

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 1st Sess.

S. _____

To enhance the transparency and accelerate the impact of programs under the African Growth and Opportunity Act and the Millennium Challenge Corporation, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. CARDIN (for himself and Mr. ISAKSON)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “African Growth and
5 Opportunity Act and Millenium Challenge Act Moderniza-
6 tion Act” or the “AGOA and MCA Modernization Act”.

7 **SEC. 2. TABLE OF CONTENTS.**

8 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—ENHANCEMENT OF THE AFRICAN GROWTH AND
OPPORTUNITY ACT

- Sec. 101. Statement of policy.
 Sec. 102. Definitions.
 Sec. 103. Activities in support of transparency.
 Sec. 104. Activities in support of trade capacity building.

TITLE II—MODERNIZATION OF THE MILLENNIUM CHALLENGE
 CORPORATION

- Sec. 201. Candidacy status.
 Sec. 202. Carryover authority for private sector members of board of directors.
 Sec. 203. Additional reporting to the board on the treatment of civil society in an eligible country.
 Sec. 204. Concurrent compacts under the Millennium Challenge Act of 2003.
 Sec. 205. Public notification of entering into a compact.
 Sec. 206. Disclosure.
 Sec. 207. Restriction on the use of assistance under section 616.
 Sec. 208. Study on subnational compacts.

1 **TITLE I—ENHANCEMENT OF THE**
 2 **AFRICAN GROWTH AND OP-**
 3 **PORTUNITY ACT**

4 **SEC. 101. STATEMENT OF POLICY.**

5 It is the policy of the United States to support ef-
 6 forts—

7 (1) to improve the rule of law, promote free and
 8 fair elections, strengthen and expand the private sec-
 9 tor, and fight corruption in sub-Saharan Africa; and

10 (2) to promote the role of women in social, po-
 11 litical, and economic development in sub-Saharan
 12 Africa.

13 **SEC. 102. DEFINITIONS.**

14 In this title:

15 (1) **AGOA WEBSITE.**—The term “AGOA
 16 website” means the website created by the President
 17 under section 103 to collect and disseminate infor-

1 mation regarding the African Growth and Oppor-
2 tunity Act (19 U.S.C. 3701 et seq.).

3 (2) ELIGIBLE SUB-SAHARAN AFRICAN COUN-
4 TRY.—The term “eligible sub-Saharan African coun-
5 try” means a country that the President has deter-
6 mined meets the eligibility requirements set forth in
7 section 104 of the African Growth and Opportunity
8 Act (19 U.S.C. 3703).

9 **SEC. 103. ACTIVITIES IN SUPPORT OF TRANSPARENCY.**

10 (a) AGOA WEBSITE.—

11 (1) IN GENERAL.—The President shall establish
12 a publicly available Internet website for the collec-
13 tion and dissemination of information regarding the
14 African Growth and Opportunity Act (title I of Pub-
15 lic Law 106–200).

16 (2) CONTENTS.—The President shall publish,
17 on the AGOA website, the information described in
18 paragraph (1), including—

19 (A) information and technical assistance
20 provided at United States Agency for Inter-
21 national Development regional trade hubs; and

22 (B) a link to the websites of United States
23 embassies located in eligible sub-Saharan Afri-
24 can countries.

1 (3) ACTIONS BY UNITED STATES EMBASSIES.—

2 The Secretary of State should direct United States
3 embassies located in eligible sub-Saharan African
4 countries—

5 (A) to encourage such countries to use the
6 benefits available under the African Growth and
7 Opportunity Act (19 U.S.C. 3701 et seq.); and

8 (B) to include a link to the AGOA website
9 on the websites of such diplomatic missions.

10 (b) AGOA FORUM.—After each meeting of the
11 United States – Sub-Saharan Africa Trade and Economic
12 Cooperation Forum, the President should publish on the
13 AGOA website—

14 (1) the outcomes of the meeting of the Forum,
15 including any commitments made by member coun-
16 tries and the private sector; and

17 (2) an assessment of progress made with re-
18 spect to any commitments made by member coun-
19 tries and the private sector from the previous meet-
20 ing of the Forum.

21 (c) OTHER INFORMATION.—The President should—

22 (1) disseminate the information required under
23 this section to the public in a digital format; and

24 (2) publish such information on the AGOA
25 website.

