

# Stanford Law School

House Foreign Affairs Committee  
Tom Lantos Human Rights Commission

“The Global Magnitsky Human Rights Accountability Act: Taking Stock”

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Written Statement of Beth Van Schaack  
Stanford Law School

Co-Chair McGovern, Co-Chair Smith, distinguished members of the Tom Lantos Human Rights Commission, Senator Cardin, Congresswoman Jackson Lee, and honored guests—I appreciate the opportunity to discuss the reauthorization of the Global Magnitsky Act with this esteemed audience.

My engagement with these issues began in 2012-13 when I served in the State Department’s Office of Global Criminal Justice. During the implementation of President Obama’s atrocities prevention and response initiative, I was part of an inter-agency group endeavoring to draft an atrocities prevention Executive Order (“EO”) that would enable sanctions against those who foment, perpetrate, or enable mass violence against civilians. At the time, the then-existing thematic sanctions regimes were aimed at addressing issues such as terrorism, narcotics trafficking, and the proliferation of weapons of mass destruction, but not human rights specifically. The goal was to create a sanctions regime that would respond to the commission of human rights abuses by any actor—state and non-state, natural and legal persons—but would not be tied to any particular country designation. Designating an entire country for sanctions can be time consuming and put great strain on a bilateral relationship because it requires the President to determine that the situation constitutes a national emergency due to “an unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States.”<sup>1</sup> Furthermore, relying on such a country-by-country approach would not accurately capture transnational harm or impose a targeted and credible threat on all perpetrators. Although many of the country-specific sanctions regimes include a human rights dimension, they tend to focus more on other national security concerns.

During our deliberations, the Department of Treasury representatives were reticent about this EO initiative.<sup>2</sup> They understood the value of using sanctions to respond to serious human rights abuses, but they were concerned about having the human power necessary to support a global sanctions regime and did not want to create outsized expectations among civil society—including victim and survivor groups—that the U.S. government could not adequately meet.<sup>3</sup> There were also arguments that many warlords and human rights abusers may not participate in the global financial system, or travel internationally, so such designations would be purely symbolic in impact. In response, supporters argued that sanctions serve a range of other critical purposes including: naming, blaming, and shaming perpetrators so they cannot enjoy the privilege of anonymity; isolating and containing abusers so they cannot travel or profit off of their depredations; restricting access to

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<sup>1</sup> International Emergency Economic Powers Act (IEEPA), P.L. 95-223; 50 U.S.C. §§1701 et seq., <https://www.law.cornell.edu/uscode/text/50/1701>.

<sup>2</sup> Stephen Pomper, *Atrocity Prevention Under the Obama Administration: What We Learned and the Path Ahead* 9, 24-25 (Feb. 2018), [https://www.ushmm.org/m/pdfs/Stephen\\_Pomper\\_Report\\_02-2018.pdf](https://www.ushmm.org/m/pdfs/Stephen_Pomper_Report_02-2018.pdf).

<sup>3</sup> See Beth Van Schaack, *Good Governance Paper No. 13: Atrocities Prevention and Response*, JUST SECURITY (Oct. 29, 2020), <https://www.justsecurity.org/73141/good-governance-paper-no-13-atrocities-prevention-and-response/>.

Beth Van Schaack

Leah Kaplan Visiting Professor in Human Rights  
Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610  
Tel. 650.725.5310

resources for self-enrichment or to organize abuses; preventing tainted funds from being invested domestically; signaling that certain conduct is worthy of censure; and expressing solidarity with victims and survivors. It was also suggested that civil society and other outside actors could be better harnessed to assist in the process of creating designation packages to alleviate the burden on Treasury’s Office of Foreign Asset Control (OFAC) personnel.<sup>4</sup>

In the end, this EO never materialized during Obama’s tenure despite significant effort among its supporters. Instead, Congress enacted the groundbreaking Global Magnitsky Act in 2016 (“GloMag”), authorizing sanctions against individuals who are engaged in “gross human rights violations” against persons who “seek to expose illegal activity carried out by government officials” or “to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections” as well as in acts of “significant corruption”<sup>5</sup>—attesting to the links between these phenomena.<sup>6</sup> The architects of this legislation were quite astute in directing the President to consider the views of key members of Congress and credible information received from nongovernmental organizations that monitor human rights in deploying this new sanctions power.<sup>7</sup>

