

116TH CONGRESS
1ST SESSION

S. 1777

To amend the Foreign Assistance Act of 1961 to include in the Annual Country Reports on Human Rights Practices a section on conflict-related sexual and gender-based violence, to amend the Global Magnitsky Human Rights Accountability Act to authorize the President to impose economic sanctions and a visa ban on the leader of an organization that commits sexual or gender-based violence.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2019

Mr. MARKEY (for himself, Mrs. SHAHEEN, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To amend the Foreign Assistance Act of 1961 to include in the Annual Country Reports on Human Rights Practices a section on conflict-related sexual and gender-based violence, to amend the Global Magnitsky Human Rights Accountability Act to authorize the President to impose economic sanctions and a visa ban on the leader of an organization that commits sexual or gender-based violence.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Accountability for Sex-
3 ual and Gender-based Violence as a Tool in Conflict Act
4 of 2019”.

5 **SEC. 2. FINDINGS.**

6 Congress makes the following findings:

7 (1) The United States, as a permanent member
8 of the United Nations Security Council, voted in
9 favor of Security Council Resolutions 1325 (2000);
10 1820 (2008); 1888 (2009); 1960 (2010); 2106
11 (2013); 2242 (2015), and 2331 (2016), which state
12 that acts of sexual violence and human trafficking
13 threaten international peace and security and can
14 constitute war crimes, crimes against humanity, acts
15 of genocide, and terrorism.

16 (2) The United States is a signatory to the G8
17 Declaration on Preventing Sexual Violence in Con-
18 flict, done in London April 11, 2013, and sponsored
19 by the United Kingdom’s Foreign & Commonwealth
20 Office’s Preventing Sexual Violence Initiative. The
21 United States and its allies declared that concerns
22 related to sexual violence in armed conflict must be
23 part of peace and security efforts, post-conflict tran-
24 sition and reform measures, and accountability proc-
25 esses.

1 (3) Despite these advances in normative frame-
2 works, sexual and gender-based violence continues to
3 be pervasive, and the responses from governments
4 and the international community range from insuffi-
5 cient and inadequate to negligent and complicit, as
6 documented in United Nations' reports.

7 (4) Gender-based violence, including sexual vio-
8 lence—

9 (A) is a global pandemic that affects 1 in
10 3 women during their lifetimes; and

11 (B) occurs at higher rates in conflict-af-
12 fected areas.

13 (5) Incidences of domestic violence, child, early,
14 or forced marriages, human trafficking, and other
15 forms of sexual and gender-based violence within
16 displaced or conflict-affected communities—

17 (A) increase during conflict due to exacer-
18 bated social tensions and underlying gender in-
19 equalities that existed in communities prior to
20 such conflict; and

21 (B) occur in parallel to sexual and gender-
22 based violence perpetrated as a weapon of war.

23 (6) Gender-based violence is underreported in
24 all settings. Recorded cases of gender-based violence
25 represent only a small fraction of the overall total.

1 A lack of available data should not be interpreted to
2 mean that gender-based violence is not a major and
3 pressing issue, but should be viewed as an indication
4 of the challenges in gathering information.

5 (7) Rape and sexual assault have been used as
6 tactics of war and terror in conflict zones, including
7 Burma, Central African Republic, Colombia, the
8 Democratic Republic of Congo, Iraq, Mali, Somalia,
9 South Sudan, Sudan, and Syria.

10 (8) Rape, sexual slavery, and other forms of
11 sexual violence have been used by terrorist and ex-
12 tremist groups, such as the so-called Islamic State,
13 Boko Haram, and the Lord's Resistance Army, to
14 intimidate and terrorize communities.

15 (9) Sexual and gender-based violence in recent
16 conflicts has been used in Iraq, Syria, and Burma
17 as a form of ethnic or religious persecution or geno-
18 cide against Yazidis, Christians, Turkmen Shi'a, and
19 Rohingya Muslims.

20 (10) The Secretary-General of the United Na-
21 tions stated that sexual violence in conflict triggers
22 mass migration and forced displacement.

23 (11) Sexual and gender-based violence in con-
24 flict is primarily used against women and girls, but
25 can also be used against men and boys.

1 (12) Sexual and gender-based violence is not in-
2 cidental to conflict and is a weapon of choice for
3 armed actors seeking to destabilize societies, given
4 that its stigma and trauma continue after the con-
5 flict has ended.

6 (13) Existing laws often fail to protect sur-
7 vivors of conflict-related sexual or gender-based vio-
8 lence, especially when the perpetrators are represent-
9 atives of government entities, such as military offi-
10 cers, soldiers, or non-state actors operating in areas
11 where governments have failed to keep the peace.

