buildings or other structures, its networks or systems.” The revised legislation also allows a minister to override confidentiality in the public interest.⁴³

Access to information on violations of human rights

Under the Access to information act: Section 17 - Safety of individuals

The Provision: The head of a government institution may refuse to disclose any record requested under this Act that contains information for which the disclosure could reasonably be expected to threaten the safety of individuals. (is this something new?)

Gender and Electronic Media

The City of Montreal has moved forward in the area of gender and electronic media through holding public consultations in September and October 2007 on the draft policy for Equal Participation of Women and Men in the Life of Montreal. Under the governance heading and in terms of resident services, the draft policy suggests improving the overall range of services to better meet the needs of women through such methods as adopting more flexible operating hours for city service points and the city's sports and cultural facilities aiming to provide access to public information.⁴⁴ (how is this relating to electronic media?)

Electoral expenses

The existing regime for disclosing campaign contributions and electoral expenses, defined by the *Canada Elections Act* (CEA), has not changed in the past two years, and is very transparent. Contributions and expenses have to be disclosed to the Chief Electoral Officer (CEO). The CEO can then publish summary statistics, and discloses all information in a very comprehensive online database that allows search queries by candidate, contributor, party, electoral district, etc. There is, however, no specific sex breakdown of the people that make or receive contributions. Most of the library of documents of Elections Canada, specially the most recent ones, can be ordered free of charge. If a citizen cannot access the online database, they can request printed copies.

Although disclosure rules have remained the same in the last two years, donation rules have undergone drastic changes. Between December 2006 and December 2007, the CEA, was amended four times. Among the most important changes that were undertaken through these amendments are the following: establishing lower limits (around \$1,100 CAD, adjusted for inflation) for each contribution to parties and candidates, demanding that contributors are Canadian citizens or permanent residents, banning corporate and trade union contributions, and limiting cash contributions to \$20 Cdn maximum. It must be emphasized that this is the capping stone of an ongoing tendency to promote

⁴³ Beeby, Dean. *Telegraph Journal*, St. John N.B, Aug 20, 2007, p. A6.

⁴⁴ www.ville.montreal.qc.ca/commissions and www.ville.montreal.qc.ca/femmesetvilles.

transparency, limit the influence of special interests, and promote public ownership of the electoral process.⁴⁵

The system was tested in April 2008. Elections Canada, directed by the CEO, prompted a police raid of the national headquarters of the Conservative Party – ironically, the government party that had tightened campaign regulations in the CEA. The CEO had evidence that the Conservative Party had funneled funds that allegedly had been used for local campaign advertising and actually spent them in federal campaign advertising. While this practice is allowed under the CEA, the transfer of funds meant that the Conservatives spent \$1 million Cdn above the federal campaign limit of \$18.3 million Cdn.⁴⁶ As of May 2008, the investigation is still ongoing, but the incident proves that the system of independent oversight of electoral expenses and contributions, together with strong disclosure rules, can bolster the health of the electoral system.

Proposals for strengthening access to public information in Canada

The following are recommendations and proposals generated in working group discussions held with FOCAL in May 2008.

- The main problem in this area is that there is a big distinction between what is written in law and how that law is applied in reality.
- Currently the Canadian Government does not have the manpower to fulfill Access to Information requests.
- The Canadian Government is not taking advantage of electronic media in terms of provision of services and keeping records.
- There is no consistency in the application of legislation between Government departments. There is a high turnover of ATI officers and they use their discretion when it comes to request. Perhaps the establishment of an independent access authority – to promote disclosure codes could be a first step.
- Test cases in the Americas could help establish standards. A taskforce could meet every 4 years and request information from a number of countries to see how they compare.

C. Freedom of Expression

Commitments from the Quebec City plan of Action

In the Quebec City Plan of Action, the countries of the Americas committed themselves to:

⁴⁵ Elections Canada, “Chief Electoral Officer Announces Election Financing Changes Brought In by Federal Accountability Act,” Elections Canada, January 2 2007, <http://www.elections.ca/content.asp?section=med&document=jan0207&dir=pre&lang=e&textonly=false>

⁴⁶ Tonda Maccharles, “Tories violated elections law: Elections Canada,” Toronto Star, April 20 2008, <http://www.thestar.com/News/Canada/article/416499>

*“ensure that national legislation relating to freedom of expression is applied equitably to all, respecting freedom of expression and access to information of all citizens, and that journalists and opinion leaders are free to investigate and publish without fear of reprisals, harassment or retaliatory actions, including the misuse of anti-defamation laws”.*⁴⁷

The main issues related to freedom of expression in Canada are:

1. Legislative framework,
2. Structure of ownership in the media sector,
3. The exercise of freedom of expression by journalists, artists and demonstrators,
4. The impact of levels of education and the use of technologies on freedom of expression.

Legislative Framework in Canada

Canada has a legal framework to protect freedom of expression. The Charter of Rights and Freedoms makes “freedom of thought, belief, opinion, and expression, including freedom of the press and other media communication” a fundamental right. This freedom is limited only to “reasonable limits prescribed by law” that can be justified in a democratic society. The laws that prescribe these limits include sections of the Criminal Code, the Information Act, the Security of Information Act (formerly the Official Secrets Act), and guidelines such as those used by the Canada Customs and Revenue Agency (CCRA) and Canadian Radio-television and Telecommunications Commission (CRTC). The limits to free expression are divided into three categories: defamation laws, protection for vulnerable groups, and public order and national security.

Defamation laws

Canada has a well developed criminal and civil libel system. Criminal convictions carry penalties that range from two to five years in prison, while civil libel is often settled through the reparations and fines. People criticized in the media have used this system to sue media outlets who report or repeat negative reports.

Protection of vulnerable groups: child pornography

Child pornography, its production, consumption and distribution, is illegal in Canada and prosecuted. Free expression related to child pornography can be protected, should artistic merit be found in the representation or written material under scrutiny. The artistic merit argument is however, highly controversial and was the subject of several bills to reduce or remove that element by both Liberal and Conservative minority governments. New legislation consistently died in the House of Commons before it could be passed. Prime Minister Stephen Harper made the passage of Bill C-2 an omnibus crime bill, announced in the 2007 Speech from the Throne, a government priority. Proposals to remove the artistic merit defense and replace it with one of demonstrating a public good, and to create a new “voyeurism” offense, were amended out of the government proposals.

Public order

⁴⁷ Quebec City Plan of Action.

Within the Public Order category, there are three limits prescribed by law on free expression: a) hate speech and propaganda, b) obscenity, and c) national security.

a. Hate speech and propaganda

Federal and provincial laws prohibit and restrict hate speech against social groups. For example, the Broadcasting Act prohibits any licensee from broadcasting or distributing programming that contains abusive comments to individuals or that would incite hatred on discriminatory grounds. Punishment is severe: fines or the limitation or denial of license renewal for the broadcaster.

However, this legislation and human rights bodies that enforce it have come under fire in the last three years. Federal and provincial human rights commissions found themselves criticized by journalists and others for hearing cases that involved relatively mild criticism of various religious and other minority group organizations. Journalists have charged that section 13(1) of the federal human rights legislation, dealing with printed materials, is being used as a tool of censorship, rather than to protect human rights. *MacLean's* magazine and syndicated columnists Mark Steyn and Ezra Levant all faced human rights charges based on material they had printed during this time.

In another case, abusive language prompted the CRTC to deny a license renewal to Quebec broadcaster, CHOI-FM. The owner claimed the CRTC was censoring the station, but the federal court ruled against their appeal of the CRTC decision on September 1, 2005. The controversial hosts resigned and left the station the same year.

In 2006, the owners of the radio station sold it to RNC Media and the CRTC granted the new station a license. The Supreme Court of Canada ruled in June 2007 that it wouldn't hear the appeal.

b. Obscenity

Obscenity is defined under the Criminal Code as “any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence.” The definition and its application remain subject to interpretation. Its broad application by customs agents at the Canadian border spurred a long-running lawsuit by Vancouver-based Little Sisters book store, whose imports of gay literature were regularly seized or delayed at the border.

In 2000, the Supreme Court had ruled that it was up to Canada's customs agency (CCRA), and not the importer, to demonstrate that materials imported across the border were obscene. The decision forced the CCRA to create new guidelines and devise two tests to determine if materials entering through the border are, indeed, obscene. The first is a tolerance test, and is aimed at determining whether public opinion would perceive the material to be harmful to society. The second determines if the defense of artistic merit could be applied to the case. The guidelines direct staff to resolve in favour of freedom of expression should there be any doubt in the classification of the materials. The CCRA

also publishes a quarterly listing of materials seized and whether it was allowed or prohibited entry.

