

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City**

**FIFTEENTH CONGRESS
First Regular Session**

HOUSE BILL No. 3230

**Introduced by Reps. TEDDY A. CASIÑO, NERI JAVIER COLMENARES,
RAFAEL V. MARIANO, LUZVIMINDA C. ILAGAN, RAYMOND V. PALATINO, and
EMERENCIANA A. DE JESUS**

EXPLANATORY NOTE

Government policy on Official Development Assistance (ODA) is defined by the ODA Act of 1996 (Republic Act 8182, as amended by R.A. 8555). The law identifies the criteria for what counts as ODA or aid, defines oversight bodies and functions, and sets parameters for the use of aid.

Ideally, foreign aid is supposed to contribute to national development and the realization of economic, social, cultural and political rights of its beneficiaries. In principle it should add to the limited financial and technical resources for programs and projects of the national government, local government units and civil society.

In reality, however, ODA has traditionally been used by donor countries as a conduit for the export of excess capital and goods. As such, aid is often used to penetrate the economies of recipient countries, impose conditionalities suited to the economic and political interests of donors and creditors or, at the very least, provide an incentive for beneficiaries to follow a certain path of development not necessarily in accordance with their own interests.

In the case of the Philippines, ODA unduly reflects collective donor preferences and not the country's social and development imperatives. Ironically, aid has tended to reinforce rather than remedy the basic problems in the country's official development strategies. The largest part of aid goes to infrastructure in areas of the country with relatively high-value economic activity or to projects with direct economic returns rather than to social services or to rural areas where outcomes are less visible or not immediately measurable. The recent high-profile cases of corruption and rent-seeking in the aid system are also a matter of serious concern.

Aid infrastructure projects, aside from often being implemented by contractors and consultants from donor countries, also tend to locate where transnational firms can most benefit from their use. In severe instances, ODA projects have been implemented in ways that violate the human rights of host communities, that economically and physically displace marginalized sectors, and that have adverse impacts on the environment.

Indeed, much has to be done to reform the country's ODA system if only to mitigate the insidious nature of development aid and to maximize whatever benefits it may provide to the country. The general direction must be to build democratic ownership, improve transparency and accountability, and encourage stakeholder vigilance and checks and balances in all levels of implementation. It is also vital to assert the country's sovereignty and by doing so greatly improve its negotiating leverage vis-à-vis donors and lenders.

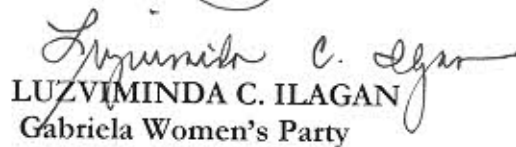
Some constructive steps towards addressing a number of these concerns can be taken with the amendments to the current ODA Law. By introducing such amendments, the authors by no means have the illusion that the self-serving (to the donor) nature of development aid can be altered. Only that somehow, some safeguards for its abuse are put in place in order to maximize whatever potential benefit it may have.

In view of the foregoing, approval of this bill is earnestly sought.

Approved,


TEDDY A. CASIÑO
Bayan Muna Party-list


NERI JAVIER COLMENARES
Bayan Muna Party-list


LUZVIMINDA C. ILAGAN
Gabriela Women's Party


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RAYMOND V. PALATINO
Kabataan Party-list

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AN ACT
ENSURING THE EFFECTIVENESS OF ALL OFFICIAL DEVELOPMENT
ASSISTANCE (ODA) LOANS AND LOANS AND GRANTS, AMENDING FOR THE
PURPOSE REPUBLIC ACT NO. 8182 OTHERWISE KNOWN AS THE OFFICIAL
DEVELOPMENT ASSISTANCE ACT OF 1996, AS AMENDED, AND FOR OTHER
PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Short Title. – This act shall be known as the “Aid Effectiveness Act of 2010.”

Section 2. Sec. 2 of Republic Act No. 8182 is hereby amended to read as follows:

"Sec. 2. Official Development Assistance (ODA) AND AID EFFECTIVENESS. - For purposes of this Act, ODA is a loan or loan and grant, which MEETS all of the following criteria FOR ODA TO BE EFFECTIVE:

(a) IT MUST BE ADMINISTERED WITH THE OBJECTIVES OF PROMOTING AND ACHIEVING SUSTAINED REDUCTION OF POVERTY AND INEQUALITY, SUPPORTING THE ENJOYMENT OF HUMAN RIGHTS, DEMOCRACY, ENVIRONMENTAL SUSTAINABILITY AND GENDER EQUALITY FOR THE FILIPINO PEOPLE;

