

INTERNATIONAL HUMAN RIGHTS STANDARDS AND CANADIAN ODA: IMPLICATIONS AND ISSUES OF THE CANADIAN ODA ACCOUNTABILITY ACT A CCIC BRIEFING NOTE¹

BACKGROUND

1. The Canadian ODA Accountability Act asserts in section 4 that “Official Development Assistance may be provided only if the competent minister¹ 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.”

This section of the Act provides three key tests for the Minister responsible for ODA to determine whether a planned allocation by the government will be eligible for the designation of “Official Development Assistance”. The minister must be “of the opinion” that **all three tests** have been met for each allocation of Canadian ODA. Other international assistance may be provided by the Minister, but cannot be included as Official Development Assistance.

2. The Act (section 3) has a definition of Official Development Assistance that is consistent with the definition provided by the Development Assistance Committee (DAC) based at the OECD.² The DAC definition of ODA is one that has been reached (and amended) by consensus among the 23 donor countries, including Canada, as members of the DAC. Canada is obliged to report its disbursements and future commitments of Canadian ODA on an ongoing basis to the DAC against this definition. However, in addition to consistency with this internationally agreed definition, the Act states that now such disbursements and commitments for Canada must **also** be consistent with section 4 of the Act.
3. The Act does not give any interpretation guidance for section 4 as to “contributes to poverty reduction” and “takes into account the perspectives of the poor”. But it does provide the interpretation that “‘international human rights standards’ means standards that are *based on* international human rights conventions to which Canada is a party and on international customary law” (Accountability Act, Section 3, emphasis added). The

¹ A “competent minister” is not only the minister responsible for CIDA, but any minister who has the responsibility to provide Canadian official development assistance, such as the Minister of Finance for allocations of ODA to the World Bank IDA window or the Minister of Foreign Affairs for allocations to peacebuilding initiatives.

² See OECD DAC “Is it ODA? A Factsheet, July 2008” (<http://www.oecd.org/dataoecd/21/21/34086975.pdf>). The Act does not directly reference the DAC definition, but takes up verbatim the DAC test for ODA. ODA for the purposes of the Act is 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, or b) that is provided for the purposes of alleviating the effects of a natural or artificial disaster or other emergency occurring outside of Canada”. The DAC also sets out a list of eligible countries for ODA based on their level of per capita gross national income (not exceeding US\$11,455 for Upper Middle Income Developing Countries (see the list of countries at <http://www.oecd.org/dataoecd/23/34/37954893.pdf>). There is no reference to eligible countries in the Canadian Act.

assertion that human rights standards are **based on** human rights conventions implies that such standards may go beyond the obligations of these conventions and would include important General Comments that have been derived from the conventions (see below).

4. This Briefing Note examines the implications of the application of international human rights standards to international development assistance, as prescribed by the Act. It argues that international human rights standards, in the context of section 4 the Act, provide an important basis for the determination of the Minister's approach to assuring that ODA "contributes to poverty reduction" and "takes into account the perspectives of the poor." This brief suggests that *only* an explicit human rights approach (HRA) to the implementation of Canadian ODA programming will be consistent with the three tests called for by the Act.

INTERNATIONAL HUMAN RIGHTS CONVENTIONS AND INTERNATIONAL CUSTOMARY LAW

5. International human rights standards referenced in the ODA Accountability Act are those derived from Human Rights Treaties to which Canada is a party. In the UN, in addition to the UN Charter and the Universal Declaration of Human Rights (which is not considered legally binding), there is a set of nine UN Covenants and Conventions that are core references for binding international human rights law:
 - International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - International Covenant on Civil and Political Rights (ICCPR)
 - Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
 - Convention on the Rights of the Child (CRC)
 - International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
 - International Convention on the Protection of the Rights of All Migrant Workers and their Families (MWC) (Canada has not signed nor ratified this Convention)
 - International Convention on the Rights of All Persons with Disabilities (Canada has signed but not ratified this Convention)
 - International Convention for the Protection of All Persons from Enforced Disappearance (Canada has not signed nor ratified this Convention)

Civil and political rights are indivisible from economic, social and cultural rights in relating all of the above treaties.