1 **SEC. 104. ACTIVITIES IN SUPPORT OF TRADE CAPACITY**
2 **BUILDING.**

3 The President should—

4 (1) develop and implement policies that—

5 (A) encourage and facilitate cross-bound-
6 ary cooperation among eligible sub-Saharan Af-
7 rican countries in order to facilitate trade; and

8 (B) encourage the provision of technical
9 assistance to eligible sub-Saharan African coun-
10 tries to establish and sustain adequate trade ca-
11 pacity development;

12 (2) provide specific training for businesses in el-
13 igible sub-Saharan African countries and govern-
14 ment trade officials of such countries on accessing
15 the benefits under the African Growth and Oppor-
16 tunity Act and other trade preference programs;

17 (3) provide capacity building for African entre-
18 preneurs and trade associations on production strat-
19 egies, quality standards, formation of cooperatives,
20 market research, and market development;

21 (4) provide capacity building training to pro-
22 mote diversification of African products and value-
23 added processing; and

24 (5) provide capacity building and technical as-
25 sistance funding for African businesses and institu-
26 tions to help such businesses and institutions comply

1 with United States counter-terrorism initiatives and
2 policies.

3 **TITLE II—MODERNIZATION OF**
4 **THE MILLENNIUM CHAL-**
5 **LENGE CORPORATION**

6 **SEC. 201. CANDIDACY STATUS.**

7 (a) **LOW INCOME COUNTRIES.**—Section 606(a) of the
8 Millennium Challenge Act of 2003 (22 U.S.C. 7705(a))
9 is amended—

10 (1) in paragraph (1)(B), by striking “(3)” and
11 inserting “(4)”;

12 (2) in paragraph (2)—

13 (A) by amending the paragraph heading to
14 read as follows: “**FISCAL YEARS 2005 THROUGH**
15 **2012**”; and

16 (B) by striking “fiscal year 2005 or a sub-
17 sequent fiscal year” and inserting “each of the
18 fiscal years 2005 through 2012”;

19 (3) by redesignating paragraph (3) as para-
20 graph (4); and

21 (4) by inserting after paragraph (2) the fol-
22 lowing:

23 “(3) **FISCAL YEAR 2013 AND SUBSEQUENT FIS-**
24 **CAL YEARS.**—A country shall be a candidate country
25 for purposes of eligibility for assistance for fiscal

1 year 2013 or a subsequent fiscal year if the coun-
2 try—

3 “(A) has a per capita income not greater
4 than the lower middle income country threshold
5 established by the International Bank for Re-
6 construction and Development for such fiscal
7 year;

8 “(B) is among the 75 countries identified
9 by the International Bank for Reconstruction
10 and Development as having the lowest per cap-
11 ita income; and

12 “(C) meets the requirements under para-
13 graph (1)(B).”.

14 (b) LOWER MIDDLE INCOME COUNTRIES.—Section
15 606(b) of the Millennium Challenge Act of 2003 (22
16 U.S.C. 7705(b)) is amended—

17 (1) in paragraph (1)—

18 (A) by amending the paragraph heading to
19 read as follows: “FISCAL YEARS 2006 THROUGH
20 2012”; and

21 (B) in the matter preceding subparagraph
22 (A), by striking “fiscal year 2006 or a subse-
23 quent fiscal year” and inserting “each of the
24 fiscal years 2006 through 2012”;

1 (2) by redesignating paragraph (2) as para-
2 graph (3); and

3 (3) by inserting after paragraph (1) the fol-
4 lowing:

5 “(2) FISCAL YEAR 2013 AND SUBSEQUENT FIS-
6 CAL YEARS.—In addition to the countries described
7 in subsection (a), a country shall be a candidate
8 country for purposes of eligibility for assistance for
9 fiscal year 2013 or a subsequent fiscal year if the
10 country—

11 “(A) has a per capita income not greater
12 than the lower middle income country threshold
13 established by the International Bank for Re-
14 construction and Development for the fiscal
15 year;

16 “(B) is not among the 75 countries identi-
17 fied by the International Bank for Reconstruc-
18 tion and Development as having the lowest per
19 capita income; and

20 “(C) meets the requirements under sub-
21 section (a)(1)(B).”.

