TARGETED HUMAN RIGHTS AND ANTI-CORRUPTION SANCTIONS: A PRIMER

FOREIGN POLICY TEAM, HUMAN RIGHTS FIRST
PRESENTATION ROADMAP

I. About us
II. Sanctions overview
III. Global Magnitsky overview
IV. Update on US government engagement to date
V. What we do
VI. How we do it
VII. Getting involved
VIII. Q&A
PART I: INTRODUCTION
PART II:
SANCTIONS OVERVIEW
TYPES OF SANCTIONS

- Comprehensive
- Sectoral
- Secondary
- Targeted
PENALTIES OF TARGETED SANCTIONS

• Four major penalties for perpetrators that are sanctioned by the US government
  1. Named and shamed
  2. Visa restrictions
  3. Asset freezes (not seizures)
  4. US banks and businesses blocked from doing business with sanctioned individuals

• Can sometimes also result in “voluntary compliance” (non-US banks and businesses choosing not to do business with the sanctioned person)
PURPOSE OF TARGETED SANCTIONS

- Provide leverage to diplomatic and political processes that can bring about sustainable solutions by:
  - Naming and shaming
  - Changing a perpetrator’s calculus to effect reduction in undesirable behavior
  - Alienating perpetrators from other government and non-government actors
  - Signaling international expectations
  - Inducing economic shortfalls to reduce repressive capacity
OTHER KEY CONCEPTS TO BE AWARE OF

- Unilateral vs multilateral sanctions
- Legal standards (both national and international)
- Reporting requirements
- Sunset provisions
PART III: GLOBAL MAGNITSKY ACT OVERVIEW
AMERICAN HR SANCTIONS PRE-MAGNITSKY

IEEPA

INA

United States Code Annotated
Title 25, International Relations
Chapter 54, International Emergency Economic Powers

§ 1701. National emergency declaration and declaration of national emergency executive of Presidential authorities

(a) The President, by and with the advice and consent of the Senate, in order to deal with perceived threats to the national security, foreign policy, or economic interests of the United States, may- (1) issue Presidential proclamations declaring a national emergency with respect to any countries or regions of the world;

(b) The authority granted to the President by section 1702 of this title may only be exercised in order to deal with an emergency and extraordinary threat which is so severe to the national economy as to warrant the President’s decisions on national emergency with respect to the national economy;

§ 1702. Presidential authorities

(a) to the extent and in the manner specified in section 1703 of this title, the President may order the sale of property, or pay any judgment, or make any guarantee, or enter into any transaction, or perform any act, or make any pledge, or enter into any agreement, or order that any such act or transaction be performed, to the extent and in the manner specified in section 1703 of this title;

(b) to the extent and in the manner specified in section 1703 of this title, the President may order the sale of property, or pay any judgment, or make any guarantee, or enter into any transaction, or perform any act, or make any pledge, or enter into any agreement, or order that any such act or transaction be performed, to the extent and in the manner specified in section 1703 of this title;

(1) any transactions in foreign exchange;

(2) any sales of securities or other investments, or any transactions in securities or other investments; or

(3) any transactions in foreign exchange;

(2) any sales of securities or other investments, or any transactions in securities or other investments;

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THE MAGNITSKY ACT (2012)

- Sergei Magnitsky (1972-2009)
- The act applies to persons involved in either crimes against Mr. Magnitsky or other gross human rights violations in Russia
- Mandatory if evidentiary threshold crossed
- Penalties are:
  - INA-based visa sanctions
  - IEEPA-based economic sanctions
THE GLOBAL MAGNITSKY ACT (2016)

• In short: global expansion of Magnitsky Act’s targeted sanction power

• The Global Magnitsky Act allows (but does not require) the President to block or revoke U.S. visas and to block all US-based property and interests in property of foreign persons (both individuals and entities) who have engaged in:
  
  a) extrajudicial killings, torture, or other gross violations of human rights against individuals who either seek “to expose illegal activity carried out by government officials” or “to obtain, exercise, defend, or promote internationally recognized human rights and freedoms”

  b) acts of significant corruption by government officials. Individuals who have acted as agents of or on behalf of human rights abusers or who have materially assisted corrupt officials can also be sanctioned.
EXECUTIVE ORDER 13818 (DEC. 2017)