Access to appeals on arbitrary seizures of materials remains a challenge. In January 2007, Little Sisters was denied funding to prosecute its appeal against CCRA by the Supreme Court of Canada. The court ruled that Little Sisters could not get advance funding because its case wasn't in the public interest. PEN Canada denounced the inability of small enterprises to challenge the government's exercise of power on issues of obscenity.

Book banning by school boards reflect a high sensitivity of public institutions to public criticism, with free expression becoming a casualty. There appears to a lack of stated policy and capacity to respond to controversies, no matter how minor, over the content of media, particularly at the local level. Two Catholic school boards in Ontario banned books in 2006 and 2007, but while one school board returned the disputed book to its shelves, the other broadened the ban to include all of the author's books. In both cases, a single complaint sparked the removal of the books in question. The Halton Catholic School Board, which banned the books of Philip Pullman, a known atheist, argued that the books reflected a different value set than that professed by the school. This decision sets a dangerous precedent for limits to free expression on the basis of religious beliefs in a publicly-funded school environment.

c. National security

National security is becoming a more frequent reason for denying access to information and restricting free expression in Canada. Canada implemented anti-terrorism legislation which placed restrictions on information following the 2001 terrorist attacks on the United States. The Anti-Terrorist Act allows the Attorney General to issue secrecy certificates to prohibit the release of information considered essential for national security.

The Security of Information Act, enacted after the 2001 terror attacks, also has provisions to ban the dissemination and/or publication of secret information that is considered to be harmful for the country. The Act penalizes public servants or people who having access to secret information that leak information to third parties; but also people who, knowing that the information is restricted, keep it for private use or to confirm and communicate the information. Offences could entail a maximum penalty of 14 years in prison. One of the main criticisms made of this amendment is that it is a substantial deterrent to whistle blowers within the government and to journalists, since the penalties for leaking and disseminating confidential information are severe. This law was also used to arrest and charge an Environment Canada contractor for allegedly leaking a draft of the Conservative government's climate change plan to the media.

The Conservative minority government in 2006-07 sought to strengthen prosecutor and police powers in the Anti-Terrorism Act. However, opposition parties forced the government to abandon sections that would have forced individuals to appear before investigatory hearings and compel testimony and documentary evidence without the witness' ability to refuse to answer on the grounds of self-incrimination. Another

important section that was struck would have given the police the power to arrest individuals without a warrant or charges and detain them for up to 72 hours, if they believed a terrorist act was going to be committed. At the end of 72 hours, a ‘show cause’ hearing would have determined whether to release or further detain the person.

The Conservative government had a setback with the case of Juliet O’Neill, an investigative reporter for the *Ottawa Citizen*. The RCMP used this legislation in order to search the home of O’Neill in search of information about who in the RCMP leaked information to her about the Maher Arar rendition case. In 2006, the court struck down the part of the legislation used by the RCMP to get a warrant. The federal government decided against appealing the decision.

However, experts argue that the legislation is still being used as a tool by police and the courts to prosecute whistleblowers for leaking information. On January 18, 2008, a Montréal federal court ordered two journalists working for La Presse to identify the source of the leak of a classified document by the Canadian Security Intelligence Service (CSIS) that accused a Moroccan citizen, Adil Charkaoui, of being linked to terrorism. The court made the order at Charkaoui’s request, who was arrested in May 2003 on suspicion of being a terrorist. He had received little evidence from the government and is trying to learn how he became a terrorist suspect. A court ordered his conditional release in 2005.

Structure of Ownership in the Media Sector

a. Media concentration

In September 2007, the Canadian parliament held hearings on the concentration of the media, which has been an issue of public debate since the Fifties. Concerns range from media owners monopolizing TV, radio and newspapers in local markets to multi-media convergence, which provides owners with a disproportionate influence to the reduction of the number of reporters on the ground and increased reliance on generic newswire stories that don’t reflect Canada’s regional and ethnic diversity.

b. Editorial lines

Concerns about editorial lines are often connected to the ownership debate. However, editorial lines or ‘what should be written’ also apply to trade publications. In February 2006, the two top editors of the *Canadian Medical Association Journal* were fired by the publisher without cause. In protest, 14 of the remaining editorial staff resigned, alleging that the journal’s editorial independence appeared to be compromised, possibly affecting the integrity of its scientific content. The CMA accepted all of the resignations and recruited a new editorial team. The fired editor-in-chief went on to found a free online journal, *Open Medicine*. The firings raised concerns in the trade publications industry that publishers may value editorial independence less than they value employee obedience.

Exercise of Freedom of Expression of journalists, artists and demonstrators

Journalists, artists and demonstrators, due to the nature of their activities, often are the first to encounter challenges to free expression in Canada. These challenges include journalists' right to protect their sources, to work free from the threat of violence, to access public documents and proceedings. For artists, most recently it has been government restrictions on funding films. For demonstrators, arbitrary arrest, surveillance and infiltration appear to have intensified in Canada since the Summit of the Americas in Quebec City.

a. Journalists

Journalists continue to face challenges from the government on the confidentiality of sources across the country. Journalists argue that being able to protect their sources enables them to gather news that would not be available otherwise. By granting police and the government access to their notes, for example, journalists would become arms of the state. Despite multiple rulings by the courts against police attempts to seize reporters' notes and court subpoenas, new attempts to do so continue, reflecting a low awareness among the authorities of the rights and responsibilities of journalists.

In 2007, the Quebec Labour Relations Board quashed an order that *Le Journal de Québec* reporter who reported on asbestos in public buildings would be forced to hand over her notes. However, one of her sources was identified and fired for speaking out, raising the issue of the need for whistleblower protection.

Violence: Threats to free expression in Canada have also come from abroad. In April 2007, *The Pakistan Post* journalist Jawaad Faizi was attacked by two men wielding a cricket bat. The reporter and his editor had received threats in January 2007 for writing critically about Islam and a religious organization in Pakistan called Idara Minhaj-ul-Quran. They had reported the threats to the police.

Defamation: A November 2007 ruling by an Ontario Court of Appeal overturned the conviction of *The Ottawa Citizen* for defamation for running a story that suggested a police officer acted improperly. The judge panel ruled that media who report a story within the standards of responsible journalism, even if it gets some of the facts wrong, has a defense against defamation suits due to the public need to know.

Court restrictions: Journalists continue to contest court-imposed publication bans on high profile cases, arguing that disclosure of the information would be in the public interest. In March 2008, the CBC, CTV, *Toronto Star*, and Associated Press appealed a court-ordered news blackout over the bail hearings of 17 people arrested on allegations of terrorism in 2006. In Alberta, the government is appealing a ruling won by The Edmonton Journal that allowed it to publish details of a domestic abuse and murder case revealed at a bail hearing. The judge ruled the publication ban unconstitutional and said that automatic publication bans allowing the accused to remain anonymous during their trial unfairly limited press freedom. In British Columbia, *The Vancouver Sun* and *The Province* newspapers along with Global TV are fighting a publication ban covering the

trial of Hells Angels members. The media outlets involved consider it a test case that could determine whether membership in the motorcycle club is a criminal offence. *The Vancouver Sun* and *Victoria Times Colonist* are also trying to secure access to search warrants used by police in 2004 to raid the offices in the BC legislature.

b. Support for Artistic Expression

The Canadian government introduced a clause in Bill C-10 that it said would prevent taxpayers from funding the production of films with violence or sexual exploitation. However, the artistic community, PEN Canada and the Canadian Civil Liberties Association expressed their concern that the government would use the clause to choose which films it provides tax credits to, based on its contents. “The idea that a government should be able retroactively to deny tax-credit status to a film because of its content is contrary to public policy is a dangerous intrusion upon freedom of expression,” said PEN Canada in its presentation to a Senate of Canada committee hearing. PEN Canada considered that the government had no guidelines and that the interpretation of the legislation would be vague, subjective and “at the whim of the politicians and bureaucrats who administer them.” The government, in turn, has said it would write guidelines once the legislation was passed.

c. Right to assemble, demonstrate

Protesters continue to face challenges in their ability to demonstrate freely and express their dissent in Canada. Police have sought to increase their ability to control and contain protests, particularly in major cities and during major events such as international summits.

The use of arbitrary arrest at protests or pre-emptive arrests of protest leaders before they even arrive at demonstrations have increased. The effect of such arrests often is to intimidate protesters and reduce the effectiveness of the protest. The tactic of mass arrests in Montreal attracted attention from the United Nations Human Rights Committee in 2005 and prompted a judge in 2007 to acquit 193 people arrested at a protest in 2004. The development of protest medical teams and the broad distribution of “know your rights” leaflets and legal aid forms to demonstrators are responses to the increase in numbers of arrests and increasingly frequent violent police responses. Most recently, 19 students at University of British Columbia have alleged their arrest involved “excessive force” at a protest against commercial development on campus. Another method of control and intimidation is the broad use of police surveillance crews that video-tape and photograph demonstrators who are not breaking the law. There appear to be no clear lines of accountability for the use of these materials.

