The U.S. foreign aid legal framework is fragmented, cumbersome, and outdated. The sheer number of pieces of foreign assistance legislation, together with a lack of coherent framework, has created a situation in which multiple pieces of legislation may govern a single issue.

These pieces of legislation often contain conflicting mandates and overlapping responsibilities for different government agencies. The result is an incoherent jumble of legislative directives. This may be seen most clearly through specific issue examples.

This issue paper provides an overview of U.S. legislation governing foreign assistance to orphans, and the problems created by the current state of foreign assistance legislation:

Legislation: There are 3 sections of the Foreign Assistance Act of 1961 (the “FAA”) and 6 pieces of stand-alone legislation that govern assistance to orphans.

Government Agency Responsibilities: At least 7 U.S. government entities, including the President, USAID and the Department of State, have responsibility over programs that relate to orphans.

Conflicting Mandates: The President, USAID, and the Special Advisor for Assistance to Orphans and Vulnerable Children (“Special Advisor for Orphans”) are all given the mandate to oversee the work of other U.S. government agencies, and each other, relating to orphans.

The Problem

There are 9 pieces of foreign assistance legislation and sections of the FAA that govern assistance to orphans. Different provisions of the various laws allocate responsibility for programs impacting orphans to the President, USAID, the State Department, the Department of Health and Human Services, one of several specially appointed ambassadors or advisors, or one of the other “relevant executive branch agencies.” Among these government entities, the President, USAID, and the Special Advisor for Orphans are all given, at one point or another, authority to oversee the work of other government agencies and each other.

---

1 The President may exercise his responsibilities for foreign assistance programs through any executive branch agency. See, FAA § 621. In the case of programs impacting orphans, the President has typically delegated his responsibilities to the Secretary of State, who in turn, has delegated many responsibilities to subordinates. See, e.g., Delegation of Authority 293 (July 4, 2006). Thus, as a practical matter, the President’s responsibilities for programs impacting orphans may not conflict with those of other agencies, depending on how the President has chosen to assign his program responsibilities. However, this does not change the fact that the legislation, as drafted, creates conflicts that are only resolved through Executive Orders and Delegations of Authority.

2 There are also a number of pieces of legislation that list orphans as among their targeted aid recipients, but this paper only discusses legislation that addresses the needs of orphans specifically and in some detail. Further, there are pieces of legislation addressing issues that are likely to have a disproportionate impact on orphans; these were also excluded, unless the needs of orphans were specifically discussed.

3 As defined in FAA §104A.
Delegated

This disorganization and overlap creates an unclear chain of command, and complicates the authority of each agency to oversee the programs for which it is responsible. A single local country program designed to assist orphans, for example, could receive its funding from (and be subject to the reporting and other requirements of) up to 3 different U.S. government entities at the same time.

Responsibilities of Some U.S. Government Entities for Overseeing Assistance to Orphans

The President

- Providing and coordinating assistance under FAA §104A, including assistance to HIV/AIDS orphans
- Provide assistance for programs to provide basic care and services to orphans under FAA §135
- Authorized to provide funds to assist Orphans in Asia
- Establish a 5-year plan for combating HIV/AIDS, including programs for orphans under PEPFAR

USAID

- Primary U.S. agency responsible for assisting orphans and vulnerable children under FAA §135
- Implement AIDS orphans pilot program
- Provide assistance to orphans under the Survival Assistance for Civil Strife in Central America Act
- Provide assistance to orphans under the Central American Peace Assistance Act

Special Advisor for Orphans

- Supervise
- Oversee USAID and other U.S. government agencies FAA §135
- Coordinate all U.S. assistance to orphans FAA §135

Global AIDS Coordinator

- Delegated
- Supervise

The Foreign Assistance Act

Assistance to Combat HIV/AIDS: Section 104A of the FAA was created by the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, which is the legislation authorizing the President’s Emergency Plan for AIDS Relief (collectively, “PEPFAR”). Section 104A creates a mandate for the President to oversee HIV/AIDS assistance, including programs that benefit AIDS orphans in sub-Saharan Africa, the Caribbean, and other developing countries.

As part of this mandate, the President must present an annual report to the Senate Foreign Relations Committee. The President is also charged with working in conjunction with multi-national agencies and USAID to support AIDS related programs. The Department of State, USAID, and the Department of Health

---

4 USAID has the mandate to oversee programs related to orphans. It does not supervise the President, but rather supervises the agencies to which the President assigns his programmatic responsibilities.
and Human Services are all listed as “relevant executive branch agencies” within §104A, although their specific responsibilities are not indicated.

