



**NOTES ON BILL C-293: AN ACT RESPECTING
THE PROVISION OF OFFICIAL DEVELOPMENT ASSISTANCE ABROAD
(OFFICIAL DEVELOPMENT ASSISTANCE ACCOUNTABILITY ACT)**

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(OFFICIAL DEVELOPMENT ASSISTANCE ACCOUNTABILITY ACT)***

BACKGROUND

On 17 May 2006, Mr. John McKay introduced Bill C-293, an Act respecting the provision of development assistance abroad (short title: Development Assistance Accountability Act) (the bill) in the House of Commons. This bill is very similar to Bill C-243, introduced in the House of Commons on 1 May 2006 by Ms. Alexa McDonough. Prior to this, similar private Member's bills, Bill C-204 and Bill C-446, were introduced by Mr. Daryl Kramp on 6 April 2006 and by Ms. Bev Desjarlais in the 38th Parliament.

Bill C-293 establishes a legislative mandate for Canada's official development assistance with a clear purpose for aid spending that focuses on poverty reduction, and is intended to improve transparency and accountability in Canada's aid spending. Bill C-293 expressly defines "official development assistance" and establishes specific criteria for the disbursement of Canadian official development assistance, consistent with the purpose of the proposed Official Development Assistance Accountability Act (the Act). In addition, Bill C-293 sets out a reporting requirement for aid spending. In introducing the bill in Parliament, its sponsor stated that "[t]he purpose of the bill is to concentrate on reducing poverty and promoting compatibility with Canadian values, foreign policy and international human rights standards."

After second reading on 20 September 2006, the bill was referred to the House of Commons Standing Committee on Foreign Affairs and International Development (the Committee). The Committee presented its report on the bill to the House on 1 February 2007. In its report, the Committee proposed several amendments to the bill. After the bill was passed by the House on 20 March 2007, it was sent to the Senate, where it was amended at third reading. The House of Commons concurred with the Senate amendments, and Bill C-293 received Royal Assent on 29 May 2008.

* This is a revised version of an earlier paper prepared by the Library of Parliament. The earlier paper was written by Emma Butt, intern, and Margaret Young, analyst, and was updated by Elizabeth Kuruvila, analyst, in the Law and Government Division.

A. Canada's Official Development Aid

Currently, there is no legislation clearly defining the mandate and purpose of the Canadian International Development Agency (CIDA) or the parameters of Canada's international development assistance.

The International Assistance Envelope (IAE), introduced in the February 1991 Budget, funds Canada's Official Development Assistance (ODA) and Official Assistance (OA) initiatives.⁽¹⁾ Official development assistance is defined by the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD) as:

[funding transferred to] developing countries and multilateral institutions provided by official (government) agencies which meets the following tests:

- (a) it is administered with the promotion of the economic development and welfare of developing countries as its main objective; and
- (b) it is concessional in character and conveys a grant element of at least 25%.⁽²⁾

CIDA is the federal agency charged with planning and implementing the majority of Canada's development cooperation programs, and administers approximately 80% of the aid budget.⁽³⁾ The authority of the Minister of Foreign Affairs over CIDA, the provision of international development and assistance by Canada, and the role of the Minister of International Cooperation, through whom CIDA reports to Parliament, are set out in the *Department of Foreign Affairs and International Trade Act*.⁽⁴⁾

B. Parliamentary Studies and Reports

Previous parliamentary studies and reports have recommended a legislative mandate for Canada's official development assistance.

(1) Canadian International Development Agency, CIDA Estimates 2005–2006, Part III, *Plans and Priorities*, 24 March 2005. Official Assistance refers to funding provided to countries that are not eligible to receive Official Development Assistance.

(2) *Ibid.*, footnote 22.

(3) Canadian International Development Agency, "About CIDA – FAQ," 31 July 2006.

(4) R.S.C. 1985, c. E-22.

In May 1987, the House of Commons Standing Committee on External Affairs and International Trade (SCEAIT) released a report on Canada's official development assistance policies and programs, entitled *For Whose Benefit?*⁽⁵⁾ In its report, SCEAIT recommended that the Canadian government adopt a "Development Assistance Charter as part of a legislative mandate for Canada's development assistance program."⁽⁶⁾ SCEAIT maintained that the Charter should contain several principles, including the principle that "the primary purpose of Canadian official development assistance is to help the poorest countries and people in the world."

On 9 June 2005, in accordance with its ongoing study of Canada's International Policy Statement, the House of Commons Standing Committee on Foreign Affairs and International Trade adopted its Twelfth Report on International Aid (the Report). The Report supported establishment of a clear legislative mandate for Canada's ODA. It called on the federal government:

To introduce legislation prior to the next federal budget which establishes poverty reduction as the priority for Canada's Official Development Assistance (ODA), as outlined in the historic February 17, 2005, letter from all Opposition Leaders to the Prime Minister, to ensure that aid is provided in a manner consistent with Canada's human rights obligations and respectful of the perspectives of those living in poverty.⁽⁷⁾

The Report was presented to the House of Commons on 13 June 2005 and concurred in by the House on 28 June 2005.