(b) IT MUST BE CONTRACTED WITH GOVERNMENTS OF FOREIGN COUNTRIES WITH WHOM THE PHILIPPINES HAS DIPLOMATIC, TRADE RELATIONS OR BILATERAL AGREEMENTS OR WHICH ARE MEMBERS OF THE UNITED NATIONS, THEIR AGENCIES AND INTERNATIONAL OR MULTILATERAL LENDING INSTITUTIONS BASED ON THE PRINCIPLES OF DEMOCRATIC OR COUNTRY OWNERSHIP AND MUTUAL ACCOUNTABILITY WITH THE UTMOST INTENTION OF UPLIFTING THE ECONOMIC, SOCIAL AND CULTURAL CONDITION OF THE FILIPINO PEOPLE;

(c) There are no available comparable financial instruments in the capital market; and

(d) It must contain a grant element of at least twenty five percent. Grant element under this Act is the reduction enjoyed by the borrower whenever the debt service payments which shall include both principal and interest and expressed at their present values discounted at ten percent (10%) OR AT THE YIELD ON COMPARABLE COMMERCIAL BONDS MOST RECENTLY ISSUED BY THE NATIONAL GOVERNMENT, WHICHEVER IS LOWER, are less than the face value of the loan or loan and grant. The grant element of a loan or loan and grant is computed at the ratio of (i) the difference between the face value of the loan or loan and grant and the debt service payments to (ii) the face value of the loan or loan and grant."

Section 3. Sec. 4 of Republic Act No. 8182, as amended, is hereby further amended to read as follows:

"Sec. 4. Use of ODA for Equitable Development. - The proceeds of ODA shall be used to achieve equitable growth and development in all provinces through priority development projects for the improvement of economic and social service facilities taking into account such factors as land area, population, scarcity of resources, low literacy rate, infant mortality and poverty incidence in the area: Provided, That rural infrastructure, countryside development and social welfare projects and programs established under the law shall be given preference in the utilization of ODA funds: PROVIDED, FURTHER, THAT STUDIES ON THE SOCIAL AND ECONOMIC IMPACT OF THE DEVELOPMENT PROJECT ARE CONDUCTED AND THE INTENDED TARGET GROUPS OF THE PROJECT ARE CONSULTED.

Towards this end, the National Economic and Development Authority (NEDA) shall endeavor to obtain ODA funds from donor countries, which shall approximately be five percent (5%) of the total ODA loan from the immediately preceding year. Said funds shall be administered by the NEDA for project identification, feasibility studies, master planning at local and regional levels, and monitoring and evaluation: Provided, further, That ODA shall not be availed of or utilized directly or indirectly for the following:

(a) Telephone programs contracted as of 1 January 1996 except basic telephone programs and projects for rural areas not adequately serviced and/or currently developed by private enterprises shall be entitled to ODA loan availments;

(b) Projects mandated primarily by law to be served by the private sector; and

(c) Financing for private corporations with access to commercial credit.

The NEDA shall ensure that the ODA obtained shall be for previously identified national priority projects which are urgent or necessary. ODA shall not be accepted or utilized solely because of its availability, convenience, or accessibility.

Section 4. Sec. 6 of Republic Act No. 8182 is hereby amended to read as follows:

"Sec. 6. Mechanism for the Distribution and Utilization of ODA Funds. - The President of the Republic of the Philippines, upon recommendation of the NEDA AND UPON APPROVAL OF

THE CONGRESS, shall develop and formulate the mechanism for the equitable distribution and utilization of ODA funds to all provinces consistent with the provisions of this Act."

Section 5. Sec. 8 of Republic Act No. 8182 is hereby amended to read as follows:

Sec. 8. Oversight. - Pursuant to its constitutional duties, the Executive Department, particularly NEDA, the Commission on Audit and Congress shall discharge Oversight functions, to wit:

- (a) The NEDA shall conduct annual review of the status of all projects financed by ODA, identify causes of delays, reasons for bottlenecks, cost overruns, both actual and prospective, and continued viability, and report to Congress not later than June 30 of each year;
- (b) The Commission on Audit shall conduct an audit on each ongoing and completed project and report to Congress not later than June 30 each year; and
- (c) There shall be a Congressional Oversight Committee composed of the Chairpersons of the Committee on Ways and Means of both the Senate and the House of Representatives, five (5) members each from the Senate and the House representing the majority and two (2) members each from the Senate and the House representing the minority to be designated by the leaders of the majority and minority in the respective chambers.

