

112TH CONGRESS
2D SESSION

H. R. 6436

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 HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 2012

Mr. SMITH of New Jersey introduced the following bill; which was referred to the Committee on Foreign Affairs

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 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Millions of incarcerated people in the world
9 suffer inhumane conditions in prisons and other de-

1 tention facilities that are overcrowded, unsanitary,
2 and unsafe to the point of endangering their lives.
3 Many governments do not respect their international
4 commitments to ensure that all individuals in deten-
5 tion or incarceration are treated with humanity and
6 with respect for the inherent dignity of the human
7 person.

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

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

22 (4) These conditions are compounded by severe
23 overcrowding in prisons and other detention facili-
24 ties. Excessive pre-trial detention and dysfunctional
25 justice systems frequently result in prisoners and

1 other detainees spending years in such conditions be-
2 fore their cases are adjudicated. In some countries,
3 such facilities are filled to capacity many times over
4 resulting in conditions so cramped that individual
5 prisoners cannot move without all doing so en
6 masse.

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

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

21 (7) Some governments fail to permit prisoners
22 and other detainees reasonable contact with family
23 members or other visitors. Many governments deny
24 access to certain prisoners and detainees, or do not

1 provide information about their location, health, and
2 well-being, leaving them unaccounted for.

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

19 (9) The United States Government currently
20 provides significant amounts of assistance to coun-
21 tries whose governments operate prisons and other
22 detention facilities that, because of their inhumane
23 conditions, seriously jeopardize the lives of prisoners
24 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-humanitarian
3 assistance furnished to carry out the provisions of the Foreign Assistance Act of 1961 (22
4 U.S.C. 2151 et seq.), the Arms Export Control Act
5 (22 U.S.C. 2751 et seq.), or the Millennium Challenge 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 annually thereafter for five years on
16 October 1, the Secretary of State shall submit
17 to the appropriate congressional committees a
18 report describing the conditions in prisons and
19 other detention facilities in at least 30 countries
20 receiving United States assistance or under
21 sanction by the United States selected as a re-
22 sult of the Secretary’s determination that such
23 conditions raise the most serious human rights
24 or humanitarian concerns. In selecting such
25 countries, the Secretary shall consider only the

1 conditions within each country's prisons and de-
2 tention 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 world-
7 wide for 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 international ex-
22 perts on eliminating and monitoring inhumane
23 conditions in prisons and other detention facili-
24 ties, promptly investigating credible allegations
25 of inhumane conditions, and making informa-

1 tion 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 authorized under section 7 for the purpose of elimi-
14 nating inhumane conditions in prisons and other de-
15 tention facilities where such assistance would be ap-
16 propriate and beneficial.

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

22 (3) ASSISTANCE.—Assistance made available
23 under this subsection shall be designated and used
24 exclusively to eliminate inhumane conditions in pris-
25 ons and other detention facilities in the country re-

1 ceiving the grant, but may not include the construc-
2 tion of new prisons. Funds made available under
3 this section shall be subject to the regular notifica-
4 tion procedures of the Committees on Appropriations
5 of the Senate and the House of Representatives.

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

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

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

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

1 scribed in paragraph (1) to achieve the pur-
2 poses of this Act.

3 (B) REPORTING.—If assistance is provided
4 to a country whose government is described in
5 paragraph (1), the Secretary of State shall sub-
6 mit to the appropriate congressional committees
7 within 30 days of the decision to provide such
8 assistance a report—

9 (i) explaining that any government
10 agency or facility to receive assistance has
11 the independence and commitment nec-
12 essary to achieve the purposes of this Act;

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

15 (iii) describing the United States in-
16 terest in providing such assistance notwith-
17 standing the failure of the government to
18 make significant efforts to eliminate inhu-
19 mane conditions; and

20 (iv) describing the conditions in pris-
21 ons and other detention facilities in such
22 country unless this information has already
23 been included in the report required under
24 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 2012.”.

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. AUTHORIZATION OF APPROPRIATIONS.**

18 (a) FOREIGN ASSISTANCE FUNDING.—In addition to
19 funds otherwise available for such purposes, the Secretary
20 of State may use funds available for any fiscal year to
21 carry out the provisions of part I and chapter 4 of part
22 II of the Foreign Assistance Act of 1961 (22 U.S.C. 2151
23 et seq. and 22 U.S.C. 2346 et seq.) and the Support for
24 East European Democracy (SEED) Act of 1989 (22

1 U.S.C. 5401 et seq.) to carry out the provisions of section
2 4(b) of this Act, including for administrative expenses.

3 (b) DIPLOMATIC AND CONSULAR AFFAIRS FUND-
4 ING.—In addition to funds otherwise available for such
5 purposes, the Secretary of State may use funds available
6 for any fiscal year to the Department of State for Diplo-
7 matic and Consular Programs to carry out the provisions
8 of section 6 of this Act and section 708(d) of the Foreign
9 Service Act of 1980, as added by section 5, including for
10 administrative expenses.

11 **SEC. 8. RULE OF CONSTRUCTION.**

12 For purposes of this Act and any amendment made
13 by this Act—

14 (1) the prohibitions of section 104(f) of the
15 Foreign Assistance Act of 1961 (22 U.S.C.
16 2151b(f)) shall apply to all provisions of this Act
17 and any amendment made by this Act and shall not
18 be construed to be altered by this Act; and

19 (2) the primary indicators for the elimination of
20 inhumane conditions in foreign prisons and other de-
21 tention facilities, as well as significant efforts and
22 best practices to achieve such indicators, shall not be
23 determined based on the provision of services for
24 which funding is prohibited by section 104(f) of the

1 Foreign Assistance Act of 1961 (22 U.S.C.
2 2151b(f)).

○