On 15 February 2007, the Senate Standing Committee on Foreign Affairs and International Trade released its report entitled *Overcoming 40 Years of Failure: A New Road Map for Sub-Saharan Africa*.⁽⁸⁾ In its Report, the Committee recommended that the Government conduct an immediate review to determine whether CIDA should continue to exist. If it is determined that CIDA should continue to exist, the Committee recommended that, "it should be given a stand-alone statutory mandate incorporating clear objectives against which the performance of the agency can be monitored by the Parliament of Canada."

(5) House of Commons, Standing Committee on External Affairs and International Trade, Report on Canada's Official Development Assistance Policies and Programs, *For Whose Benefit?* 2nd Session, 33rd Parliament, May 1987.

(6) *Ibid.*, p. 12.

(7) House of Commons, Standing Committee on Foreign Affairs and International Trade, *Report 12 – International Aid*, 1st Session, 38th Parliament, 9 June 2005, <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=8979&Lang=1&SourceId=120069>.

(8) The report can be obtained from <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/fore-e/rep-e/repafriFeb07-e.pdf>.

Further, the Committee recommended that Canada should completely redesign its foreign aid program in Africa in different ways, such as:

- by concentrating all bilateral development aid on countries in Sub-Saharan Africa that are aggressively undertaking certain economic and political reforms; and
- by focusing its aid on economic development, in order to achieve economic advancement in support of social progress.

DESCRIPTION AND ANALYSIS

A. Short Title and Interpretation (Clauses 1 and 3)

The bill is entitled the Official Development Assistance Accountability Act (clause 1).

Clause 3 contains a number of definitions for the purpose of the bill, including those of “competent minister,” “international agency,” “Minister,” and “official development assistance.”

The “competent minister” is defined as “any minister designated by the Governor in Council to provide official development assistance in relation to this Act.”

“International agency” is defined as any intergovernmental organization whose objectives include global poverty reduction or international humanitarian assistance.

“Minister” is defined as the “Minister of International Cooperation, the Minister of Finance, the Minister of Foreign Affairs or any other minister designated by the Governor in Council as the Minister for the purposes of this Act.”

Official development assistance is defined as international assistance:

- the principle objective of which is to promote economic development and welfare of developing countries and that meets certain specific criteria including the requirements under clause 4; and/or
- that is provided for the purpose of alleviating the effects of a natural or artificial disaster or other emergency occurring outside Canada.

The definition of official development assistance under the bill is similar to the definition provided by the OECD’s Development Assistance Committee.

B. Purpose (Clause 2)

Clause 2(1) establishes that the purpose of the Act is to ensure that all of Canada's official development assistance abroad is provided with a central focus on poverty reduction, as well as in a manner that is consistent with Canadian values, Canada's foreign policy, the principles of the *Paris Declaration on Aid Effectiveness* of 2 March 2005,⁽⁹⁾ sustainable development and democracy promotion and in a manner that promotes international human rights standards. The *Paris Declaration on Aid Effectiveness* is a document that "lays down a practical, action-orientated roadmap to improve the quality of aid and its impact on development."⁽⁹⁾ It states commitments responding to five broad principles (ownership, alignment, harmonization, managing for results, and mutual accountability) and sets out indicators of aid effectiveness with a view to tracking progress.

Clause 2(2) states that Canadian official development assistance abroad shall be defined exclusively with regard to the values provided for in clause 2(1).

C. Criteria for Providing Development Assistance (Clause 4)

Clause 4 of the bill sets out criteria for the disbursement of Canadian official development assistance. Such assistance may be provided only if the competent minister 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. As part of the process of determining whether official development assistance meets these criteria, the competent minister must consult with governments, international agencies and Canadian civil society organizations at least once every two years (clause 4(2)). The views and recommendations expressed in such consultations must be taken into consideration by the minister in assessing whether the assistance meets the criteria set out in clause 4(1).

Clause 4(3) provides that in calculating Canada's official development assistance contribution in Government of Canada publications, the competent minister or the Governor in Council shall consider only development assistance as defined by this Act that meets the criteria provided in clause 4(1), and humanitarian assistance.

(9) See Organisation for Economic Co-operation and Development, Development Co-operation Directorate, *The Paris Declaration*, http://www.oecd.org/document/18/0,2340,en_2649_3236398_35401554_1_1_1_1,00.html.

This Act shall not be construed as to limit or restrict the funding or activities of the International Development Research Centre (clause 4(4)). Nor does the Act apply to funding or other assistance provided in cases of natural or artificial disasters or other emergencies outside Canada (clause 5).

D. Reporting Requirements (Clause 5)

Clause 5 requires that the Minister, or the competent minister, submit an annual report to the House of Commons and the Senate within six months of fiscal year end. The report must include the total amount spent on official development assistance by the government in the previous fiscal year, a summary of any activity or initiative taken under the Act, a summary of any representation made by Canadian representatives related to priorities and policies of the Bretton Woods Institutions, and a summary of CIDA's *Departmental Performance Report*. The Minister is also required to submit an annual statistical report to Parliament on the disbursement of official development assistance, within one year of the fiscal year end. This clause also imposes certain reporting obligations on the Minister of Finance. However, clause 5 restricts reporting requirements by providing that "information shall not be reported under this section if its disclosure is prohibited by the policies of the Bretton Woods institutions."

