



American ideals. Universal values.

January 23, 2020

Committee Secretary  
Joint Standing Committee on Foreign Affairs, Defence and Trade  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Members of the Joint Standing Committee on Foreign Affairs,  
Defence and Trade,

On behalf of Human Rights First, it is a privilege to write you on the question of whether Australia should enact legislation comparable to the U.S. Global Magnitsky Human Rights Accountability Act of 2016 (Global Magnitsky Act) as implemented by Executive Order 13818.<sup>1</sup> On the basis of our experience as a U.S.-based human rights non-governmental organization (NGO) deeply involved in the process of submitting Global Magnitsky recommendations to the U.S. government, our answer is an emphatic “yes.”

### **Background and Activities**

Human Rights First is a forty-year-old, independent advocacy organization focused on holding the U.S. government accountable to its commitments to promote and protect human rights. We achieve this mandate through research and reporting, private and public advocacy, and strategic litigation.

The Global Magnitsky Act is the most comprehensive and targeted human rights- and anti-corruption-focused sanctions tool in U.S. history. In the opinion of this organization, the enactment of the Act significantly advanced the U.S. government’s ability to hold human rights abusers and corrupt actors accountable for actions that violate human dignity, undermine economic growth, and threaten international security.

Since the Global Magnitsky Act’s passage, Human Rights First has taken the lead in coordinating the efforts of over 200 local, national, and international NGOs, and a growing number of pro-bono attorneys and law school human rights clinics, in working not only to advocate for robust implementation of the Act, but also, critically, to assist the U.S. government in the complex task of assembling viable sanctions case files. The theory under which we operate is that by assembling dossiers mirroring those used

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<sup>1</sup> <https://www.humanrightsfirst.org/sites/default/files/GMA-Law.pdf> and <https://www.humanrightsfirst.org/sites/default/files/eo-13818-glomag.pdf>

by the U.S. government internally to justify its targeted sanctions, civil society can spur beneficial U.S. governmental action by contributing to its capacity.

We do this by training, equipping, and guiding our NGO partners – local human rights defenders and anti-corruption activists in scores of countries around the world – so that they can put forward well-researched, compelling, corroborated case files related to their organizational priorities. In any given month, we educate, coordinate, and advocate on behalf of the work of dozens of these partners, assisting them in turning their work into highly credible case files. Our training guides and other materials related to this work can be found online on our Global Magnitsky resources page.<sup>2</sup>

### **Impact of U.S. Government Engagement with NGOs**

Section 1263(c) of the Global Magnitsky Act provides that: “[i]n determining whether to impose sanctions...the President shall consider...credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights.”<sup>3</sup>

While this language does not obligate the U.S. government to make sanctions decisions in line with NGO advocacy or priorities, it does require the U.S. government to “consider” information provided by NGOs in making its determinations. In practice, the U.S. government has maintained a robust dialogue with human rights and anti-corruption NGOs concerning civil society’s recommendations.

To date, Human Rights First and our partners have submitted case files documenting egregious human rights abuses and/or acts of grand corruption in dozens of countries around the world, including, to name just a few, Azerbaijan, Bahrain, China, Egypt, Ethiopia, Hungary, Mexico, Myanmar, Russia, Saudi Arabia, Tajikistan, Turkey, Uzbekistan, and Vietnam. For its part, in just over three years, the U.S. government has sanctioned nearly 200 individuals, military units, and corporations using the Global Magnitsky Act. According to Human Rights First’s statistics, members of our NGO network have directly or indirectly contributed to roughly 25% of these designations.

### **Domestic and International Engagement Beyond the Global Magnitsky Act**

As the NGO network coordinated by Human Rights First has grown, our work has expanded to underpin a broad range of accountability-oriented diplomatic and legal authorities in the U.S. and elsewhere. In addition to use of our network’s information for sanctions under the Global Magnitsky Act, the U.S. State Department now routinely refers to our case files when denying visas on human rights or corruption grounds under its so-called Section 7031(c) authority. Similarly, the U.S. Federal Bureau of Investigation (FBI) and Department of Homeland Security (DHS) have requested our information to inform their war crimes prosecutions and enforcement of human rights-related immigration actions, respectively.