12 (14) Under the doctrine of military command
13 responsibility, leaders can be prosecuted for war
14 crimes when they—

15 (A) knew or should have known that their
16 subordinates were committing war crimes; and

17 (B) failed to take all necessary and reason-
18 able measures to prevent such crimes or inves-
19 tigate and prosecute those responsible for such
20 crimes.

21 (15) Courts with jurisdiction over war crimes
22 may be nonexistent, may lack capacity, or may be
23 subject to the same political failings that allowed
24 conflict-related sexual or gender-based violence to
25 take place. While the United Nations Security Coun-

1 cil could refer a case to the International Criminal
2 Court, it is constrained by the prospects of a veto.

3 (16) Convicting and imprisoning top military
4 leaders with command or superior responsibility for
5 rape or other forms of sexual and gender-based vio-
6 lence in conflict is essential to deter future crimes of
7 sexual violence. Further support to civil society,
8 grassroots organizations, women-led organizations,
9 and justice actors is necessary to combat sexual vio-
10 lence and provide services and support to survivors.
11 The landmark decision on December 15, 2017, by
12 military justice authorities in the Democratic Repub-
13 lic of the Congo for the conviction of a provincial
14 parliamentarian and members of the “Army of
15 Jesus” militia for the crimes against humanity of
16 rape of dozens of children in Kavumu, Democratic
17 Republic of the Congo is a significant step for end-
18 ing impunity for sexual violence.

19 (17) The United Nations Office of the Special
20 Representative of the Secretary-General on Sexual
21 Violence in Conflict was established by Security
22 Council Resolution 1888 (2009) to work toward end-
23 ing impunity for sexual violence.

24 **SEC. 3. STATEMENT OF POLICY.**

25 It is the policy of the United States—

1 (1) to take effective action to prevent and to re-
2 spond to sexual and gender-based violence around
3 the world, particularly when related to conflict, as a
4 matter of promoting basic human rights;

5 (2) to hold accountable leaders who fail to pre-
6 vent, respond to, investigate, and prosecute sexual
7 and gender-based violence; and

8 (3) to support survivors of conflict-related sex-
9 ual and general based violence.

10 **SEC. 4. ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS**
11 **PRACTICES.**

12 (a) SAVINGS PROVISION.—The additional reporting
13 requirements added under sections 116(d) and 502B(h)
14 of the Foreign Assistance Act of 1961 (22 U.S.C.
15 2151n(d) and 2304(h)) should not be considered as a sub-
16 stitute for comprehensive reporting on sexual and gender-
17 based violence in non-conflict settings. Such information
18 should continue to be robustly reported on in the annual
19 Country Reports on Human Rights Practices with any
20 linkages and connections between these areas of reporting
21 drawn through internal references amongst the various
22 sections of each individual Country Report.

23 (b) COUNTRIES RECEIVING ECONOMIC ASSIST-
24 ANCE.—Section 116(d) of the Foreign Assistance Act of
25 1961 (22 U.S.C. 2151n(d)) is amended—

1 (1) by redesignating paragraphs (9), (10), (11),
2 and (12) as paragraphs (10), (11), (12), and (13),
3 respectively; and

4 (2) by inserting after paragraph (8) the fol-
5 lowing:

6 “(9)(A) a description of sexual and gender-
7 based violence, including conflict-related sexual and
8 gender-based violence and sexual assault (as defined
9 in section 40002 of the Violence Against Women Act
10 of 1994 (34 U.S.C. 12291)) or rape (as defined in
11 section 2441 of title 18, United States Code), as a
12 tool of terror or war, in each foreign country;

13 “(B) with respect to each country in which
14 there is sexual and gender-based violence, especially
15 as a result of conflict or where rape or sexual vio-
16 lence has been used as a tool of terror or war by
17 state or non-state actors, an assessment of the ef-
18 forts by the government of that country to combat
19 such violence, including an assessment of—

20 “(i) whether governmental authorities in
21 that country participate in, facilitate, or con-
22 done sexual and gender-based violence;

23 “(ii) the steps the government of that
24 country has taken to prohibit government offi-
25 cials, including military officers and non-state

1 actors from participating in, facilitating, or
2 condoning sexual and gender-based violence, in-
3 cluding the investigation, prosecution, and con-
4 viction of such officials;

5 “(iii) the steps the government of that
6 country has taken to assist survivors of gender
7 or sexual-based violence, including efforts to
8 prevent survivors from being further victimized
9 by perpetrators, government officials, or others,
10 and provision of humanitarian relief, including
11 provision of comprehensive health care services,
12 including mental, sexual, and reproductive
13 health services, and other physical health care
14 and reparation; and

15 “(iv) whether the government of that coun-
16 try recognizes the rights of survivors of sexual
17 and gender-based violence and ensures their ac-
18 cess to justice; and

19 “(C) such other information relating to sexual
20 and gender-based violence, including conflict-related
21 violence, as the Secretary of State considers appro-
22 priate.”.