THE CONGRESSIONAL OVERSIGHT COMMITTEE SHALL HAVE THE FOLLOWING DUTIES AND RESPONSIBILITIES, AMONG OTHERS:

- (1) MONITOR AND ENSURE THE PROPER IMPLEMENTATION OF THIS ACT;
- (2) REVIEW ODA LOANS AND LOANS AND GRANTS INCURRED AND ENTERED INTO BY THE PHILIPPINE GOVERNMENT;
- (3) ENSURE THAT MECHANISMS ARE IN PLACE THAT WILL ALLOW CONGRESS TO ASSESS AND REJECT AID CONDITIONALITY, IF NEED BE, WHEN THESE CONDITIONS RUN COUNTER TO THE COUNTRY'S INTEREST;
- (4) REVIEW THE IMPLEMENTATION AND STUDY THE IMPACT OF ODA-ASSISTED DEVELOPMENT PROJECTS; AND
- (5) INITIATE INDEPENDENT IMPACT STUDIES OF ODA PROJECTS. IN FURTHERANCE THEREOF, THE COMMITTEE IS EMPOWERED TO REQUIRE GOVERNMENT ENTITIES IMPLEMENTING ODA-ASSISTED PROJECTS, THE SUBMISSION OF ALL PERTINENT INFORMATION ABOUT THE MATTER.

Section 6. Republic Act No. 8182 is hereby further amended to include a new Sec. 8-A and Sec. 8-B to read follows:

"SEC. 8-A. ROLE OF CIVIL SOCIETY ORGANIZATIONS – THE GOVERNMENT SHALL ENCOURAGE A WIDE RANGE OF STAKEHOLDERS' INVOLVEMENT AND A PARTICIPATORY PROCESS IN THE MATTER OF MONITORING AND EVALUATING

ODA PROJECTS. CIVIL SOCIETY ORGANIZATIONS SHALL PLAY IMPORTANT ROLES IN THE FOLLOWING, AMONG OTHERS:

(1) IN DETERMINING MORE APPROPRIATE INDICATORS AND MEASUREMENTS OF AID EFFECTIVENESS IMPACT; AND

(2) AS A WATCHDOG IN THE EFFICIENT, EFFECTIVE, AND TRANSPARENT IMPLEMENTATION OF ODA PROJECTS FROM THE PROJECT CONCEPTUALIZATION UNTIL ITS COMPLETION.

SEC. 8-B. CITIZENS' PARTICIPATION IN ODA PROJECTS – IN FURTHERANCE OF THE OVERSIGHT FUNCTION PROVIDED FOR IN SEC. 8-A, THERE SHALL BE CREATED A CITIZENS' PARTICIPATION COMMITTEE FOR EACH ODA PROJECT TO BE COMPOSED OF CIVIL SOCIETY ORGANIZATIONS WHICH WILL MONITOR AND REVIEW ODA-FUNDED PROJECTS AND GIVE RECOMMENDATIONS FOR ITS PROPER IMPLEMENTATION.

THE NEDA SHALL CRAFT THE APPROPRIATE RULES AND REGULATIONS TO EFFECTIVELY IMPLEMENT SEC.-B OF THIS ACT IN CONSULTATION WITH VARIOUS CIVIL SOCIETY STAKEHOLDERS."

Section 7. Sec. 10 of Republic Act No. 8182 is hereby amended to read as follows:

"Sec. 10. Report. - It shall be the duty of the President of the Republic of the Philippines to submit, within thirty (30) days after the opening of every regular session, a separate report to each member of Congress on the amount of ODA loans and grants incurred under this Act, INCLUDING THE RECEIPT AND DISBURSEMENT OF AID FLOWS IN THE NATIONAL BUDGET."

Section 8. Sec. 11 of Republic Act No. 8182 is hereby amended to read as follows:

"Sec. 11. Implementation, Restrictions, Rules and Regulations. In the implementation of the projects:

- (a) Consultants for the feasibility and design aspects of the project may not participate, directly or indirectly, in any subsequent phase of project implementation;
- (b) Project execution shall not be delegated by the implementing agency except where the latter does not have the capacity to implement such project;
- (c) In the hiring of consultants, contractors, architects, engineers, and other professionals necessary for a project's implementation, Filipinos shall be given preferences;
- (d) In the purchase of supplies and materials, preference shall be given to Filipino suppliers and manufacturers, [so long as the same shall not adversely alter or affect the project, and such supplies and materials are to the] WHO MEET the standards specified by the consultants, contractors, architects, engineers, and other professionals connected with the projects; and
- (e) ODA projects shall not be exempt from the requirement of first obtaining an Environmental

Compliance Certificate (ECC), or other such certificates and clearances necessary or required by law for the purpose of environmental protection, from the Department of Environment and Natural Resources (DENR) or proper government agency, as the case may be. The NEDA shall promulgate the Implementing Rules and Regulations (IRR) to implement this Act within thirty (30) days from its approval. The Implementing Rules and Regulations shall take effect five (5) days after publication in a newspaper of general circulation."

Section 9. *Separability.* - Provisions herein which may be declared unconstitutional shall not affect the effectivity and enforcement of other provisions of this Act.

Section 10. *Repealing Clause.* - All laws, decrees, executive orders, rules and regulations and other issuances inconsistent with this Act are hereby repealed or amended accordingly.

Section 11. *Effectivity.* - This Act shall take effect after five (5) days from its publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved,