

Calendar No. 246

113TH CONGRESS
1ST SESSION**S. 657**

To eliminate conditions in foreign prisons and other detention facilities that do not meet primary indicators of health, sanitation, and safety, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2013

Mr. LEAHY (for himself and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

NOVEMBER 14, 2013

Reported by Mr. MENENDEZ, without amendment

A BILL

To eliminate conditions in foreign prisons and other detention facilities that do not meet primary indicators of health, sanitation, and safety, 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 “Foreign Prison Condi-
5 tions Improvement Act of 2013”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Millions of incarcerated people in the world
4 suffer inhumane conditions in prisons and other de-
5 tention facilities that are overcrowded, unsanitary,
6 and unsafe to the point of endangering their lives.
7 Many governments do not respect the basic right of
8 all individuals in detention or incarceration to be
9 treated with humanity and with respect for the in-
10 herent dignity of the human person.

11 (2) Rates of malnutrition and death among
12 prisoners and other detainees far exceed those of the
13 general population, and medical treatment for seri-
14 ous illness or injury is, in many instances, non-exist-
15 ent or grossly inadequate.

16 (3) Prisons are extremely high-risk environ-
17 ments for transmitting diseases, particularly HIV
18 and tuberculosis, and create grave risks to commu-
19 nities in which released prisoners live; studies esti-
20 mate that HIV infection rates in prisons in devel-
21 oping countries can be as much as 50 times higher
22 than in the general population, and tuberculosis in-
23 fection rates in prisons are more than 20 times high-
24 er than in the general population.

25 (4) These conditions are compounded by severe
26 overcrowding in prisons and other detention facili-

1 ties. Excessive pre-trial detention and dysfunctional
2 justice systems frequently result in prisoners and
3 other detainees spending years in such conditions be-
4 fore their cases are adjudicated. In some countries,
5 such facilities are filled to capacity many times over
6 resulting in conditions so cramped that individual
7 prisoners cannot move without all doing so en
8 masse.

9 (5) Experts have documented widespread inhu-
10 mane prison conditions, including overcrowding, in-
11 adequate food and water, no access to hygiene prod-
12 ucts or medical care, juveniles detained with adults,
13 and denial of visits from family.

14 (6) Some governments fail to provide even the
15 most rudimentary sanitation in prisons and other
16 detention facilities, putting prisoners and other de-
17 tainees at even greater risk of easily preventable and
18 often life-threatening diseases. Toilets are few or
19 non-existent and human waste repositories often are
20 located among the general prison population, forcing
21 prisoners to eat, sleep, and live in grossly unsanitary
22 conditions.

23 (7) Some governments fail to permit prisoners
24 and other detainees reasonable contact with family
25 members or other visitors. Many governments deny

1 access to certain prisoners and detainees, or do not
2 provide information about their location, health, and
3 well-being, leaving them unaccounted for.

4 (8) Inhumane conditions in prisons and other
5 detention facilities often exist in countries where re-
6 sources for law enforcement are limited and only a
7 small fraction of such resources are made available
8 for the operation and maintenance of prisons and
9 other detention facilities. Inadequate, misplaced, or
10 lost records often result in prisoners and other de-
11 tainees being incarcerated indefinitely because their
12 cases have never been tried or otherwise adjudicated.
13 In other cases, poor recordkeeping results in pris-
14 oners and other detainees being held long after their
15 sentences have expired. Allocating the relatively
16 modest resources necessary to provide for the basic
17 human needs of prisoners and other detainees and to
18 remediate the inhumane conditions under which
19 such prisoners are held is often a low priority.

20 (9) The United States Government currently
21 provides significant amounts of assistance to coun-
22 tries whose governments operate prisons and other
23 detention facilities that, because of their inhumane
24 conditions, seriously jeopardize the lives of prisoners
25 and other detainees held under their authority.

1 (10) The Department of State's 2011 Country
2 Reports on Human Rights Practices reported prison
3 conditions as poor, inhumane, or life threatening in
4 scores of countries, all of which receive United
5 States assistance.

6 (11) On February 14, 2012, a fire at the
7 Comayagua Prison in Honduras killed 360 pris-
8 oners. United States officials who investigated the
9 fire attributed the deaths to severe overcrowding and
10 poor safety practices. In one overcrowded cell block,
11 only 4 of 105 prisoners survived. More than half of
12 the prisoners were pretrial detainees who had never
13 been convicted of any crime.

14 (12) In many countries, United States citizens
15 suffer serious harm and are at risk of death and
16 mistreatment from being held in prisons and other
17 detention facilities under inhumane conditions.

18 (13) The United States Government should use
19 its influence and resources to ensure that govern-
20 ments that receive United States assistance do not
21 operate prisons and other detention facilities under
22 inhumane conditions. The United States Govern-
23 ment also should assist countries to eliminate inhu-
24 mane conditions in prisons and other detention fa-
25 cilities.

1 (14) Eliminating inhumane conditions in for-
2 eign prisons and other detention facilities will
3 strengthen the rule of law, save lives, and enhance
4 the health and well-being of vulnerable people in
5 poor countries, and it will advance United States in-
6 terests.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

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

12 (A) the Committee on Appropriations and
13 the Committee on Foreign Relations of the Sen-
14 ate; and

15 (B) the Committee on Appropriations and
16 the Committee on Foreign Affairs of the House
17 of Representatives.

18 (2) PRIMARY INDICATORS FOR THE ELIMI-
19 NATION OF INHUMANE CONDITIONS IN FOREIGN
20 PRISONS AND OTHER DETENTION FACILITIES.—The
21 term “primary indicators for the elimination of inhu-
22 mane conditions in prisons and other detention fa-
23 cilities” means, with respect to the operation or
24 maintenance of prisons and other detention facilities

1 in a foreign country that is a recipient of United
2 States assistance, the following:

3 (A) The number of inmates or detainees
4 held in a facility does not so exceed prison ca-
5 pacity such that per capita floor space is insuf-
6 ficient to allow for humane sleeping conditions
7 and reasonable physical movement.

8 (B) Human waste facilities are sanitary
9 and accessible, and human waste is disposed of
10 regularly and in a sanitary manner.

11 (C) The lighting, ventilation, temperature,
12 and physical construction of prisons and other
13 detention facilities do not seriously endanger
14 the health and safety of prisoners.

15 (D) Prisoners and other detainees have ac-
16 cess to adequate food and potable drinking
17 water.

18 (E) Prisoners and other detainees have ac-
19 cess to essential and emergency medical care.

20 (F) To the maximum extent practicable,
21 prisoners and other detainees are allowed reli-
22 gious observance and materials, and contact
23 with clergy, family, and friends, by both cor-
24 respondence and personal visits.

1 (3) UNITED STATES ASSISTANCE.—The term
2 “United States assistance” means any non-humani-
3 tarian assistance furnished to carry out the provi-
4 sions of the Foreign Assistance Act of 1961 (22
5 U.S.C. 2151 et seq.), the Arms Export Control Act
6 (22 U.S.C. 2751 et seq.), or the Millennium Chal-
7 lenge Act of 2003 (22 U.S.C. 7701 et seq.).

8 **SEC. 4. EFFORTS TO HELP ELIMINATE INHUMANE CONDI-**
9 **TIONS IN FOREIGN PRISONS AND OTHER DE-**
10 **TENTION FACILITIES.**

11 (a) REPORT TO CONGRESS.—

12 (1) ANNUAL REPORT.—

13 (A) IN GENERAL.—Not later than 180
14 days after the date of the enactment of this
15 Act, and October 1 every other year thereafter
16 for a six-year period, the Secretary of State
17 shall submit to the appropriate congressional
18 committees a report describing the conditions in
19 prisons and other detention facilities in at least
20 30 countries receiving United States assistance
21 or under sanction by the United States selected
22 as a result of the Secretary’s determination
23 that such conditions raise the most serious
24 human rights or humanitarian concerns. In se-
25 lecting such countries, the Secretary shall con-

1 sider only the conditions within each country's
2 prisons and detention facilities.

3 (B) CONTENT.—The report required under
4 subparagraph (A) shall, for each country, de-
5 scribe the conditions that raise human rights
6 and humanitarian concerns, including—

7 (i) a detailed and up to date review,
8 whenever possible, of each of the primary
9 indicators set forth in section 3(2) and
10 noting any efforts made to eliminate inhu-
11 mane conditions as described in paragraph
12 (2);

13 (ii) an identification of those coun-
14 tries, if any, receiving United States assist-
15 ance, whose governments—

16 (I) do not meet one or more of
17 the primary indicators for the elimi-
18 nation of inhumane conditions in pris-
19 ons and other detention facilities but
20 are making significant efforts to com-
21 ply; and

22 (II) do not meet one or more of
23 the primary indicators and are not
24 making significant efforts to comply;
25 and

1 (iii) the steps being taken by the
2 United States Government to improve con-
3 ditions in foreign prisons and other deten-
4 tion facilities.

5 (C) BEST PRACTICES.—The report shall
6 also include a section on best practices for
7 achieving the primary indicators.

8 (2) SIGNIFICANT EFFORTS.—In making deter-
9 minations under paragraph (1)(A) as to whether the
10 government of a country is making significant ef-
11 forts to comply with the primary indicators for the
12 elimination of inhumane conditions in prisons and
13 other detention facilities, the Secretary of State shall
14 consider the extent to which the government of the
15 country is—

16 (A) regularly monitoring the conditions of
17 prisons and other detention facilities under its
18 authority, including allowing access for inde-
19 pendent monitors, permitting prisoners and
20 other detainees to submit complaints without
21 censorship, cooperating with humanitarian or-
22 ganizations in eliminating and monitoring inhu-
23 mane conditions in prisons and other detention
24 facilities, promptly investigating credible allega-
25 tions of inhumane conditions, and making infor-

1 mation concerning conditions and investigations
2 available to the public and the Secretary of
3 State;

4 (B) taking effective steps to eliminate in-
5 humane conditions in prisons and other deten-
6 tion facilities, which may include, among other
7 steps, appointing ombudsmen to serve on behalf
8 of prisoners and other detainees, providing al-
9 ternatives to incarceration for nonviolent of-
10 fenders in order to alleviate inhumane over-
11 crowding, addressing the status and cir-
12 cumstances of confinement of juveniles, improv-
13 ing pretrial detention practices, and imple-
14 menting bail and recordkeeping procedures to
15 reduce pretrial detention periods and to ensure
16 that prisoners do not serve beyond the max-
17 imum sentence for the charged offense; and

18 (C) increasing the amount of government
19 resources to eliminate inhumane conditions in
20 prisons and other detention facilities.

21 (3) USE OF COUNTRY REPORTS.—The report
22 required under paragraph (1) may draw from the
23 discussion of prison conditions contained in the
24 Country Reports on Human Rights Practices re-
25 quired under sections 116(d) and 502B(b) of the

1 Foreign Assistance Act of 1961 (22 U.S.C.
2 2151n(d) and 2304(b)).

3 (4) PUBLICATION.—The report required under
4 paragraph (1) shall be made available to the public,
5 including on a publicly available website of the De-
6 partment of State.

7 (b) ASSISTANCE FOR GOVERNMENTS TO ELIMINATE
8 INHUMANE CONDITIONS IN PRISONS AND OTHER DETEN-
9 TION FACILITIES.—

10 (1) IN GENERAL.—The Secretary of State and
11 the Administrator of the United States Agency for
12 International Development should furnish assistance
13 for the purpose of eliminating inhumane conditions
14 in prisons and other detention facilities where such
15 assistance would be appropriate and beneficial.

16 (2) INAPPLICABILITY OF PROHIBITION.—The
17 prohibitions under section 660 of the Foreign Assist-
18 ance Act of 1961 (22 U.S.C. 2420) shall not be ap-
19 plicable to assistance furnished to carry out the pro-
20 visions of paragraph (1).

21 (3) ASSISTANCE.—Assistance made available
22 under this subsection shall be designated and used
23 exclusively to eliminate inhumane conditions in pris-
24 ons and other detention facilities in the country re-
25 ceiving the grant, but may not include the construc-

1 tion of new prisons. Funds made available under
 2 this section shall be subject to the regular notifica-
 3 tion procedures of the Committees on Appropriations
 4 of the Senate and the House of Representatives.