At the end of 2017, President Donald J. Trump issued E.O. 13818 to implement and expand upon this legislative framework.<sup>8</sup> The EO is broader than Global Magnitsky in a number of important respects:<sup>9</sup>

1. The Executive Order reformulated the grounds on which individuals or entities can be sanctioned. GloMag covers the commission of “gross violations of internationally recognized human rights” whereas the EO speaks of “serious human rights abuse.” While “violations” and “abuses” are often considered synonymous, to an international lawyer the former is generally employed to apply to acts by state actors who are breaching human rights obligations owed by states (under treaties the relevant state has ratified or under customary international law); by contrast, the concept of “abuses” is broader in that it can cover the conduct of non-state actors who are not acting on behalf of, or with the acquiescence of, a state.
2. In GloMag, the conduct in question is defined by a sister statute to include torture, disappearances, and other flagrant human rights abuses.<sup>10</sup> The EO’s reference to “serious human rights abuse” is potentially more capacious and would more readily cover acts of sexual violence or non-violent human rights abuses, such as persecution on the basis of race or religion. To be sure, such actions

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<sup>4</sup> When I returned to academia, I had some students work on a Draft Executive Order Blocking Property and Prohibiting Transaction to Prevent Mass Atrocities in an effort to develop ideas about what a global sanctions regime might look like. See Tres Thompson & Mari Guttman, *Draft Executive Order Blocking Property and Prohibiting Transactions to Prevent Mass Atrocities*, Stanford Law School: Law & Policy Lab (January 2016), <https://law.stanford.edu/publications/draft-executive-order-blocking-property-and-prohibiting-transactions-to-prevent-mass-atrocities/>.

<sup>5</sup> Global Magnitsky Human Rights Accountability Act, § 1263, enacted as part of the National Defense Authorization Act for Fiscal Year 2017, 22 U.S.C. § 2656 note. See Beth Van Schaack, *Global Magnitsky Act Re-Introduced*, JUST SECURITY (Jan. 29, 2015), <https://www.justsecurity.org/19494/global-magnitsky-act-re-introduced/>.

<sup>6</sup> See Brian Adeb, *Changing the Calculus to Support Peace in South Sudan*, JUST SECURITY (Feb. 13, 2021), <https://www.justsecurity.org/74596/changing-the-calculus-to-support-peace-in-south-sudan/>.

<sup>7</sup> GloMag, *supra*, § 1263(c), (j).

<sup>8</sup> E.O. 13818, Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption (Dec. 20, 2017), <https://www.humanrightsfirst.org/sites/default/files/co-13818-glomag.pdf>. See generally Rob Berschinski, *Trump Administration Notches a Serious Human Rights Win. No, really*, JUST SECURITY (Jan. 10, 2018), <https://www.justsecurity.org/50846/trump-administration-notches-human-rights-win-no-really/>.

<sup>9</sup> See Congressional Research Service, *The Global Magnitsky Human Rights Accountability Act* (Oct. 28, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF10576>.

<sup>10</sup> See The Foreign Assistance Act of 1961, 22 U.S.C. § 2304(d)(1) (defining “gross violations of internationally recognized human rights” to include torture; cruel, inhuman, or degrading treatment or punishment; prolonged detention without charges or trial; causing the disappearance of persons; and “other flagrant denial of the right to life, liberty, or the security of person”), <https://www.law.cornell.edu/uscode/text/22/2304>.

can be characterized as “torture” or “cruel treatment,” but it would be helpful to list such conduct directly to remove any ambiguity and signal U.S. opprobrium. The use of the singular “abuse” also suggests that it is not necessary to show a pattern or practice of harm to justify the imposition of sanctions, so a single assassination could trigger a designation.

3. Whereas GloMag is devoted to protecting human rights advocates and whistleblowers, the EO allows for sanctions to be imposed regardless of the nature or status of the victim class. As such, harm to ordinary civilians falls within its reach so long as the person to be sanctioned engaged in (directly or indirectly), is responsible for, or is complicit in the harm.
4. GloMag can be used to sanction individuals and their agents who are “responsible” for gross human rights violations whereas the EO also indicates that it is enough for the person sanctioned to have been a leader or official of an entity that has engaged in serious human rights abuse or corruption; to have materially assisted, sponsored, or provided other forms of support to human rights abuses; or to have participated in a conspiracy to violate the EO. As such, the latter more easily reaches enablers, including lawyers, real estate agents, and accountants (including from Western countries) whose assistance is critical to effectuate these complex financial crimes.
5. The EO is actionable against any act of “corruption” rather than “significant acts of corruption.”

