

The ODA Accountability Act and the Right to Education: Implications for Canadian Aid to Education

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“Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities... But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.”

General Comments on the Implementation of Article 13 of the International Covenant on Economic, Social and Cultural Rights, Section 1(1999)

The enactment of the Official Development Assistance (ODA) Accountability Act (Bill C-293) brings both promise and potential to Canadians concerned with development aid in the field of education. Most importantly, the Bill provides the opportunity for Canadians to advance education as a human right. It opens the way for the articulation of policies, standards, programs and benchmarks regarding Canadian aid to education from a human rights perspective. The Bill also provides for greater accountability and transparency in the allocation of Canadian assistance to education, and the opportunity for consultation on Canada’s policies and performance in the sector.

This paper begins to explore these opportunities by providing a more detailed description of internationally recognized human rights standards in education. The paper then analyses Canada’s current policies and strategies related to education, and the extent to which they address these standards. Finally, some potential implications for Canadian ODA to education, in light of Bill C-293, are identified.

¹ Valuable comments and insight have been provided by Brian Tomlinson, CCIC.

Bill C -293: The ODA Accountability Act

In the years leading up to the passing of the Official Development Assistance Accountability Act (Bill C-293), Canadian civil society worked actively to formalize a legislated mandate for Canadian ODA. Through various civil society organizations (CSOs) and the Make Poverty History Campaign, a petition – including over 12,000 e-mails and letters – was sent to Canadian senators. Bill C-293 was introduced into the House of Commons in May 2006 by Liberal Member of Parliament John McKay and supported by other opposition parties. Amendments were made in both the House of Commons and the Senate, and the Bill passed unanimously by all parties and gained royal assent on May 29th, 2008.

The Act sets out certain conditions regarding the provision of official development assistance abroad or Canada's ODA. The purpose of the Act is two-fold, as described in Section 2 of the Bill:

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. (2) Canadian official development assistance abroad shall be defined exclusively with regard to these values (Bill C-293, Section 2).

While the purpose section provides important statements, the heart of the Bill is found in Section 4, entitled "Official Development Assistance". Subsection 4 (1) states that Canadian ODA 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.

Other international assistance may be provided by the Minister, but cannot be included as Official Development Assistance. There is an exemption for humanitarian assistance and a further exemption for the International Development Research Center (IDRC), which are not required to meet this test (Freeman, 2008).

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 (Section 3). While 'contributes to poverty reduction' and 'takes into account the perspectives of the poor' are not defined, the Canadian Council for International Co-operation (CCIC), in its briefing note on Bill C-293, argues 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” (Tomlinson, 2008, para. 4).

A human rights approach to development aid has been explored by several government and non-government actors, including the United Kingdom Department for International Development (DFID), the United Nations (UN) development agencies and international non-governmental organizations (NGOs) such as Save the Children and ActionAid. The United Nations agencies have probably gone the furthest in the development and implementation of a human rights approach. As CCIC’s briefing paper notes, there are several elements of the approach that are both specific and unique.

- 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 fulfil 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 (Tomlinson 2008, para. 19).

International Human Rights Standards in Education

The ODA Accountability Act requires that Official Development Assistance may be provided only if the competent Minister is of the opinion that it is consistent with international human rights standards (in addition to contributing to poverty reduction and taking into account the perspectives of the poor).

The right to education has been recognized since the proclamation of the Universal Declaration of Human Rights (UDHR) in December 1948. This Declaration is extremely important to Canada, in so far as it provides the foundational framework for the human rights goals and standards to which Canadian legislation, institutions, and society aspire. Article 26 of the Universal Declaration proclaims that:

- 1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and

professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

- 2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- 3) Parents have a prior right to choose the kind of education that shall be given to their children (UDHR, 1948).

In addition to the Declaration of Human Rights, the right to education is enshrined in a range of international conventions to which Canada is a state signatory, including the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979), and more recently, the Convention on the Rights of the Children (CRC, 1989).² The right to education has also been incorporated into various regional treaties. Beyond this, many countries have made provisions for the right to education in their national constitutions.

