

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 and Mr. CORKER) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) APPROPRIATE CONGRESSIONAL COMMIT-
9 TEES.—The term “appropriate congressional com-
10 mittees” means—

1 (A) the Committee on Foreign Relations,
2 the Committee on Appropriations, the Com-
3 mittee on Armed Services, and the Select Com-
4 mittee on Intelligence of the Senate; and

5 (B) the Committee on Foreign Affairs, the
6 Committee on Appropriations, the Committee
7 on Armed Services, and the Permanent Select
8 Committee on Intelligence of the House of Rep-
9 resentatives.

10 **TITLE I—EFFECTIVE AFGHANI-**
11 **STAN ASSISTANCE AND AC-**
12 **COUNTABILITY**

13 **SEC. 101. FINDINGS.**

14 Congress makes the following findings:

15 (1) Following the terrorist attacks of September
16 11, 2001, the United States launched Operation En-
17 during Freedom, and since then the United States
18 Armed Forces and the Afghan National Security
19 Forces have made countless sacrifices in defending
20 Afghanistan against the threat of terrorism and in-
21 surgency and by extension the United States and the
22 wider world.

23 (2) Since 2001, the United States has worked
24 with a broad coalition of nations that has helped to
25 dramatically improve numerous development indica-

1 tors within Afghanistan, including a dramatic in-
2 crease in the number of girls enrolled in primary
3 education from an estimated 5,000 under the
4 Taliban to 2,400,000 girls as of 2010; an increase
5 in the percentage of individuals above the poverty
6 line from 25.4 percent in 2002 to 35.8 percent in
7 2011; an increase in the percentage of individuals
8 who now have access to an improved water source in
9 rural areas from 22 percent in 2001 to 56 percent
10 in 2012; a precipitous decline in maternal mortality
11 from 1,200/100,000 births in 1995 to 400/100,000
12 births in 2013; and an expansion of women's rights.

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

17 (4) Since the first democratic transfer of power
18 in the history of Afghanistan in 2014, President
19 Ashraf Ghani and Chief Executive Officer Abdullah
20 Abdullah have led a National Unity Government
21 that has identified key security and development
22 challenges in order to make Afghanistan a full and
23 productive member of the community of democratic
24 nations.

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

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

17 (A) forming an independent anti-corrup-
18 tion commission with time-bound prosecutorial
19 powers;

20 (B) implementing recommendations by the
21 Monitoring and Evaluation Committee on a na-
22 tional action plan to reduce corruption;

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

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

4 (E) forming a national procurement board
5 staffed by qualified professionals who will man-
6 age all large value contracts using internation-
7 ally recognized standards and procedures; and

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

14 (7) The December 2014 Government of Af-
15 ghanistan report “Realizing Self Reliance: Commit-
16 ments to Reform and Renewed Partnership”, ex-
17 pressed a commitment to “enhancing productivity,
18 growth and revenues” by—

19 (A) developing natural resources through
20 public-private partnerships that bring in rents,
21 taxes, and profits;

22 (B) removing obstacles to trade and transit
23 and ending smuggling that diverts revenue
24 away from the treasury;

1 (C) negotiating expanded market access in
2 regional and global markets;

3 (D) gradually formalizing the informal
4 economy and changing the compact between the
5 state and citizens to one where citizens pay
6 taxes for services they tangibly benefit from;
7 and

8 (E) transferring government payments
9 electronically to eliminate losses in transit.

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

20 (9) At the end of 2014, under the TMAF, the
21 Government of Afghanistan had fallen short in meet-
22 ing benchmarks related to: revenue collection, the
23 enhancement of women’s rights, corruption and the
24 illicit economy, and the protection of human rights.

1 (10) In the Joint Declaration following the
2 London Conference on Afghanistan of December 4,
3 2014, the international community and the new Gov-
4 ernment of Afghanistan agreed to refresh the exist-
5 ing TMAF and associated commitments at the 2015
6 Senior Officials Meeting based on the reform pro-
7 gram and priorities as laid out by the Government
8 of Afghanistan.

9 (11) Afghanistan faces great difficulties in
10 making progress in countering illegal narcotics and
11 remains the leading global illicit opium poppy pro-
12 ducer.

13 (12) The illegal narcotics trade results in the
14 transfer of illicit funds and encourages and also re-
15 quires corrupt financial transactions, and, if mini-
16 mized, could have beneficial impacts on trade and
17 reduce overall levels of corruption.