• Significantly expanded the scope of sanctionable crimes under the GMA, IEEPA, and INA

• Delegated further designations to the Secretary of Treasury in consultation with the Secretary of State

• Annex designated 15 persons and 37 entities
# EXPANDED POWERS

<table>
<thead>
<tr>
<th>Global Magnitsky as enacted</th>
<th>EO 13818 as applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>“gross violations of internationally recognized human rights”</td>
<td>“serious human rights abuse” (non-state actors)</td>
</tr>
<tr>
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</tr>
<tr>
<td>perpetrated against someone working to “obtain, exercise, defend, or promote” human rights</td>
<td>perpetrated by any foreign person found “to be responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse.”</td>
</tr>
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<td></td>
<td></td>
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<tr>
<td>command responsibility (activity-based)</td>
<td>“leader or official of an entity that has engaged in…” (status-based)</td>
</tr>
<tr>
<td>“acts of significant corruption”</td>
<td>“corruption”</td>
</tr>
<tr>
<td>“the facilitation or transfer of the proceeds of corruption” only apply to transfers to foreign jurisdictions</td>
<td>No restriction on application regarding facilitation or transfer of corrupt proceeds</td>
</tr>
</tbody>
</table>
WHAT CONSTITUTES “SERIOUS HUMAN RIGHTS ABUSE”?

• Not a term codified in US law, but expands legal standard of “gross violations of internationally recognized human rights” (GVHR) to apply to non-state actors

• GVHR legal standard includes:
  • Torture
  • Cruel, inhuman, or degrading treatment or punishment
  • Prolonged detention without charges and trial
  • Causing the disappearance of persons by their abduction and clandestine detention
  • Other flagrant denials of the right to life, liberty, or the security of the person

• In general, under the Magnitsky Act, the USG has limited action to the crimes of extrajudicial killing, rape, torture, or enforced disappearance, and may act on cases of prolonged detention
WHAT CONSTITUTES “CORRUPTION”?

- Broad construction
- Explicitly includes:
  - Misappropriation of state assets
  - Expropriation of private assets for personal gain
  - Corruption related to government contracts or extraction of natural resources
  - Bribery
  - Transfer or facilitation of transfer of proceeds from corruption
PART IV:
US GOVERNMENT ENGAGEMENT TO DATE
EXECUTIVE BRANCH ENGAGEMENT

• **199** designations made since January 2017
  • (as of June 2020)

• **16** batches

• **25** countries
BREAKDOWN OF SANCTIONS TO DATE

<table>
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<tr>
<th>Sanctions by Type</th>
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<tbody>
<tr>
<td>Individual Primary Sanctions</td>
<td>79</td>
</tr>
<tr>
<td>Entity Primary Sanctions</td>
<td>2</td>
</tr>
<tr>
<td>Individual Derivative Sanctions</td>
<td>17</td>
</tr>
<tr>
<td>Entity Derivative Sanctions</td>
<td>101</td>
</tr>
<tr>
<td><strong>Total Sanctions</strong></td>
<td><strong>199</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sanctions by Crime</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Corruption</td>
<td>120</td>
</tr>
<tr>
<td>Human Rights Abuse</td>
<td>65</td>
</tr>
<tr>
<td>Both</td>
<td>14</td>
</tr>
</tbody>
</table>
**SANCTIONS TRACKER**