An expanded foundation for international human rights standards in education is provided for in Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966 and ratified by Canada on May 19, 1976. Unlike the Universal Declaration of Human Rights, the ICESCR is a legally binding document under international human rights law. Article 13 of the ICESCR is considered “the most wide ranging and comprehensive article on the right to education in human rights law” (CESCR 1999a, para 2).

The United Nations Economic and Social Council’s General Comments on Articles 13 and 14 of the ICESCR, finalized in 1999, provide a more specific understanding of the articles, and the obligations arising from them. These Comments are informed by other international human rights conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), and the Convention on the Rights of the Child (CRC, 1989) which contain specific articles related to the right to education (articles 10 and 28-29 respectively). The Comments are also informed by declarations such as the World Declaration on Education for All (EFA), adopted by 155 governmental delegations in 1990,, as well as the

² Details of articles on the right to education, provided for in these and other UN Conventions, can be found in Unesco 2007. *The Right to Education: Normative Framework*. Unesco, Paris.

adoption of a human rights based approach by United Nations agencies, programmes and bodies, including the office of the UN Special Rapporteur on the Right to Education.³

Article 13 of the ICESCR references, first and foremost, the aims and objectives of education. According to Article 13, Section 1 of the ICESCR, education shall:

- Be directed to the full development of the human personality and its sense of dignity.
- Strengthen the respect for human rights and fundamental freedoms.
- Enable all persons to participate effectively in a free society.
- Promote understanding among all ethnic groups, as well as nations and ethnic, racial and religious groups.

From the General Comments on Article 13 (CESCR, 1999a)⁴, gender equality and respect for the environment have been added to the aims and objectives of education to reflect a more contemporary understanding of Article 13 (1).

The General Comments further elaborate that education, in all its forms and levels, should also exhibit four interrelated and essential features:

Availability – Functioning educational institutions and programs are in place and available in sufficient quantity.

Accessibility – Education institutions and programs are accessible, without discrimination, and are within safe physical reach and affordable for all children.

Acceptability – The content of education, including curricula and teaching methods, are relevant, culturally appropriate, and of good quality.

Adaptability – Education is flexible, to respond the needs of students, and to adapt to the needs of changing communities and societies.

³ Reports of the UN Special Rapporteur on the right to education can be found at <http://www2.ohchr.org/english/issues/education/rapporteur/annual.htm>

⁴ The following section summarizes key points from General Comments 13 on the right to education. The full text of General Comments 13 can be found at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ae1a0b126d068e868025683c003c8b3b?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?Opendocument)

While international human rights standards in education cover all forms and levels of education (including secondary, technical and vocational, fundamental and higher education), States Parties **are obliged to prioritize the introduction of compulsory, free primary education.** As the Comments note, “the obligation to provide primary education for all is an immediate duty of all States parties” (CESCR 1999a, para.51). This obligation is reinforced by Article 14 of the ICESCR which requires States parties that have not achieved compulsory, primary education to adopt a detailed plan of action for its achievement. States Parties are also obliged to ensure “progressive realization” of free education at secondary and tertiary levels (CESCR 1999b).

The right to primary education under human rights law has several features:

- It includes the elements of availability, accessibility, acceptability and adaptability identified above.
- It is compulsory. Compulsory is understood to mean that neither parents, guardians, nor the state can treat primary education as optional.
- It is available free to all.
- It satisfies the basic learning needs of all children. Basic learning needs are defined, in accordance with the World Declaration on Education for All, as essential learning tools (literacy, oral expression, numeracy, and problem solving) and basic learning content (such as knowledge, skills, values and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.

In addition to the above provisions, Article 13 of the ICESCR and General Comment 13 make specific reference to several other key issues related to the right to education. Non-discrimination and equal treatment is considered an immediate obligation of all States parties and is not subject to progressive realization or the availability of resources. It further accepts the adoption of temporary measures to bring about equality for disadvantaged groups. It identifies disparities in spending across geographic locations as discrimination under the Covenant. It requires states parties to closely monitor education (including disaggregation of educational data by prohibited grounds of discrimination), to identify and redress discrimination.