18 (13) The international community has endorsed
19 Afghanistan’s longer-term development following the
20 war and identified the criticality of the “trans-
21 formation decade” from 2015–2024 outlined by the
22 Government of Afghanistan and has acknowledged
23 that the Government of Afghanistan will seek con-
24 tinued international assistance in order for it to be-

1 come a stable, self-sustained partner in the commu-
2 nity of democratic countries.

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

11 (15) While Afghan National Security Forces
12 (ANSF) have taken over lead combat responsibil-
13 ities, they continue to operate in close coordination
14 with, and with significant resources from the inter-
15 national community, under the Train, Advise and
16 Assist (TAA) mission of Operation Inherent Resolve
17 and in coordination with ongoing counter-terrorism
18 operations. Development of civilian oversight institu-
19 tions for the security sector has lagged. Such over-
20 sight will be important for ensuring that Afghan se-
21 curity forces are accountable and do not abuse their
22 powers.

1 **SEC. 102. SENSE OF CONGRESS ON UNITED STATES ASSIST-**
2 **ANCE AND ACCOUNTABILITY IN AFGHANI-**
3 **STAN.**

4 It is the sense of Congress that—

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

11 (2) Afghanistan is at a critical inflection point,
12 having gone through political and security transi-
13 tions as the international community draws down its
14 military forces. The international community should
15 work closely with the new government in supporting
16 development priorities for the rest of the trans-
17 formation decade that translate into producing con-
18 crete development results for the Afghan people;

19 (3) sustainable accountability and reform of Af-
20 ghan governing institutions will not come from the
21 international community but from a commitment by
22 the Government of Afghanistan and society rein-
23 forced by domestic watchdog groups and internal
24 government accountability monitoring mechanisms;

25 (4) the United States Government should deep-
26 en its dialogue on anti-corruption efforts with the

1 Government of Afghanistan to develop effective over-
2 sight mechanisms to ensure large donor contracts do
3 not contribute to corruption;

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

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

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

20 (8) in the event of future egregious cases of
21 corruption in Afghanistan, the President should im-
22 pose visa bans and asset freezes on those respon-
23 sible, especially in instances where United States as-
24 sistance is stolen or misappropriated;

1 (9) the United States Government should co-
2 operate with the Government of Afghanistan and
3 with international donors to develop a series of strict
4 accountability benchmarks based on the refreshed
5 Tokyo Mutual Accountability Framework and the
6 Government of Afghanistan’s own “Realizing Self
7 Reliance” report commitments that will condition
8 levels of assistance and the amount of on-budget as-
9 sistance on anti-corruption performance acceptable
10 to donors;

11 (10) the United States should support the Af-
12 ghan Parliament to refine and strengthen the legal
13 framework of anti-corruption and anti-money laun-
14 dering laws to address beneficial ownership, coun-
15 tering bid-rigging and other contracting and pro-
16 curement fraud, criminal investigations of financial
17 transactions, complementary banks, personal asset
18 or other financial declarations and disclosures as re-
19 quired by law or regulation, efforts to meet FATF
20 requirements, and other areas to further inhibit the
21 illicit flow of money;

22 (11) the commitment by the Government of Af-
23 ghanistan to strengthen its nascent private sector
24 should be supported and sustained using the full

1 array of tools of the United States, including tech-
2 nical and legal assistance;

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

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

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

19 (15) the United States Government should es-
20 tablish a United States-Afghan Tax Commission to
21 help spearhead a rapid and successful conclusion of
22 a new Bilateral Tax Agreement similar to the Agree-
23 ments with several of Afghanistan's neighbors, in-
24 cluding Kazakhstan, Azerbaijan, Tajikistan,
25 Kyrgyzstan, Turkmenistan, India, and Pakistan;

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

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

12 **SEC. 103. UNITED STATES ASSISTANCE POLICY FOR AF-**
13 **GHANISTAN.**

14 It is the policy of the United States—

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

20 (2) that all United States Government agencies
21 and entities working in Afghanistan coordinate,
22 plan, and regularly review plans in a coherent, well-
23 informed process to develop United States policy and
24 assistance programming;

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

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

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

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

20 (7) to recognize that Afghanistan's sustainable
21 development is grounded in growing the regional
22 economy, and to support the efforts of the Govern-
23 ment and people of Afghanistan to build strong re-
24 gional economic connectivity with the country's
25 neighbors; and

1 (8) to support, where appropriate, proven pro-
2 grams that promote private sector job creation in
3 Afghanistan.