6. There is nothing in the definition of standards in the Act that limits these to UN standards. Canada has ratified five out of seven fundamental Conventions of the International Labour Organization³. Another relevant convention, among others, is the UNESCO Convention on Discrimination in Education. The four Geneva Conventions (such as the protection of civilian persons in time of war) and the Convention on the Crime of Genocide are also relevant international human rights treaties ratified by Canada. While the Act excludes Canadian international humanitarian assistance from the ODA tests of Section 4 (Section 4, 1.1), other forms of Canadian ODA allocated within situations of conflict or post-conflict states are required to meet these three tests, including consistency with international human rights standards.
7. The International Covenant on Civil and Political Rights has an Optional Protocol, which provides judicial remedies for violations of these rights. This past June, after many years of advocacy by human rights organizations, an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, to provide for a complaints procedure, was adopted by the Human Rights Council by consensus. While a member of the Human Rights Council and consistently opposed to this protocol, Canada did not stand against the consensus at the Human Rights Council.⁴
8. Many countries also consider the Declaration on the Right to Development, adopted by the UN General Assembly in 1986, to be an important UN human rights document. Although it was adopted by an overwhelming majority in the General Assembly, Canada was among several countries that abstained in the General Assembly vote and does not recognize this Declaration. Nevertheless the scope for the Right to Development has been pursued within the UN human rights system through the Human Rights Commission (and since 2006, its successor, the Human Rights Council), though it has never been formally transformed into a Convention by the members of the United Nations.
9. Each of the Treaties (i.e. Covenant or Convention) is accompanied by a UN Treaty Body (often referred to as a Committee). Committees are composed of experts in the rights covered by that treaty. A Committee monitors compliance with the Treaty and may review issues and hold hearings to question states on their compliance reports. After reviewing

³ The seven fundamental Conventions of the ILO are:

- C87: Freedom of Association and Protection of the Right to Organize Convention;
- C98: Right to Organize and Collective Bargaining Convention;
- C100: Equal Remuneration Convention;
- C105: Abolition of Forced Labour Convention;
- C111: Discrimination (Employment and Occupation) Convention;
- C138: Minimum Age Convention;
- C182: Worst Forms of Child Labour Convention.

Canada has not ratified C98 (right to organize) or C138 (minimum age).

⁴ The draft Protocol is a mechanism by which individuals can make complaints to an international body after they have exhausted all domestic procedures for remedy. But the Human Rights Council is a political body without judicial power to impose a decision.

state reports and practice, the Committees have adopted several “General Comments” clarifying the particular meaning of the treaty provisions in terms of the obligations of states and for people claiming particular rights. General Comments are considered “authoritative interpretations of binding obligations” arising from the original Convention. These are often highly detailed and widely referenced in legal and political discussions and are intended to clarify states’ obligations under their respective Treaty. In defining human rights standards in the Act as “based on” human rights conventions, these General Comments are highly relevant to providing content to the considerations that the Minister must give to be consistent with these standards.⁵

10. The most prominent political human rights body in the UN is the recently reconstituted Human Rights Council, to which Canada was elected as a member in 2006. The Council creates, by agreement of its members, “special procedures” such as various sub-theme groups of experts looking at such issues as UN norms for business or mandates for Special Rapporteurs who are also experts in various areas of human rights law. The Council meets in regular on-going sessions to review current human rights situations and issues. Finally, the High Commissioner for Human Rights was created following the Vienna World Conference on Human Rights in 1993. The office of the High Commissioner, who is accountable to the Secretary-General, has the primary responsibility for human rights in the UN system to support the various treaty bodies (i.e. committees) and to promote human rights throughout the UN system and among member states.
11. In sum, human rights standards identified in the ODA Accountability Act flow from the work of the UN Committees associated with the various covenants and conventions ratified by Canada, General Comments⁶ by these committees, and the work of Special Rapporteurs⁷ appointed by the Human Rights Council. The office of the High Commissioner for Human Rights, along with the UNDP and UNICEF, has also been promoting a human rights approach to development in fulfilling the various UN development mandates, based on a common UN approach to human rights adopted in 1997.