To address Treasury’s concerns about its internal capacity to prepare timely and accurate designations, Human Rights First and others convened a consortium of human rights groups to help implement GloMag and the EO by preparing reports containing background research and the bio-identifiers of potential perpetrators for submission to OFAC to enable it to make meaningful, timely, and accurate designations.<sup>11</sup> This marks a new and highly effective public-private partnership in the service of international human rights.

I lead Stanford Law School’s human rights hands-on human rights program. As part of this civil society consortium, my students have researched human rights abuses and corruption in Sri Lanka, Guatemala, El Salvador, The Gambia, the Kurdish region of Turkey, the Xinjiang region in China, Iraq, Thailand, and the Philippines. We also shared our research with the Human Rights and Special Prosecutions Unit of the Department of Justice, in case some of the individuals identified might fall within U.S. criminal jurisdiction;<sup>12</sup> with the Human Rights Violators and War Crimes Center, with an eye toward potential immigration remedies;<sup>13</sup> and with the State Department, to populate the Consular Lookout and Support System (CLASS) database and ensure that the United States does not offer safe haven, or even a vacation venue, for human rights perpetrators.<sup>14</sup>

In some cases, we stayed within the confines of GloMag, researching, for example, attacks on journalists in Sri Lanka<sup>15</sup> or on protesters during the 2019 Tishreen Uprising in Iraq.<sup>16</sup> In most cases, however, the information we collected was more responsive to the EO because it involved human rights abuses

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<sup>11</sup> See Human Rights First, *Targeted Human Rights and Anti-Corruption Sanctions Resources*, <https://www.humanrightsfirst.org/topics/global-magnitsky/resources>.

<sup>12</sup> Department of Justice, Criminal Division, Human Rights and Special Prosecutions Section (HRSP), <https://www.justice.gov/criminal-hrsp>. See Beth Van Schaack, *The Parallels Between South African and U.S. Law on Universal Jurisdiction*, JUST SECURITY (Dec. 16, 2013) (canvassing U.S. international crimes legislation), <https://www.justsecurity.org/4569/unexceptional-nature-south-african-universal-jurisdiction-law/>.

<sup>13</sup> U.S. Immigration and Customs Enforcement, Human Rights Violators & War Crimes Center, <https://www.ice.gov/partnerships-centers/hrvcc>. See also Presidential Proclamation 8696 (Aug. 4, 2011), [https://travel.state.gov/content/dam/visas/Human\\_Rights\\_Proclamation\\_8697.pdf](https://travel.state.gov/content/dam/visas/Human_Rights_Proclamation_8697.pdf).

<sup>14</sup> Consular Lookout and Support System (CLASS), Privacy Impact Assessment (Sept. 2018), <https://www.state.gov/wp-content/uploads/2019/05/Consular-Lookout-and-Support-System-CLASS-PIA.pdf>; CLASS—Consular Lookout and Support System, 9 FAM 303.3 (Feb. 25, 2021), <https://fam.state.gov/fam/09fam/09fam030303.html>.

<sup>15</sup> See Elise Baker & Nushin Sarkarati, *Escalating Attacks on Journalists in Sri Lanka Demand New Tack from Human Rights Council*, JUST SECURITY (Feb 17, 2021), <https://www.justsecurity.org/74759/escalating-attacks-on-journalists-in-sri-lanka-demand-new-tack-from-human-rights-council/>.

<sup>16</sup> See Chantal Berman et al., *Patterns of Mobilization and Repression in Iraq’s Tishreen Uprising*, Project on Middle East Political Science (2020), <https://pomeps.org/patterns-of-mobilization-and-repression-in-iraqs-tishreen-uprising>.

committed against ordinary civilians and their communities—acts that many would deem deserving of sanction—and not just those seeking to expose illegal activity or to defend internationally recognized human rights. Indeed, my students were quite confused about the distinction between the two authorities and queried why one would ever use GloMag when the EO had such a broader reach.

GloMag has now inspired a number of other human rights sanctions regimes, including several of our closest allies and the European Union, which recently activated its new authority.<sup>17</sup> No longer bound by the European Union’s sanction policies, the United Kingdom recently enacted an autonomous global sanctions regime that seeks to deter, and provide accountability for, violations of the right to life; the right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment; or the right to be free from slavery or forced labor.<sup>18</sup> Likewise, Canada’s version of the Magnitsky Act allows for sanctions against foreign nationals (but not legal entities)<sup>19</sup> responsible for, or complicit in, extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against a similar victim class as GloMag.<sup>20</sup> As we have seen with the new coordinated sanctions against officials in Xinjiang province in China on behalf of the Uyghurs,<sup>21</sup> multilateralizing these national designations will magnify their stigmatizing, neutralizing, and deterrent impacts, particularly given the increasing difficulties of creating global regimes within the Security Council.<sup>22</sup> Together, these expanding global sanctions authorities are a fitting legacy for the remarkable Sergei Magnitsky, who was detained after revealing significant Russian corruption and died in custody in 2009 having been beaten and denied medical assistance.<sup>23</sup>

Given the success of the GloMag regime so far, as revealed by the testimony of my colleagues here today and ongoing research,<sup>24</sup> and its adoption by the United States’ friends and allies, a permanent reauthorization is clearly warranted. If Congress is inclined to think about ways to expand and strengthen GloMag, I’d like to offer ten concrete suggestions, some of which are addressed more to implementation, but perhaps a revised statute could nudge U.S. practice in these directions. In this regard, I heartedly support the

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<sup>17</sup> See *EU Imposes Further Sanctions over Serious Violations of Human Rights Around the World*, European Council (Mar. 22, 2021), <https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/eu-imposes-further-sanctions-over-serious-violations-of-human-rights-around-the-world/>; *EU Approves its ‘Magnitsky Act’ to Target Human Rights Abuses*, DW (Dec. 7, 2020), <https://p.dw.com/p/3mNVJ>; *The Magnitsky Act Comes to the EU: A Human Rights Sanctions Regime Proposed by the Netherlands*, Netherlands Helsinki Committee (Dec. 20, 2019), <https://www.nhc.nl/the-magnitsky-act-comes-to-the-eu-a-human-rights-sanctions-regime-proposed-by-the-netherlands/>.

<sup>18</sup> The Global Human Rights Sanctions Regulations 2020, No. 680, <https://www.legislation.gov.uk/ukxi/2020/680/made>. See generally Emil Dall, *UK Sanctions Policy: A Progress Report*, Royal United Services Institute (RUSI) (Feb. 18, 2021), <https://www.rusi.org/commentary/uk-sanctions-policy-progress-report>. The full list of U.K. designations is available here: <https://www.gov.uk/government/publications/the-uk-sanctions-list>.

<sup>19</sup> Irwin Cotler & Brandon Silver, *The Case for a New and Improved Magnitsky Law*, POLICY MAGAZINE (Sept. 12, 2020), <https://policymagazine.ca/the-case-for-a-new-and-improved-magnitsky-law/>.

<sup>20</sup> Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), S.C. 2017, c. 21 (Oct. 18, 2017), <https://laws.justice.gc.ca/eng/acts/J-2.3/> (protecting those who seek to expose illegal activity carried out by foreign public officials or to “obtain, exercise, defend or promote internationally recognized human rights and freedoms, such as freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly and association, and the right to a fair trial and democratic elections.”). The Canadian designations are available here: [https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/sanctions/victims\\_corrupt-victimes\\_corrompus.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/victims_corrupt-victimes_corrompus.aspx?lang=eng).

<sup>21</sup> Lorne Cook, *EU, UK, UK, Canada Target China Officials of Uyghur Abuses*, ABC NEWS (Mar. 22, 2021), <https://abcnews.go.com/International/wireStory/eu-slaps-sanctions-chinese-officials-uyghur-abuses-76602377>.

<sup>22</sup> See, e.g., *UK Announces First Sanctions under New Global Human Rights Regime*, Gov.UK (July 6, 2020), <https://www.gov.uk/government/news/uk-announces-first-sanctions-under-new-global-human-rights-regime>.

<sup>23</sup> Vladimir Kara-Murza, *Russia’s Victory in Congress*, Institute of Modern Russia (Dec. 6, 2012) (recounting history), <https://imrussia.org/en/russia-and-the-world/345-russias-victory-in-congress>.