The General Comments view corporal punishment as inconsistent with international human rights law and encourage schools to introduce positive, non-violent approaches to school discipline.

The importance of teachers to the full realization of children's right to education is recognized. The Covenant calls for the continuous improvement of material conditions of teaching staff, as well as their right to organize and bargain collectively. States parties are encouraged to report on measures they are taking to ensure that teaching staff enjoy the conditions and status commensurate with their role.

General Comments on Articles 13 and 14 of the ICESCR recognize that in many places the right to education remains a distant goal. The Comments also recognize the 'diverse factors' which make it difficult for States to fulfill their obligations. These factors include lack of adequate financial resources, as well as development context, both internally within a State, and internationally such as global financial crises. Given these realities, the General Comments have identified minimum core obligations of States Parties in relation to the right to education. These include:

- Ensuring the right of access to public educational institutions and programmes on a non-discriminatory basis. This is considered an immediate obligation of States parties and is not subject to progressive implementation.
- To ensure that education conforms to the aims and objectives of education, outlined in Article 13 of ICESCR.
- To provide primary education for all.
- To adopt and implement a national educational strategy which includes provision of secondary, higher and fundamental education.
- To ensure free choice of education without interference from the State or third parties, subject to conformity with 'minimum educational standards' (CESCR, 1999a, para. 57).

The ICESCR provides for the concept of progressive realization in its acknowledgement of constraints of States Parties in meeting their obligations towards the right to education (Article 14). However, progressive implementation requires states parties to take deliberate, concrete and targeted steps towards the realization of the right to education. It also implies that retrogressive measures in relation to the right to education are not permissible without clear justification.

Further, the ICESCR obliges **all States Parties, including Canada, to take steps to support other States Parties towards the right to education**. This obligation includes providing international assistance, both economic and technical, "to the maximum of their available resources" (ICESCR, 1966, Article 2:1). It also obliges states to ensure that any international

agreements a government enters into have no adverse impact on the right to education, and to ensure that their actions, as members of international organizations, including international financial institutions, take account of the right to education. In General Comment 3, the Committee on Economic Social and Cultural Rights (CESCR) draws attention to the obligation of all States parties “to take steps, individually and through international assistance and cooperation, especially economic and technical, towards the full realization of the rights recognized in the Covenant, such as the right to education”. The obligation to provide international assistance and cooperation to support the universal right to education is further reinforced by Article 56 of the Charter of the United Nations (1945) and the Constitution of UNESCO (1945); Article 10 of the World Declaration on Education for All (1990); Part 1, paragraph 35 of the Vienna Declaration and Programme of Action (1993); as well as Article 24(4) of the Convention on the Rights of the Child (1989).

The General Comments to Articles 13 and 14 of the ICESCR were published in 1999, and therefore do not consider the Dakar Framework for Action (2000), agreed to at the UN-sponsored World Education Forum in Dakar, Senegal in April 2000, or the Millennium Development Declaration (United Nations, 2000), adopted at the Millennium Development Summit in September 2000. The Dakar Framework for Action was affirmed by UN organizations and 164 governments, and sets the broad targets for the achievement of education for all. These targets include early childhood development, life skills for young people and literacy for adults, in addition to primary education, quality education and gender equality. The Millennium Development Goals address the right to education more narrowly, focusing on two goals: ensuring universal access to and completion of primary education (Goal 2); and achieving gender equity in secondary and primary education (Goal 3a). While these Declarations do not have the same status within international human rights law as the ICESCR, they clearly reinforce human rights law as it relates to the right to education, and are important indicators of broad international commitment to supporting the right to education through international development assistance.

Two international initiatives established since 2000 to support the universal right to education are worth noting here. The first is the Education for All Fast Track Initiative (FTI), an international effort launched in 2002 and housed at the World Bank that works to raise sufficient external assistance to support least developed countries that have formal plans to provide the universal entitlement to education (see Fast Track Initiative, 2004, 2008). The second is the Education for All Global Monitoring Report (GMR), housed in UNESCO, which monitors fulfillment of both domestic obligations to provide universal access to education, and the quality of international assistance that supports these efforts (see UNESCO 2002-2009). Canada has supported both of these initiatives. They are particularly important because they provide key quantitative measures of the funding gaps facing efforts to achieve the right to

education, and thus a way of quantifying international obligations as well as domestic ones.