4 **SEC. 104. EFFECTIVE AFGHANISTAN ASSISTANCE AND AC-**
5 **COUNTABILITY.**

6 (a) STRATEGY TO COMBAT CORRUPTION IN AF-
7 GHANISTAN.—

8 (1) IN GENERAL.—The Secretary of State, in
9 consultation with the Secretary of Defense and the
10 Government of Afghanistan, shall develop a com-
11 prehensive interagency strategy for United States
12 assistance that is sustainable and is not counter-pro-
13 ductive to combating corruption in Afghanistan.

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

16 (A) Multi-year goals, objectives, and meas-
17 urable outcomes for targeted activities to
18 strengthen selected Afghan official institutions
19 and nongovernmental organizations to prevent,
20 investigate, deter, and prosecute corruption.

21 (B) An operational plan incorporating all
22 United States Government programming to im-
23 plement the anti-corruption goals and objec-
24 tives.

1 (C) A summary of United States efforts to
2 coordinate with other international donors to
3 ensure that anti-corruption advice or program-
4 ming provided to the Government of Afghani-
5 stan is not contradictory.

6 (D) A focus on the development of govern-
7 mental and nongovernmental Afghan capacity
8 to ensure accountability and combat corruption.

9 (E) An evaluation of Afghan civil society
10 anti-corruption capacities that includes their
11 ability to use technology to combat corruption.

12 (b) AFGHANISTAN ANTI-CORRUPTION FUND.—

13 (1) IN GENERAL.—Subject to the availability of
14 funds, the President is authorized to provide tech-
15 nical and financial assistance to official Government
16 of Afghanistan anti-corruption and audit institutions
17 and Afghan civil society watchdog groups in support
18 of the anti-corruption priorities identified by the
19 Government of Afghanistan and the United States
20 Government. Subject to careful consideration by the
21 United States Government of the legitimacy, effi-
22 cacy, and direct impact and influence of such enti-
23 ties and individuals, offices, and organizations that
24 are funded under this subsection could include—

25 (A) the Supreme Audit Office;

1 (B) the Attorney General;

2 (C) the Ministry of Justice;

3 (D) Inspectors General within key min-
4 istries;

5 (E) the Independent Joint Anti-Corruption
6 Monitoring and Evaluation Committee (MEC);

7 (F) the major crimes task force, Technical
8 Investigative Unit, and the Sensitive Investiga-
9 tive Unit;

10 (G) the High Office of Oversight and Anti-
11 Corruption;

12 (H) the Anti-Corruption Tribunal;

13 (I) the Financial Transactions and Reports
14 Analysis Center of Afghanistan;

15 (J) the proposed procurement board; and

16 (K) civil society organizations engaged in
17 oversight, anti-corruption advocacy, and sup-
18 port of good governance.

19 (c) PROMOTION OF HUMAN RIGHTS, PRESS FREE-
20 DOM, AND SECURITY SECTOR ACCOUNTABILITY.—

21 (1) IN GENERAL.—Subject to the availability of
22 funds, the Secretary of State, in cooperation with
23 the Secretary of Defense, should provide support for
24 efforts of the Government of Afghanistan to improve
25 oversight and accountability of the Afghan National

1 Security Forces, including the Afghan National Po-
2 lice, and Afghan local police, and strengthen Afghan
3 civil society and investigative journalists to provide
4 watchdog oversight of these institutions. Subject to
5 due consideration of the legitimacy, efficacy, and di-
6 rect impact and influence of such entities and indi-
7 viduals, these efforts could include—

8 (A) supporting the ANSF to strengthen
9 the capacity, independence, and power of its in-
10 ternal Inspector General to collect and inves-
11 tigate all credible reports of abuse by armed
12 forces;

13 (B) supporting the Office of the Attorney
14 General and the Ministries of Defense and Inte-
15 rior to be better capable to investigate and, if
16 appropriate, criminally prosecute police, mili-
17 tary, intelligence, and militia personnel, regard-
18 less of rank, found responsible for human rights
19 abuses and war crimes;

20 (C) considering establishing a special inde-
21 pendent mechanism to investigate government
22 officials and security force officers implicated in
23 abuses;

24 (D) supporting the Ministry of Interior to
25 establish a centralized register of all detainees

1 held in police and National Directorate of Secu-
2 rity custody, and ensure that it is accessible to
3 independent monitors and is updated regularly
4 and in a transparent manner;

5 (E) supporting implementation of the Ac-
6 cess to Information Law and the 2009 Mass
7 Media Law, particularly provisions of the latter
8 that would disband the Media Violations Inves-
9 tigation Commission and replace it with a Mass
10 Media Commission;

11 (F) supporting the Attorney General’s Of-
12 fice to undertake prompt, impartial, and thor-
13 ough investigations into all attacks on journal-
14 ists and media organizations and bring prosecu-
15 tions as appropriate; and

16 (G) supporting the further establishment
17 of civil society organizations to provide essential
18 “watchdog” oversight of the police and armed
19 forces; as well as efforts to strengthen and im-
20 prove coordination among civil society organiza-
21 tions, such as the Afghan Independent Human
22 Rights Commission.