<sup>24</sup> U.S. Government Accountability Office, *Economic Sanctions: Agencies Assess Impacts on Targets, and Studies Suggest Several Factors Contribute to Sanctions’ Effectiveness* (Oct. 2019), GAO-20-145, <https://www.gao.gov/assets/gao-20-145.pdf>.

amendments proposed by Senators Ben Cardin (D-MD) and Roger Wicker (R-MS) in S. 93, the Global Magnitsky Reauthorization Act.<sup>25</sup>

First: My main recommendation would be to better align GloMag with EO 13818 and consider removing the language within GloMag identifying the class of victims who have been targeted for abuse. Simply removing § 1263(a)(1)(A) and (B) would broaden the impact of GloMag, ensure the retention of a robust sanctions regime in the event that the EO is rescinded for whatever reason, and rationalize U.S. human rights sanctions policy. Although those restrictions reflected concerns about capacity and the tragic situation that inspired the original legislation, they seem increasingly arbitrary and, as such, could be removed.

Second: Congress should consider adopting the EO's language of "serious human rights abuses." To avoid this standard becoming too amorphous, the legislation could then include an exemplary list of human rights abuses drawn from 22 U.S.C. § 2304(d)(1) but also including sexual violence and persecution on the basis of race, religion, ethnicity, or other grounds. These are all human rights abuses against which the international community has formed a firm consensus.<sup>26</sup>

Third: I understand that one of the biggest challenges to taking full advantage of GloMag and the EO remains the lack of sufficient resources to undertake the considerable work it takes at both State and Treasury to prepare complete designation packages (and making potential delisting decisions), notwithstanding the outside assistance received from congressional committees and civil society. Indeed, it takes approximately 6-9 months to move from the fact-finding phase to the designation phase, a period of time in which individuals can continue to undermine human rights and good governance in their home systems.<sup>27</sup> In the absence of the necessary human power, the concomitant backlog may result in delays in moving against bad actors from low priority countries situations. This furthers an appearance of selective implementation, a perennial criticism of sanctions designations. I would encourage Congress to ensure dedicated funding for GloMag enforcement, including potentially funds that civil society organizations could be eligible for to help underwrite their own supportive efforts.

Fourth: I would encourage greater transparency around the internal deliberative process where possible, particularly with Congress and civil society entities that are feeding in information for sanctions consideration. A lack of communication may inhibit such organizations from further participation or leave survivor communities confused about the U.S. government's priorities. I recently participated in two fora with victims and survivors from Sri Lanka and Xinjiang; all were aware of—and deeply grateful for—the sanctions that have been imposed to date on perpetrators from those two situations.<sup>28</sup> At the same time, they had questions about why other individuals whom they consider equally responsible for abuses were not also included in the programs. Obviously, the executive branch must balance a range of competing equities in deciding whether to deploy sanctions. Diplomats, for example, may be working other levers of influence that might be compromised if a key interlocutor is sanctioned. All that said, it is still helpful to have greater transparency and offer feedback on why designations that might be appropriate have not moved forward.

Fifth: The U.S. government could be more express about the nature of the behavioral changes that are expected in order to justify delisting an individual or entity. Bespoke benchmarks would offer designees a concrete offramp and also enable the U.S. government to more effectively track the effectiveness and impact

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<sup>25</sup> See S.93, Global Magnitsky Human Rights Accountability Reauthorization Act, <https://www.congress.gov/bill/117th-congress/senate-bill/93/text>.

<sup>26</sup> See § 701, RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (Am. L. Inst. 1986) (listing established violations of international human rights).

<sup>27</sup> Human Rights First, *Magnitsky FAQs* at 11 (April 2019), <https://www.humanrightsfirst.org/sites/default/files/hrf-global-magnitsky-faq.pdf>.

