

Calendar No. 189

114TH CONGRESS
1ST SESSION

S. 1875

To support enhanced accountability for United States assistance to
Afghanistan, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2015

Mr. MENENDEZ (for himself, Mr. CORKER, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

JULY 30, 2015

Reported by Mr. CORKER, with an amendment

[Omit the part struck through and insert the part printed in italic]

A BILL

To support enhanced accountability for United States
assistance to Afghanistan, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Afghanistan Account-
- 5 ability Act of 2015”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) APPROPRIATE CONGRESSIONAL COMMIT-
4 TEES.—The term “appropriate congressional com-
5 mittees” means—

6 (A) the Committee on Foreign Relations,
7 the Committee on Appropriations, the Com-
8 mittee on Armed Services, and the Select Com-
9 mittee on Intelligence of the Senate; and

10 (B) the Committee on Foreign Affairs, the
11 Committee on Appropriations, the Committee
12 on Armed Services, and the Permanent Select
13 Committee on Intelligence of the House of Rep-
14 resentatives.

15 **TITLE I—EFFECTIVE AFGHANI-
16 STAN ASSISTANCE AND AC-
17 COUNTABILITY**

18 **SEC. 101. FINDINGS.**

19 Congress makes the following findings:

20 (1) Following the terrorist attacks of September
21 11, 2001, the United States launched Operation En-
22 during Freedom, and since then the United States
23 Armed Forces and the Afghan National Security
24 Forces have made countless sacrifices in defending
25 Afghanistan against the threat of terrorism and in-

1 surgeency and by extension the United States and the
2 wider world.

3 (2) Since 2001, the United States has worked
4 with a broad coalition of nations that has helped to
5 dramatically improve numerous development indica-
6 tors within Afghanistan, including a dramatic in-
7 crease in the number of girls enrolled in primary
8 education from an estimated 5,000 under the
9 Taliban to 2,400,000 girls as of 2010; an increase
10 in the percentage of individuals above the poverty
11 line from 25.4 percent in 2002 to 35.8 percent in
12 2011; an increase in the percentage of individuals
13 who now have access to an improved water source in
14 rural areas from 22 percent in 2001 to 56 percent
15 in 2012; a precipitous decline in maternal mortality
16 from 1200/100,000 births in 1995 to 400/100,000
17 births in 2013; and an expansion of women's rights;

18 (3) Numerous research studies have shown that
19 government corruption is a driver of conflict and
20 particularly so in Afghanistan, where it has served
21 as a powerful recruitment tool for the Taliban.

22 (4) Since the first democratic transfer of power
23 in the history of Afghanistan in 2014, President
24 Ashraf Ghani and Chief Executive Officer Abdullah
25 Abdullah have led a National Unity Government

1 that has identified key security and development
2 challenges in order to make Afghanistan a full and
3 productive member of the community of democratic
4 nations.

5 (5) The National Unity Government has re-
6 newed specific focus on addressing corruption within
7 the country as a driver of instability, including re-
8 opening a fraud case involving high level officials
9 and the Kabul Bank that resulted in the disappear-
10 ance of an estimated \$1,000,000,000.

11 (6) In its report “Realizing Self Reliance: Com-
12 mitments to Reform and Renewed Partnership”, the
13 Government of Afghanistan committed to the inter-
14 national community in London in December 2014,
15 to address the “main drivers of corruption in Af-
16 ghanistan,” including “collusive procurement prac-
17 tices, weak rule of law and abuse of the legal sys-
18 tem, and arbitrary regulations that build in incen-
19 tives to pay bribes”. Government of Afghanistan
20 commitments included—

21 (A) forming an independent anti-corrup-
22 tion commission with time-bound prosecutorial
23 powers;

(B) implementing recommendations by the Monitoring and Evaluation Committee on a national action plan to reduce corruption;

(C) requiring all government officials to provide public declarations of their assets;

(D) meeting all Financial Action Task Force (FATF) requirements to further limit and investigate illicit fund flows;

(E) forming a national procurement board staffed by qualified professionals who will manage all large value contracts using internationally recognized standards and procedures; and

(F) delineating the roles, responsibilities, and jurisdiction of anti-corruption institutions such as the High Office of Oversight and Anti-Corruption (HOO) and the Attorney General to restrict them to focus on their core function of enforcement instead of oversight.

