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S. 3210

To identify and combat corruption in countries, to establish a tiered system of countries with respect to levels of corruption by their governments and their efforts to combat such corruption, and to assess United States assistance to designated countries in order to advance anti-corruption efforts in those countries and better serve United States taxpayers.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2016

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

A BILL

To identify and combat corruption in countries, to establish a tiered system of countries with respect to levels of corruption by their governments and their efforts to combat such corruption, and to assess United States assistance to designated countries in order to advance anti-corruption efforts in those countries and better serve United States taxpayers.

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 “Combating Global Cor-
5 ruption and Ensuring Accountability Act of 2016”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Corruption erodes trust and confidence in
4 democratic institutions, the rule of law, and human
5 rights protections.

6 (2) Highly corrupt governments deliberately
7 weaken state institutions, especially those associated
8 with democratic accountability, in order to improve
9 their chances of remaining in power.

10 (3) A direct correlation exists between highly
11 corrupt governments and human rights abuses with-
12 in countries ruled by such governments.

13 (4) Corruption—

14 (A) frustrates the ability of the United
15 States to combat terrorism;

16 (B) helps to foster the conditions for vio-
17 lent extremism; and

18 (C) endangers national and international
19 security.

20 (5) Corruption damages United States competi-
21 tiveness globally and creates barriers to economic
22 growth overseas.

23 (6) Anti-corruption measures are instrumental
24 in protecting human rights and achieving sustain-
25 able economic growth, which benefits a country's

1 citizens and the international community through
2 the creation of open and transparent markets.

3 (7) Eliminating corruption requires greater
4 transparency and accountability and effective civilian
5 oversight.

6 (8) Deterring corruption requires the credible
7 threat of prosecution to deter corrupt public serv-
8 ants from abusing their authority with impunity for
9 political or financial gains, in collusion with private
10 entities.

11 (9) The United States is a signatory to the
12 United Nations Convention Against Corruption, hav-
13 ing ratified the treaty on October 30, 2006.

14 (10) United States foreign assistance could be
15 used to encourage actors within highly corrupt coun-
16 tries to support a more inclusive, just, and demo-
17 cratic political and economic system that ultimately
18 contributes to regional stability, credible and legiti-
19 mate United States partners, and markets for goods
20 produced in the United States.

21 (11) Preventing corruption requires imple-
22 menting democracy and governance programs within
23 countries receiving United States foreign assistance,
24 including—

25 (A) anti-corruption training;

1 (B) anti-corruption technical assistance to
2 national human rights institutions;

3 (C) support for civilian anti-corruption
4 oversight capabilities;

5 (D) the development of anti-corruption
6 legal mechanisms; and

7 (E) increased asset recovery and auditing
8 capabilities.

9 (12) Poorly directed foreign assistance could in-
10 advertently contribute to exclusive political and eco-
11 nomic systems that—

12 (A) contribute to insecurity within the
13 countries receiving such assistance;

14 (B) stymie their citizens' democratic and
15 economic aspirations;

16 (C) discourage a free press and civil soci-
17 ety; and

18 (D) impede United States foreign policy
19 goals.

20 (13) Effective corruption risk assessment and
21 analysis before, during, and after the provision of
22 foreign assistance is a key element for reducing and
23 eliminating corruption.

24 (14) Comprehensive and timely data on foreign
25 assistance programs is the first step to greater ac-

1 countability and scrutiny by donor institutions, re-
2 cipient states, and civil society.

3 (15) Foreign assistance provided to the security
4 sector of a foreign country is not effective at
5 strengthening weak defense and security forces un-
6 less it is properly provided and closely monitored for
7 corruption, including diversion and misuse.

8 (b) PURPOSES.—The purposes of this Act are—

9 (1) to combat corruption in countries by requir-
10 ing the Secretary of State to establish and report on
11 corruption in such countries and the efforts of the
12 governments of such countries in combating such
13 corruption;

14 (2) to assess United States foreign assistance to
15 designated countries based on the corruption re-
16 ports; and

17 (3) to improve the transparency and account-
18 ability of United States foreign assistance.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
22 **TEES.**—The term “appropriate congressional com-
23 mittees” means—

24 (A) the Committee on Foreign Relations of
25 the Senate;

1 (B) the Committee on Armed Services of
2 the Senate;

3 (C) the Committee on Foreign Affairs of
4 the House of Representatives; and

5 (D) the Committee on Armed Services of
6 the House of Representatives.

7 (2) CORRUPT ACTOR.—The term “corrupt
8 actor” means—

9 (A) any foreign person or entity that is a
10 government official or government entity re-
11 sponsible for, or complicit in—

12 (i) ordering or otherwise directing
13 acts of significant corruption; or

14 (ii) facilitating or transferring the
15 proceeds of corruption to foreign jurisdic-
16 tions; or

17 (B) any company, in which a person or en-
18 tity described in subparagraph (A) has a sig-
19 nificant stake, which is complicit in—

20 (i) directing or participating in signifi-
21 cant corruption; or

22 (ii) facilitating or transferring the
23 proceeds of corruption to foreign jurisdic-
24 tions.

1 (3) CORRUPTION.—The term “corruption”
2 means the extent to which public power is exercised
3 for private gain, including by bribery, nepotism,
4 fraud, or embezzlement.

5 (4) FOREIGN ASSISTANCE.—The term “foreign
6 assistance” means—

7 (A) aid given by the United States Govern-
8 ment to other countries—

9 (i) to support global peace, security,
10 government capacity-building, democracy,
11 and development efforts; or

12 (ii) to provide humanitarian relief
13 during times of crisis; and

14 (B) programs authorized under title 10,
15 United States Code, or under any Act of Con-
16 gress that has been placed in title 22, United
17 States Code, that provide funds, military train-
18 ing or education, or military equipment, weap-
19 onry, or services to another country for its mili-
20 tary forces and security forces, including police
21 and paramilitary forces.

22 (5) GRAND CORRUPTION.—The term “grand
23 corruption” means corruption committed at a high
24 level of government that—

1 (A) distorts policies or the central func-
2 tioning of the country; and

3 (B) enables leaders to benefit at the ex-
4 pense of the public good.

5 (6) PETTY CORRUPTION.—The term “petty cor-
6 ruption” means the abuse of entrusted power by
7 low- and mid-level public officials in their inter-
8 actions with ordinary citizens.

9 **SEC. 4. ANNUAL REPORT AND TIERED RANKING SYSTEM.**

10 (a) ANNUAL REPORT.—To ensure the transparency,
11 accountability, and effectiveness of United States foreign
12 assistance programs, not later than June 1 of each year,
13 the Secretary of State shall submit a report to the appro-
14 priate congressional committees that—

15 (1) describes the status of corruption in foreign
16 countries;

17 (2) includes an assessment of the efforts by the
18 government of each country to combat corruption,
19 including identifying which countries are meeting the
20 minimum standards for the elimination of corruption
21 set forth in section 5, using an appropriate index or
22 indices for measuring corruption; and

23 (3) describes the status of each country’s active
24 membership in voluntary multisectoral global govern-

1 ance initiatives as evidence of the country’s govern-
2 ment-led efforts to combat corruption.

3 (b) PUBLICATION OF TIERED RANKING LIST.—

4 (1) IN GENERAL.—The Secretary of State shall
5 annually publish, on a publicly accessible website, a
6 tiered ranking that includes all countries whose gov-
7 ernments do not fully comply with the minimum
8 standards set forth in section 5.

9 (2) TIER 1 COUNTRIES.—A country included in
10 the ranking published under paragraph (1) shall be
11 ranked as a tier 1 country if the government of such
12 country is making serious and sustained efforts to
13 comply with the minimum standards set forth in sec-
14 tion 5.

15 (3) TIER 2 COUNTRIES.—A country included in
16 the ranking published under paragraph (1) shall be
17 ranked as a tier 2 country if the government of such
18 country is making significant efforts to comply with
19 the minimum standards set forth in section 5.

20 (4) TIER 3 COUNTRIES.—A country included in
21 the ranking published under paragraph (1) shall be
22 ranked as a tier 3 country if the government of such
23 country is making minimal efforts to comply with
24 the minimum standards set forth in section 5.

1 (5) TIER 4 COUNTRIES.—A country included in
2 the ranking published under paragraph (1) shall be
3 ranked as a tier 4 country if the government of such
4 country is making de minimis or no efforts to com-
5 ply with the minimum standards set forth in section
6 5.

7 **SEC. 5. MINIMUM STANDARDS FOR THE ELIMINATION OF**
8 **CORRUPTION AND ASSESSMENT OF EFFORTS**
9 **TO COMBAT CORRUPTION.**

10 (a) IN GENERAL.—The government of a country is
11 complying with the minimum standards for the elimi-
12 nation of corruption if the government—

13 (1) has enacted laws and established govern-
14 ment structures, policies, and practices that prohibit
15 corruption, including grand corruption and petty
16 corruption;

17 (2) enforces the laws described in paragraph (1)
18 by punishing any person who is found, through a
19 fair judicial process, to have violated such laws;

20 (3) prescribes punishment for grand corruption
21 that is commensurate with the punishment pre-
22 scribed for serious crimes;

23 (4) prescribes punishment for petty corruption
24 that—

1 (A) provides a sufficiently stringent deter-
2 rent; and

3 (B) adequately reflects the nature of the
4 offense; and

5 (5) is making serious and sustained efforts to
6 eliminate corruption.

7 (b) FACTORS FOR ASSESSING GOVERNMENT EF-
8 FORTS TO COMBAT CORRUPTION.—In assessing a govern-
9 ment’s efforts To combat corruption, the Secretary of
10 State shall consider—

11 (1) whether the government of the country vig-
12 orously investigates and prosecutes acts of corrup-
13 tion and convicts and sentences persons responsible
14 for such acts that take place wholly or partly within
15 such country, including, as appropriate, requiring in-
16 carceration of individuals convicted of such acts;

17 (2) whether the government of the country has
18 adopted measures to prevent corruption, such as
19 measures to inform and educate the public, including
20 potential victims, about the causes and consequences
21 of corruption;

22 (3) whether government authorities in the coun-
23 try participate in, facilitate, or condone corruption;

24 (4) what steps the government of the country
25 has taken to prohibit government officials from par-

1 participating in, facilitating, or condoning corruption,
2 including the investigation, prosecution, and conviction
3 of such officials;

4 (5) which government authorities in the country
5 are involved in activities to combat corruption;

6 (6) the extent to which the country provides access,
7 or, as appropriate, makes adequate resources
8 available, to civil society organizations and other institutions
9 to combat corruption, including reporting,
10 investigating, and monitoring;

11 (7) what steps the government of the country
12 has taken to prohibit nongovernment individuals
13 from participating in corruption, including—

14 (A) the investigation, prosecution, and conviction
15 of individuals involved in corruption;

16 (B) the criminal and civil penalties for corruption;
17 and

18 (C) the efficacy of the penalties referred to
19 in subparagraph (B) in eliminating or reducing
20 corruption;

21 (8) whether there is an independent judiciary or
22 judicial body in the country responsible for, and effectively
23 capable of, deciding corruption cases impartially,
24 on the basis of facts and in accordance with
25 the law, without any restrictions, improper influ-

1 ences, inducements, pressures, threats, or inter-
2 ferences, direct or indirect, from any quarter or for
3 any reason;

4 (9) whether the government of the country vig-
5 orously investigates, prosecutes, convicts, and sen-
6 tences public officials who participate in or facilitate
7 corruption, including nationals of the country who
8 are deployed in foreign military assignments, trade
9 delegations abroad, or other similar missions, who
10 engage in or facilitate severe forms of corruption;