The infiltration of police agents among protesters is an alarming tactic that has outraged demonstrators. At least three Sûreté du Québec officers infiltrated demonstrations outside the tri-partite Canada-Mexico-United States leaders meeting in Montebello, dressed in black with their faces covered in bandannas, one of them carrying a rock while confronting police lines. Protest organizers denounced the infiltration of these officers as agent provocateurs to provoke violence and de-legitimize the protesters’ message. The Quebec police chief said the officers were undercover to identify “violent” protesters and

protect the “peaceful” protesters. This division of protesters into violent and peaceful categories by police and the media is cause for considerable debate about the legitimacy of protest. The Communications, Energy and Paperworkers Union of Canada filed a formal complaint with the police ethics commissioner on April 11, 2008. Opposition politicians also demanded a formal inquiry into the affair. Critics say that inserting undercover police into demonstrations is a disproportionate tactic to the minimal threat protesters pose and an attack on their right to democratic assembly and free expression.

The Impact of Education and Information Technologies

Canada has developed a variety of technical responses and strategies to ensuring people have access to the tools of free expression. SchoolNet, LibraryNet, and Community Access Program, in addition to local and provincial initiatives, provided ready access to education in person or long distance as well as Internet access for people. These programs attempted to reach out to aboriginal peoples and marginalized or minority groups, which still lag behind in terms of access to education and Internet. It is unclear what impact the closure of the SchoolNet program in 2007 will have on access by people to education and ICTs. The Community Access Program was renewed for 2007-08.

Noteworthy updates in Freedom of Expression from 2008

On January 15, 2008, the Canadian Radio-television and Telecommunications Commission (CRTC) introduced new ownership guidelines that it intends “to ensure that a diversity of voices is maintained in the Canadian broadcasting system.” The CRTC introduced new restrictions on ownership. A person or company can only own two of the following types of private media outlets in each locality: a radio, TV or newspaper. CRTC also approved the Canadian Broadcast Standards Council’s Journalistic Independence Code, which includes journalists on its complaint panels. In response to the trend toward media mergers, the CRTC also set an ownership limit of 45 per cent for the total television audience and prohibited any transaction that would have one person controlling all companies that distribute television programming. The effectiveness of these new regulations in terms of guarding free expression in the media has yet to be evaluated.

The courts have affirmed the right of journalists to protect sources over the last two years. On March 17, 2008, *Hamilton Spectator* journalist Ken Peters won an appeal against his 2004 conviction of being in contempt of court for refusing to reveal his source on a story about problems at a nursing home. The ruling lifted a \$31,600 fine and reinforced the legal right of journalists to protect their sources. The Crown had requested that the judges not refer to the Charter of Rights and Freedoms in making their ruling, but they rejected that request. In February 2008, a similar case, supported by a subpoena for a journalists’ notes, was negotiated into a compromise in which the journalists testified, but did not have to identify his sources.

Proposals for strengthening the right of Freedom of Expression

The following are recommendations and proposals generated in working group discussions held with FOCAL in May 2008.

At this time there is no standard in the Canadian government about how to classify information; a Secret classification for one department may not be the same classification for another.

D. Strengthening Civil Society Participation

Commitments from the Quebec City plan of action

The Quebec Plan of Action establishes commitments for the strengthening of civil society's participation in national and hemispheric processes, specifically:

“The creation of public and private financing mechanisms to help strengthen the capacity of civil society organizations (CSOs) to publicize their work and its results, as well as to promote social responsibility;”

“The promotion of the participation of all minority groups in the creation of a stronger civil society;” and

“The development of educational programs, in cooperation with the relevant civil society organizations, academic experts and other appropriate sources, to educate the public in the areas of democracy and human rights.”⁴⁸

The history of civil society participation in Canada is a long and relatively positive one. The one constant is that the influence of CSOs in the decision-making process of local governments has remained fairly significant depending on the issue and on the level of involvement of the organization in the issue at hand. However in the last few years, government leadership changes and funding issues have been responsible for a newfound uneasiness and made room for feelings of instability.

Unexpected changes in government priorities and decisions can make organizations vulnerable and undermine their long-term viability. The biggest concern for Canadian CSOs is about maintaining government support and finding a way to deal with the restrictions that accompanies government funding.⁴⁹

Restrictions on advocacy activities for charities continue to be vague and need to be made clearer and more flexible. For some organizations, government imposes policies that make it difficult for them to deliver on their missions. For example, some need to advocate with government for support, but lobbying is restricted so that it can only comprise 10 per cent of their organizations' activities. Governments may impose limitations on the revenue the sector can generate.

There is some concern that the Canadian government is not developing policies on issues such as human rights or social enterprise and there is also talk of a lack of a regulatory

⁴⁸ Quebec City Plan of Action.

⁴⁹ *Imagine Canada: Leadership Perspectives: Interviews with leaders of Canada's charities and nonprofit organizations* (2007).

framework or even relevant funding or program categories that guide or support this type of organization. Funding and reporting on funding appears to be one of the biggest obstacles for Canadian CSOs and there doesn't appear to be a reprieve in sight.

National government-CSOs relations

Findings from Status of Women

The 2007 Budget increased the Women's Program budget to \$20 million.⁵⁰ Over the next year, the government will build on this achievement through the development of an Action Plan to advance the equality of women across Canada through the improvement of their economic and social conditions and their participation in democratic life.

Women's Partnership Fund

One agency which is a recipient of government funding, Status of Women Canada (SWC, the government agency in charge of the promotion of women) has seen budgetary fluctuations in the last two years, losing a large proportion of its operating budget (which forced it to close 12 of its 16 offices across the country) but received a very large injection of cash for grants and programs ran by third parties (including women's rights organizations). It is difficult to evaluate if information about issues like birth control or violence against women is better provided by a network of government centres or by non-governmental partners, but developments in the last two years point to a preference for the latter.

The Women's Partnership Fund is a fund of \$3.7 million for contributions to collaborative projects that involve non-governmental organizations in partnership with public institutions and other levels of government. The objective of this component is: to build partnerships between Status of Women Canada, eligible non-governmental organizations and public institutions to address the economic and social situation of women and their participation in democratic life. However, given the 10per cent rule mentioned above, women's groups are finding it increasingly difficult to access this new pot of money. A significant number of women focused NGOs have lost funding and been forced to close down.

Resources and Social Development Canada (HRSDC)

The Department of Human Resources and Social Development Canada (HRSDC) was created on February 6, 2006, through the consolidation of the former Departments of Human Resources and Skills Development and Social Development. HRSDC supports community-based efforts to improve the lives of Canadians by assisting communities, institutions and networks to identify their particular needs and challenges.

Laws that strengthen or weaken civil society participation

⁵⁰ Status of Women Canada: http://www.swc-cfc.gc.ca/funding/wp/wpguide_e.html

Indian and Northern Affairs Canada (INAC)

On November 1, 2007 the government of Canada launched an action plan to address the legal duty of federal departments and agencies to properly consult with First Nation, Métis and Inuit groups when Crown conduct may adversely impact established or potential Aboriginal and Treaty rights. The legal duty to consult could be triggered by a federal approval, license, permit or by any large or small size project or activity that could adversely impact, established or potential Aboriginal and Treaty rights.⁵¹

A federal interdepartmental team will implement the new action plan and ensure that:

- Federal officials receive interim consultation guidelines and related training;
- Federal officials begin monitoring and improving the coordination of consultation and accommodation practices across departments;
- A repository of information is created to track the location and nature of Canada's established and potential Aboriginal and Treaty rights; and
- First Nations, Métis and Inuit groups, as well as provinces, territories and industry groups are engaged in the development of a policy on consultation and accommodation beginning in winter 2008.

Canada Revenue Agency (CRA)

The Canada Revenue Agency has issued new policy statements since the Quebec City Plan of Action in 2001. These new policies will allow more NGOs to use the 'Charitable organization' label.

Policy Statement (CSP - E11 June 30, 2005)

“Organizations that provide assistance to an ethno cultural community or communities, or that educate the public about a particular culture, can qualify for registration as a charity. These organizations can qualify under any of the four recognized categories of charitable purposes.”