- 1 (A) developing natural resources through
2 public-private partnerships that bring in rents,
3 taxes, and profits;
- 4 (B) removing obstacles to trade and transit
5 and ending smuggling that diverts revenue
6 away from the treasury;
- 7 (C) negotiating expanded market access in
8 regional and global markets;
- 9 (D) gradually formalizing the informal
10 economy and changing the compact between the
11 state and citizens to one where citizens pay
12 taxes for services they tangibly benefit from;
13 and
- 14 (E) transferring government payments
15 electronically to eliminate losses in transit.

16 (8) In 2012, international donors and the Gov-
17 ernment of Afghanistan agreed to the Tokyo Mutual
18 Accountability Framework (“TMAF”) which com-
19 mitted to provide \$4,000,000,000 in economic assist-
20 ance per year from 2012-2015 and sustain assist-
21 ance at or near the same levels of the past decade
22 through 2017, while the Government of Afghanistan
23 committed to meet benchmarks related to democracy
24 and governance, public finance and revenue genera-
25 tion, and economic development.

1 (9) At the end of 2014, under the TMAF, the
2 Government of Afghanistan had fallen short in meet-
3 ing benchmarks related to: revenue collection, the
4 enhancement of women's rights, corruption and the
5 illicit economy, and the protection of human rights,

6 (10) In the Joint Declaration following the
7 London Conference on Afghanistan of December 4,
8 2014, the international community and the new Gov-
9 ernment of Afghanistan agreed to refresh the exist-
10 ing TMAF and associated commitments at the 2015
11 Senior Officials Meeting based on the reform pro-
12 gram and priorities as laid out by the Government
13 of Afghanistan.

14 (11) Afghanistan faces great difficulties in
15 making progress in countering illegal narcotics and
16 remains the leading global illicit opium poppy pro-
17 ducer.

18 (12) The illegal narcotics trade results in the
19 transfer of illicit funds and encourages and also re-
20 quires corrupt financial transactions, and, if mini-
21 mized, could have beneficial impacts on trade and
22 reduce overall levels of corruption.

23 (13) The international community has endorsed
24 Afghanistan's longer-term development following the
25 war and identified the criticality of the "trans-

1 formation decade” from 2015-2024 outlined by the
2 Government of Afghanistan and has acknowledged
3 that the Government of Afghanistan will seek con-
4 tinued international assistance in order for it to be-
5 come a stable, self-sustained partner in the commu-
6 nity of democratic countries.

7 (14) As development assistance from the United
8 States and broader international community gradu-
9 ally diminishes in the coming years, the accelerated
10 development of the Afghan private sector and gov-
11 erning institutions becomes even more necessary to
12 maintain the gains of the past decade and to en-
13 hance our mutual goals of Afghan security and sta-
14 bility.

15 (15) While Afghan National Security Forces
16 (ANSF) have taken over lead combat responsibil-
17 ities, they continue to operate in close coordination
18 with, and with significant resources from the inter-
19 national community, under the Train, Advise and
20 Assist (TAA) mission of Operation Inherent Resolve
21 and in coordination with ongoing counter-terrorism
22 operations. Development of civilian oversight institu-
23 tions for the security sector has lagged. Such over-
24 sight will be important for ensuring that Afghan se-

1 security forces are accountable and do not abuse their
2 powers.

3 SEC. 102. SENSE OF CONGRESS ON UNITED STATES ASSIST-
4 ANCE AND ACCOUNTABILITY IN AFGHANI-
5 STAN.

6 It is the sense of Congress that—

7 (1) the National Unity Government of Afghani-
8 stan has made a substantial commitment to reform
9 that should be supported but also subject to height-
10 ened scrutiny by the Afghan people and inter-
11 national donors given past failures and persistent
12 challenges in the country;

(3) sustainable accountability and reform of Afghan governing institutions will not come from the international community but from a commitment by the Government of Afghanistan and society rein-

1 forced by domestic watchdog groups and internal
2 government accountability monitoring mechanisms;