⁵ It could be argued that there are many more interpretative documents that have arisen that are “based on” human rights conventions, for example, Guiding Principles for Internally Displaced Persons, which are widely recognized, but not legally binding, but are clearly based on international human rights and humanitarian law. Another example is eviction guidelines which the UN Rapporteur on the Right to Housing has developed, which are very detailed standards for conditions on which people may be evicted from their homes or land that they own.

⁶ There are many useful General Comments by UN Committee bodies, including on the right to adequate food, the right to education, the right to the highest attainable standard of health, the rights approach to poverty, and the right to water, among others. See the web site of the Office of the High Commissioner for Human Rights (www.ohchr.org) for a comprehensive collection of these General Comments and their application to development priorities.

⁷ More than 20 Special Rapporteurs have a mandate from the Human Rights Council, including on adequate housing, on education, on human rights and extreme poverty, on the rights of indigenous people, on internally displaced persons, on the protection of human rights while countering terrorism, on violence against women, among others.

12. The ODA Accountability Act refers also to “international customary law.” Unlike UN Treaty law, international customary law is binding on states irrespective of whether they have ratified a given treaty or international legal provision. The body of international customary law is the result of consistent and uncoerced actions by most states over time, which then establishes the basis for a stable and uniform set of international practices. A second test for customary law is the *opinion juris* requirement: states must act with the belief that the applied practice fulfills a legal obligation, and that the practice is not being followed by the state out of convenience or diplomacy.⁸ While not involving the formal ratification of UN treaties, the force (and weakness) of international customary law lies in the requirement of consent by states to its terms, whose preferences can also change over time. By consistently objecting to particular provisions, a state is exempt from these provisions in international customary law.⁹

IMPLICATIONS OF INTERNATIONAL HUMAN RIGHTS STANDARDS FOR CANADIAN ODA

A Human Rights Obligation to Provide ODA?

13. Several committees related to international human rights treaties, in their interpretive Comments, have asserted that states have a legal obligation for international cooperation and international assistance within their means to assist. However, there is no agreement on the nature and scope of the obligation for international assistance. Canada, along with other donors, has explicitly asserted the view at the United Nations that “international cooperation and assistance” referenced in the treaties, is only a moral obligation. Interpretative Comments on human rights standards have set out the obligation of states that are “in a position to assist” to provide such assistance to states that otherwise cannot meet their minimal obligations to people within their borders. However, no interpretation has been given to the notion of “in a position to assist.”¹⁰
14. The test of international human right standards in the ODA Accountability Act cannot therefore be used to directly buttress Canadian CSO campaigns that Canada achieves such goals as the UN target of 0.7% of Canadian GNI. The Act speaks to the quality of Canadian aid, but does not address its quantity.

⁸ See Fon, Vincent and Parisi, Francesco. “Stability and Change in International Customary Law”, Berkley Program in Law and Economics, Working Paper #96, 2003, accessed at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1095&context=blewp>.

⁹ Salomon, Margot, “International Economic Governance and Human Rights Accountability”, LES Law, Society and Economy Working Papers 9/2007, page 21, accessed at www.lse.ac.uk/collections/law/wps/wps.htm.

¹⁰ See, Magdalena Sepúlveda, “Obligations of “international assistance and cooperation” in an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights”, *Netherlands Quarterly of Human Rights*, vol. 24/2, 2006; Sigrun Skogly, *Beyond National Borders: States’ Human Rights Obligations in International Cooperation*. Antwerp, Intersentia, 2006; and Philip Alston, “Ships Passing in the Night: the current state of the human rights and development debate seen through the lens of the Millennium Development Goals”, 27 HRQ 3 (2005).

Canada's Extra-Territorial Obligation to Fulfill Human Rights

15. Through the requirement to consider international human rights standards in allocating Canadian ODA, the Act raises the issue of Canada's human rights obligations beyond the territorial jurisdiction of the Canadian government. These obligations have been increasingly clarified in various General Comments by UN human rights Committees in recent years. While not specifying a legal obligation to provide ODA, treaty bodies have asserted that all states have a general obligation to respect and protect human rights beyond their borders, even though many states, including Canada, have failed to acknowledge and act upon this obligation. All states are assumed by the treaty bodies to be in a position to cooperate to create an enabling environment for the fulfillment of human rights. Furthermore, when states do provide international assistance as part of this cooperation, it is also assumed that they must do so in ways that comply with the full range of human rights. This includes the duty to facilitate the realization of economic, social and cultural rights, which are fundamental for making progress in poverty reduction and development.¹¹

Human rights standards should inform both the planned outcomes and the process of Canadian official development assistance.