E. Coming Into Force (Clause 6)

The Act will come into force 30 days after the day on which it receives royal assent.

COMMENTARY

For years, calls have come from parliamentary committees, as well as from non-governmental organizations, and other interested parties, for a legislative mandate for Canada's official development assistance that would focus aid on poverty reduction.⁽¹⁰⁾ With respect to the accountability of aid spending and aid effectiveness, Mr. Gerry Barr, President and Chief Executive Officer of the Canadian Council for International Co-operation, maintains,

(10) Canadian Council for International Co-operation, "Briefing Note: A Legislated Mandate for Foreign Aid," http://www.ccic.ca/e/docs/002_aid_2006-03_legislated_mandate_foreign_aid.pdf.

“There is no more effective tool to address that than the idea of a legislated mandate for aid spending, which sets out very clearly the purposes of aid spending, and creates, because of that clarity, a framework in which accountability becomes truly possible.”⁽¹¹⁾

Other countries such as the United Kingdom have already established legislative mandates for their international development assistance. The International Development Act (IDA 2002), which came into force in the United Kingdom on 17 June 2002, is the central piece of legislation authorizing disbursements of development or humanitarian assistance, including in what form and on what terms it can be given.⁽¹²⁾ The IDA 2002 establishes poverty reduction as the overarching purpose of the United Kingdom’s international development assistance.

One of the notable amendments to the bill made by the House Committee relates to the Advisory Committee for International Development. When it was introduced in Parliament, the bill proposed the creation of a new Advisory Committee for International Development, consisting of 20 members, to advise the Minister on the exercise of his or her powers in relation to the Act. The Advisory Committee was also mandated to review any matters related to development assistance in accordance with the purposes of the Act. Prior to the amendments made by the House Committee, the bill provided for a process whereby residents of developing countries who believed that the development assistance being provided to that country was inconsistent with the purposes of the Act could petition the Advisory Committee for International Development. Such petitions would then be forwarded to the Minister, who was required to reply to the petitioner. The bill, as amended by the Standing Committee, does not contain provisions relating to the Advisory Committee and does not provide for a petition process.

Finally, the Senate Standing Committee on Foreign Affairs and International Trade examined Bill C-293 and produced a report on 3 April 2008 containing observations.⁽¹³⁾ The observations express support for the principle of Bill C-293 but highlight what the Senate

(11) House of Commons, Standing Committee on Foreign Affairs and International Trade, *Evidence*, 1st Session, 38th Parliament, 19 May 2005.

(12) United Kingdom, Department for International Development (DFID), <http://www.dfid.gov.uk/About-DFID/>.

(13) Senate Standing Committee on Foreign Affairs and International Trade, Fourth Report, 3 April 2008. Observations carry no legal weight but serve to indicate to the Senate and the Government some of the issues the Committee was concerned with. As noted in a Speaker’s Ruling from the Senate, “These observations are not a procedurally significant part of [Senate Committee] reports. Their value, in the view of some Senators, is as an advisory to the government to pay attention to certain elements of the law when considering future amendments to legislation.” Senate, *Journals*, 11 December 2002, p. 412.

Committee considered to be shortcomings. First, the Senate Committee considers that the objective of poverty reduction should be supplemented “by a focus on economic development and the achievement of prosperity in aid-recipient countries.” Second, it suggests that “poverty reduction” be defined in the bill, so as to provide a test for determining whether ODA meets the objective. Third, the report notes the absence of “specific criteria for recipient countries to satisfy in order to obtain Canadian aid,” which would facilitate targeting aid recipients. Fourth, the Senate Committee deems clause 4(1)(b) of the bill – requiring “tak[ing] into account the perspectives of the poor” – to lack clarity as to how this would be done. Fifth, it suggests that the requirement of consultation with “governments, international agencies and Canadian civil society organizations” found in Bill C-293 could become burdensome, could create the potential for legal actions by groups not consulted, and could lead to problematic consultation with repressive regimes. Sixth, the Senate Committee notes that reporting and transparency requirements could duplicate existing reporting practices and could conflict with the confidentiality policies of partnering organizations, thereby curtailing their willingness to exchange confidential information. Seventh, the report notes the absence of a requirement of accountability by the competent minister to Canadian taxpayers on the delivery of aid. Finally, the report considers that the absence of a comprehensive legislative mandate for CIDA is problematic, and it notes that Bill C-293 does not address this.

At third reading, Senator Hugh Segal proposed a series of amendments which were incorporated into the final version of the bill. Amendments dealt with the definitions of three terms used in the bill, the obligation of consultation by the competent minister with governments, international agencies and Canadian civil society organizations and an exception to the reporting obligation for information that cannot be disclosed under the policies of Bretton Woods institutions.