3 (4) the United States Government should deepen
4 its dialogue on anti-corruption efforts with the
5 Government of Afghanistan to develop effective over-
6 sight mechanisms to ensure large donor contracts do
7 not contribute to corruption;

8 (5) the United States should encourage Af-
9 ghanistan's participation in the Open Government
10 Partnership, a multilateral initiative in which gov-
11 ernment and civil society collaborate to promote
12 transparency, fight corruption, and use technologies
13 to strengthen government;

14 (6) the United States should urge the Govern-
15 ment of Afghanistan to build upon existing anti-
16 money laundering and countering terrorism financ-
17 ing legislation by developing effective regulations
18 and institutions to implement reforms;

19 (7) the United States should urge the Govern-
20 ment of Afghanistan to broaden personal asset dis-
21 closures to include members of the covered officials'
22 immediate families or households and develop effec-
23 tive mechanisms for verifying disclosed information;

24 (8) in the event of future egregious cases of
25 corruption in Afghanistan, the President should im-

1 pose visa bans and asset freezes on those responsible,
2 especially in instances where United States assistance
3 is stolen or misappropriated;

4 (9) the United States Government should cooperate with the Government of Afghanistan and with international donors to develop a series of strict accountability benchmarks based on the refreshed Tokyo Mutual Accountability Framework and the Government of Afghanistan's own "Realizing Self Reliance" report commitments that will condition levels of assistance and the amount of on-budget assistance on anti-corruption performance acceptable to donors;

14 (10) the United States should support the Afghan Parliament to refine and strengthen the legal framework of anti-corruption and anti-money laundering laws to address beneficial ownership, countering bid-rigging and other contracting and procurement fraud, criminal investigations of financial transactions, complementary banks, personal asset or other financial declarations and disclosures as required by law or regulation, efforts to meet FATF requirements, and other areas to further inhibit the illicit flow of money;

1 (11) the commitment by the Government of Af-
2 ghanistan to strengthen its nascent private sector
3 should be supported and sustained using the full
4 array of tools of the United States, including tech-
5 nical and legal assistance;

6 (12) United States assistance to the Afghan ju-
7 dicial system and other Afghan legal institutions
8 that enable and empower private sector development
9 by instilling greater investor confidence should be
10 prioritized to ensure the protection of private prop-
11 erty, the sanctity of contracts, and effective dispute
12 resolution mechanisms for businesses and investors;

13 (13) the United States Government should
14 identify opportunities for the United States to intro-
15 duce trade facilitation as part of the economic rela-
16 tionship between the two countries;

17 (14) the Governments of the United States and
18 Afghanistan should work together to identify more
19 Afghan products and raw materials to be included
20 on the United States Generalized System of Pref-
21 erences (GSP) treatment list;

22 (15) the United States Government should es-
23 tablish a United States-Afghan Tax Commission to
24 help spearhead a rapid and successful conclusion of
25 a new Bilateral Tax Agreement similar to the Agree-

1 ments with several of Afghanistan's neighbors, in-
2 cluding Kazakhstan, Azerbaijan, Tajikistan,
3 Kyrgyzstan, Turkmenistan, India, and Pakistan;

4 (16) the American University of Afghanistan is
5 an emerging pillar in Afghanistan's education sys-
6 tem and has provided a unique opportunity for high-
7 er education for Afghan youth, especially women;
8 and

9 (17) the United States should encourage the
10 Government of Afghanistan to implement with ur-
11 gency electoral reforms in accordance with the
12 “Agreement between the Two Campaign Teams Re-
13 garding the Structure of the National Unity Govern-
14 ment”.

15 **SEC. 103. UNITED STATES ASSISTANCE POLICY FOR AF-**
16 **GHANISTAN.**

17 It is the policy of the United States—

18 (1) to conduct assistance programs that result
19 in highly effective, impact driven development out-
20 comes for the people of Afghanistan while maintain-
21 ing the highest standards of accountability for
22 United States taxpayers;

23 (2) that all United States Government agencies
24 and entities working in Afghanistan coordinate,
25 plan, and regularly review plans in a coherent, well-

1 informed process to develop United States policy and
2 assistance programming;

3 (3) to support the development of effective Gov-
4 ernment of Afghanistan oversight institutions and
5 domestic watchdog civil society organizations;