16. States are obliged to protect, respect and ensure the fulfillment of human rights.¹² States have an obligation to immediately fulfill civil and political rights. The obligations to fulfill economic, social and cultural rights (ESCR) are progressive over time, given the varying ability of states in different levels of development, taking account of capacity and financial resource constraints. In doing so, states must – as an immediate obligation – always be taking steps to assure progress, and not regression, in fulfilling these rights. There is also an immediate obligation to give priority to “minimum core obligations” in social, economic and cultural rights, which are minimal essential levels for each right (such as free and compulsory primary education, access to essential medicines, essential foodstuffs, basic shelter etc.).¹³ While the obligation to fulfill ESC rights progressive, the obligation to respect and protect ESC rights is immediate. International human rights standards referred to in section 4 of the Act derive from these obligations and should inform both the planned results and the process for Canadian ODA.¹⁴

¹¹ CESCR, General Comment # 14 (2000), para 39; CESR, General Comment #15 (2002) para 37; CESCR General Comment #11 (1999), para 9.

¹² The obligation to respect means States must refrain from any action that interferes with or curtails the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses by non-state actors. The obligation to fulfill means that States must take active steps (provide an institutional framework) to enable people to enjoy their human rights in practice. See Sreenivasan, *op. cit.*, page 3.

¹³ CESCR, General Comment #3 (1990), para 10. Countries with resource constraints are obliged to seek international assistance and cooperation to immediately meet these core obligations. Donor countries in turn are obliged “where they are in a position to do so” (see above) to provide assistance for realizing these core obligations through ODA.

¹⁴ Examples of international human rights standards can be found in Office of the United Nations High Commissioner for Human Rights, “Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, Geneva, 2006, http://www2.ohchr.org/english/about/publications/docs/poverty_strategies.doc. See also Darrow, M. and Tomas, A. “Power, Capture, and Conflict: A Call for Human rights Accountability in Development Cooperation”, *Human Rights Quarterly*, 27 (2005), pp 525 – 528.

17. Several donors such as the UK Department for International Development (DFID) have taken some actions to integrate international human rights norms at the policy and planning level for the conduct of international assistance. However, recent reviews of these efforts also point to their limited adoption and complexity at the level of implementation.¹⁵ The Canadian ODA Accountability Act clearly directs CIDA and other ministries to move in these directions. But the Act also requires fora for consultation to discuss the implications of the three tests for an allocation of Canadian ODA. These should be treated as opportunities to deepen both the understanding and the government's commitment to international human rights standards in the practice of aid allocations. Without underestimating the complexity of the task, a review of human rights literature suggests some important areas to be addressed.
18. All relevant Ministers responsible for ODA (including the Minister of Finance for the Bretton Woods Institutions) can be assured that the impact of each ODA allocation is consistent with international human rights standards by
- ❑ **Exercising due diligence** that the provision of Canadian ODA is fulfilling, and not undermining, human rights in countries where this aid is provided. This implies for CIDA and the Department of Finance, for example, that CIDA country strategies and plans, developed by CIDA or by other donors, such as the World Bank, to which CIDA/Department of Finance makes contributions, explicitly identifies the human rights context for this programming. The approach by CIDA or Foreign Affairs to issues of governance must give primacy to human rights as the framework for establishing priorities for cooperation in support of “good governance.” In the approval mechanisms for discrete aid allocations, the responsible Minister must be assured that Canadian ODA will not impact negatively on the respect and protection of human rights, and will contribute to the progressive realization of ESCRs in that country. This might also imply the need for training of staff and counterparts involved in the delivery of Canadian aid in human rights impact assessments.
 - ❑ **Giving priority to the most marginalized and vulnerable.** Non discrimination in citizens' access to their rights is a fundamental human rights principle given the inherent equality of all human beings. As a result, those most marginalized in society become explicit policy priorities for states. Canadian ODA programming must reflect this priority including attention to the minimum core obligations for ESCRs (e.g. enhance the legal protections for the right to housing, land and other resources for the poor). CIDA and other ministries delivering Canadian ODA must avoid actions that discriminate in the implementation of programs supported by Canadian aid (e.g. user fees in basic services for the most vulnerable) and explicitly analyze the causes of discrimination and vulnerability (intended and unintended) for populations in a given country context. For example, the government must prioritize addressing the human rights violations that drive poverty among women and children. International human rights standards provide a definitive interpretation of the provision in the Act in Section 4 that the responsible Minister must be of the opinion that ODA allocations “contribute