Assistance to Orphans and Other Vulnerable Children: Section 135 of the FAA, which was created by the Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005 (the “Orphans Assistance Act”), contains a thorough overview of the programs that the U.S. government operates to aid orphans. Within §135 itself, USAID, the President and the Special Advisor for Orphans are given mandates to oversee all U.S. programs and each other.

According to §135, USAID should be the primary government agency responsible for assisting orphans, tracking the progress of all programs impacting orphans and the number of orphans and other vulnerable children helped by U.S. programs. In the same section, however, the President is specifically authorized to provide assistance to orphans. Also, this section tasks the Secretary of State with appointing the Special Advisor for Orphans (in agreement with the administrator of USAID) to coordinate the efforts of the departments within USAID, and to coordinate all other U.S. government efforts relating to orphans.

In other words, USAID, the President and the Special Advisor for Orphans are all simultaneously tasked with supervising each other and all U.S. government programs impacting orphans. The result is that USAID is responsible for overseeing programs related to orphans, including programs that are administered by the President and the State Department, yet it must report its activities to the Special Advisor for Orphans, who is tasked with coordinating USAID’s efforts, and it must depend on the President for funding for NGOs.

Assistance to Certain Disadvantaged Children in Asia: Section 241 of the FAA authorizes the President to distribute funds to international organizations and private voluntary organizations to provide services to orphans in Asia, particularly those fathered by Americans. Section 241 was passed in 1978, and has not been funded since 1985, yet it remains part of the FAA.

Overlapping Goals: Not only do different provisions within the FAA give control over programs to assist orphans to 3 different U.S. government agencies, the goals of the sections of the FAA overlap as well. All three sections mentioned above, for example, provide assistance to AIDS orphans in Asia. Sections 104A and 135 cover some of the same populations of children in sub-Saharan Africa and other developing countries.

Other Pieces of Legislation

In addition to the sections of the FAA that relate to orphans, there are also 6 pieces of stand-alone legislation that address the problems of orphans in some detail. The first of these is the Orphans Assistance Act, which created §135 of the FAA. Although the Orphans Assistance Act is considerably longer than the portion of the FAA that encompasses it, for the purposes of this comparison, there are no significant differences between the two.

PEPFAR (which created §104A of the FAA), on the other hand, contains some additional provisions that are important. PEPFAR includes much more

Legislation Governing U.S. Assistance to Orphans

The FAA:
- Part I, Ch. 1, §104A: Assistance to Combat HIV/AIDS
- Part I, Ch. 1, §135: Assistance for Orphans and Other Vulnerable Children
- Part V, Section 241: Assistance to Certain Disadvantaged Children in Asia

Other Legislation:
- Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005 (which created §135 of the FAA)
- U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (which created §104A of the FAA)
- The North Korean Human Rights Act of 2004
- The Afghanistan Freedom Support Act of 2002
- Survival Assistance for Civil Strife in Central America
- The Central American Peace Assistance Act
detail regarding the assistance intended for orphans. According to PEPFAR, the President delegated his authority to oversee AIDS programs to the Secretary of State and a Global AIDS Coordinator. This adds yet another party, the Global AIDS Coordinator, who is responsible for overseeing assistance to orphans.

There are two country-specific acts that contain significant provisions for the assistance of orphans, the North Korean Human Rights Act of 2004, and the Afghanistan Freedom Support Act of 2002, both of which give the authority for providing support to orphans to the President. The North Korean Human Rights Act requires that the Secretary of State and the Department of Homeland Security provide annual reports to Congress. The Afghanistan Freedom Support Act requires the Secretary of State and USAID to report to Congress, while the President controls the funding and designates an Ambassador for Afghan Freedom Support at the Department of State to coordinate all activities.

The two remaining acts with provisions for assistance to orphans, the Survival Assistance for Civil Strife in Central America (last amended in 1990), and the Central American Peace Assistance Act (1988), grant responsibility for orphan related assistance to USAID alone.

Legislation governing assistance to orphans is a prime example of several of the problems with current U.S. foreign assistance legislation. The lack of a coherent framework for assistance leads to overlapping program scopes and to multiple government entities responsible for overseeing one another. U.S. foreign assistance legislation should be reformed to more effectively and efficiently deal with the U.S. government’s foreign assistance priorities.

---

5 For example, PEPFAR requires the expansion of programs for AIDS orphans, the establishment of a pilot program for providing care and treatment to orphans, and specifies that 10% of funds appropriated under it go to assistance to orphans and vulnerable children.