11 (10) whether the government of the country—

12 (A) is cooperating with governments of
13 other countries to extradite corrupt actors when
14 requested; or

15 (B) to the extent that such cooperation
16 would be inconsistent with the laws of such
17 country or with extradition treaties to which
18 such country is a party, is taking all appro-
19 priate measures to modify or replace such laws
20 and treaties so as to permit such cooperation;

21 (11) whether the government of the country is
22 assisting in international investigations of
23 transnational corruption networks and in other coop-
24 erative efforts to combat grand corruption;

1 (12) whether the government of the country
2 recognizes the rights of victims of corruption and en-
3 sures their access to justice;

4 (13) the steps taken by the government of the
5 country to assist victims of corruption, including ef-
6 forts to prevent victims from being further victim-
7 ized or persecuted by corrupt actors, government of-
8 ficials, or others;

9 (14) whether the government of the country re-
10 frains from prosecuting victims of corruption or
11 whistleblowers due to such persons having assisted
12 in exposing corruption, and refrains from other dis-
13 criminatory treatment of such persons;

14 (15) whether the government of the country,
15 consistent with the capacity of such government—

16 (A) systematically monitors its efforts to
17 satisfy the criteria described in paragraphs (1)
18 through (12); and

19 (B) makes publicly available a periodic as-
20 sessment of such efforts; and

21 (16) such other information relating to corrup-
22 tion as the Secretary of State considers appropriate.

23 **SEC. 6. TRANSPARENCY AND ACCOUNTABILITY.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of law, prior to obligation by any United States agen-

1 cy of foreign assistance, except acute humanitarian and
2 disaster assistance, to a country ranked as a tier 3 or tier
3 4 country under section 4(b), the Secretary of State, in
4 coordination with the Administrator of the United States
5 Agency for International Development (“USAID”) and
6 the Secretary of Defense, as appropriate, shall—

7 (1) conduct a corruption risk assessment and
8 create a corruption mitigation strategy for all United
9 States foreign assistance programs to that country;

10 (2) require the inclusion of anti-corruption
11 clauses for all foreign assistance contracts, grants,
12 and cooperative agreements, which allow for the ter-
13 mination of the contract, grant, or cooperative
14 agreement without penalty if credible indicators of
15 corruption are discovered;

16 (3) require the inclusion of appropriate
17 clawback clauses for all foreign assistance contracts,
18 grants, and cooperative agreements to recover
19 United States taxpayer funds that have been mis-
20 appropriated from the prime contractor, grantee, or
21 cooperative agreement participant through corrup-
22 tion;

23 (4) require the disclosure of the beneficial own-
24 ership of all contractors, subcontractors, grantees,
25 cooperative agreement participants, and other orga-

1 nizations receiving funding from the United States
2 Government for foreign assistance programs; and

3 (5) establish a mechanism for investigating alle-
4 gations of misappropriated foreign assistance funds
5 or equipment.

6 (b) ADDITIONAL REQUIREMENTS.—In meeting the
7 requirements under subsection (a) and overseeing the im-
8 plementation of foreign assistance programs in Tier 3 and
9 Tier 4 countries, the Secretary of State, in coordination
10 with the Administrator of USAID and the Secretary of
11 Defense, as appropriate, shall consider—

12 (1) implementing appropriate safeguards to en-
13 sure that disclosure of information about award re-
14 cipients does not create additional security risks for
15 those operating in restrictive environments;

16 (2) the need to respond in a timely manner to
17 programmatic needs and prevent significant delays
18 in the obligation of foreign assistance funding, which
19 could disrupt the implementation of programs and
20 reduce program effectiveness;

21 (3) programming foreign assistance resources,
22 including democracy, rights, and governance assist-
23 ance, based on need, foreign policy, and development
24 priorities, strategic planning, and where assistance
25 can be most effective; and

1 (4) criteria for making a recommendation re-
2 garding the termination of any contracts, grants, or
3 cooperative agreements determined to be associated
4 with corruption and criminality.