¹⁵ See Brauholtz-Speight, T., Foresti, M., Proudlock, K., and Sharma, B. “DFID Rights Practice Review: Synthesis Report”, Overseas Development Institute, July 2008.

to poverty reduction”. CIDA’s sectoral priorities and strategies must explicitly take account of relevant Covenants and related General Comments, in areas such as the right to food, or to education and health.

- ❑ **Avoid ODA allocations that are designed to benefit specific Canadian domestic, commercial and foreign policy interests** as these, by design, may be discriminatory and not give priority to the most vulnerable. Equally, in the allocation of Canadian ODA, Canadian officials must take account of how recipient states might use Canadian ODA for ends other than the realization of human rights (see due diligence above). However, as noted below, human rights are obligations and not “conditions” to be attached to aid programs.
- ❑ **Exercise explicit due diligence in International Financial Institutions (IFIs)**, in which Canadian ODA has been allocated, to avoid support for policies and programs conducted by IFIs that undermine civic, political and ECSRs within recipient countries.¹⁶

19. International human rights standards apply not only to the impact of Canadian ODA, but also to processes in the delivery of this ODA. Consequently, to meet the test of the ODA Accountability Act, the responsible minister should be developing an assurance that Canadian ODA is delivered in a manner that is:

- ❑ **Transparent.** Transparency in Canadian aid delivery implies that all those affected by Canadian ODA have timely and effective access to relevant information on amounts to be delivered, purpose, priorities, terms and conditions for ODA allocations and the due diligence processes described above. While the Act provides an improvement in accountability to the Canadian Parliament for ODA by responsible ministers, international human rights standards suggest that relevant and accessible information on Canadian ODA must also be available to affected peoples and communities. Such information should be in forms and languages that affected people can understand. The design and coverage of reports mandated in the Act must relate directly to the implementation of the standards set for ODA in Section 4 of the Act.
- ❑ **Participatory.** Effective participation that empowers affected populations is a central foundation for meeting all international human rights standards. While each country context is unique, Canadian ODA must be delivered in a manner that builds capacities of affected populations to participate in all dimensions of development affecting their lives, with particular attention to women, girls, and other discriminated populations. ODA should strengthen the capacities of civil society organizations, parliamentarians, and human rights monitoring bodies to undertake timely assessment of the impact of development assistance in their country. Assuring the fulfillment of political and civil rights is vitally important for achieving effective participation of affected populations.

¹⁶ See the Concluding Observations of the Committee on Economic, Social and Cultural Rights for Ireland, Sweden, France and the UK: “The Committee encourages the State party, as a member of international organizations, including international financial institutions such as the International Monetary Fund and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties under the Covenant, in particular the obligations contained in articles 2.1, 11, 15, 22 and 23 concerning international assistance and cooperation.” [Ireland, 2002, para 37]