6 (4) subject to significant evident progress made
7 in meeting TMAF accountability and improved gov-
8 ernance as it relates to development, to abide by re-
9 source commitments made as part of the Tokyo Mu-
10 tual Accountability Framework;

11 (5) to provide incentivized assistance to Af-
12 ghanistan's governing institutions based upon
13 verifiable and measurable development outcomes and
14 on-budget assistance based upon demonstrated ca-
15 pacity improvements that are mutually agreed to by
16 the Governments of Afghanistan and the United
17 States;

18 (6) to support the development of democratic
19 governing institutions in Afghanistan, promote the
20 development of a growing private sector, and
21 strengthen civil society in Afghanistan;

22 (7) to recognize that Afghanistan's sustainable
23 development is grounded in growing the regional
24 economy, and to support the efforts of the Govern-
25 ment and people of Afghanistan to build strong re-

1 regional economic connectivity with the country's
2 neighbors; and

(8) to support, where appropriate, proven programs that promote private sector job creation in Afghanistan; neighbors;

18 SEC. 104. EFFECTIVE AFGHANISTAN ASSISTANCE AND AC-
19 COUNTABILITY.

20 (a) STRATEGY TO COMBAT CORRUPTION IN AFGHAN-
21 ISTAN.—

1 assistance that is sustainable and is not counter-pro-
2 ductive to combatting corruption in Afghanistan.

3 (2) ELEMENTS.—The strategy developed under
4 paragraph (1) should include the following elements:

5 (A) Multi-year goals, objectives, and meas-
6 urable outcomes for targeted activities to
7 strengthen selected Afghan official institutions
8 and nongovernmental organizations to prevent,
9 investigate, deter, and prosecute corruption.

10 (B) An operational plan incorporating all
11 United States Government programming to im-
12 plement the anti-corruption goals and objec-
13 tives.

14 (C) A summary of United States efforts to
15 coordinate with other international donors to
16 ensure that anti-corruption advice or program-
17 ming provided to the Government of Afghani-
18 stan is not contradictory.

19 (D) A focus on the development of govern-
20 mental and nongovernmental Afghan capacity
21 to ensure accountability and combat corruption.

22 (E) An evaluation of Afghan civil society
23 anti-corruption capacities that includes their
24 ability to use technology to combat corruption.

25 (b) AFGHANISTAN ANTI-CORRUPTION FUND.—

1 (1) IN GENERAL.—Subject to the availability of
2 funds, the President is authorized to provide tech-
3 nical and financial assistance to official Government
4 of Afghanistan anti-corruption and audit institutions
5 and Afghan civil society watchdog groups in support
6 of the anti-corruption priorities identified by the
7 Government of Afghanistan and the United States
8 Government. Subject to careful consideration by the
9 United States Government of the legitimacy, effi-
10 cacy, and direct impact and influence of such enti-
11 ties and individuals, offices, and organizations that
12 are funded under this subsection could include—

- 13 (A) the Supreme Audit Office;
- 14 (B) the Attorney General;
- 15 (C) the Ministry of Justice;
- 16 (D) Inspectors General within key min-
17 istries;
- 18 (E) the Independent Joint Anti-Corruption
19 Monitoring and Evaluation Committee (MEC);
- 20 (F) the major crimes task force, Technical
21 Investigative Unit, and the Sensitive Investiga-
22 tive Unit;
- 23 (G) the High Office of Oversight and Anti-
24 Corruption;
- 25 (H) the Anti-Corruption Tribunal;

(c) PROMOTION OF HUMAN RIGHTS, PRESS FREEDOM, AND SECURITY SECTOR ACCOUNTABILITY.—

(B) supporting the Office of the Attorney General and the Ministries of Defense and Interior to be better capable to investigate and, if appropriate, criminally prosecute police, military, intelligence, and militia personnel, regardless of rank, found responsible for human rights abuses and war crimes;

12 (D) supporting the Ministry of Interior to
13 establish a centralized register of all detainees
14 held in police and National Directorate of Secu-
15 rity custody, and ensure that it is accessible to
16 independent monitors and is updated regularly
17 and in a transparent manner;

(F) supporting the Attorney General's Office to undertake prompt, impartial, and thorough

1 ough investigations into all attacks on journalists
2 and media organizations and bring prosecutions as appropriate; and
3

4 (G) supporting the further establishment
5 of civil society organizations to provide essential
6 “watchdog” oversight of the police and armed
7 forces; as well as efforts to strengthen and im-
8 prove coordination among civil society organiza-
9 tions, such as the Afghan Independent Human
10 Rights Commission.

