

Committee consideration on adoption of Magnitsky Act
Joint Standing Committee on Foreign Affairs, Defence and Trade

On January 23 this year Behgjet Pacolli, Deputy Prime Minister & Minister of Foreign Affairs of Kosovo, announced that Kosovo was now moving to adopt its own Magnitsky Act, becoming the first country to do so in southeastern Europe and the Balkans. The very same day Vadym Prystaiko, the Minister for Foreign Affairs in the Ukraine announced that he was working to find ways to support the Global Magnitsky Justice Campaign both in the Ukraine and abroad. The EU itself has recently, in substance, approved the drafting of a sanctions law centered on human rights and corruption.

The continued expansion of a new human rights and corruption-focused accountability schemes, which goes after specific, targeted perpetrators rather than countries or entities, is an idea whose time has come. In many ways, this mechanism is needed more now than ever, as rule of law, human rights, and information transparency are all under increased assault, and the tools for defending those values having lost some of its power. The continued expansion of jurisdictions adopting these acts is the basis for a global movement in which Australia can play an important role, both in showing commitment to its own values of democracy and human rights, but also as a regional leader.

While the debate on adoption of such a law in Australia continues, some of the world's leading non-democratic states have been taking steps to interfere with Australia's own legislative process. Such flagrant attempts to influence domestic policy making in Australia should make it clear just how strongly the world's autocratic regimes fear this new law, precisely because it threatens to hold perpetrators accountable.

This submission will focus on three points; **(i)** considerations for an effective sanctions scheme, **(ii)** lessons learned from existing Magnitsky Acts, especially the U.S.'s Global Magnitsky Human Rights Accountability Act, and **(iii)** use of Magnitsky Act sanctions and other foreign policy tools by Australia.

- (i)** A Magnitsky Sanctions scheme can only be successful if implemented systematically. Because many existing targeted sanctions exist solely on political grounds, they are often mired in political expediency over rights-based commitments. By making it more systematic and rights-based, overt politicization can be greatly reduced, which increases the legitimacy of such sanctions schemes. To achieve this, as recognized by both the U.S. and Canada, and soon it is hoped the UK, requires that any process established for managing selection of targets needs to be **open and transparent**. It must seek input from civil society. No Foreign Ministry has the knowledge to ensure a strong selection of recommendations for targeted rights-based sanctions without input from civil society working on the ground or in the context of the perpetrator in question. Even the U.S. has recognized it relies heavily on input from civil society. **Any implementation must thus have an easy to understand, easy to use, and publically**

disseminated method for civil society to make recommendations and follow the process transparently, and public guidelines for ensuring that such recommendations hold consistently high quality.

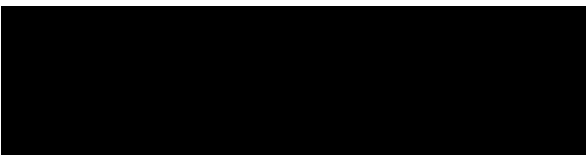
- (ii) The United States, the first country to adopt and then broaden the original Magnitsky Act, has not only established a transparent system for seeking and deciding on targets. It has also reached out to civil society, and both its treasury and state department regularly interacts with such groups, offers trainings, and more. Likewise, its recent expansion of sanctions away from targeting those that are politically expedient, to include sanctions against thematic areas of human rights abuse and grand corruption, has greatly enhanced its legitimacy. While Canada and it is believed soon the UK have followed the U.S. method of having a more open and transparent system and process, the three Baltic countries – Estonia, Latvia and Lithuania, as well as Gibraltar – have opted for an internal-only system for gathering information, making recommendations and decision making on targets. **These non-transparent systems have had had little to no impact**, and by keeping it an internal matter for their Foreign Ministries it has given rise to the same concerns of political rather than rights-based motivations. Australia, like the E.U., should consider choosing a transparent and consistently applied rights-based sanctions scheme to be effective in countering grand corruption and holding perpetrators of human rights violations accountable.
- (iii) A Magnitsky sanctions scheme done right has the ability to **amplify other Australian foreign policy tools**, and should be considered as one part of a larger foreign policy agenda and engagement, much like Australia’s development aid as well as direct human rights-oriented grant making. For flexibility, and to avoid allowing Magnitsky Act implementation to undermine other important and temporary foreign policy goals, using annual thematic approaches is an effective tool. Using annually decided thematic focus areas would allow the government the flexibility needed to avoid undermining current foreign policy goals, while ensuring strong, consistent and widespread adoption of sanctions’ targets. A Magnitsky sanctions scheme also have the possibility of **strengthening Australia’s attempt to regulate, limit and counter vastly increasing foreign influence operations** in Australia, especially concerning use of finances secured through corruption, or which through its means of transfers and payments constitute corruption or illegal use of financing. Considering Australia’s exposed position as a target for foreign influence peddling, the act can and should be considered with this in mind.

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For ease, we are including an appendix to this brief letter, which is '[Fighting Impunity](#)' (link to download as PDF). It is the first-ever comprehensive guide on existing Magnitsky Act sanctions schemes, aimed at providing information on how these schemes work, how civil society and NGOs can utilize them, but also details on political realities. It also offers direct comparison between the different jurisdictions. It is grounded in the expertise of state functionaries, diplomatic staff, those involved in the legislative process behind the adoption of the act in other jurisdictions, as well as key international NGOs.

Australia stands to become a regional leader in accountability in moving forward with adoption of a Magnitsky sanctions scheme, and to strengthen the sanctions framework internationally. It also stands to provide itself a tool to reinforce its existing foreign policy tools, and to equip itself to better protect Australia from undue external pressure and opinion influencing. Most of all, Australia can step up its defense of human rights and its fight against corruption at a time when it is needed more than ever.

Yours sincerely,



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