<sup>28</sup> See Randle DeFalco, *U.S. Issues Travel Ban on Sri Lankan Military Leader*, JUST SECURITY (Feb. 20, 2020), <https://www.justsecurity.org/68720/u-s-issues-travel-ban-on-sri-lankan-military-leader/> (detailing travel sanctions on the commander of the Sri Lankan Army, Shavendra Silva); Connor O'Steen, *U.S. and Multilateral Policy Options to Address Abuses Against Uyghurs in Xinjiang*, JUST SECURITY (July 30, 2020), <https://www.justsecurity.org/71621/u-s-and-multilateral-policy-options-to-address-abuses-against-uyghurs-in-xinjiang/>.

of its sanctions designations. GloMag, for example, allows the President to terminate sanctions if the designee has significantly changed their behavior, has been prosecuted for the offense or has otherwise “paid an appropriate consequence,” or is committed to eschewing sanctionable behavior going forward.<sup>29</sup> As such, the President prioritizes actions “that are expected to produce a tangible and significant impact on the sanctioned person and their affiliates, to prompt changes in behavior or disrupt the activities of malign actors.”<sup>30</sup> Designees should have an understanding of what would allow for delisting if they are inclined to remediate their behavior.

Sixth: Congress should continue to encourage outreach to other nations to further multilateralize targeted human rights and anti-corruption sanctions, as has been called for by a consortium of human rights organizations concerned with the genocidal abuses in Xinjiang.<sup>31</sup> This will expand their reach, strengthen their impact, and heighten their deterrent effect. States should also formalize and routinize information sharing around visa restrictions and asset freezes. Such collaboration across borders will make it much harder to evade sanctions.

Seventh: Given that sanctions are at their most effective when they are rigorously implemented, the United States should look for ways to build the capacity around the globe to enforce unilateral and multilateral sanctions, particularly in countries with weak regulatory environments, as has been argued elsewhere by The Sentry.<sup>32</sup>

Eighth: Particularly with respect to legal entities that have been sanctioned, the United States can better coordinate its sanctions designations with its anti-trafficking authorities. This would involve coordinating sanctions with trade restrictions, export controls, withhold release orders (WROs), and supply chain curtailment if such entities are also implicated in forced labor or human trafficking.<sup>33</sup> The re-appointment of a sanctions coordinator within the State Department will be able to assist in this regard.<sup>34</sup>

Ninth: Although we think of sanctions as a behavioral modification tool, the work that goes into a sanctions designation could also be repurposed to support accountability efforts in foreign courts, U.S. courts, or international tribunals. To be sure, there will inevitably be certain individuals who may be out of reach of any national or international criminal jurisdiction, so a sanctions regime is the most robust response available. For others, however, there may be options to invoke criminal sanctions. As such, data generated through these sanctions processes should be actively shared across law enforcement and with international accountability mechanisms, as relevant. These tools are not mutually exclusive, and there may be sanctioned individuals who could also be prosecuted criminally under international crimes statutes.

Tenth: I would recommend consideration of a framework to transfer and repurpose seized assets from perpetrators to victims—in appropriate circumstances and potentially with judicial oversight and due process protections—as is being considered in Canada.<sup>35</sup> This could involve greater coordination with the Department

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<sup>29</sup> GloMag, *supra*, § 1263(g).

<sup>30</sup> Global Magnitsky Human Rights Accountability Act Annual Report, 84 FR 72424, 72425 (Dec. 31, 2019), <https://www.federalregister.gov/documents/2019/12/31/2019-28231/global-magnitsky-human-rights-accountability-act-annual-report>.

<sup>31</sup> *Joint Statement on Magnitsky Sanctions Against China for Egregious Human Rights Abuses in Xinjiang* (Aug. 18, 2020), <https://pen.org/joint-statement-sanctions-china-human-rights-abuses-xinjiang/>.

<sup>32</sup> Megha Swamy, *Shoring up Sanctions Enforcement in Sub-Saharan Africa: A North Korea Case Study*, JUST SECURITY (Sept. 1, 2020), <https://www.justsecurity.org/72198/shoring-up-sanctions-enforcement-in-sub-saharan-africa-a-north-korea-case-study/>.

<sup>33</sup> O’Steen, *supra*.

<sup>34</sup> Daniel Fried & Edward Fishman, *The Rebirth of the State Department’s Office of Sanctions Coordination: Guidelines for Success* (Feb. 12, 2021), <https://www.atlanticcouncil.org/blogs/new-atlanticist/the-rebirth-of-the-state-departments-office-of-sanctions-coordination-guidelines-for-success/>.