“It may be acceptable for these organizations to limit services to a particular ethno cultural or grouping of ethno cultural communities. However, under the category of charitable purposes known as "other purposes beneficial to the community", an organization can only restrict access to its programs or services to a specific group if the reasons for doing so are justified by the purposes.”⁵²

Policy Statement (CSP - V02 May 6, 2008)

“Organizations established to promote volunteerism in the community-at-large through broad-based activities can qualify for registration as a charity under the following

⁵¹ Indian and northern Affairs Canada: <http://www.ainc-inac.gc.ca/nr/prs/s-d2007/2-2948-eng.asp>

⁵² Canada Revenue Agency “Registering a Charity for Income Tax Purposes” Government of Canada, T4063(E) Rev. 01

category of charitable purposes: other purposes beneficial to the community in the way the law regards as charitable.”⁵³

The Council of Canadians with disabilities

The 2007 budget included a new emphasis on Canadians with disabilities, something Canadians had not seen in over 10 years. The budget included the following changes which are of interest to the civil society community:⁵⁴

- A Disability Savings Plan is an initiative to assist families which have children with a severe disability save for the long term financial security of their children.
- A Mental Health Commission: “with \$10 million over the next two years and \$15 million per year starting in 2009-10. This commission will lead the development of a national mental health strategy”.
- A Working Income Tax Benefit Entitlement for low income Canadians with an additional supplement for persons with disabilities.
- An Enabling Accessibility Fund of \$45 million over three years to “contribute to the capital costs of construction and renovation related to physical accessibility for persons with disabilities.”
- Canadians with Disabilities Celebrate the Coming into Force of the Convention on the Rights of Persons with Disabilities (May 12, 2008)

Civil Society's Participation in the Summit of the Americas Process

Several events held before the Summit in Mar del Plata, Argentina in 2005 provided opportunities for experts, civil society and government representatives to discuss key issues related to the Summit.

Through the Canadian International Development Agency (CIDA), the Government of Canada supports the participation of civil society organizations in the Summit process. Various organizations such as Rights & Democracy, the Assembly of First Nations’ Women’s Council, the Canadian Centre for International Studies and Cooperation, the Canadian Foundation for the Americas (FOCAL) and several other groups have been heard in some of these forums.

In addition, Foreign Affairs Canada (FAC) publishes a newsletter to reach out to CSOs and Canadians and inform them on the Summit progress. As well, DFAIT organizes round tables that allow civil society organizations to take part and share information regarding the preparations and government positions on the issues going into the Summit.⁵⁵

Proposals for strengthening Canadian CSOs’ participation in national affairs and in the Inter-American system

⁵³ Ibid.

⁵⁴ Council of Canadians with Disabilities <http://www.ccdonline.ca/about-us/annual-reports/2007.html>

⁵⁵ Canadian International Development Agency:
<http://www.acdi-cida.gc.ca/CIDAWEB/acdicida.nsf/En/NIC-43142214-PJX#2>

The following are recommendations and proposals generated in working group discussions held with FOCAL in May 2008.

- Barriers with regards to the percentage of work that can be advocacy needs to be removed. The funding for women's organizations is there, but CSOs cannot access it because they do not meet the criteria.
- There must be a mechanism implemented throughout the hemisphere with respect to funding.
- Currently there is no feedback/communication process between the Canadian Government and CSOs to see where/how money is being spent.
- The reporting process needs to be simplified. Results need to be measurable but the Results Based Management structure is not the most efficient way to measure results.
- Increasing funding is not the only solution to some of the more pressing issues, increasing and bettering communication strategies between the Canadian Government and CSOs would help the relationship.
- More important than funding is for the Government to help provide networking connections to private industry. Municipal government has a role to play in this networking.
- Using the web as a means of communications: E-discussion between Government departments such as DFAIT and CSOs is currently underused and not very well advertised. The use technology to reach out and disseminate info and diversify the reach.
- Consultations: Currently there are only pre General Assembly discussions between Government and CSOs. Adding post general assembly consultations would help keep everyone informed.
- Canada has a strong CSO community and relatively good relations between Government and CSOs. Canada's successes should be disseminated to other countries in the hemisphere.

V. Conclusion & Recommendations

Add summary here...

With the completion of this national report, FOCAL will begin the next phase of this project, which is to found a National Alliance ...

Recommendations

Overall

- any overall recommendations about whether Canada is complying or not with its Summits commitments?

Access to information

The Canadian government has not extended access to information regulation to private companies that receive public funding or deliver public services. This idea was featured as a Parliamentary Task Force recommendation and should continue to be considered for adoption. In addition, there continue to be costs associated with accessing public information, which could present a barrier. Currently, there is no public interest clause targeting these costs although the Office of the Information Commissioner has endorsed changes in this area. Finally, the closure of the SchoolNet program raises concerns about access to information by marginalized communities in Canada.

Freedom of Expression

While a solid legal framework exists to protect free expression and delineate its limits, there is considerable debate about the fringes of these limits. This debate include new concerns about the use of human rights legislation and enforcing institutions as tools of censorship. The Canadian government has also sought to tighten control over information using the vehicle of additional anti-terrorism legislation. Journalists continue to struggle to protect their sources and their reputation as independent agents, apart from the state. Artists face a complex dilemma to work out when considering government sources of support for potentially controversial topics. Protesters complain about the threats of intimidation, arrest, surveillance and infiltration. In short, free expression remains a contested right within the Canadian context.

Decentralization, Provincial and Municipal Government

Few notable changes have occurred over 2006-2007. One that stands out is in the area of infrastructure development. The present administration has put forth a “Building Canada Plan” for 2007-2014 that commits 33 billion dollars to infrastructural development in cities and municipalities. The plan will primarily be financed by a municipal GST rebate, among other measures. As a sign of progress in adopting information and communications technology for more efficient local governance, most cities and municipalities have a website, with the standard “Who we are,” “Services” and “Get involved” buttons.

Civil Society Participation in Governance

Canada has a long and rich history of civil society participation. However, in the past few years many are paying heed to the vulnerability of civil society organizations and programming to changes in government priorities and changes in policies affecting funding. The perception of the government’s continued vagueness with respect to restrictions on advocacy activities for charities has created some backlash from civil society groups.

Another significant change is with respect to the federal department for the Status of Women , which has undergone drastic changes in the last two years including a 2006 change in its mandate to stop providing funding to advocacy organizations. A new fund was created under the Women’s Program to foster partnerships between public institutions and women’s organizations, but CSOs that conduct a certain level of advocacy lost significant portions of their funding.

APPENDICES

APPENDIX I: Basic Canada adaptation of the methodology steps (January- July, 2008)

1. Establishment of National Research Team. Basic requirements were previous social sciences research experience as well as work with a gender perspective.
2. In Canada, the research team developed a list of observable activities of relevance to developments in the thematic areas in Canada over the research period (January 2006-December 2007), and proceeded to conduct background research on observable activities by consulting official documents and other sources of information.
3. Parallel to this process, the research team sought to conduct primary research on the observable activities by sending requests for interviews and information by e-mail and phone to officials in government agencies with pertinent jurisdiction regarding the activities that it had carried out in the 4 EGCI research areas. (At least 11 government officials contacted between March-April 2008).
4. Establishment of a Panel of Experts in each subject area. It was required that they regularly participate in discussions, seminars, studies and legal debates, as well as have published work related to the formulation, implementation and evaluation of public policies in the research areas. Close to 300 experts and/or representatives of civil society organizations and research centers in Canada were contacted regarding the formation of 4 experts panel, with a goal of a minimum of 6 people represented on each panel. Ultimately the participation rate was less than ideal, an experience that was a common challenge for many participating country teams, and one Canada panel had only 5 experts (local government and decentralization), while two panels were combined given that the subject matters shared many reference points (access to information and freedom of expression) to have a combined total of 6 experts.
5. FOCAL briefed the government office in charge of the follow-up of the Summits process of focus and progress of research.
6. Ranking of the activities by the Panels of Evaluators in each of the 4 areas. These panels included both experts and representatives of civil society organizations and research centers and academics. At a symposium held in May 2008, the evaluators completed two forms. The first regarding their perception as to whether the activities carried out by the government were oriented to fulfilling the mandates or not. This opinion was also expressed on a scale of whether this fulfillment or lack thereof was a lot, average or little.

The second sheet was for the general ranking. In this one they evaluated the degree to which the government's actions represented progress or setbacks for the fulfillment of the general principles agreed to in the Summits mandates. The score ranged from + 3 to - 3. The positive numbers (+) indicate a perception of progress in the fulfillment of

commitments. The negative numbers (-) indicate a perception of difficulties or setbacks. The 0 shows that there was no progress or setbacks of any kind regarding the mandates.

7. Systematization of the information. The Canada research team collected the scoring sheets from the evaluators and sent them to the Hemispheric Coordinator to complete the EGCI calculations. (June, 2008)

9. First draft Active Democracy Canada Report (narrative) sent to Hemispheric Coordination.(July, 2008)

8. Building of the EGCI. In Chile, the methodology expert Rodrigo Márquez, hired by the project to design the EGCI, calculated the EGCI on the basis of the questionnaires received from the 21 countries. This Index was constructed by taking an average score for each subject by country (as a function of the scores of each evaluator), and then forming an aggregate score of the information collected.