23 (e) COUNTRIES RECEIVING SECURITY ASSIST-
24 ANCE.—Section 502B(b) of the Foreign Assistance Act of
25 1961 (22 U.S.C. 2304(b)) is amended—

1 (1) by inserting “(1)” after “(b)”;

2 (2) by striking “Wherever applicable, such re-
3 port shall include consolidated” and insert the fol-
4 lowing:

5 “(2) Wherever applicable, each report required under
6 paragraph (1) shall include—

7 “(A) consolidated”;

8 (3) by striking “. Wherever applicable, such re-
9 port shall include information” and inserting the fol-
10 lowing: “;

11 “(B) information”;

12 (4) by striking “. Such report shall also include,
13 wherever applicable, information” and inserting the
14 following: “;

15 “(C) information”;

16 (5) by striking “Wherever applicable, such re-
17 port shall include a description” and inserting the
18 following: “;

19 “(D) a description”;

20 (6) by striking “. Such report shall also include
21 information” and inserting the following: “;

22 “(E) consolidated information regarding the
23 commission of war crimes, crimes against humanity,
24 and evidence of acts that may constitute genocide
25 (as defined in article 2 of the Convention on the

1 Prevention and Punishment of the Crime of Geno-
2 cide and modified by section 2(a) of the Genocide
3 Convention Implementation Act of 1987 (the Prox-
4 mire Act));

5 “(F) a description of the nature and extent of
6 sexual and gender-based violence, including conflict-
7 related sexual and gender-based violence and sexual
8 assault (as defined in section 40002 of the Violence
9 Against Women Act of 1994 (34 U.S.C. 12291)) or
10 rape (as defined in section 2441 of title 18, United
11 States Code) as a tool or terror or war, in each for-
12 eign country;

13 “(G) with respect to each country in which
14 there is sexual and gender-based violence, especially
15 as a result of conflict or where rape or sexual as-
16 sult has been used as a tool of terror or war by
17 state or non-state actors, an assessment of the ef-
18 forts by the government of that country to combat
19 such violence, including an assessment of—

20 “(i) whether governmental authorities in
21 that country participate in, facilitate, or con-
22 done sexual and gender-based violence;

23 “(ii) what steps the government of that
24 country has taken to prohibit government offi-
25 cials, including military officers, and non-state

1 actors from participating in, facilitating, or
2 condoning sexual and gender-based violence, in-
3 cluding the investigation, prosecution, and con-
4 viction of such officials;

5 “(iii) what steps the government of that
6 country has taken to assist victims of sexual
7 and gender-based violence, including efforts to
8 prevent survivors from being further victimized
9 by perpetrators, government officials, or others,
10 and provision of humanitarian relief, including
11 provision of comprehensive health services, in-
12 cluding mental, sexual, and reproductive health
13 services, and other physical health care and rep-
14 aration; and

15 “(iv) whether the government of that coun-
16 try recognizes the rights of survivors of sexual
17 and gender-based violence and ensures their ac-
18 cess to justice; and

19 “(H) such other information relating to sexual
20 and gender-based violence, including conflict-related
21 sexual and gender-based violence, as the Secretary of
22 State considers appropriate.

23 “(3) Each report required under paragraph (1) shall
24 also include information”;

1 (7) by striking “Each report under this section
 2 shall also include (i) wherever applicable, a descrip-
 3 tion” and inserting the following:

4 “(4) Each report required under this section shall
 5 also include, wherever applicable—

6 “(A) a description”;

7 (8) by striking “, (ii) what steps, if any, taken
 8 by the government of the country to eliminate such
 9 practices, and (iii) such other information” and in-
 10 sserting the following: “;

11 “(B) what steps, if any, taken by the govern-
 12 ment of the country to eliminate such practices; and

13 “(C) such other information”;

14 (9) by striking “In determining” and inserting
 15 the following:

16 “(5) In determining”; and

17 (10) in paragraph (5), as redesignated, by re-
 18 designating paragraphs (1) and (2) as subpara-
 19 graphs (A) and (B), respectively.

20 **SEC. 5. ACTIONS AGAINST PERPETRATORS OF CONFLICT-**
 21 **BASED SEXUAL AND GENDER-BASED VIO-**
 22 **LENCE.**

23 (a) SANCTIONS.—Section 1263(a)(1) of the Global
 24 Magnitsky Human Rights Accountability Act (22 U.S.C.

1 2656 note) is amended by inserting “sexual and gender-
2 based violence,” after “torture,”.

3 (b) TRAVEL RESTRICTIONS.—Section 7031(c)(1)(A)
4 of the Department of State, Foreign Operations, and Re-
5 lated Programs Appropriations Act, 2019 (division F of
6 Public Law 116–6) is amended by inserting “, including
7 sexual and gender-based violence,” after “human rights”.

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