<table>
<thead>
<tr>
<th>Number</th>
<th>Designation Date</th>
<th>Primary?</th>
<th>Derivative</th>
<th>Crime</th>
<th>Country</th>
<th>Name</th>
<th>Type</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>N/A</td>
<td>HR Abuse</td>
<td>Guatemala</td>
<td>Julio Antonio (Juarez) Ramirez</td>
<td>Individual</td>
<td>Congressman</td>
</tr>
<tr>
<td>2</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>N/A</td>
<td>Corruption</td>
<td>Uzbekistan</td>
<td>Gulnara Karimova</td>
<td>Individual</td>
<td>Daughter of former leader Karimov</td>
</tr>
<tr>
<td>3</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>N/A</td>
<td>HR Abuse</td>
<td>China</td>
<td>Gao Yan</td>
<td>Individual</td>
<td>Former Chaoyang Branch Director, Beijing Public Security Bureau</td>
</tr>
<tr>
<td>4</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>N/A</td>
<td>HR Abuse</td>
<td>Myanmar</td>
<td>Maung Maung Soe</td>
<td>Individual</td>
<td>Former Chief, Army Western Command</td>
</tr>
<tr>
<td>5</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>N/A</td>
<td>HR Abuse</td>
<td>Ukraine</td>
<td>Sergey Kusiuk</td>
<td>Individual</td>
<td>Former Commander, Berkut</td>
</tr>
<tr>
<td>6</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>N/A</td>
<td>Corruption</td>
<td>Dom. Rep.</td>
<td>Angel (Rondon) Rijo</td>
<td>Individual</td>
<td>Odebrecht lobbyist</td>
</tr>
<tr>
<td>7</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>N/A</td>
<td>Corruption</td>
<td>Nicaragua</td>
<td>Roberto Jose (Rivas) Reyes</td>
<td>Individual</td>
<td>President, Supreme Electoral Council</td>
</tr>
<tr>
<td>8</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>N/A</td>
<td>Corruption</td>
<td>Russia</td>
<td>Artem Chayka</td>
<td>Individual</td>
<td>Son of Prosecutor General</td>
</tr>
<tr>
<td>9</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>N/A</td>
<td>HR Abuse</td>
<td>Pakistan</td>
<td>Mukhtar Hamid Shah</td>
<td>Individual</td>
<td>Surgeon; organ trafficker</td>
</tr>
<tr>
<td>10</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>Bol Mel</td>
<td>Corruption</td>
<td>South Sudan</td>
<td>Benjamin (Bol Mel)</td>
<td>Individual</td>
<td>President, ABMC Thai-South Sudan Construction Company</td>
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<tr>
<td>11</td>
<td>12/21/2017</td>
<td>No</td>
<td>Bol Mel</td>
<td>Corruption</td>
<td>South Sudan</td>
<td>ABMC Thai-South Sudan Construction Company</td>
<td>Entity</td>
<td>Bol Mel Derivative</td>
</tr>
<tr>
<td>12</td>
<td>12/21/2017</td>
<td>No</td>
<td>Bol Mel</td>
<td>Corruption</td>
<td>South Sudan</td>
<td>Home and Away LTD</td>
<td>Entity</td>
<td>Bol Mel Derivative</td>
</tr>
<tr>
<td>13</td>
<td>12/21/2017</td>
<td>Yes</td>
<td>Gertler</td>
<td>Corruption</td>
<td>Israel</td>
<td>Dan Gertler</td>
<td>Individual</td>
<td>Executive, oil and mining</td>
</tr>
<tr>
<td>14</td>
<td>12/21/2017</td>
<td>No</td>
<td>Gertler</td>
<td>Corruption</td>
<td>DRC</td>
<td>Pieter Albert Deboutte</td>
<td>Individual</td>
<td>Director, Moku Goldmines AG</td>
</tr>
</tbody>
</table>

Fairly equal balance between human rights and corruption focus: 41 “cases”
21 human rights,
18 corruption
2 both
CONGRESSIONAL ENGAGEMENT

• “In determining whether to impose sanctions under subsection (a), the President shall consider...information provided jointly by the chairperson and ranking member of each of the appropriate congressional committees”

• Members of Congress have acted through both public and private recommendations

• Since passage of the law, 15 open letters have been sent to the Executive Branch requesting the review and sanctioning of specific individuals/entities

• Many letters have been bipartisan, demonstrating the uniquely powerful nature of Global Magnitsky in the current US political climate vis-à-vis human rights
PART V:
CIVIL SOCIETY
INVOLVEMENT
NGOS ARE GRANTED INVOLVEMENT IN GLOBAL MAGNITSKY ACT IMPLEMENTATION

“(c) Consideration Of Certain Information In Imposing Sanctions.—In determining whether to impose sanctions under subsection (a), the President shall consider—

• (1) information provided by the chairperson and ranking member of each of the appropriate congressional committees; and