5 (c) CONSULTATIONS WITH GOVERNMENTS NOT
 6 MAKING SIGNIFICANT EFFORTS TO ELIMINATE INHU-
 7 MANE CONDITIONS IN PRISONS AND OTHER DETENTION
 8 FACILITIES.—

9 (1) CONSULTATIONS.—In the case of a govern-
 10 ment of a country that is listed in the report sub-
 11 mitted under subsection (a)(1)(B)(ii)(II) as not
 12 making significant efforts to eliminate inhumane
 13 conditions in prisons and other detention facilities,
 14 the Secretary of State shall, not later than 90 days
 15 after the date such report is submitted, enter into
 16 consultations with such government to achieve the
 17 purposes of this Act.

18 (2) ACTIONS REGARDING UNITED STATES AS-
 19 SISTANCE.—

20 (A) UNITED STATES ASSISTANCE.—The
 21 Secretary of State and the Administrator of the
 22 United States Agency for International Devel-
 23 opment may restructure, reprogram, or reduce
 24 United States assistance for a government de-

scribed in paragraph (1) to achieve the purposes of this Act.

(B) REPORTING.—If assistance is provided to a country whose government is described in paragraph (1), the Secretary of State shall submit to the appropriate congressional committees within 30 days of the decision to provide such assistance a report—

(i) explaining that any government agency or facility to receive assistance has the independence and commitment necessary to achieve the purposes of this Act;

(ii) detailing the purposes for which such assistance will be provided;

(iii) describing the United States interest in providing such assistance notwithstanding the failure of the government to make significant efforts to eliminate inhumane conditions; and

(iv) describing the conditions in prisons and other detention facilities in such country unless this information has already been included in the report required under section 4(a)(1).

1 (3) BRIEFING.—Not later than 180 days after
2 the beginning of consultations required under para-
3 graph (1), the Secretary shall brief the appropriate
4 congressional committees on the actions taken or
5 agreed to be taken, if any, by the government of
6 that country that constitute significant efforts to
7 eliminate inhumane conditions in prisons and other
8 detention facilities and the actions taken, or that will
9 be taken, by the United States pursuant to para-
10 graph (2). Such information shall also be included in
11 the next report required under subsection (a). If the
12 Secretary determines that United States assistance
13 to such government should not be restructured, re-
14 programmed, or reduced, the briefing and report
15 shall contain an explanation for that decision.

16 **SEC. 5. TRAINING FOR FOREIGN SERVICE OFFICERS.**

17 Section 708 of the Foreign Service Act of 1980 (22
18 U.S.C. 4028) is amended by adding at the end the fol-
19 lowing new subsection:

20 “(d) The Secretary of State, with the assistance of
21 other relevant officials, shall establish as part of the stand-
22 ard training provided for chiefs of mission, deputy chiefs
23 of mission, and other officers of the Service who are or
24 will be involved in the assessment of conditions in foreign
25 prisons and other detention facilities or the drafting of the

1 annual Country Reports on Human Rights Practices, in-
2 struction on matters related to conditions in such prisons
3 and other detention facilities and the substance of the
4 Foreign Prison Conditions Improvement Act of 2013.”.

5 **SEC. 6. OFFICIAL TO MONITOR FOREIGN PRISON CONDI-**
6 **TIONS.**

7 The Secretary of State shall designate, within the
8 Bureau of Democracy, Human Rights, and Labor, an offi-
9 cial at a minimum level of a Deputy Assistant Secretary
10 who shall have responsibility for implementing the provi-
11 sions of this Act, which shall be a substantial part of such
12 official’s responsibilities. The Secretary shall instruct rel-
13 evant United States officials abroad to assist such official
14 in gathering information regarding conditions in foreign
15 prisons and other detention facilities and in implementing
16 the provisions of this Act.

17 **SEC. 7. RULE OF CONSTRUCTION.**

18 For purposes of this Act and any amendment made
19 by this Act—

20 (1) the prohibitions of section 104(f) of the
21 Foreign Assistance Act of 1961 (22 U.S.C.
22 2151b(f)) shall apply to all provisions of this Act
23 and any amendment made by this Act and shall not
24 be construed to be altered by this Act; and

1 (2) the primary indicators for the elimination of
2 inhumane conditions in foreign prisons and other de-
3 tention facilities, as well as significant efforts and
4 best practices to achieve such indicators, shall not be
5 determined based on the provision of services for
6 which funding is prohibited by section 104(f) of the
7 Foreign Assistance Act of 1961 (22 U.S.C.
8 2151b(f)).

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