22 (c) RECLASSIFICATION.—Section 606 of the Millen-
23 nium Challenge Act of 2003 (22 U.S.C. 7705) is amend-
24 ed—

1 (1) by redesignating subsection (c) as sub-
2 section (d); and

3 (2) by inserting after subsection (b) the fol-
4 lowing:

5 “(c) TREATMENT OF COUNTRIES WITH PER CAPITA
6 INCOME CHANGES.—A country qualifying for candidate
7 status under this section with a per capita income that
8 changes during the fiscal year such that the country would
9 be reclassified from a low income country to a lower mid-
10 dle income country or from a lower middle income country
11 to a low income country shall retain its candidacy status
12 in its former income classification for such fiscal year and
13 the two subsequent fiscal years.”.

14 **SEC. 202. CARRYOVER AUTHORITY FOR PRIVATE SECTOR**
15 **MEMBERS OF BOARD OF DIRECTORS.**

16 Section 604(c)(4)(B) of the Millennium Challenge
17 Act of 2003 (22 U.S.C. 7703(c)(4)(B)) is amended to read
18 as follows:

19 “(B) OTHER MEMBERS.—Each member of
20 the Board described in paragraph (3)(B)—

21 “(i) shall be appointed for a term of
22 3 years;

23 “(ii) may be reappointed for a term of
24 an additional 2 years; and

1 “(iii) may continue to serve in each
2 such appointment until the earlier of—

3 “(I) the date on which his or her
4 successor is appointed; or

5 “(II) the date that is one year
6 after the expiration of his or her ap-
7 pointment or reappointment, as the
8 case may be.”.

9 **SEC. 203. ADDITIONAL REPORTING TO THE BOARD ON THE**
10 **TREATMENT OF CIVIL SOCIETY IN AN ELIGI-**
11 **BLE COUNTRY.**

12 Section 607 of the Millennium Challenge Act of 2003
13 (22 U.S.C. 7706) is amended—

14 (1) in subsection (b)(1)—

15 (A) in subparagraph (D), by striking
16 “and” at the end;

17 (B) in subparagraph (E), by adding “and”
18 at the end; and

19 (C) by adding at the end the following:

20 “(F) the quality of the civil society ena-
21 bling environment;”;

22 (2) by redesignating subsections (d) and (e) as
23 subsections (e) and (f), respectively; and

24 (3) by inserting after subsection (c) the fol-
25 lowing:

1 “(d) REPORTING ON TREATMENT OF CIVIL SOCI-
2 ETY.—For the 7-year period beginning on the date of the
3 enactment of this subsection, before the Board selects an
4 eligible country for a Compact under subsection (c), the
5 Corporation shall provide information to the Board re-
6 garding the country’s treatment of civil society, including
7 classified information, as appropriate. The information
8 shall include an assessment and analysis of factors, includ-
9 ing—

10 “(1) any relevant laws governing the formation
11 or establishment of a civil society organization, par-
12 ticularly laws intended to curb the activities of for-
13 eign civil society organizations;

14 “(2) any relevant laws governing the operations
15 of a civil society organization, particularly those laws
16 seeking to define or otherwise regulate the actions of
17 foreign civil society organizations;

18 “(3) laws relating to the legal status of civil so-
19 ciety organizations, including laws which effectively
20 discriminate against foreign civil society organiza-
21 tions as compared to similarly situated domestic or-
22 ganizations;

23 “(4) laws regulating the freedom of expression
24 and peaceful assembly; and

1 “(5) laws regulating the usage of the Internet,
2 particularly by foreign civil society organizations.”.

3 **SEC. 204. CONCURRENT COMPACTS UNDER THE MILLEN-**
4 **NIUM CHALLENGE ACT OF 2003.**

5 (a) IN GENERAL.—Section 609 of the Millennium
6 Challenge Act of 2003 (22 U.S.C. 7708) is amended—

7 (1) in subsection (k), by striking the first sen-
8 tence;

9 (2) by redesignating subsection (k) as sub-
10 section (l); and

11 (3) by inserting after subsection (j) the fol-
12 lowing:

13 “(k) CONCURRENT COMPACTS.—An eligible country
14 that has entered into and has in effect a Compact under
15 this section may enter into and have in effect at the same
16 time not more than one additional Compact in accordance
17 with the requirements under this title if—

18 “(1) one or both of the Compacts are or will be
19 for purposes of regional economic integration, in-
20 creased regional trade, or cross-border collabora-
21 tions; and

22 “(2) the Board determines that the country is
23 making considerable and demonstrable progress in
24 implementing the terms of the existing Compact and
25 supplementary agreements thereto.”.