• (2) credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights.”
HRF AND PARTNERS WORKING TO MAKE THE MOST OF THIS GUARANTEE

• Building and expanding a diverse coalition of NGO and pro bono legal partners

• Engaging with actors across the U.S. Government:
  • Treasury Department and State Department
  • House Foreign Affairs and Senate Foreign Relations

• Authoring case files and advocating for specific actions

• Monitoring use of Global Magnitsky sanctions by USG
DUAL BENEFITS OF RIGOROUS NGO INVOLVEMENT

**NGOs can support responsible and effective use of the sanction power:**

- Facilitate increased designations through research and advocacy
- Penalize perpetrators of human rights abuses and corrupt acts around the world, prompting reform
- Bolster U.S. commitment to human rights both at home and abroad
- Encourage other countries to adopt similar standards and enact more powerful multilateral sanctions

**NGOs can be more effective watchdogs against abuse of the sanction power:**

- Understand better the internal factors the USG considers when making designations
- Hold USG accountable for political, short-sighted, or hypocritical exercise of sanctions
- Review sanctions for effectiveness and promote changes to specific designations as well as Global Magnitsky program, as appropriate
PART VI: OUR PROCESS
10 STEPS FOR EFFECTIVE SANCTIONS RECOMMENDATIONS

1) Identify area of interest and people/entities of concern
2) Study and collect extant research on specific abuses
3) Perform additional research ideally combining local evidence gathering with international reporting (INGO and local NGO partnerships are recommended)
4) Research U.S. government interest relevant to sanctioning of target
5) Follow case template to create a case file out of the evidence
6) Consult pro bono counsel to improve legal strength of case file
7) Review for accuracy and sufficiency
8) Submit to the State & Treasury Departments and to embassies
9) Send copies to relevant congressional staff and request member support
10) Repeat cycle, building on past engagement
1) IDENTIFY AREA OF INTEREST AND PEOPLE/ENTITIES OF CONCERN

- Content expertise?
  - HR Abuse, corruption, or both?

- Geographic expertise?
  - Specific country, region, etc.?

- Identify who
  - USG interested in diplomatic, financial impact

- Identify why
  - USG sees GMA as behavior-altering, so focuses on ongoing instances of abuse/corruption
  - Case more than 5 years old, USG not interested
2) STUDY AND COLLECT EXTANT RESEARCH ON SPECIFIC ABUSES
3) PERFORM ADDITIONAL RESEARCH IDEALLY COMBINING LOCAL EVIDENCE GATHERING WITH INTERNATIONAL REPORTING (INGO AND LOCAL NGO PARTNERSHIPS ARE RECOMMENDED)

- If combining other research is insufficient, do more digging
  - Don’t need to prove person’s every offense, just enough serious HR abuses and/or corrupt acts to justify designation
- Research should inform as to local NGOs, journalists, witnesses, and victims that could be contacted for additional information
  - Confidentiality can be CRITICAL, verify with local contacts before, during, and after
  - NOTE: USG treats all submissions as confidential
- Barring confidentiality concerns, opportunity to raise the profile of with the USG of NGOs that have little to no contact with US
### 4) RESEARCH U.S. GOVERNMENT NATIONAL INTEREST RELEVANT TO SANCTIONING OF TARGET

- Realistically, political considerations are an important factor in sanctioning.

<table>
<thead>
<tr>
<th>National interest pros of sanctioning</th>
<th>National interest cons of sanctioning</th>
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<tbody>
<tr>
<td>Create diplomatic leverage</td>
<td>Endanger chances for more amicable relations</td>
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<tr>
<td>Support less corruption/abusive factions within foreign governments</td>
<td>Threats cause some to retreat from the bargaining table and entrench</td>
</tr>
<tr>
<td>Undermine competitor states</td>
<td>Open US to criticisms of hypocrisy</td>
</tr>
<tr>
<td>Improve US standing as a leader in human rights and rule of law</td>
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</tbody>
</table>
5) FOLLOW CASE TEMPLATE TO CREATE A CASE FILE OUT OF THE EVIDENCE

Model case template developed based on consultation with USG and past experience.

Incorporates 7031(c) sanctions as well.

Ensures that orgs are including all essential information to present a robust recommendation.

Facilitates review and editing.

