

Additional information provided by Human Rights Watch to the Australian Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade on the Inquiry into a Framework for Autonomous Sanctions Under Australian Law to Target Human Rights Abuses

Thank you for the opportunity to testify on March 31, 2020. Please find responses to the questions that Human Rights Watch took on notice during the inquiry.

What should be the threshold for sanctioning individuals for corruption?

We urge the threshold for corruption, to be any act of corruption, in line with the approach taken under the US Executive Order.¹ The US Global Magnitsky Human Rights Accountability Act (US legislation) defines corruption to mean:

(1) the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery; or (2) the transfer or the facilitation of the transfer of the proceeds of corruption.²

Human rights abuses and corruption are often interlinked. For instance, US officials recently sanctioned a Cambodian former general, Kun Kim, for corruption, as there was more recent evidence of corruption. Although he was also implicated in human rights abuses, the evidence of these abuses was some time ago.

Are there specific characteristics of the US legislation that relate to the flow on effects that you mention to corporate compliance?

The US legislation for asset freezes is far reaching, it blocks all financial transactions with a sanctioned person, punishable by civil or criminal penalties. Sanctioned individuals are effectively prevented from entering into transactions with banks and companies including their subsidiaries or related entities, in the US and outside of it.

Most financial institutions conduct risk assessments when deciding to enter into financial agreements with parties. A Magnitsky-style sanction sends a warning to those institutions that this person or entity has engaged in acts of human rights abuse or corruption, and would make any reasonable person wary of doing business with them. Further, there are negative reputational and financial consequences for businesses and organisations doing business with corrupt individuals or entities.

Should the targeted sanctions cover family members?

It should be on a case-by-case basis. In some cases, if there is evidence to suggest that family members may be benefiting from the corruption or human rights abuse, then it would make sense to add them to the sanctions list. But in other cases, a family member may not be benefiting from the corruption, and may even be estranged from the abusive member, and it would effectively be a form of collective punishment to also punish those family members.

¹ Executive Order 13818, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption" <https://www.whitehouse.gov/presidential-actions/executive-order-blocking-property-persons-involved-serious-human-rights-abuse-corruption/>.

² Executive Order 13818, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption" <https://www.whitehouse.gov/presidential-actions/executive-order-blocking-property-persons-involved-serious-human-rights-abuse-corruption/> and <https://www.congress.gov/bill/114th-congress/senate-bill/284/text>.