23 (d) DEVELOPMENT OF THE AFGHAN PRIVATE SEC-
24 TOR.—

1 (1) REGIONAL ECONOMIC CONNECTIVITY
2 FUND.—

3 (A) ESTABLISHMENT.—There is estab-
4 lished a Regional Economic Connectivity Fund
5 from which funds may be made available from
6 existing appropriations to enhance regional eco-
7 nomic connectivity between Afghanistan and the
8 countries of South and Central Asia.

9 (B) PURPOSE.—The purpose of the Re-
10 gional Economic Connectivity Fund is to pro-
11 vide support for efforts to enhance Afghani-
12 stan’s economic connectivity with its neighbors,
13 thus improving the country’s overall economic
14 prospects and diminishing the need for inter-
15 national assistance in the future. The Regional
16 Economic Connectivity Fund may be used to
17 support programs in the following areas:

18 (i) Trade and transit fee normaliza-
19 tion and electronic payment systems.

20 (ii) Capacity and skills development to
21 improve collaboration among countries for
22 border and customs.

23 (iii) Women-owned business net-
24 working.

1 (iv) Developing regional options on
2 transit and customs to facilitate trade.

3 (v) Enhancing and implementing con-
4 fidence building measures.

5 (vi) Encouraging regional energy and
6 electricity development and sharing.

7 (vii) Market access and business con-
8 ferences.

9 (viii) Intellectual and cultural ex-
10 changes to engage in regional problem
11 solving.

12 (2) TRANSFER AUTHORITY.—In addition to
13 other transfer authorities available to the Depart-
14 ment of State, the Department of Defense, the
15 United States Agency for International Development
16 (USAID) or other United States Government agen-
17 cies or departments, funds that are specifically allo-
18 cated towards addressing the situation in Afghani-
19 stan may be transferred to programs in South and
20 Central Asia that promote regional economic
21 connectivity with substantial and direct benefits to
22 Afghanistan.

23 **SEC. 105. REPORTS.**

24 (a) REPORTING ON CORRUPTION IN AFGHANI-
25 STAN.—Not later than one year after the date of the en-

1 actment of this Act, and annually thereafter through
2 2024, the Secretary of State shall submit to the appro-
3 priate congressional committees a report listing each indi-
4 vidual who the President determines, based on credible
5 evidence—

6 (1) is a Government of Afghanistan official, a
7 senior associate, or close relative of such an official,
8 who is responsible for, or complicit in, ordering, con-
9 trolling, or otherwise directing, acts of significant
10 corruption, including the expropriation of private or
11 public assets for personal gain, corruption related to
12 government contracts or the extraction of natural re-
13 sources, bribery, or the facilitation or transfer of the
14 proceeds of corruption to foreign jurisdictions; or

15 (2) has materially assisted, sponsored, or pro-
16 vided financial, material, or technological support
17 for, or goods or services in support of, an activity
18 described above.

19 (b) REPORT ON CIVILIAN-MILITARY ASSISTANCE EF-
20 FORTS IN AFGHANISTAN.—

21 (1) IN GENERAL.—Not later than one year
22 after the date of the enactment of this Act, the
23 Comptroller General of the United States shall sub-
24 mit to the appropriate congressional committees a

1 report on civilian-military assistance efforts in Af-
2 ghanistan.

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

5 (A) A description of lessons learned from
6 conducting development programming in a con-
7 flict zone to include recommendations on how to
8 improve coordination between United States de-
9 velopment agencies and the United States
10 Armed Forces.

11 (B) An assessment of the ability of the
12 United States Agency for International Devel-
13 opment to advance development goals within a
14 conflict environment, operating alongside pro-
15 viders of United States military assistance.

16 (C) An assessment of whether funding
17 under the Commander's Emergency Response
18 Program achieved the program's stated goals
19 and whether this program had any long-term
20 development impact, including any negative un-
21 intended consequences.

○