CIDA's Policies and Strategies of Canada's Official Development Assistance to Education:

Canada's policies and strategies for ODA to education draw heavily on the Dakar Framework for Action (2000) and the Millennium Development Goals (UN, 2000). However, Canada has only recently begun to use human rights standards in education to inform its international development activities.

The Sustainable Development Strategy 2007-2009 (SDS) of the Canadian International Development Agency (CIDA) provides the current direction for the Agency's programming in education. The following four result areas are identified in the strategy:

1. **Education for All:** CIDA will work with partner countries to develop credible national education plans that seek to increase access and improve the quality and relevance of basic education.
2. **Gender Equality:** CIDA will assist partner countries to reduce barriers that prevent closing the gender gap in education by mainstreaming gender equality in national education sector plans and by strengthening programming in girls' education.
3. **Strengthened Action Against HIV/AIDS Through the Education Sector:** With CIDA's support, partner countries will improve the capacity and coordination of the education sector's response to HIV/AIDS, increase the integration of HIV/AIDS into national education sector plans, and increase the number of HIV/AIDS education policies and programs.
4. **Improved Stability and Protection for Children in Emergency Settings:** In situations of conflict, post-conflict and emergencies, CIDA will work to improve coordination among partner countries and organizations, and provide more immediate access for children living in crisis situations to safe, secure and child-friendly formal and/or non-formal basic education programs (CIDA, 2007, Table 5. p. 23).

These four result areas identified in the SDS echo previous education policies established by CIDA.

Canada's International Policy Statement (IPS) A Role of Pride and Influence in the World, published in 2005, identified the following areas for CIDA's work in the education sector – improving the quality, safety and relevance of basic education including life skills training; removing barriers that prevent closing the gender gap in education; providing education for the

prevention of HIV/AIDS; and providing education for girls and boys in conflict, post-conflict and/or emergency situations (CIDA, 2005).

CIDA's Action Plan on Basic Education, which preceded the IPS and was launched in 2002, identified three goals for Canadian aid to education – access to and completion of free and compulsory primary education of good quality by 2015 with a special emphasis on children who are often marginalized, and living in conditions that are subject to disparity, discrimination and exclusion; progress towards gender equality, ensuring that gender disparities in primary and secondary education are eliminated by 2005; and improvement to the quality of basic education, as reflected in recognized and measurable learning outcomes, especially in literacy and numeracy and life skills for learners of all age groups (CIDA, 2002).

From these policies it is clear that the access, quality and equality goals in the current SDS have roots in both previous policy statements on education. However HIV and AIDS in education and education in emergencies, conflict and post-conflict settings emerged more recently, starting with the IPS process in 2005.

The Sustainable Development Strategy 2007-2009 makes reference to education as a human right, recognizing both the practical and transformative value of education.

Education is a human right, a basic component of open, democratic and equitable societies, and essential for sustained social and economic development (CIDA, 2007, Activity 2b).

The SDS also references key international agreements that have shaped its focus on basic education; namely the EFA Framework, the Millennium Development Goals and Millennium Declaration, the Convention on the Rights of the Child, and the 1995 Beijing Declaration (CIDA, 2007).

The SDS opens the door to a human rights approach to education programming by emphasizing common principles of a human rights based approach. These principles are listed as participation, non-discrimination, accountability, and the interdependence of rights.

These agreements also imply that education policy and programming should be consistent with human rights principles including the participation of girls, boys, men and women in decisions that affect them; non-discrimination; state accountability for fulfilling human rights; and the interdependence of rights such as education, freedom of thought, and protection from exploitation (CIDA, 2007, Activity 2b).

Finally, the SDS emphasizes the importance of country-led development, the development of national education plans within a broader poverty reduction strategy process,

and the importance of participation by all stakeholders. This is again similar to the stress within the IPS on national ownership, greater country concentration, strengthening aid effectiveness and performance management and results.