Based on our Global Magnitsky work within the United States, Human Rights First staff regularly advise foreign governments pursuing similar targeted human rights and anti-corruption sanctions

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<sup>2</sup> <https://www.humanrightsfirst.org/global-magnitsky-resources>

<sup>3</sup> <https://www.humanrightsfirst.org/sites/default/files/GMA-Law.pdf>

programs. At present, members of our staff engage on these matters on a routine basis with officials from Global Affairs Canada, the UK Foreign and Commonwealth Office, several EU member state foreign ministries, and various executive bodies under the European Council. Materials and analyses used to advise these governments/bodies are available upon request.

### **Recommendations**

Human Rights First strongly welcomes the Australian parliament passing a targeted human rights and anti-corruption sanctions regime mirroring the Global Magnitsky Act. Were such a law to come into force, Australia would join a growing number of governments around the world that are willing and able to take significant action against individual human rights violators and corrupt actors. Particularly if acted upon in concert with likeminded governments, sanctions designations undertaken by the Australian government hold the potential to achieve accountability for egregious crimes, deter abuses before they occur, and incentivize governments to change policies rooted in corruption and human rights violations. While we do not purport to speak for any other NGO, on the basis of our experience coordinating the work of hundreds of organizations on this matter, we are confident that passage and implementation of such a law would be widely praised within the human rights and anti-corruption advocacy communities.

As the Australian parliament considers its framework for targeted sanctions, we recommend the inclusion of the following, based on our experience assisting in the implementation of the Global Magnitsky Act:

- 1) Corruption as a Stand-alone Criterion for Listing. The Global Magnitsky Act includes both “gross violations of human rights” and “acts of significant corruption” as independent sanctionable activities (“prongs,” in U.S. sanctions parlance). In our experience, inclusion of corruption alongside human rights as a sanctions prong provides the U.S. government significant authority to designate not only those that maintain power through repression, but also the key financial backers who sustain and benefit from abusive rule. Linkages between corruption and human rights violations are well documented. Many of the world’s most abusive tyrants commit human rights abuses as a means to maintain power for personal gain. Conversely, by its very nature, corruption undermines essential aspects of democratic governance and allows for unaccountable power and instability to flourish. The Australian targeted sanctions program should reflect these linkages.
- 2) Both State and Non-State Actors. While government officials remain uniquely empowered to commit human rights violations and corruptly benefit from public office, these crimes are by no means limited to state actors. In keeping with the approach adopted by the U.S. government, an Australian targeted sanctions regime should allow flexibility to target both state and non-state actors, including: current or former government officials; security force and military units; armed rebel and extremist groups and the leaders of such groups; corporate entities; and any individuals that materially or financially support covered crimes.
- 3) Clear Remedy Guidelines and Delisting Criteria. In keeping with applicable domestic and international law, all sanctions regimes must respect human rights and fundamental freedoms. In practice, this means upholding sanctions designees’ right to be presented

with the factual basis for their listing, and to provide access to effective remedy and delisting. Clear criteria and methodology for sanctions listing and de-listing, and the means by which a sanctioned person can challenge his/her listing through administrative and/or judicial remedy, should thus be written in applicable law and/or regulation governing the sanctions regime. Furthermore, to the greatest extent possible, designations under the sanctions regime should be made on the basis of publicly-available, non-classified information.

- 4) Specific Reference to Input from Civil Society: As detailed above, in the context of implementation of the Global Magnitsky Act, both the U.S. government and relevant NGOs feel that the Act's legitimacy and effectiveness have been bolstered by a robust information flow between governmental and non-governmental actors. On that basis, we recommend inclusion of a provision within any future sanctions law explicitly authorizing (if not requiring) a process to allow for civil society input.

In addition to the above, drafters of a targeted human rights and anti-corruption sanctions regime will need to grapple with numerous complex questions, including, at a minimum:

- 1) What minimum evidentiary standard to use in sanctions designations;
- 2) Whether to make designations mandatory, or elective, if the evidentiary threshold is met<sup>4</sup>;
- 3) Which specific human rights abuses and corrupt acts to include as sanctionable activities;
- 4) Whether to penalize designated individuals through economic sanctions, visa restrictions, or both (the last being our recommendation); and
- 5) Whether to limit penalties to designated individuals or to extend them to members of the designated individual's immediate family.

My staff and I would welcome an opportunity to speak further on these matters. In the meantime, we again underscore our strong support for your efforts.

Sincerely,

Rob Berschinski  
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<sup>4</sup> Regarding mandatory versus elective sanctions, note that the Russia-specific Sergei Magnitsky Act of 2012 mandates that sanctions be imposed against perpetrators when the law's evidentiary standard is met, while the Global Magnitsky Act merely allows for sanctions designations under similar circumstances.