- ❑ The right to organize and to freedom of speech (including the right to form trade unions), as well as access to development processes, to information, to institutions and to mechanisms for redress, are essential conditions for active citizenship, enabling people to participate and claim rights. The manner in which Canadian ODA contributes to and seeks out the participation of affected populations, consistent with human rights standards, is the measure of the test “taking into account the perspectives of the poor” in section 4 of the Act.¹⁷ The Act itself mandates responsible ministers to undertake consultations on the implementation of the Act, i.e. the realization of the tests for Canadian ODA in Section 4. The process and focus for these consultations should therefore take their reference from relevant international human rights standards.
- ❑ **Strengthening mechanisms for accountability and redress.** The realization of rights for vulnerable populations is subject to power relations and politics in a given context. International human rights standards for Canadian ODA suggest that Canada should be working with other development stakeholders to assure that there are effective remedies, including non-judicial mechanisms, for those whose human rights have been violated as a direct or indirect result of development assistance in developing countries. Both monitoring and effective data collection are essential for strengthening mechanisms for accountability. In Canada, consistency with international human rights standards for Canadian ODA also implies the need for parliamentarians to assess Canadian ODA within this framework and for the potential of Canadian human rights oversight bodies to have a role in independent assessment (such as Rights and Democracy with its mandate directly from the Parliament of Canada).
- ❑ **Strengthening ownership by affected populations.** International human rights standards suggest that Canadian ODA must be delivered through mechanisms that promote democratic ownership in recipient countries.¹⁸ Attaching donor-determined conditions to Canadian aid allocations undermines standards for democratic participation in recipient countries. As civil society has argued, the obligation to respect, protect and fulfill human rights is a legal obligation, not a condition of an aid transaction, but rather subject to due diligence and mutual accountability.¹⁹

¹⁷ An important reference point for taking account the perspectives of the poor is a comprehensive study by the World Bank published in 2000 which identified understanding and priorities of poverty from thousands of direct interviews with people living in poverty. See Deepa Narayan et al eds. *Voices of the Poor: Crying out for change*, Washington: World Bank, 2000; Deepa Narayan et al eds. *Voices of the Poor: Can anyone hear us?* Washington: World Bank, 2000; and Deepa Narayan and Patti Petesch (eds). *Voices of the Poor: From many lands*. Washington: World Bank, 2002.

¹⁸ See the elaboration of this notion of “democratic ownership” in the Findings and Recommendations of the Advisory Group on Civil Society and Aid Effectiveness and in the Accra Agenda for Action, resulting from the Third High Level Forum on Aid Effectiveness in Accra, Ghana, September 2008.

¹⁹ See the various civil society position statements directed towards the Accra High Level Forum on policy conditionality and aid at www.betteraid.org. At the High Level Forum, a Roundtable on Ownership concluded that “There is strong evidence showing that policy conditionalities don’t work as intended. Donors should take this evidence seriously and respect country leadership when negotiating the terms and conditions of aid. The respect of human rights, including women’s rights, constitutes the basis for the definition of such terms.”

INTERNATIONAL HUMAN RIGHTS STANDARDS: A HUMAN RIGHTS APPROACH TO DEVELOPMENT

20. Given the centrality and nature of human rights standards in the ODA Accountability Act for determining the allocation of Canadian ODA, the systematic application of these standards in implementation and programming of Canadian ODA will require a Human Rights Approach (HRA). Development that aims to address poverty reduction and inequality is a complex undertaking, which is also very dependent upon specific conditions and peoples' engagement within each developing country, and for which aid can only be a catalyst. Development practitioners have drawn lessons from decades of development experience to inform the use of aid as a development resource.²⁰ A HRA to development does not replace notions of good development practice with "rights-derived" definitive answers for development choices in a given country. Indeed, conflicts can arise from the application of specific rights – for example, the rights of indigenous people to food from their territory and the rights of external fisherfolk to work and livelihood from this same resource. Rather a HRA *guides an approach to development* that is consistent with human rights norms, effectively permitting a bridging of international human rights standards with development interventions that respond to local development conditions and actors.²¹
21. What will a rights-based approach contribute to Canadian development effectiveness in the context of the ODA Accountability Act?
- ❑ A normative framework, widely accepted in Canada and by developing country partners, for determining and implementing programmatic choices for ODA activities;
 - ❑ An accountability framework for improvements in Canadian aid effectiveness (i.e. the mechanisms for the delivery of Canadian aid), based on human rights principles;