However, the SDS is a strategy only, not a policy with an accountability framework for implementation. While previous policies continue to inform Canada's official development assistance to education, the strategy lacks the force of policy in terms of guiding programming decisions, ensuring coherence across the work of CIDA, the Department for Foreign Affairs and International Trade (DFAIT) and other ODA implementing governmental departments active in education, monitoring the impact of Canada's aid to education and ensuring that Canada's aid to education does not in any way undermine international human rights standards in education. Furthermore, the SDS is framed primarily as a strategy for the Canadian International Development Agency. While CIDA is the largest of all the governmental bodies through which Canadian ODA is channeled, other bodies, including the Department of Foreign Affairs and International Trade, the Ministry of Finance (which handles Canada's subventions and relations with the international financial institutions) and the International Development Research Centre, are not currently guided by the SDS.

Implications for Canadian ODA

A human rights approach to Canadian ODA has the potential to address all three tests of the ODA Accountability Act. Integrating a human rights approach within Canadian ODA also has the potential to position CIDA as a leading donor agency and would allow Canada to join a growing group of international donors, including DFID and the UN system, in integrating human rights in their vision and programming.

This paper has reviewed the key elements of the ODA Accountability Act, international human rights standards in education, and CIDA's policies and strategies related to education. The following section makes recommendations for how Canada, and more specifically CIDA, can move forward in adopting a human rights approach within the education sector, consistent with the passing of the ODA Accountability Act.

Recommendation #1 - Renew Canada's Education ODA Policy to ensure international human rights standards and principles guide Canada's aid to education.

While CIDA's *Sustainable Development Strategy 2007 – 2009* identifies a strategy for Canadian aid to education, it does not have the force of policy. A more explicit policy referencing human rights instruments, standards and principles should be a priority focus for CIDA. The last

education sector policy was developed in 2005 and was short lived. Without an education sector policy CIDA is unable to adequately guide practice within the Agency and assess the impact of its education aid.

A new education sector policy, in line with the ODA Accountability Act, should adopt a human rights approach. A new policy should reference all legally binding human rights instruments that are part of the human rights framework in education. The current strategy references key international agreements related to education that Canada supports. Missing, however, are references to components of the international human rights framework in education that Canada has ratified and are considered legally binding. The most significant of these is the ICESCR (1966), considered the most wide-ranging and comprehensive on the right to education. Others not referenced include the Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965). The importance of distinguishing between legally binding instruments such as the Convention on the Rights of the Child and declarations or frameworks, which have moral or political force but are not considered legally binding, is important as the ODA Accountability Act references human rights standards based on Conventions to which Canada is a party.

From these agreements, human rights standards in education should be explicitly drawn. Those that are currently addressed in the Strategy, and should be continued in a new education sector policy, include:

- Priority of support to universal access to primary education that is free and compulsory.
- Support for the principle of non-discrimination in education at all other levels.
- Gender equality in education.
- Education of good quality.

Other human rights standards in education missing from the Strategy (CIDA, 2007), speak more specifically to the content and purpose of education.⁵ These include:

⁵ While these elements could be assumed under good quality education, quality is often considered in relation to learning outcomes in literacy and numeracy, rather than the broader concept encompassed in the 'purpose' of education.

- The full development of the human personality, talents, mental and physical abilities.
- Respect for human rights and fundamental freedoms.
- Respect for cultural identity, language and values of the child.
- Promotion of understanding, tolerance and friendship within and between nations.
- Preparation of the child for a responsible life in a free society including maintenance of peace and equality.
- Respect for the natural environment.

A new education policy should expand on the human rights principles of non-discrimination, participation and accountability and how these would be applied in programming. Guidance in this area is provided by the United Nations, as well as other government and non-government agencies.