Mr. Márquez provided the Hemispheric Coordination with the results of the global EGCI, by subject and by country. This information was sent to each national research team, in order for them to prepare their National Reports. The Hemispheric Coordinator was responsible for drawing-up the Hemispheric Report with the global EGCI results.

APPENDIX II: Observable Activities for each Thematic Component and Sub-component Researched in Canada.

For the purpose of evaluation, each thematic area has been divided down into components sub-themes, in order to better identify the many aspects included in the theme. In turn, each component sub-theme is divided (if applicable) into sub-components. Progress in each of the components and sub-components is evaluated by researching developments with respect to different observable activities carried out by governments,⁵⁶ or not, with regard to the theme in question over the period January 1, 2006-December 30, 2007. An “observable activity” needs to be specific, observable and subject to evaluation by external actors. Likewise, when possible, information is gathered that includes a gender perspective.

The following chart shows all the components, sub-components, and observable activities evaluated for each theme in Canada. The list of observable activities was drawn from a larger universe of potential observable activities provided in the project’s methodology manual.

Theme No. 1: Decentralization and local governments

Thematic Component:

1. Strengthening of regional–local democracy

Thematic Sub-component:

1.1. Promote democracy and autonomy in decision-making of sub-national governments.

Observable Activities:

The government:

- Passes laws that improve legal and institutional frameworks for regional-local democracy and its autonomy in decision-making in relation to the national government. Some examples are laws that:
- Regulates the direct election of representatives at the regional level.
- Limits the number of times someone can be re-elected to a sub-national post.
- Assists the enrollment of citizens in the electoral rolls, especially peasant women, indigenous people, Afro-Americans and migrants.
- Assists the recruitment of independent candidates or those supported by civil organizations.
- Broadens the framework of roles carried out by sub-national governments, especially in decisions connected to territorial development and environmental conservation.
- Endows regional-local authorities with the general right to take their own initiative with regard to any subject, as long as this is not an exclusive role of another authority or is specifically excluded from local competence.
- Endows regional-local governments with the administrative capacity necessary to carry out their responsibilities.

⁵⁶ When the word “government” is used without an adjective, it is intended to refer to actions undertaken by national governments to implement the agreements of the Summits. “Local governments” refers to municipal governments.

- Guarantees that sub-national governments will receive adequate financial resources, different from those allotted to other levels of government. .
- Endows regional-local authorities with decision-making power regarding internal administrative structures, so that this may be adapted to regional-local needs and ensure effective administration
- Expressly points out that accountability measures and supervision of local authorities must be established solely by the constitution or by law.

Thematic Sub-component:

1.2. Strengthen citizens’ participation in local politics.

Observable Activities:

The government:

- Passes a law that updates the legal framework of citizens’ participation, establishing mechanisms that reinforce its scope and effectiveness.
- For example, such a law might:
 - Create new possibilities for citizens’ participation in the diagnosis of issues and problems, formulation of policies and decision-making; these might include consultative councils, participative budgets, deliberative polls, citizen juries, local tele-democracy or electronic government.
 - Creates mechanisms that increase citizen power and accountability of authorities such as requests for referendums, action of compliance with the laws and administrative acts, citizen inspectors, public accounts, publication of audits, websites with information of the management and use of public resources, public purchases and contracts, permanent staff, declaration of assets by politicians, authorities and high public officials.
 - Promotes the participation of women and organizations that work towards the advancement of women’s rights, especially peasant, indigenous and migrant women, as well as those of African descent.
 - Ensures that processes for establishing ministries and national public services budgets include methodologies of participation with gender equity in order to give priority to resources, goods and services to be assigned to each territory. Information is also incorporated to promote gender equity in budget allocations and mechanisms that ensure the participation of organizations working for human rights for women, especially peasant, indigenous and migrant women, as well as those of African descent.
 - Promotes campaigns of an informative and educational kind that encourage citizen organizations to participate in local political life, explaining the mechanisms available for citizen participation, showing their results and promoting citizens’ values, such as volunteering.

Thematic Sub-component

1.3. Strengthen dialogue and consensus-building for regional-local development.

Observable Activities:

The government:

- Creates and/or implements different public-private mechanisms for dialogue and agreements between sub-national governments and CSOs, such as forums, corporations, development agencies or socio-economic councils.
- Through the budget of certain ministries and/or public services, assigns funds for financing public-private initiatives at the sub-national level. Allotment of
- government funds takes into account criteria related to gender equity and women's human rights.
- Cooperates with the media in order to disseminate information, organize meetings, reports and programs dedicated to social dialogue and consensus-building.
- Reaches agreements with regional universities for the development of studies and meetings that strengthen social dialogue.

Thematic Sub-component:

1.4. Support for national and regional associations of sub-national governments

Observable Activities:

The government:

- Passes laws that enable the creation of associations of sub-national governments and define mechanisms for their organization as well as their financial support.
- Gives technical and financial backing to the functioning of a public information system that promotes coordination and/or joint enterprise activities between regional and local government organizations.
- Allocates resources through ministries and/or national public service budgets to finance programs or initiatives for training authorities and employees at sub-national levels in the design and implementation of co-operative programs.
- Ensures ministries and national public service budgets include resources for developing agreements with sub-national governments.

Thematic Sub-component:

1.5. Strengthening of women's participation in political institutions at the regional-local level

Observable Activities:

National, regional and local governments promote the use of quotas for women's participation in public institutions and political parties, and control their implementation so as to guarantee that women are included in political institutions at regional-local levels, especially peasant, indigenous and migrant women, as well as those of African descent.

The government:

- Has a policy of gender equality that considers different mechanisms for facilitating access to public posts by popular election as well as programs that
- promote women leaders at the regional-local level, including the financing of local offices, meetings, publications, and training.

- Has passed a law of gender equality or equal participation that aims at increasing the proportion of women employed by regional governments, in all of the following categories: professional, technical, administrative and general services.
- Has a policy of gender equality that promotes different mechanisms to facilitate women's access to public posts, among which are:
 - Ensuring the short lists for interviews for posts include at least one woman.
 - Ensuring that the requirements of women workers, such as day care centres and flexible work hours, are taken into account in all competitions for public posts at the regional-local levels.

Thematic Component:

2. Modernization and improvement of regional–local public management

Thematic Sub-component:

2.1. Qualitative transformation of public administration: modernization, simplification and transparency

Observable Activities

The government:

- Supports the improvement of management of sub-national governments by transferring financial resources for initiatives that promote non-discrimination and gender equality.
- Simplification of financial procedures and incorporation of technology for financial management.
- Improved access to public services, through information and claims offices, single windows, use of the Internet or better territorial coverage.
- Transfer of services to sub-national levels.
- Transparency in the use of resources, especially in public purchases and contracts.
- Auditing, public accounts and accountability.

1 Public competitions and professionalization of executive posts.

Provides information on the Internet about the process of public modernization.

Has introduced legislation to promote transparency in the actions of sub-national administrations.

Incorporates gender perspective in its management of public accounts.

Ensures its ministries carry out an annual public consultation about their management with a representative group of their clients, and that they take note of their clients' suggestions and recommendations.

Ensures its ministries publish public accounts of their management in written and electronic media, including their clients' evaluations.

Thematic Sub-component

2.2. Technical and methodological support to improve the quality of decentralization processes

Observable Activities

The government:

Measures and monitors the quality of regional and local management on the basis of objective indicators, and uses sub-national organizations to compare their management.

Has, in the ministry in charge of decentralization, a program for technical support for the strategic and methodological aspects of decentralized management of territory in sub-national governments.

Publishes and disseminates evaluative studies of the application of methodologies of decentralized management of territory in sub-national governments.

Provides technical and methodological support to incorporate gender perspective in the processes of decentralization.

Thematic Sub-component

2.3. Promotion of professionalization of sub-national government employees

Observable Activities

The government:

Passes a law that regulates the civil service of the sub-national governments in which issues linked to plants, career and professionalization of employees.

Has a public service board or directorate that promotes the professionalization of the public sector in sub-national governments.

Supports through its ministries the design and application of human resources policies for sub-national governments.

Respects gender equity in its training programs.

Thematic Sub-component

2.4. Gender equality and modernization of the state

Observable Activities

The government:

Formulates and applies regulations and protocols to prevent and punish violence against women in the workplace, as well as policies for eradicating discrimination against women.

Incorporates social rights of women in the work environment. Examples of these rights are: freedom from violence, social security and protection of health without discrimination, equal pay for equal work.

