AMENDMENT TO RULES COMMITTEE PRINT FOR
H.R. 6395
OFFERED BY MR. MALINOWSKI OF NEW JERSEY

At the end of title XII, add the following:

Subtitle H—Protecting Security Assistance From Corruption Act

SEC. 1281. SHORT TITLE.

This subtitle may be cited as the “Protecting Security Assistance from Corruption Act”.

SEC. 1282. FINDINGS.

Congress finds the following:

(1) Over the past 15 years, the United States has provided more than $200 billion in military and security assistance to over 100 countries around the world to address shared international security threats.

(2) In countries such as Afghanistan, Iraq, Mali, Yemen, and Somalia, corruption has been a significant factor behind the failure of United States-supported national security forces to effectively and legitimately respond to terrorist threats.

(3) Abusive and corrupt security forces are a key determinant of support for extremism. In fragile
partners, corrupt and predatory behavior by local officials generates resentment and resistance against the central government and security forces.

(4) Inspectors General have frequently pointed to key avenues through which corruption can negatively impact United States security objectives and end-states, such as buying and selling senior national security force positions, selling United States-provided equipment and fuel on the black market or to criminal groups, and creating ghost soldiers.

(5) In the past, United States military assistance has inadvertently found its way directly into the hands of terrorists. In Afghanistan, the Special Inspector General for Afghanistan Reconstruction found that the use of shell companies allowed Taliban-supporting persons to contract with the United States military for food, construction, and cleaning services.

(6) The Special Inspector General for Afghanistan Reconstruction also found that billions of dollars of United States reconstruction funds were siphoned out of Afghanistan by corrupt officials, fueling resentment of central government authorities.

(7) Several United States partners have systematically supported certain units of their national se-
curity forces while marginalizing others in order to bolster their power, generating factional divisions within these forces, undermining overall security sector effectiveness, and at times fueled mutinies, military coups, and instability.

(8) Failure to conduct due diligence prior to contract disbursements in support of cooperative military programs and exercises in fragile states could reinforce the control of predatory and abusive governance structures, fueling extremism and anti-government contestation.

(9) While not always a sign of corruption, industrial offsets are also sometimes used to reinforce abusive governance structures in corrupt, extremism-prone countries by requiring foreign defense suppliers to provide specific kickbacks into companies owned by regime officials, their families, and associates.

(10) Achieving the objectives of military assistance and security programs requires meaningful due diligence to ensure that United States funds are not benefiting corrupt officials, reinforcing repressive governance structures, or indirectly benefiting terrorists, extremists, transnational criminal organizations, and other bad actors.
(11) As a result of these risks, Congress approved language in the National Defense Authorization Act for Fiscal Year 2016 that called on the Department of Defense to create a strategic framework for United States security cooperation and identify challenges, including related to corruption, to achieve United States security cooperation’s primary objectives, priorities, and desired end-states.

(12) In the National Defense Authorization Act for Fiscal Year 2017, Congress also urged the Department of Defense to develop and maintain “an assessment, monitoring, and evaluation framework for security cooperation with foreign countries to ensure accountability. . .”.

(13) During the same time, the Department of State created a “Framework for Policy Review and Risk Assessment of Proposed SSA Activities”, which called on the Department to ask key corruption-related questions about the proposed recipient of United States security assistance prior to providing that assistance, such as “is the security force known to be or reported to be. . .permitting illicit trafficking across borders, buying and selling positions or professional opportunities, stealing government assets and resources, engaging in bribery, or main-
taining rolls of ghost personnel. . .”, among other
questions.

(14) However, the Department of Defense and
the Department of State have yet to fully incor-
porate many of these key assessments needed to ef-
effectively identify and mitigate corruption-related
risks that continue to undermine United States secu-
rigy cooperation activities around the world.

SEC. 1283. DEFINITIONS.

In this subtitle:

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

(A) the Committee on Armed Services and
the Committee on Foreign Affairs of the House
of Representatives; and

(B) the Committee on Armed Services and
the Committee on Foreign Relations of the Sen-
ate.

(2) COVERED SECURITY ASSISTANCE.—

(A) PART I.—For purposes of part I, the
term “covered security assistance” means a
program or activity of the Department of De-
fense that—
(i) is carried out under the authority of chapter 16 of title 10, United States Code; and

(ii) is valued at more than $1,000,000 on a fiscal year basis.