Finally, a new education ODA policy should lay out, in specific terms, the extent of Canada's obligations to support developing countries in the achievement of the right to education. A clear statement of Canada's obligations could be developed in relation to internationally agreed assessments of the current funding gaps for EFA and the MDGs. It should also include a stated commitment to ensuring that all of Canadian ODA, both that channeled by CIDA and that delivered through alternative routes, will be guided by the prioritization of universal primary education, as obliged by international human rights standards, and a recognition of the obligation for Canada to ensure that its actions, as a member of international organizations, including international financial institutions, takes account of the right to education.⁶

Recommendation #2 - Ensure Canadian aid to education gives greater focus to the content and purpose of education.

The aims and objectives of education, as part of international human rights standards in education, are comprehensive. These aims and objectives are detailed in the previous section. They cover both practical skills such as literacy, numeracy, life skills, problem solving and preparation for the world of work, as well as values of tolerance, peace and equality. As described by Save the Children "the concern with the quality of education is not a new one; it

⁶ Early childhood care and development is covered under other aspects of social and cultural rights, including the right to survival, development, health and education in the Convention on the Rights of the Child (1989). The progressive realization of rights at this level is of fundamental importance

was recognized as a key goal in the Dakar Framework for Education in 2000, and was the subject of the UNESCO Global Monitoring Report, *The Quality Imperative*, in 2005. As the 2015 deadline for the Education For All (EFA) goals approaches, however, there is an increasing recognition that much of the existing education provision is not quality education, and that urgent action is required” (Save the Children UK, 2009, August, p.1).

While CIDA’s SDS and previous policies refer to quality education, as noted earlier, in practice quality education is often considered in relation to learning outcomes in literacy and numeracy, perhaps because these are easier to measure. A human rights perspective requires a vision of quality education that encompasses a broad range of outcomes for children – the ability to reflect, to think critically, to access relevant knowledge, to acquire skills, and to develop a voice in decision-making through active participation.

Recommendation #3 - Develop performance indicators, consistent with international human rights standards, to measure Canada’s performance towards the right to education.

The ODA Accountability Act includes important reporting and transparency requirements. The first is the requirement for consultation with governments, international agencies and Canadian civil society organizations at least once every two years to inform the opinion of whether aid meets the three-part test of the Act. “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” (Freeman, 2008, p.3).

Secondly, the CIDA Minister or another Minister who administers ODA, must provide: a summary of activities undertaken under the Act; a summary of CIDA’s departmental performance report; a statistical report on ODA; and more.

The information Canada is currently able to track and report on in relation to its education ODA provides a fairly comprehensive profile of Canada’s investments in the basic education sector. Canada is less able to comment on the performance of its investment in education in a substantive way or to measure its investment against the four result areas of the strategy. The kind of analysis CIDA is able to provide regarding its education aid is largely quantitative – divided geographically as well as by level of education. In each of its priority objectives Canada is able to provide illustrative examples of its work in advancing that objective. CIDA also has country level performance assessments, but these are not rolled up at a higher level to assess overall performance in education aid against stated objectives. Nor is ODA channeled through other governmental bodies evaluated. Efforts to assess results in education are made more complicated by increasing support to program-based approaches

(PBAs) that work across multiple objectives simultaneously and in combination with other donors and at different levels of government within recipient nations, with related issues of attribution.

To measure whether Canada's aid to education is consistent with international human rights standards in education, Canada needs to identify performance indicators consistent with these standards. Standard development indicators in education currently in use, such as enrolment and survival rates, have certain limitations. Education indicators do not sufficiently focus on discrimination and inequality. There has been considerable effort to disaggregate data on the basis of gender; however, this has not happened to the same extent with other grounds of discrimination. Education indicators tend to focus on enrollment rates and tell little about the quality of education provided beyond completion and some testing in literacy and numeracy outcomes.

Canada should develop performance indicators to ensure its programming in education is achieving results and these indicators should be integrated into Canada's education sector policy. As part of a human rights approach these performance indicators should be linked to international human rights standards in education, mentioned previously. The development of right to education indicators has been evolving in the last decade. Perhaps most significant among these efforts is the work of Katerina Tomaševki, the first and former UN Special Rapporteur on the right to education, who developed the 4A framework of availability, accessibility, acceptability and adaptability referenced in the CESCR's General Comments.⁷ She proposed that indicators be established on the basis of this framework (De Beco 2009, p 5). Work on right to education indicators is currently being taken forward by the Right to Education Project, an organization which continues Tomaševki's work on the right to education.