1 (b) CONFORMING AMENDMENT.—Section
2 613(b)(2)(A) of such Act (22 U.S.C. 7712(b)(2)(A)) is
3 amended by striking “the” before “Compact” and insert-
4 ing “any”.

5 (c) APPLICABILITY.—The amendments made by this
6 section shall apply with respect to Compacts entered into
7 between the United States and an eligible country under
8 the Millennium Challenge Act of 2003 before, on, or after
9 the date of the enactment of this Act.

10 **SEC. 205. ELIGIBILITY DETERMINATIONS FOR SUBSE-**
11 **QUENT COMPACTS.**

12 Section 607(a) of the Millennium Challenge Act of
13 2003 (22 U.S.C. 7706(a)) is amended by adding at the
14 end the following: “A determination whether a country is
15 eligible for a subsequent, non-concurrent Millennium Chal-
16 lenge Compact shall also be based, to the extent prac-
17 ticable, on significantly improved performance across eligi-
18 bility criteria in subsection (b) that, at a minimum, are
19 relevant to the preceding Compact, compared to the coun-
20 try’s performance against such eligibility criteria when se-
21 lected for the preceding Compact.”.

22 **SEC. 206. PUBLIC NOTIFICATION OF ENTERING INTO A**
23 **COMPACT.**

24 Section 610 of the Millennium Challenge Act of 2003
25 (22 U.S.C. 7709) is amended to read as follows:

1 **“SEC. 610. CONGRESSIONAL AND PUBLIC NOTIFICATION.**

2 “(a) CONGRESSIONAL CONSULTATIONS AND NOTIFI-
3 CATIONS.—

4 “(1) IN GENERAL.—The Board, acting through
5 the Chief Executive Officer, shall consult with and
6 notify the appropriate congressional committees not
7 later than 15 days before taking any of the actions
8 described in paragraph (2).

9 “(2) ACTIONS DESCRIBED.—The actions de-
10 scribed in this paragraph are—

11 “(A) providing assistance for an eligible
12 country under section 609(g);

13 “(B) commencing negotiations with an eli-
14 gible country to provide assistance for—

15 “(i) a Compact under section 605; or

16 “(ii) an agreement under section 616;

17 “(C) signing such a Compact or agree-
18 ment; and

19 “(D) terminating assistance under such a
20 Compact or agreement.

21 “(3) ECONOMIC JUSTIFICATION.—Any notifica-
22 tion relating to the intent to negotiate or sign a
23 Compact shall include a report describing the pro-
24 jected economic justification for the Compact, in-
25 cluding, as applicable—

1 “(A) the expected economic rate of return
2 of the Compact;

3 “(B) a cost-benefit analysis of the Com-
4 pact;

5 “(C) a description of the impact on bene-
6 ficiary populations;

7 “(D) the likelihood that the investment will
8 catalyze private sector investments; and

9 “(E) any other applicable economic factors
10 that justify each project to be funded under
11 such a Compact to the extent practicable and
12 appropriate.

13 “(4) RISK MANAGEMENT PLAN.—Not later than
14 60 days before signing each concurrent Compact, as
15 authorized under section 609, the Board, acting
16 through the Chief Executive Officer, shall consult
17 with and provide to the appropriate congressional
18 committees—

19 “(A) an assessment and, as appropriate,
20 the identification of potential measures to miti-
21 gate risks, of—

22 “(i) the countries’ commitment to re-
23 gional integration and cross-border co-
24 operation and capacity to carry out com-
25 mitments;

1 “(ii) political and policy risks, includ-
2 ing risks that could affect country eligi-
3 bility;

4 “(iii) risks associated with realizing
5 economic returns;

6 “(iv) time and completion risks; and

7 “(v) cost and financial risks; and

8 “(B) an assessment of measures to be
9 taken to mitigate any identified risks, includ-
10 ing—

11 “(i) securing other potential donors to
12 finance projects or parts of projects as
13 needed; and

14 “(ii) partnering with regional organi-
15 zations to support and oversee effective
16 cross-border cooperation.