(B) PART II.—For purposes of part II, the term “covered security assistance” means—

(i) a program or activity of the Department of State or the Department of Commerce that—

(I) is carried out under the authority of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to provide military or civilian security assistance to a foreign country; and

(II) is valued at more than $1,000,000 on a fiscal year basis; and

(ii) a program or activity of the Department of Defense that meets the requirements described in subclauses (I) and (II) of clause (i) and is carried out with the concurrence of the Secretary of State.
(3) COVERED FOREIGN COUNTRY.—The term “covered foreign country” means a country that—

(A) is receiving covered security assistance, as such term is defined in subparagraph (A) or (B) of paragraph (1), as the case may be, with an aggregate value of not less than $4,000,000; and

(B)(i) is ranked E or F on the Transparency International Defense Corruption Index, or a successor to such index;

(ii) is ranked at an equivalent level of corruption for the security sector under any independent index funded by the Department of State of any other Federal agency; or

(iii) is determined and reported by the Secretary of State in the Federal Register as exhibiting elevated risks of public corruption in the security sector, if such determination is accompanied in the Federal Register by a definition of the methodology and factors used in such determination, including—

(I) ethnic or religious favoritism in recruitment and retention practices of security forces;
(II) merit-based promotion practices in security services;

(III) bribery, extortion, and predatory practices by security forces;

(IV) corruption within security forces;

(V) civilian control and parliamentary oversight of security services;

(VI) involvement of security forces in political decision-making;

(VII) human rights abuses and violence by the state-sanctioned security services;

(VIII) efficacy of delivery of public justice services; and

(IX) violent deaths by geography and cause.

(4) COVERED GOVERNMENT OFFICIALS.—The term “covered government officials”, with respect to a covered foreign country, means—

(A) officials of the government, military, or security services;

(B) individuals who assume unofficial leadership functions, such as tribal officials, heads of informal courts, or other unelected or unappointed leadership;
(C) advisors or associates of senior government officials;

(D) individuals involved, directly or indirectly, in security assistance activities; or

(E) family members or associates of individuals described in subparagraphs (A) through (D).


(6) INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.—The term “International Traffic in Arms Regulations” means subchapter M of chapter I of title 22, Code of Federal Regulations, or successor regulations.

(7) OFFSET AGREEMENT.—The term “offset agreement” has the meaning given that term in section 36(e)(1) of the Arms Export Control Act (22 U.S.C. 2776(e)(1)).
PART I—MATTERS RELATING TO SECURITY ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF DEFENSE

SEC. 1291. ANTI-CORRUPTION RISK ASSESSMENT.

The Secretary of Defense, in coordination with the Secretary of State and the heads of other relevant Federal departments and agencies, shall ensure that any due diligence review conducted prior to the provision of covered security assistance to a covered foreign country includes an assessment of the risks that such assistance could foster public corruption in the country, including specifically and individually by—

(1) indirectly or directly financially or materially benefitting covered government officials of the country;

(2) empowering officials or units of the security forces documented or suspected of corruption, bribery, or political repression;

(3) contracting or subcontracting for delivery, logistics, contracting, or other services related to covered security assistance that are owned, in whole or in part, by covered government officials; and

(4) failing to provide for effective civilian government, parliamentary, and public oversight.
SEC. 1292. BENEFICIAL OWNERSHIP INFORMATION OF CONTRACTORS AND SUBCONTRACTORS PROVIDING COVERED SECURITY ASSISTANCE.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Defense shall issue regulations to require each contract for the provision of covered security assistance in a covered foreign country to identify the beneficial owner of each contractor and subcontractor providing such assistance under the contract, including—

(1) each advisor, broker, and consultant providing services in connection with the contract; and

(2) each individual and entity providing training, advice, or support services, construction services, or logistical, shipping, storage, or customs-processing services in connection with the contract.

(b) DELAY FOR PROVISION OF INFORMATION.—The information required under subsection (a) may be appended to a contract not later than 30 days after the date of completion of the contract.

(c) ACCESS TO INFORMATION.—The information required under subsection (a)—

(1) shall be included or appended to a contract in unclassified form; and

(2) shall be made available upon request to—
(A) other Federal departments and agencies; and

(B) the appropriate congressional committees.

SEC. 1293. ENSURING COVERED SECURITY ASSISTANCE IS NOT USED TO ENRICH FOREIGN GOVERNMENT OFFICIALS.

(a) In General.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Defense shall issue regulations to prohibit disbursement of funds under a contract for the provision of covered security assistance in a covered foreign country to any foreign entity that is owned in part or in whole by a covered government official of the country.

(b) Waiver in the Interest of National Security.—The Secretary of Defense may waive the application of subsection (a) with respect to a foreign entity if the Secretary determines and submits to the appropriate congressional committees written notice and justification not later than 30 days before granting the waiver that the waiver is in the national security interests of the United States.