Recognizes and values women's work (domestic work, baby-care, among others) and ensures it is remunerated with dignity.

Formulates and applies laws, regulations and protocols to promote gender equity in the contracting of employees and public employees.

Thematic Component:

3. Transfer of competencies from national level to regional-local level

Thematic Sub-component:

3.1. Transfer of responsibilities

Observable Activities:

The government:

Passes a law that regulates the transfer of national public services to sub-national governments.

Transfers relevant services from national ministries to regional or local governments when requested.

Thematic Sub-component:

3.2. Transfer of financial resources

Observable Activities:

The government:

Increases the transfer of responsibility for decision-making about financial resources from national level to regional or local levels, while ensuring gender equality in decision-making.

Awards different financial incentives to sub-national governments that demonstrate their compliance with established managerial standards, particularly gender equality.

Thematic Sub-component

3.3. Transfer of technical capacities.

Observable Activities

The national budget incorporates programs that finance the strengthening of technical capacities of sub-national government employees, taking into account training, technical assistance, studies, methodologies and/or strategies.

The government:

Promotes the strengthening of the technical capacity of female officials and employees of regional and local governments.

Promotes the strengthening of the technical capacity of officials and employees to incorporate gender perspective in the design, planning, financing, implementation and evaluation of public policies.

The ministries and national public services transfer to sub-national governments the design and execution of public programs in order to make adjustments to the realities of each sub-national territory.

Thematic Sub-component

3.4. Decentralization of policies concerning rights of women.

Observable Activities:

The government:

Carries out an evaluation with a gender perspective, with the participation of local and national organizations that work for the advancement of women's rights (especially peasant, indigenous and migrant women, as well as those of African descent), before transferring competencies from the national level to the regional or local level, including:

- 1 Police or security forces (municipal police).
- 2 Judicial competencies (local family courts).
- 3 Sexual and reproductive health policy (e.g. free birth control provided by the municipality).
- 4 Social programs.

Thematic Component

4. Financing of regional-local administration

Thematic Sub-component

4.1. Strengthening of financial administration

Observable Activities

The government:

Applies a public program directed towards uniformity in the presentation of information about public finances and the establishment of improved budget practices.

Develops a system for measuring the efficiency and quality of spending and public investment of regional and local governments. This system pays particular attention to spending in relation to peasant, indigenous, migrant women and those of African descent.

Thematic Sub-component

4.2. Fiscal strengthening

Observable Activities

The government:

Has passed a law that punishes the evasion of local taxes and provides adequate mechanisms for collaboration between national and local fiscal authorities

Establishes a program that supports the improvement of local governments' capacity for self-financing and collection.

Has carried out studies that analyze the indicators of sub-national government participation in the generation and assignation of income from each governmental level.

Thematic Sub-component

4.3. Gender and financing of regional-local administration

Observable Activities

The government:

Incorporates gender perspective in the design, production, application and evaluation of the budget and fiscal policy.

Includes the participation of women (especially rural women) in the design, production, application and evaluation of the budget and fiscal policy.

Ensures gender equality in decentralization by transferring the necessary financial resources to implement policies as well as measures that guarantee equality and facilitate the control of public spending.

Thematic Component

5. Respect and valuation of regional-local cultural diversity

Thematic Sub-component

5.1. Respect for the cultural diversity of each sub-national territory

Observable Activities

The government:

Has passed a law, written regulations or instructions that punish discrimination in all of its manifestations, especially regarding access to public or private employment, elected posts or teaching establishments.

Includes in its educational policies and learning materials, contents connected to respect for cultural diversity, as well as gender equality as a factor of cohesion and development.

Thematic Sub-component

5.2. Support for conservation of regional-local cultural heritage

Observable Activities

The government:

Applies a policy that demands from the public sector respect and valuation of heritage elements of the local culture in the design, localization and execution of investment projects with a high impact on local territory.

Thematic Sub-component

5.3. Support for regional-local cultural expressions

Observable Activities

The government:

Passes a law that facilitates the creation of civil society organizations dedicated to promoting cultural diversity and respect for minorities.

Applies a program that collaborates in the financing of cultural initiatives of regional and local governments, especially those that have been produced with citizen participation,

and which rescue, restore or re-value local identity and heritage and/or contribute to the development of local artists, and the production and distribution of their work.

Thematic Sub-component

5.4. Gender and cultural diversity

Observable Activities

The government:

Recognizes the intrinsic value of women's culture. It promotes through concrete measures the valuation of and respect for the diversity and cultural heritage of women, especially peasant, indigenous, migrant women and those of African descent, at a regional-local level. Examples are:

- 1 Promotion of cultural expressions of women through research, investment and protection measures.
- 2 Quotas for the assignation of resources and spaces for cultural activities.

Thematic Component

6. Electronic government and access to information and communications technologies (ICTs) at the regional-local level

Thematic Sub-component

6.1. Development of connectivity and access to ICTs

Observable Activities

The government has:

A policy that provides facilities for access to and financing of broadband connectivity and/or equips sub-national organisms and public services with computers

A financial program for the functioning of free Internet access centers in territories with difficult access and/or low-income populations.

Thematic Sub-component

6.2. Support for the development of electronic government at the regional-local level

Observable Activities

The government:

Establishes a program that finances training of employees in the use of ICTs at the regional and local level.

Has available an information system directed to employees –or to which they have access- at the regional and local levels to promote as well as train them in the use of ICTs.

Has produced a policy to promote electronic government at the regional and local levels, which includes the following initiatives, among others:

- 1 Diagnosis of accessibility of ICTs at regional and local level.
- 2 Identification and formulation of projects directed to developing ICTs.
- 3 Transfer of lessons learned, improved practices and knowledge.
- 4 Training in management capacity for promotion and development of ICTs.

Thematic Sub-component

6.3. Promotion of public-private cooperation for access to ICTs

Observable Activities

The government:

Has passed a law that facilitates cooperation between the different public and private sector organisms involved in promoting the use of ICTs.

Has signed agreements with the private sector to facilitate access to financing of broadband service as well as connectivity for community and educational centers.

Applies a program that awards financial and/or technological assistance to promote the creation of user networks and websites by local communities.

Develops a policy that awards incentives to the private sector for broadening the telecommunications infrastructure and providing services to non-profitable locations.

Thematic Sub-component

6.4. Gender and ICTs in the regional- local environment

Observable Activities

The government:

Provides training in programs and projects to improve women's access to ICTs, especially women with low incomes and from rural sectors.

Incorporates the gender perspective in all stages of ICT projects,

Theme No. 2: Access to public information

Thematic Component

1. Legislation on freedom of access to information and other norms

Thematic Sub-component

1.1. Concrete actions that imply progress in matters of legislation on access to information

Observable Activities

The government has promoted progress through:

- 1 The constitutional recognition of the right of access and the elimination of restrictions.
- 2 Its approach to public organisms that have an obligation to publish information
- 3 Its recognition of the right of anyone to request information from the state.
- 4 The application of legislation to the Executive, Legislative and Judicial branches.
- 5 The obligation to provide information about private companies which offer public services.
- 6 Limiting the exceptions to providing information.
- 7 Eliminating the need to justify a request for information.
- 8 Reduction of the time in which the state can reply to requests for information.
- 9 The possibilities of effective access to justice when the State refuses access to the information required without good reason.
- 10 Establishing clear responsibilities and sanctions for an employee who refuses access to information without good reason.
- 11 The elimination of laws that are inconsistent with the principle of maximum access to information and with the state's international commitments.
- 12 The recognition of "Habeas Data" in legislation.

Thematic Sub-component

1.2. Removal of legal barriers and incorporation of measures that promote access to information about women and women's rights

Observable Activities

The government has promoted progress through:

- 1 Legislation that could improve access to information in matters that affect women particularly, such as birth control and violence against women.
- 2 Legal norms eliminating restrictions, both formal and those which occur in practice, on access by women to all kinds of public information.
- 3 Laws on encouraging and promoting access by women to all types of public information.
- 4 Establishing and promoting legal measures regarding the dissemination of information on women's rights.

Thematic Component

2. Effective access to public information

Thematic Sub-component

2.1. Information on state activity

Observable Activities

The government:

Instructs public employees about the importance of and procedures for handing over of information.

Creates incentives its evaluation procedures to punish ministries and employees that have refused to give information.

Establishes prizes and incentives for ministries and employees that facilitate the handing over of information.

Instructs its ministries and public employees on training in matters of right of access.

Creates incentives for public institutions to develop mechanisms that ensure access by women to information on their rights (especially sexual and reproductive, as well as on violence against women) and on all public questions, punishing those who discriminate against women in the handing over of information.

Establishes mechanisms for periodically evaluating the quality of information given to women.