Identification of target outcomes, outputs and indicators in each of the four areas of availability, accessibility, acceptability and adaptability could provide a comprehensive mechanism for ensuring Canadian aid to education is addressing all human rights standards in education.

Recent international initiatives, such as the Fast Track Initiative and the EFA Global Monitoring Report, provide an opportunity for Canada to report on both the quality and the quantity of its efforts to support a universal right to education, using terms and targets that have achieved some degree of international consensus. Canada should report on its ODA in relation to internationally recognized estimates of the funding gaps for the achievement of basic education. It must also go one step further, and include information in its ODA report to

⁷ Annual reports of the UN Special Rapporteur on the Right to Education, including reports by Katerina Tomaševki, can be found at <http://www2.ohchr.org/english/issues/education/rapporteur/annual.htm>.

suggest that no international agreements it has entered into (including its actions as a member of an international financial organization) will have an adverse impact on the right to education.

The capacity of donor countries and partners to collect data against human rights indicators should also be strengthened. The capacity to further disaggregate data on indicators by gender, socio-economic status, ethnicity, geographic location, and other grounds of discrimination should be further developed, and capacities strengthened in these areas in developing countries. Finally, these indicators should form the basis for consultation and performance reporting on Canadian aid to education, required under the ODA Accountability Act.

Recommendation #4 - Strengthen the capacity of rights –holders to claim their rights.

Accountability is a key principle in a human rights approach. Most references to human rights approaches stress the dual nature of rights – the rights holders that will claim their rights and the duty-bearers whose obligation it is to fulfill these rights. Because rights constitute entitlements there is considerable emphasis on strengthening the capacity of states (duty-bearers) to meet their obligations to citizens. The focus on the state as duty-bearer rather than the citizen as rights-holder is also reinforced through donor agreement around aid effectiveness principles which support country-driven (state) development, supported by harmonized donor practices. As previously noted, the emphasis on the State side of accountability is also reflected in CIDA's Sustainable Development Strategy 2007-2009.

This focus has been matched by an increasing concentration of aid dollars at the state level. Trends in CIDA's investment in education shows that expenditures through bilateral and multilateral channels have risen significantly, reflecting CIDA's enhanced use of harmonized funding mechanisms in education aid. While the shift to budget support for meeting recurrent costs in education, and greater predictability of financing is welcome, this shift is necessarily focused on strengthening state capacity in meeting the right to education. This emphasis has not been matched by a parallel focus in CIDA's Bilateral, and particularly Canadian Partnership Branch windows, on support to civil society organizations in their roles in strengthening capacities of citizens as rights-holders in education (Mundy and Bhanji 2005).

The gap in government support to civil society organizations within the existing aid architecture is also recognized globally. A major international initiative to establish National Civil Society Education Funds (CSEF) to support national education coalitions and citizen voices in countries working towards Education for All is currently being developed. The Funds are intended to support "civil society organizations to participate in the formulation, implementation and monitoring of national education plans, as agreed in Dakar in 2000"

(National Civil Society Education Funds, p. 2). The research leading to the call for the establishment of CSEFs notes that “the move to strategic support of government education plans has not been matched by a similar strategic engagement with civil society” (Commonwealth Education Fund, 2007, p. 5).

In 2006, the Ontario Institute for Studies in Education undertook a study, with the support of CIDA, entitled “Education SWAPs in Africa: Lessons for CSOs” which echoed these findings. The study found that civil society participation in education sector programs across four countries in Sub-Saharan Africa has been uneven. The study noted that “CSO capacity for sustained voice and representation in the planning and implementation of education sector SWAPs [Sector-Wide Approaches] has remained quite limited, though this varies by country.” Furthermore, “governments are often uncomfortable with CSO attempts to act as citizen watchdogs or challenge the established national plans of the government. Donor organizations, for their part, continue to fund CSOs primarily as service providers, even though they offer much rhetorical support for the notion of CSOs as agents of citizen voice and oversight” (Mundy & Haggerty, 2008, p. 1).