<sup>35</sup> Cotler & Silver, *supra*. See *Using Frozen Assets to Assist the Forcibly Displaced: A Policy Proposal for Canada*, World Refugee Council Paper No. 2 (2018), [https://www.cigionline.org/sites/default/files/documents/WRC%20Discussion%20Paper%20no.2\\_0.pdf](https://www.cigionline.org/sites/default/files/documents/WRC%20Discussion%20Paper%20no.2_0.pdf); Ratna Omidvar, *To Make Corrupt Leaders Pay, We Should Seize and Repurpose Frozen Assets*, THE GLOBE & MAIL (Dec. 2, 2019), <http://www.ratnaomidvar.ca/to-make-corrupt-leaders-pay-we-should-seize-and-repurpose-frozen-assets/>.

of Justice, which can initiate criminal and civil forfeiture of assets owned by, or sufficiently connected to, sanctioned individuals and entities within the United States. This coordination was exemplified with respect to Yahya Jammeh, the former President of The Gambia. Jammeh was sanctioned in December 2017; in July 2020, the U.S. attorney's office filed a civil *in rem* action against his multimillion-dollar mansion in Senator Cardin's state.<sup>36</sup>

I make these latter two recommendations cognizant of the fact that sanctions are, first and foremost, meant to be a behavior modification tool and not necessarily an accountability tool, and so a proposal to seize and distribute assets is hard to reconcile with the primary purpose of sanctions. That said, and as discussed above, sanctions are a flexible tool that serve a range of purposes. In addition to imposing significant reputational harm and logistical constraints on those publicly sanctioned, sanctions can also lead to additional accountability measures.<sup>37</sup> There will inevitably be certain individuals who will never change their behavior, or who have committed grave human rights abuses that demand punishment. For example, President Jammeh is no longer in power in The Gambia and has, so far, evaded prosecution. It is hard to imagine a set of circumstances in which it would be appropriate to delist him given his long history of rights abuses unless he is extradited to a jurisdiction that is willing and able to prosecute him. For cases such as this one, we should think creatively about how the assets of sanctioned individuals might, when appropriate, contribute to the rehabilitation of victims so these resources are not simply rendered inert and how we can hold perpetrators accountable for their prior crimes if they fall within the United States' jurisdictional reach. In this regard, I am hopeful that Congress will give serious consideration to a crimes against humanity statute to plug some of the gaps in our own penal code,<sup>38</sup> about which I have earlier testified.<sup>39</sup>

In closing, I'd like to echo the testimony of my co-panelists that human rights and anti-corruption sanctions must be part of a broader strategy of statecraft to protect and promote human rights and curtail corruption around the globe. This should involve embedding each set of sanctions within a larger strategy to address human rights abuses, including through civil and criminal accountability and the rehabilitation of victims. This will ensure that all the pistons within the United States human rights foreign policy machinery are working together and in sync with those of our allies and partners. Thanks for your consideration of these ideas; I look forward to our discussion!

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<sup>36</sup> See Complaint, *U.S. v. 9908 Bentcross Dr., Potomac, Md.*, (D. Md. 2020) (No. 8:20-cv-02071), <https://www.justice.gov/opa/press-release/file/1294611/download>; *Department of Justice Seeks Recovery of Approximately \$3.5 Million in Corruption Proceeds Linked to Ex-President of The Gambia*, Department of Justice, Office of Public Affairs (July 17, 2020), <https://www.justice.gov/opa/pr/department-justice-seeks-recovery-approximately-35-million-corruption-proceeds-linked-ex>.

<sup>37</sup> Amal Clooney, *Report on the Use of Targeted Sanctions to Protect Journalists*, High Level Panel of Legal Experts on Media Freedom 15-18 (Feb. 13, 2020).

<sup>38</sup> See Beth Van Schaack, *Crimes Against Humanity: Repairing Title 18's Blind Spots*, in ARCS OF GLOBAL JUSTICE 341 (Margaret M. DeGuzman & Diane Marie Amann eds., (2018)), <https://www.justsecurity.org/wp-content/uploads/2019/06/Arcs-of-Global-Justice-The-Need-for-a-US-CAH-Statute.pdf>.

<sup>39</sup> Beth Van Schaack, *Tom Lantos Commission: Enhancing U.S. Ability to Pursue Accountability for Atrocities*, JUST SECURITY (June 17, 2019), <https://www.justsecurity.org/64579/tom-lantos-commission-enhancing-u-s-ability-to-pursue-accountability-for-atrocities/>.