Thematic Sub-component

2.2. Information on the public budget

Observable Activities

The government has implemented systems to provide free access to information about the national budget.

Thematic Sub-component

2.3. Information on senior public officials and other authorities.

Observable Activities

The government:

Gives detailed and specific information about the public budget.

Carries out a gender analysis of the budget, and communicates the results.

Requires the handing over of information about conflicts of interest respecting all public employees.

Thematic Sub-component

2.4. Information on legislative activity

Observable Activities

The legislature prepares and disseminates information on the legislative process and on the voting records of legislators.

Thematic Sub-component

2.5. Information on lobbying activities respecting the Executive and Legislative branches

Thematic Sub-component

2.6 Activities and finances of private companies that offer public services

Thematic Sub-component

2.7. Access to information on violations of human rights

Observable Activities

The government:

Maintains information for its citizens about lobbying activities—for example, information about those who have meetings with Ministers, and the purpose of the meetings.

Guarantees that organizations that work for the advancement of women's rights have access to the above information.

Maintains a register of lobbyists and other groups or people of influence (e.g. Church officials).

Promotes legislation that obliges private companies to hand over information.

Creates institutions that have the objective of implementing preventative policies in matters of violations of human rights.

Establishes and/or promotes a human rights component in the education curriculum.

Proposes legislation with these objectives.

Works with police and security institutions in matters of security that involve human rights.

Monitors and reports on violence against detainees or inmates in police stations and penitentiaries, including a gender analysis.

Thematic Component

3. Use of ICTs to facilitate access to public information

Thematic Sub-component

3.1. Electronic media

Observable Activities

The government:

Encourages the creation of websites of public services and of the three branches of the state, establishing the minimum contents that the site should contain.

Allows access to documents of public interest through electronic media, which requires the implementation of a system of digital signatures. This includes obtaining certificates of birth, death and marriage by electronic means.

Organizes centres with free connectivity, in order that the whole population can have access to electronic media.

Promotes legislation directed towards the mass use of electronic media.

Establishes electronic access to the exercise of the so-called social rights, especially the rights related to housing, health, education and access to justice.

Thematic Sub-component

3.2. Gender and electronic media

Observable Activities

The government:

Establishes programs and projects for improving access to electronic information media and new technologies for women, particularly those with low incomes and from rural sectors.

2 In this case, sub-components have not been defined, and therefore the observable activities relate to the larger component.

Publishes relevant information about women's rights through electronic media.

Carries out/generates/promotes training activities in ICTs for women and other discriminated groups, especially those from rural sectors.

Thematic Component

4. Electoral expenses²

Observable Activities

The government promotes:

Legislation that regulates electoral expenses.

Official information about candidates' expenses.

Legal norms that promote openness about the sources of campaign contributions.

Discussion on this topic at every sub-national and local level.

Diffusion of information about electoral expenses, including a gender breakdown of the people who receive or make contributions.

Theme No. 3: Freedom of Expression

Thematic Component

1. Legislation on freedom of expression

Thematic Sub-component

1.1. Concrete actions that imply progress in matters of legislation on freedom of expression

Observable Actions

The government has promoted progress through:

Constitutional guarantees of freedom of expression.

Laws (whether civil, military or special) that guarantee freedom of expression.

Legislation on citizens' access to public communication media.

Recognition of the right of reply and the conditions for its exercise.

Laws that regulate restrictions in matters of freedom of expression (civil, penal or military).

Legislation that protects intimacy, private life and personal honor, while balancing these rights with the right to freedom of expression.

Creation of mechanisms, apart from the courts, to protect against abuses or violations of freedom of expression.

Promoting transparency in the system of license concessions and regulations, with the objective of determining effective mechanisms to impede the concentration of ownership of the communication media.

Regulations on the creation of alternative or community communications media to ensure their independent functioning.

Regulations against monopolies in the ownership of the communications media.

Regulations on ethical behavior by the media.

Legislation on the free exercise of journalism (conscience clause) and protection of information sources (professional secrets).

3 In this case, a first sub-component (2.1.) has not been defined, so that in this section of the component, the observable activities relate to the larger component.

Legislation on access by parties to the media in election campaigns.

The elimination of laws that are inconsistent with the principle of the maximum freedom of expression provided under the state's international commitments.

Analysis of ways to facilitate women's freedom of expression in those areas that particularly affect women, such as sexual and reproductive rights.

Thematic Sub-component

1.2. Removal of legal barriers and incorporation of measures that promote women's freedom of expression and women's rights

Observable Actions

The government:

Proposes laws or reforms that strengthen women's freedom of expression and women's rights organizations. An examples is the establishment of space quotas in the communications media for women and themes of women's human rights (sexual and reproductive rights, violence against women, among others).

Establishes rules for guaranteeing the voice of women is heard in the communications and other media of expression.

Thematic Component

2. Censorship, limitations and sanctions³

Thematic Sub-component

2.1

Observable Activities

The government:

Promotes verdicts or judicial decisions destined to protect freedom of expression, particularly for women, and especially those from indigenous, peasant, African and migrant backgrounds.

Is aware of and makes pronouncements about journalists or communicators who have been detained, processed or judged for issues related to limitations of freedom of expression.

Promotes sanctions and makes them known in cases of impediments to free diffusion of publications, threats to journalists, programs, media, or censorship of publications.

Disseminates information and promotes sanctions in matters of journalists or communicators murdered or tortured for reasons connected to their professional work.

Makes statements on matters concerning censored works.

Promotes legislation and regulations that prevent restrictions on the right of expression in matters of religion and education.

Proposes appropriate sanctions when the right to demonstrate on a public highway has been restricted, and where there has been a use of excessive violence.

Shows progress in matters of requests for meetings with political, administrative and judicial authorities, and provides statistics on whether or not the requests were granted.

Promotes judicial verdicts supporting freedom of expression. This ought to be complemented by an analysis of complaints concerning violations of freedom of expression made in recent years before the Inter-American Commission for Human Rights.

Produces case studies of journalists or communicators who have been detained, processed or sentenced for charges related to limitations on freedom of expression. The number of these cases and the seriousness of the offences would be a highly useful instrument for comparing the situation in all states.

Complementing the above study with the enumeration of cases in which there has been censorship, termination of transmissions, or limitations to the freedom of communications media or publications.

Judicial decisions that affect women's freedom of expression in the same sense.

Thematic Sub-component

2.2. Censorship, limitations and sanctions on women's expression or on women's rights

Observable Activities

The government:

4 In this case, the first sub-component (3.1.) has not been defined, so the observable activities relate to the overall component.

Makes progress towards not having people detained, processed or sentenced for charges related to limitations on women's freedom of expression or on women's rights.

Advances towards the elimination of impediments to free circulation, confiscation of publications, threats to journalists, programs and media, or censored publications on women's rights.

Finances activities on women's freedom of expression and on women's rights.

Thematic Component

3. Communications media⁴

Observable Activities

It is recommended that studies be undertaken to determine whether there is progress in:

- 1 The use of the right to reply in the communications media.
- 2 Matters of distribution of ownership of public communications media.
- 3 The quality of information disseminated by the communications media.
- 4 Concessions of media licences by the state in a given period, in order to establish the economic and political links of the groups that have been granted the concessions.
- 5 Concentration of ownership in the media. This study should be complemented by an analysis of the complaints presented about the issue in recent years before the Inter-American Commission of Human Rights.

The government:

Promotes the existence and operation of alternative and community communications media.

Drafts legislation that encourages compliance with the mandates related to plurality in media ownership.

Distributes annual reports of the Inter-American Commission for Human Rights in matters of freedom of expression.

Thematic Sub-component

3.2. Communications media and women's rights.

Observable Activities

The government:

5 In this case, the sub-components have not been defined, so that the observable activities relate to the overall component.

6 In this case, the sub-component (5.1.) has not been defined, so that the observable activities relate to the overall component.

Promotes gender equality in ownership and direction of the communications media.

Gives coverage in public communications media to themes related to women and women's rights.

Promotes and puts into practice the avoidance of sexist language, discrimination and gender stereotypes in the treatment of information.

Thematic Component

4. New ICTs⁵

Observable Activities

The government:

Establishes websites for public services and the three branches of government.

Incorporates, in public service websites, formats and procedures for formulating requests to the authorities and expressing opinions.

Makes it possible to make appointments through the electronic media, which requires the implementation of a system of digital signatures.

Implements centres with free connectivity, so that the whole population may have access to electronic media.

Promotes legislation directed to the mass use of electronic tools and the possibility of access to information through them.

Thematic Component

5. Objective possibilities for citizens to express themselves freely⁶

Observable Activities

It is recommended that studies be undertaken to determine progress in:

1 The number of instruments of communication per capita and by gender (home telephones, cell phones, television sets and radios).