11 (d) DEVELOPMENT OF THE AFGHAN PRIVATE SEC-
12 TOR.—

13 (1) REGIONAL ECONOMIC CONNECTIVITY
14 FUND.—

15 (A) ESTABLISHMENT.—There is estab-
16 lished a Regional Economic Connectivity Fund
17 from which funds may be made available from
18 existing appropriations to enhance regional eco-
19 nomic connectivity between Afghanistan and the
20 countries of South and Central Asia.

21 (B) PURPOSE.—The purpose of the Re-
22 gional Economic Connectivity Fund is to pro-
23 vide support for efforts to enhance Afghani-
24 stan’s economic connectivity with its neighbors,
25 thus improving the country’s overall economic

1 prospects and diminishing the need for inter-
2 national assistance in the future. The Regional
3 Economic Connectivity Fund may be used to
4 support programs in the following areas:

5 (i) Trade and transit fee normaliza-
6 tion and electronic payment systems.

7 (ii) Capacity and skills development to
8 improve collaboration among countries for
9 border and customs.

10 (iii) Women-owned business net-
11 working.

12 (iv) Developing regional options on
13 transit and customs to facilitate trade.

14 (v) Enhancing and implementing con-
15 fidence building measures.

16 (vi) Encouraging regional energy and
17 electricity development and sharing.

18 (vii) Market access and business con-
19 ferences.

20 (viii) Intellectual and cultural ex-
21 changes to engage in regional problem
22 solving.

23 (2) TRANSFER AUTHORITY.—In addition to
24 other transfer authorities available to the Depart-
25 ment of State, the Department of Defense, the

1 United States Agency for International Development
2 (USAID) or other United States Government agen-
3 cies or departments, funds that are specifically allo-
4 cated towards addressing the situation in Afghani-
5 stan may be transferred to programs in South and
6 Central Asia that promote regional economic
7 connectivity with substantial and direct benefits to
8 Afghanistan.

9 **SEC. 105. REPORTS.**

10 (a) REPORTING ON CORRUPTION IN AFGHANI-
11 STAN.—Not later than one year after the date of the en-
12 actment of this Act, and annually thereafter through
13 2024, the Secretary of State shall submit to the appro-
14 priate congressional committees a report listing each indi-
15 vidual who the President determines, based on credible
16 evidence—

17 (1) is an Government of Afghanistan official, a
18 senior associate, or close relative of such an official,
19 who is responsible for, or complicit in, ordering, con-
20 trolling, or otherwise directing, acts of significant
21 corruption, including the expropriation of private or
22 public assets for personal gain, corruption related to
23 government contracts or the extraction of natural re-
24 sources, bribery, or the facilitation or transfer of the
25 proceeds of corruption to foreign jurisdictions; or

1 (2) has materially assisted, sponsored, or pro-
2 vided financial, material, or technological support
3 for, or goods or services in support of, an activity
4 described above.

5 (b) REPORT ON CIVILIAN-MILITARY ASSISTANCE EF-
6 FORTS IN AFGHANISTAN.—

7 (1) IN GENERAL.—Not later than one year
8 after the date of the enactment of this Act, the
9 Comptroller General of the United States shall sub-
10 mit to the appropriate congressional committees a
11 report on civilian-military assistance efforts in Af-
12 ghanistan.

13 (2) ELEMENTS.—The report required under
14 paragraph (1) shall include the following elements:

15 (A) A description of lessons learned from
16 conducting development programming in a con-
17 flict zone to include recommendations on how to
18 improve coordination between United States de-
19 velopment agencies and the United States
20 Armed Forces.

21 (B) An assessment of the ability of the
22 United States Agency for International Devel-
23 opment to advance development goals within a
24 conflict environment, operating alongside pro-
25 viders of United States military assistance.

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