17 “(b) CONGRESSIONAL AND PUBLIC NOTIFICATION
18 AFTER ENTERING INTO A COMPACT.—Not later than 10
19 days after entering into a Compact with an eligible coun-
20 try, the Board, acting through the Chief Executive Officer,
21 shall—

22 “(1) publish the text of the Compact on the
23 Web Site of the Corporation;

1 “(2) provide the appropriate congressional com-
2 mittees with a detailed summary of the Compact
3 and, upon request, the text of the Compact; and

4 “(3) publish in the Federal Register a detailed
5 summary of the Compact and a notice of availability
6 of the text of the Compact on the Web Site of the
7 Corporation.”.

8 **SEC. 207. DISCLOSURE.**

9 (a) REQUIREMENT FOR TIMELY DISCLOSURE.—Sec-
10 tion 612(a) of the Millennium Challenge Act of 2003 (22
11 U.S.C. 7711(a)) is amended—

12 (1) in the subsection heading, by inserting
13 “TIMELY” before “DISCLOSURE”; and

14 (2) in the matter preceding paragraph (1)—

15 (A) by striking “The Corporation” and in-
16 serting “Not later than 90 days after the last
17 day of each fiscal quarter, the Corporation”;
18 and

19 (B) by striking “on at least a quarterly
20 basis,”.

21 (b) DISSEMINATION.—Section 612(b) of the Millen-
22 nium Challenge Act of 2003 (22 U.S.C. 7711(b)) is
23 amended to read as follows:

24 “(b) DISSEMINATION.—The Board, acting through
25 the Chief Executive Officer, shall make the information

1 required to be disclosed under subsection (a) available to
2 the public—

3 “(1) by publishing it on the website of the Cor-
4 poration;

5 “(2) by providing notice of the availability of
6 such information in the Federal Register; and

7 “(3) by any other methods that the Board de-
8 termines to be appropriate.”.

9 **SEC. 208. RESTRICTION ON THE USE OF ASSISTANCE**
10 **UNDER SECTION 616.**

11 Section 616(d) of the Millennium Challenge Act of
12 2003 (22 U.S.C. 7715(d)) is amended to read as follows:

13 “(d) FUNDING.—

14 “(1) LIMITATION.—Not more than 10 percent
15 of the amounts made available to carry out this Act
16 for a fiscal year may be made available to carry out
17 this section.

18 “(2) RESTRICTION RELATING TO ASSIST-
19 ANCE.—None of the funds authorized to carry out
20 the purposes of this Act shall be available for assist-
21 ance under this section to a country that does not
22 qualify as a candidate country under section 606 for
23 the fiscal year during which such assistance is pro-
24 vided.”.

1 **SEC. 209. STUDY ON SUBNATIONAL COMPACTS.**

2 (a) IN GENERAL.—Not later than 180 days after the
3 date of the enactment of this Act, the Board of the Millen-
4 nium Challenge Corporation, acting through the Chief Ex-
5 ecutive Officer, shall submit a study to the appropriate
6 congressional committees that assesses the feasibility and
7 desirability of developing partnerships at the subnational
8 level within candidate countries that would be complemen-
9 tary to, and, as applicable, concurrent with, any Millen-
10 nium Challenge Corporation national-level or regional in-
11 vestments.

12 (b) CONTENT.—The study required under subsection
13 (a) shall examine—

14 (1) the extent to which targeting investments at
15 the subnational level might provide new opportuni-
16 ties for reducing poverty through economic growth;

17 (2) the extent to which traditional approaches
18 to defining poverty may not adequately capture the
19 nature of poverty within a country;

20 (3) the types of subnational entities that might
21 be appropriate partners for subnational Millennium
22 Challenge Corporation compacts;

23 (4) how candidates for subnational partners
24 might best be identified; and

1 (5) what role each national government should
2 play in creating or implementing a subnational part-
3 nership.

4 (c) APPROPRIATE CONGRESSIONAL COMMITTEES.—

5 In this subsection, the term “appropriate congressional
6 committees” means—

7 (1) the Committee on Foreign Relations of the
8 Senate;

9 (2) the Committee on Appropriations of the
10 Senate;

11 (3) the Committee on Foreign Affairs of the
12 House of Representatives; and

13 (4) the Committee on Appropriations of the
14 House of Representatives.