(e) Other Waiver Authorities.—The Secretary of Defense may waive the application of subsection (a) with respect to a foreign entity if the Secretary determines
and submits to the appropriate congressional committees written notice and justification not later than 30 days before granting the waiver that the ownership of such entity—

(1) is through stock ownership of a publicly traded company and whose share of such stocks is—

(A) less than five percent of such foreign entity’s traded shares; or

(B) valued at less than $5,000,000; or

(2) is through blind investment in mutual funds or other composite investment vehicles that would render a shareholder’s control over fund-owned companies negligible.

SEC. 1294. INDEPENDENT DATA ON GOVERNANCE AND CORRUPTION OF UNITED STATES PARTNERS.

(a) IN GENERAL.—Of the amounts made available to the Department of Defense for security cooperation and capacity-building activities, the Secretary of Defense, in coordination with the Secretary of State, shall provide funding for the research and publication by independent institutions of indexed data on the internal governance capacities and professionalism of military and civilian security sectors of United States partners that receive United States security assistance, in such a way as to facilitate the United States Government’s ability to effectively
measure and assess the effectiveness of security coopera-
tion and security sector capacity-building programs.

(b) MATTERS TO BE INCLUDED.—The indexed data
described in subsection (a) shall include quantifiable, year-
ly-updated, by-country metrics on—

(1) ethnic or religious favoritism in recruitment
and retention practices of security forces;

(2) merit-based promotion practices in security
services;

(3) bribery, extortion, and predatory practices
by security forces;

(4) corruption within security forces;

(5) civilian control and parliamentary oversight
of security services;

(6) involvement of security forces in political
decision-making;

(7) human rights abuses and violence by the
state-sanctioned security services;

(8) efficacy of delivery of public justice services;

and

(9) violent deaths by geography and cause.

SEC. 1295. REPORT ON IMPLEMENTATION.

(a) IN GENERAL.—Not later than 120 days after the
date of the enactment of this Act, the Secretary of Defense
shall submit to the appropriate congressional committees
(b) MATTERS TO BE INCLUDED.—The report required by subsection (a) shall include—

(1) a description of how such assessments and regulations will be incorporated with ongoing Department of Defense initiatives to assess, monitor, and evaluate covered security assistance;

(2) the names of the offices in the Department of Defense, the Department of State, and any other relevant Federal department or agency that will participate in any such assessments and regulatory implementation;

(3) an identification of planned resource allocation for implementation of these sections; and

(4) a description of financial, personnel, resources, and external limitations on conducting such assessments and regulations and any likely impacts on the integrity of such assessments.

(c) FORM.—The report required by subsection (a) shall be submitted in unclassified form.
PART II—MATTERS RELATING TO SECURITY ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF STATE AND THE DEPARTMENT OF COMMERCE

SEC. 1296. ANTI-CORRUPTION RISK ASSESSMENT.

The Secretary of State, in coordination with the Secretary of Defense and the heads of other relevant Federal departments and agencies, shall ensure that any due diligence review conducted prior to the provision of covered security assistance to a covered foreign country includes an assessment of the risks that such assistance could foster public corruption in such country, including specifically and individually by—

(1) indirectly or directly financially or materially benefitting covered government officials of the country;

(2) empowering officials or units of the security forces documented or suspected of corruption, bribery, or political repression;

(3) contracting or subcontracting for delivery, logistics, contracting, or other services related to covered security assistance that are owned, in whole or in part, by covered government officials; and

(4) failing to provide for effective civilian government, parliamentary, and public oversight.
SEC. 1297. BENEFICIAL OWNERSHIP INFORMATION OF CONTRACTORS AND SUBCONTRACTORS PROVIDING COVERED SECURITY ASSISTANCE.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of State shall issue regulations to require each contract for the provision of covered security assistance in a covered foreign country to identify the beneficial owner of each contractor and subcontractor providing such assistance under the contract, including—

(1) each advisor, broker, and consultant providing services in connection with the contract; and

(2) each individual and entity providing training, advice, or support services, construction services, or logistical, shipping, storage, or customs-processing services in connection with the contract.

(b) DELAY FOR PROVISION OF INFORMATION.—The information required under subsection (a) may be appended to a contract not later than 30 days after the date of completion of the contract.

(c) ACCESS TO INFORMATION.—The information required under subsection (a)—

(1) shall be included or appended to a contract in unclassified form; and

(2) shall be made available upon request to—
(A) other Federal departments and agencies; and

(B) the appropriate congressional committees.