5 (c) STRATEGY FOR INCORPORATING CORRUPTION
6 RISK ASSESSMENTS.—In order to ensure meaningful fol-
7 low-through on the United States Government’s recent
8 commitment to strengthen attention to anti-corruption in
9 security cooperation and the provision of security assist-
10 ance at the United Global Anti-Corruption Summit, the
11 Secretary of State and the Secretary of Defense, not later
12 than 180 days after the date of the enactment of this Act,
13 shall submit a strategy to the appropriate congressional
14 committees that details—

15 (1) how the United States Government will in-
16 corporate corruption risk assessments during secu-
17 rity sector assistance with foreign security forces;
18 and

19 (2) how security sector assistance will improve
20 security sector governance, as appropriate.

21 **SEC. 7. RESOURCES AND REPORTING REQUIREMENTS.**

22 (a) ANNUAL REPORT.—

23 (1) IN GENERAL.—The Secretary of State shall
24 submit an annual report to the appropriate congres-
25 sional committees that outlines the resources needed

1 to meet the objectives and reports under sections 4
2 through 6, including—

- 3 (A) intelligence data collection needs;
- 4 (B) personnel needs;
- 5 (C) information technology requirements;
- 6 and
- 7 (D) a description of the bureaucratic struc-
8 ture of the offices within the Department of
9 State and USAID that are engaged in anti-cor-
10 ruption activities.

11 (2) FORM.—The report submitted under para-
12 graph (1) shall be submitted in unclassified form,
13 but may include a classified annex.

14 (b) ONLINE PLATFORM.—The Secretary of State and
15 the Administrator of USAID shall consolidate existing re-
16 ports with anti-corruption components into one online,
17 public platform, which shall—

- 18 (1) include—
 - 19 (A) the Human Rights Report;
 - 20 (B) the Fiscal Transparency Report;
 - 21 (C) the Investment Climate Statement re-
22 ports;
 - 23 (D) the International Narcotics Control
24 Strategy Report; and
 - 25 (E) any other relevant public reports;

1 (2) link to third-party indicators used by the
2 United States Government to inform policy and pro-
3 gramming, such as—

4 (A) the World Bank Control of Corruption
5 indicator;

6 (B) the World Bank’s Actionable Govern-
7 ance Index Data Portal;

8 (C) the International Finance Corpora-
9 tion’s Doing Business surveys;

10 (D) the International Budget Partnership’s
11 Open Budget Index;

12 (E) the Global Integrity Index; and

13 (F) multilateral peer review anti-corruption
14 compliance mechanisms, such as the OECD
15 Working Group on Bribery and United Nations
16 Convention Against Corruption, to further high-
17 light expert international views on country chal-
18 lenges and country efforts.

19 (c) TRAINING.—To increase the ability of Depart-
20 ment of State and USAID personnel to support anti-cor-
21 ruption as a foreign policy and development priority, and
22 strengthen their ability to design, implement, and evaluate
23 more effective anti-corruption programming around the
24 world, including enhanced skills to better evaluate and
25 mitigate corruption risks in assistance programs, the Sec-

1 retary of State and the Administrator of USAID shall in-
2 corporate anti-corruption components into existing For-
3 eign Service and Civil Service training courses.

4 **SEC. 8. SENSE OF CONGRESS ON CORRUPTION AND BENE-**
5 **FICIAL OWNERSHIP.**

6 It is the sense of Congress that identifying the true
7 beneficial owners of companies formed in the United
8 States or abroad, and property that has been removed
9 from a country in connection with corrupt activities by
10 corrupt leaders or other corrupt actors, is an important
11 part of combating corruption, and the President should
12 develop a comprehensive approach to requiring such bene-
13 ficial ownership information for companies formed in the
14 United States or abroad, and intensify cooperative efforts
15 with U.S. allies toward those ends.

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