Canadian aid to education should give greater emphasis to the role of rights-holders and the civil society organizations that represent them. CIDA should build on its leadership role in exploring the role of civil society organizations and aid effectiveness, leading up to the High Level Forum on Aid Effectiveness held in Accra in 2008. An expanded understanding of the concept of country ownership within the aid effectiveness debate is reflected in the Accra Agenda for Action (2008).

There are many opportunities for CIDA to expand their support for rights-holders to claim their rights. Support for newly developing National Civil Society Education Funds is one such opportunity.

In addition to strengthening the strategic empowerment of civil society organizations to hold States Parties to account, Canada, and CIDA specifically, also has a role to use its influence nationally and internationally to respect, protect and promote the civil and political rights of developing country citizens. Awareness, freedom of information, association and speech are critical for rights-holders to engage critically with the State around their obligations in education. Of course, good quality education is the foundation on which these skills are built.

Conclusion

Bill C-293 presents a unique opportunity for Canadians to advance education as a human right. Bill C-293 requires three tests for Canadian ODA – contributes to poverty reduction, takes into

account the perspectives of the poor, and is consistent with international human rights standards. A human rights approach to Canadian ODA satisfies all three tests.

Canada has taken steps to integrate international human rights standards into its education aid, and to advance the right to education globally. CIDA's current Sustainable Development Strategy 2007-2009 recognizes the right to education, and contains elements of a rights based approach including support for universal primary education, non-discrimination, primarily on the basis of gender, as well as a focus on improved quality of education. Canada has ratified a number of Covenants and Conventions that recognize the right to education including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Canada has supported international agreements and declarations which reinforce the right to education, including the Education for All Framework and the Millennium Declaration. Canada has also demonstrated a commitment to meeting its obligations to support developing states in the progressive realization of the right to education through the provision of technical and financial assistance.

There is more, however, that Canada can do. Recommendations for Canada to further its support for achieving the right to education for all children include:

- Renew Canada's Education ODA Policy to ensure international human rights standards and principles guide Canada's aid to education.
- Ensure Canadian aid to education gives greater focus to the content and purpose of education.
- Develop performance indicators, consistent with international human rights standards, to measure Canada's performance towards the right to education.
- Strengthen the capacity of rights-holders to claim their rights.

This paper further argues that it is important to ensure that Canada's policy on aid to education gives guidance and coherence to Canadian ODA provided through non-CIDA channels including DFAIT, the Ministry of Finance and IDRC. Canada also needs to ensure that no international agreements entered into will have an adverse impact on the achievement of the right to education. Finally, Canada should be explicit in its obligation to support developing countries in the achievement of the right to education, particularly in the area of the financing of education.

Education has many practical benefits including economic growth, improved family incomes, and increased health benefits, particularly for mothers and children. Good quality education has the potential to promote values of peace, tolerance and equality. As the quote at

the beginning of the paper notes, “enlightened and active minds are one of the joys of human existence”. The ODA Accountability Act has the potential to ensure that Canadian aid to education is consistent with this broad understanding of the value of education. Civil society organizations and individuals, active in the promotion and monitoring of a human rights approach to education, are critical to ensuring Canada’s accountability under the Act.

Abbreviations

CCIC	Canadian Council for International Co-operation
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CIDA	Canadian International Development Agency
CRC	Convention on the Rights of the Child
CSEF	Civil Society Education Funds
CSO	Civil Society Organization
DFID	Department for International Development
EFA	Education for All
FTI	Fast Track Initiative
GMR	Global Monitoring Report
HIV/AIDS	Human Immunodeficiency Virus / Acquired Immune Deficiency Syndrome
HRA	Human Rights Approach
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDRC	International Development Research Centre
MDG	Millennium Development Goal
NGO	Non-Governmental Organization
ODA	Official Development Assistance
OISE-UT	Ontario Institute for Studies in Education of the University of Toronto
PBA	Programme-Based Approach
SDS	Sustainable Development Strategy
SWAP	Sector-Wide Approach
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization

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