SEC. 1298. ENSURING COVERED SECURITY ASSISTANCE IS NOT USED TO ENRICH FOREIGN GOVERNMENT OFFICIALS.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of State shall issue regulations to prohibit disbursement of funds under a contract for the provision of covered security assistance in a covered foreign country to any foreign entity that is owned in part or in whole by a covered government official of the country.

(b) WAIVER IN THE INTEREST OF NATIONAL SECURITY.—The Secretary of State may waive the application of subsection (a) with respect to a foreign entity if the Secretary determines and submits to the appropriate congressional committees written notice and justification not later than 30 days before granting the waiver that the waiver is in the national security interests of the United States.

(c) OTHER WAIVER AUTHOREITIES.—The Secretary of State may waive the application of subsection (a) with respect to a foreign entity if the Secretary determines and
1 submits to the appropriate congressional committees written notice and justification not later than 30 days before granting the waiver that the ownership of such entity is—
2 (1) through stock ownership of a publicly traded company and whose share of such stocks is—
3 (A) less than five percent of such foreign entity’s traded shares; or
4 (B) valued at less than $5,000,000; or
5 (2) is through blind investment in mutual funds or other composite investment vehicles that would render a shareholder’s control over fund-owned companies negligible.

SEC. 1299. TRANSPARENCY RELATING TO OFFSET AGREEMENTS.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of State shall issue regulations under the International Traffic in Arms Regulations and the Secretary of Commerce shall issue regulations under the Export Administration Regulations to require a United States person that is an applicant for a license to export an item controlled under either such Regulation which includes an offset agreement to meet the requirements described in subsection (b).

(b) REQUIREMENTS.—The requirements described in this subsection are the following:
(1) The applicant agrees to provide on a public, text-searchable website comprehensive information on—

(A) beneficial ownership of foreign persons involved in the offset agreement, including advisors, brokers, and marketing entities; and

(B) beneficial ownership of foreign persons benefiting from the offset agreement.

(2) The applicant agrees to provide an assessment of corruption risks of the offset agreement, which shall include information on each of the following:

(A) The recipients, deliverables, contract value, and offset credits of the offset agreement.

(B) The beneficial ownership of foreign persons involved in the offset agreement and the benefits that will be received under the offset agreement.

(C) Conflicts of interest or connections of such beneficial ownership with the political leadership of the country in which the offset agreement will be carried out.
(D) Prior work or expertise of such beneficial ownership in the fields in which they will carry out activities under the offset agreement.

(E) Requirements or inducements imposed on the applicant to use any specific brokers in the recipient country to find individuals or entities to perform requirements under the offset agreement.

(F) The affiliation of any broker used as part of the offset agreement with the political leadership of the country in which the offset agreement will be carried out.

(G) Due diligence efforts conducted to verify that no shell companies are involved in the offset agreement.

(e) ASSESSMENT OF CORRUPTION RISKS FROM OFFSET AGREEMENTS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of State shall issue regulations under the International Traffic in Arms Regulation and the Secretary of Commerce shall issue regulations under the Export Administration Regulations to require that each notification to Congress required under any provision of law with respect to a sale or export of major defense articles or major defense equipment include,
if applicable, an assessment of corruption risks from offset agreements described in subsection (b).

SEC. 1299A. CONSIDERATIONS IN FURNISHING MILITARY ASSISTANCE.

Section 511 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321d) is amended—

(1) in paragraph (2), by striking “or” at the end;

(2) in paragraph (3), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(4) contribute to corruption in the destination country or provide financial benefit to covered government officials (as such term is defined in section 1283 of the Protecting Security Assistance from Corruption Act) of that country.”.

SEC. 1299B. REPORT ON IMPLEMENTATION.

(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act—

(1) the Secretary of State shall submit to the appropriate congressional committees a report on plans of the Department of State to implement sections 1296, 1297, and 1298; and

(2) the Secretary of State and the Secretary of Commerce shall jointly submit to the appropriate
congressional committees a report on plans of the Department of State and the Department of Commerce to implement section 1299.

(b) MATTERS TO BE INCLUDED.—The report required by subsection (a) shall include—

(1) a description of how such assessments and regulations will be incorporated with ongoing Department of State initiatives to assess, monitor, and evaluate covered security assistance;

(2) the names of the offices within the Department of State, the Department of Defense, and any other relevant Federal department or agency that will participate in any such assessments and regulatory implementation;

(3) an identification of planned resource allocation for implementation of these sections; and

(4) a description of financial, personnel, resources, and external limitations on conducting such assessments and regulations and any likely impacts on the integrity of such assessments.

c) FORM.—The report required by subsection (a) shall be submitted in unclassified form.