2 The number and geographic distribution of local communications media.

3 The number and distribution of inhabitants who speak and write in languages other than the official one.

1 The number and percentage of inhabitants who have Internet access in their homes, by gender.

2 The progress each state has made in facilitating access to information through the electronic media.

Thematic Sub-component

5.2. Objective possibilities for women to express themselves freely.

Observable Activities

The government promotes:

Channels and spaces devoted to women's self-expression, especially those of peasant, indigenous, migrant and African origin.

Women's access to resources and instruments of communication, for example, through training programs, transfer of technology, allocation of space in communication frequencies, among other methods.

Actions and strategies that strengthen the presence of women in public and private spaces.

Theme No. 4: Strengthening Of Civil Society Participation

Thematic Component

1. Legal changes that weaken or strengthen civil society participation

Thematic Sub-component

1.1. Removal of legal barriers and incorporation of measures that promote civil society participation

Observable Activities

The government:

Promotes constitutional changes that create new mechanisms of citizens' participation. This involves inclusion of specific clauses referring to gender equality, the participation of women and positive actions in favor of women and other discriminated groups.

Presents new laws or reforms that regulate the role of civil society.

Establishes mechanisms encouraging civil society participation, with attention to gender equality, the participation of women and positive actions in favor of women and other discriminated groups.

Thematic Sub-component

1.2. Removal of legal barriers and incorporation of positive measures that promote the participation of women and of women's rights organizations

Observable Activities

The government presents and promotes laws and reforms that:

Strengthen the participation of women and organizations for the advancement of women's rights in decision-making processes.

Increase the participation of women from peasant, indigenous, African-origin and migrant groups in policies of budget, culture, sexual and reproductive health, among others.

It is recommended that studies be undertaken to determine progress through:

1 Judicial decisions that affect the participation of women and women's rights organizations in sexual and reproductive rights, social programs and violence against women.

2 Laws or regulations that establish controls or programs so that women can participate effectively. Examples are: rules that establish schedules for meetings during hours in which women can attend, measures to cover the work in the home done by women so that they

can take part in meetings, transfer of technological capacity, mechanisms to ensure that women can express themselves at meetings and that their opinions may be taken into account in the making of decisions.

Thematic Component

2. National government-CSO relations

Thematic Sub-component

2.1. Financial support

Observable Activities

The government:

Provides funds to support CSOs.

Distributes public information, including on its websites, about the criteria used for deciding CSO funding and the sums assigned to each organization, including women's CSOs.

It is recommended that governments investigate possibilities for the periodic assignation of special funds to the CSOs, the allocation of: the decision that a set percentage of the national budget to CSOs, or institutional links for the creation of special funds for the CSOs on a national scale.

Thematic Sub-component

2.2 Functioning in practice of the different instruments for participation in the national context.

Observable Activities

The government:

Uses consultative mechanisms (observations, open meetings, citizens' assemblies, consultative referendums, among others).

Promotes binding mechanisms (approval and recall referendums, among others).

Applies other mechanisms to promote public participation (monitoring of public policies, citizens' legislative initiatives, social auditing, budget decisions).

Systematizes and provides information about the participation of women's rights organizations in different mechanisms.

Thematic Sub-component

2.3 The government provides the information required to strengthen civil society participation

Observable Activities

The government:

Maintains and provides information about means and instruments that strengthen the channels of participation. Examples are: information bulletins, workshops, dialogues, and meetings with CSOs.

Formulates and executes specific strategies to promote gender equality.

Designs and executes specific strategies to promote the participation of women's rights organizations.

Thematic Sub-component

2.4 Governments welcome/allow activities or initiatives of the CSOs

Observable Activities

The government:

Establishes dialogues or negotiations that include women's rights organizations.

Authorizes actions of protest and mobilization that include women's rights organizations.

Thematic Sub-component

2.5. Support for the participation of women and their organizations (e.g. financing, instruments, organizations)

Observable Activities

The government:

Implements citizens' participation with attention to the gender perspective. For example, it provides relief for women in the primary care of children and other domestic work, in order to ensure their presence and their participation.

Intervenes in cases in which the males of the woman's intimate circle (father, partner or other) prohibit her participation in activities outside the home.

Intervenes to prevent violence and harassment to which women who participate in activities outside the home are exposed.

Takes measures to reduce the participation gap generated through women's more restricted access to education, health, work, among others.

Implements concrete measures so that women's rights organizations may participate and influence public policies—for example, policies that guarantee easy access to information on women's rights.

Develops systems of accountability so that women's organizations may denounce their exclusion from participative processes, censorship and other abuses of power, and vote-buying, among other abuses.

Invites these organizations to participate in decision-making processes regarding budgets, security, as well as other public policies.

Thematic Component

3. Participation in the Inter-American system

Thematic Sub-component

3.2 Participation in activities of the OAS

Observable Activities

The government:

Provided financial support to CSOs, including women's rights organizations, and in particular, of peasant, indigenous, African-origin and migrant women, so that they could participate in the Fourth Summit of the Americas.

Presented proposals related to gender equality in the Fourth Summit of the Americas.

Promoted the participation of CSOs, including women's rights organizations, and in particular, of peasant, indigenous, African-origin and migrant women, in the 35th, 36th and 37th OAS General Assemblies.

Presented proposals related to gender equality in the 35th, 36th and 37th OAS General Assemblies.

It is recommended that evaluators also identify CSOs that participated in other Inter-American forums, such as the Inter-American Commission of Human Rights (CIDH) and the Inter-American Anti-Corruption Commission (CICC) and meetings called by the Group for the Revision and Implementation of the Summits (GRIC).

Thematic Sub-component

3.3 Compliance with agreements of the Member States that promote participation of the CSOs.

Observable Activities

The government:

Has contributed to the Specific Fund to Support the Participation of Civil Society in OAS Activities.

Presents the reports on regulations and procedures for consultation with civil society.

Transparently awarded financial support for the attendance of the CSOs at the 35th, 36th and 37th OAS General Assemblies, the Fourth Summit of the Americas, and other meetings of the Inter-American system, respecting the criterion of gender equality.

Requests financial, technical or human resource assistance to strengthen its institutional capacity to receive, process and act in accordance with the initiatives of civil society.

The Foreign Ministers participated in the dialogues at the 35th, 36th and 37th OAS General Assemblies, as well as the Fourth Summit of the Americas.

Thematic Sub-component

3.4. Participation of women in the Inter-American system

Observable Activities

The government adopts the recommendations of women's rights CSOs related to the participation of women in the Inter-American system.

Appendix III: Canada Thematic Evaluation Panels

Thematic Area	Last Name	First Name	Organization	Position in Organization	Expertise in Gender?
Access to Info and Freedom of Expression	Karutnarante	Dayanti	Freelance Journalist	Freelance Journalist	NO
Access to Info and Freedom of Expression	McCloskey	Bill	Transparency International-Canada	Board Member	YES
Access to Info and Freedom of Expression	Nakanuku	Louisa	Carleton School of Journalism & Communications	Doctoral Candidate	NO
Access to Info and Freedom of Expression	Rubin	Ken		Public Interest Researcher	No
Access to Info and Freedom of Expression	Wadell	Chris	PEN Canada		NO
Access to Info and Freedom of Expression	Conacher	Duff	Coordinator	Democracy Watch	Some
Civil Society	Bulgur	Kim	Metis National Council	former Health Director	YES
Civil Society	Edgar	Laura	Institute On Governance	Lead Director for Social Development	YES
Civil Society	Farren	Mark	Demographics Consultant		YES
Civil Society	Marleau	Perry	Eye on Ottawa	Board Member	NO
Civil Society	Ostrovski	Halina	Xela Enterprises	Consultant	YES
Civil Society	Rubio	Frances	Prevent Cancer Now	Coordinator	YES
Civil Society	Russell	Susan	Executive Director	Cdn Federation of University Women	YES

Civil Society	Solano	Paolo	Commission for Environmental Cooperation	Interim Director, Submissions on Enforcement Matters Unit	NO
Civil Society	Conacher	Duff	Coordinator	Democracy Watch	Some
Local Government	Fudge	Ann	Ann Fudge Campaign For School Board Trustee		No info
Local Government	Gottsbacher	Markus	IDRC	Senior Program Officer	YES
Local Government	Kimball	Jackie	Democracy in Action		Some
Local Government	Kovacs	Jerry	Grad Student	grad student (thesis on democracy theory)	NO
Local Government	Conacher	Duff	Coordinator	Democracy Watch	Some

PARTICIPANTS - May 15, 2008 - Democratic Governance in Canada consultation				
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Keith	Mines		US Embassy	
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Ken	Rubin			
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			Environmental Cooperation	Unit
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