***SAMPLE TEXT***

Full Legal Name of Perpetrator: Colonel John Smith
Country: Generica
Title or Position: Director-General of Ministry of Security (since July 2016); former Director of the Directorate of Criminal Interrogation (2015)
Date of Birth: 12/14/1971

Other Known Personal Identifiers (passport number, address, etc): located in Metropolis, Central Province; Passport 66666666; Generica identification number 3333333
6) CONSULT PRO BONO COUNSEL TO IMPROVE LEGAL STRENGTH OF CASE FILE

- Consult legal counsel familiar with sanctioning regarding evidence and the applicability of sanction law (parts 4-6 of the model case file)

- Standard of proof: “reason to believe” “based on credible information”

- Note: Each piece of evidence must be corroborated by multiple, preferably independent sources
7) REVIEW FOR ACCURACY AND SUFFICIENCY

**Serious Human Rights Abuse Checklist:**
1. Was the victim subjected to a SHRA?
2. Can the perpetrator (individual or entity) be connected?
3. For cases of “status-based responsibility,” can it be shown that the individual was an official engaged in, or whose subordinates were engaged in SHRA?
4. Did the perpetrator either attempt or materially assist a SHRB? A sanctioned person? A SHRB committing entity?
5. Is the perpetrator owned or controlled by a sanctioned person?
6. Are the perpetrator’s personal identifiers known (at a minimum, full legal name and date of birth)?

**Corruption Checklist:**
1. Is the perpetrator a current or former government official or aid responsible for corruption?
2. For cases of “status-based responsibility,” can it be shown that the individual was a leader of a corrupt government entity?
3. Did the perpetrator either attempt or materially assist corruption? A sanctioned person? A corrupt entity?
4. Is the perpetrator owned or controlled by a sanctioned person?
5. Are the perpetrator’s personal identifiers known (at a minimum, full legal name and date of birth)?
8) SUBMIT TO THE STATE & TREASURY DEPARTMENTS AND TO EMBASSIES

- The Treasury Department controls sanctions through the Office of Foreign Asset Control (OFAC)
- The State Department oversees U.S. foreign relations
- OFAC has two standard designation cycles per year: one spring and one fall
- Plan ahead to schedule a meeting and present the recommendations a couple of months in advance so that they have time to be integrated into the general pool for consideration
- Upon submission, contact the relevant in-country embassy and present the information to them as well
**9) SEND COPIES TO RELEVANT CONGRESSIONAL STAFF/OFFICIALS AND REQUEST THEIR SUPPORT**

- Many members of Congress are interested in GMA and submit recommendations to the Executive Branch.

- Pairing an NGO recommendation with an congressional recommendation can only serve to increase the likelihood that it will be given a serious review.

- Some members of Congress are more focused in certain areas of the world. Doing background research can help pinpoint the best Congressional offices to target for cooperation.
10) REPEAT CYCLE, BUILDING ON PAST ENGAGEMENT

Submit cases
Build relationships
Research new cases
PART VI: OUR COALITION
<table>
<thead>
<tr>
<th>MEMBERS</th>
<th>NGO Branch</th>
<th>Pro bono Branch</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>200+</strong> Organizations</td>
<td>Dozen-plus major US law firms</td>
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<tr>
<td></td>
<td><strong>50+</strong> Different countries</td>
<td>Multiple additional smaller and</td>
</tr>
<tr>
<td></td>
<td>represented</td>
<td>international firms, and</td>
</tr>
<tr>
<td></td>
<td><strong>30+</strong> INGOs working globally</td>
<td>solo practitioners</td>
</tr>
</tbody>
</table>
RESULTS TO DATE

Since September 2017:

- **200+** unique recommendations submitted to OFAC
- Received consistent and repeated positive responses
- More than **25%** of total GloMag sanctions issued by USG have basis in our recommendations
- Additional sanctions under 7031(c) and other programs
JOINING THE COALITION

• Informal

• Each NGOs recommendations are presented as their own

• Opportunity to learn from experience and expertise of other coalition members

• Coalition leaders assist in setting up Washington, D.C., meetings and attend to help facilitate presentations and relationship building

• To join, simply speak with HRF staff
Q&A