²⁰ For official donors and recipient governments, the 2005 Paris Declaration on Aid Effectiveness represents a culmination of research and dialogue on making the delivery of aid more effective for development purposes. CSOs have been strongly critical of the limitations of the Paris Declaration and in particular its exclusive focus on the delivery mechanisms for aid and not its intended impact on poverty, inequality and human rights. (See this critique at www.betteraid.org). At the Third High Level Forum in Accra in September 2008 it was recognized that aid effectiveness could not be divorced from its intended consequence. The Accra Agenda for Action identifies "gender equality, respect for human rights, and environmental sustainability are cornerstones for achieving enduring impact on the lives and potential of poor women, men and children. It is vital that all our policies address these issues in a more systematic and coherent way." [para 3] It goes on to declare that "developing countries and donors will ensure that their respective development policies and programmes are designed and implemented in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability." [para 13c] (See the Accra Agenda for Action at www.accrahl.org). Civil Society Organizations as development actors in their own right have also come together in Accra to launch an Open Forum on Civil Society Development Effectiveness which will be proposing principles and guidelines on CSO development effectiveness. (See the documentation on the Open Forum at www.cso-effectiveness.org)

²¹ See Darrow, M. and Tomas, A. "Power, Capture, and Conflict: A Call for Human rights Accountability in Development Cooperation", *Human Rights Quarterly*, 27 (2005), pages 486-7 and 521-22. See also Emma Harris-Curtis, Oscar Marleyn and Oliver Bakewell, "The Implications for Northern NGOs of Adopting Rights-Based Approaches" INTRAC, 2005, <http://www.intrac.org/docs/OPS%20and%20beyond.pdf> and Just Associates, "Rights Based Approaches and Beyond linking Rights and Participation: Challenges of current thinking and action", 2004, <http://www.justassociates.org/Rights%20based%20approaches%20and%20beyond.pdf>.

- ❑ A people-centered approach that takes into account many levels of power inequalities, and references universal norms (non-discrimination, equality, democratic participation), rather than donor-specific interests; and
 - ❑ An approach linking these international human rights standards to prevailing socio-economic and political situations, cultural norms, and local capacities in a given time-frame and country context.
22. While a human rights approach has been applied and adapted by different institutions including international NGOs, official aid agencies (DFID)²² and the UN agencies²³, the UN development system has identified several elements that are specific and unique to a HRA:
- a) Assessment and analysis to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying and structural causes of the non-realization of rights;
 - b) Programmes assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfill their obligations. They then develop strategies to build these capacities.
 - c) Programmes monitor and evaluate outcomes and processes guided by human rights standards and norms.
 - d) Programming is informed by the recommendations of international human rights bodies and mechanisms.”²⁴

CONCLUSIONS

23. The ODA Accountability Act spells out a clear mandate for Canadian ODA in terms of poverty reduction, accountability to perspectives of the poor, and international human rights standards. This Briefing Note argues that consistency with international human rights standards frames the meaning and provides implications for the Act’s requirements for ODA to focus on poverty reduction and take account of the perspectives of the poor. In order for the responsible Minister to be of the opinion that the three tests for Canadian ODA are met, the responsible ministries must implement a human-rights-based approach for the delivery of Canadian aid.

²² See O’Neil, T., Foresti, M., Brauholtz, T., Sharma, B. “DFID’s Human Rights Policy: Scoping Study”, London: ODI, October 2007.

²³ A number of UN agencies who have adopted a rights based approach came together in the UN Development Group around a “Common Understanding” of the application of this approach to UN funds and programming. See “The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding among the UN Agencies”, 2003, http://www.hreoc.gov.au/social_justice/conference/engaging_communities/un_common_understanding_rba.pdf.

²⁴ *Ibid.*, p 3.

24. The application of specific human rights norms in a results-based approach to aid programming is context specific. Interventions must aim to highlight and address the rights of the most discriminated and vulnerable populations, as well as the capacities of citizens for claiming rights and of states for meeting obligations. In a HRA, human rights standards are a guide (but not a specific answer) for determining what should be considered, with whom, and how, to address these realities of development process on the ground. Finally, a HRA has an impact on the donor organization itself in terms of the expertise required of its staff, the process for engaging with counterpart states and other development stakeholders such as CSOs, and the relationship to citizens in the donor country.²⁵
25. Further work is required to develop the practical programmatic guidance for the HRA approach, not only for agencies such as CIDA, but also for Canada's development partners, including Canadian and developing country civil society organizations.

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²⁵ See Haris-Curtis, *et al*, *op. cit.*