

Official Development Assistance Accountability Act
Plain Language Overview
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On May 16, 2008, almost exactly two years after it was introduced, the House of Commons gave final approval to Bill C-293, an Act respecting the provision of development assistance abroad (“the Official Development Assistance Accountability Act”). The bill was given Royal Assent on May 29 and came into effect on June 28.

This briefing note provides a plain-language explanation of what each key section of the Act does and how it informs Canada’s aid policy.

Purpose of the Official Development Assistance Accountability Act

The purpose of the Act, set out in section 2, is as follows:

2. (1) The purpose of this Act is to ensure that all Canadian official development assistance abroad is provided with a central focus on poverty reduction and in a manner that is consistent with Canadian values, Canadian foreign policy, the principles of the Paris Declaration on Aid Effectiveness of March 2, 2005, sustainable development and democracy promotion and that promotes international human rights standards.

- (2) Canadian official development assistance abroad shall be defined exclusively with regard to these values.

The purpose clause was the result of discussion and compromise during the Committee process of the bill’s passage, and as a result, there are some ambiguities and difficulties in its meaning. While it is tempting to parse these phrases, a purpose clause is meant merely as a mission statement of sorts, guiding the overall direction of the Act. This section is not the reference point for determining the purpose of Canadian ODA, only the Act. It is also important to recognize that this clause generally will not override the specific meaning of the more directive sections of the Act and in particular, clause 4 setting out the three tests for Canadian ODA. The most important element of the Act is that it establishes a legislative mandate for Canadian ODA to ensure aid is focused on poverty reduction, while ensuring human rights standards are respected. Further sections of the Act provide for important transparency and reporting requirements for ODA.

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ODA is defined in section 3 of the Act as international assistance:

(a) that is administered with the principal objective of promoting the economic development and welfare of developing countries, that is concessional in character, that conveys a grant element of at least 25%, and that meets the requirements set out in section 4 [See below]; or

(b) that is provided for the purpose of alleviating the effects of a natural or artificial disaster or other emergency occurring outside Canada.

Subsection (a) is based on the definition of ODA set out in the OECD Development Assistance Committee. However, unlike the DAC, the Act does not specify eligible countries for Canadian ODA covered by the Act. It is also important to note that the Act and this definition focuses only on Canadian ODA, and not other budgetary support for Canadian international assistance set out each year in the International Assistance Envelope. As a result, the government may continue to fund initiatives that are not focused on poverty reduction or humanitarian assistance, provided they do not call it ODA.

The ODA Accountability Act has three key legislative dimensions. It sets out a statement of purpose for Canadian ODA; it mandates a series of consultations; and it establishes clear benchmarks for accountability through a number of reports to Parliament.

The Purpose of Canadian ODA: The Three-Part Test

Section 4, sub-section 1, is the reference point for determining Canadian ODA. Under this section, ODA may be provided only if the administering minister (not just the minister for CIDA)² is “of the opinion” that it: a) contributes to poverty reduction; b) takes into account the perspectives of the poor; and (c) is consistent with international human rights standards. There is an exemption carved out for humanitarian assistance (4 [1.1]), and a further exemption for the International Development Research Center (4 [4]), which are not required to meet this test.

It should be noted that while the language of the three-part test is strong, it must only be met on a standard of whether the minister is “of the opinion.” This is close to a subjective standard, meaning a court will show a great deal of deference to the minister’s view that a particular aid disbursement meets the test. This will make a particular disbursement which some may consider not meeting the test difficult, but certainly not impossible.

2 While CIDA administers roughly 80 percent of Canada’s aid budget, the Act makes it clear that aid must adhere to the three-part test regardless of which minister is administering it. S.3 defines “competent minister” as “the Minister of International Cooperation, the Minister of Finance, the Minister of Foreign Affairs or any other minister who is providing official development assistance.”

Consultation

Per subsection 4(2), to inform the opinion of whether aid meets the three-part test, all of the ministers – and it is important to again recognize that the Act uses the term “competent ministers,” meaning all ministers who administer aid – must “consult with governments, international agencies and Canadian civil society organizations at least once every two years.” This requirement will provide civil society with a regular forum for input to the government with regard to aid policy, although the depth of that opportunity will depend on how seriously the minister(s) treat this consultation.

Reporting and Transparency

Section 5 sets out the Act’s reporting requirements. Within six months of fiscal year end, the CIDA minister or another minister who administers aid must submit an annual report to Parliament, containing: total ODA (as defined by the three-part test in section 4) spent in the previous year; a summary of activities taken under the Act; a summary of the annual report submitted under the *Bretton Woods and Related Agreements Act*; a summary of CIDA’s Departmental Performance Report; and, importantly, “a summary of any representation made by Canadian representatives with respect to priorities and policies of the Bretton Woods Institutions.”

In addition to the above disclosures, section 5 requires the Finance Minister to disclose in the annual report the positions that Canada has taken on resolutions adopted by the boards of the Bretton Woods Institutions, as well as a summary of how Canada’s activities with these institutions have contributed to the purposes of the Act.

The Bretton Woods provisions should shed light and provide unprecedented accountability for Canada’s representations and activities at the World Bank and IMF, helping ensure the interests of the poor are better reflected in these endeavours. However, it should be noted that information regarding the Bretton Woods Institutions must not be released by the government if the release would be prohibited by the policies of those institutions, a clause that may provide a loophole for the government.

Finally, within one year of the fiscal year end, the CIDA minister must also provide a statistical report on ODA.

While some of the other material disclosed under section 5 is already found in various reports, this section consolidates them in one place, and ensures through a statutory obligation that it will continue to be made public on a timely basis.