



THE SENTRY

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House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing on

The Global Magnitsky Human Rights Accountability Act: Taking Stock

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Co-Chair McGovern, Co-Chair Smith, distinguished members of the Tom Lantos Human Rights Commission, Senator Cardin, and WebEx viewers, it is an honor and privilege to testify today in support of reauthorization of the Global Magnitsky Human Rights Accountability Act, together with my esteemed co-panelists.

In his day, the late great Nigerian musician and Afrobeat innovator Fela Kuti was, among many other things, an anti-corruption and human rights activist. Not unlike Sergei Magnitsky, whose legacy of fighting back against the theft of state resources we continue to honor today, Fela fought back against corruption and suffered terribly at the hands of the state in the 1970s and 1980s as a result. And now, decades after Fela decried [“International Thief Thiefs.”](#) Fela’s son Femi is singing on his new album that [“You Can’t Fight Corruption With Corruption.”](#)

Too often in the past, the United States and its allies did fight corruption in often contradictory and counterproductive ways, leaving the problems to fester and metastasize. So, if not with a version of corruption itself, how do you best fight corruption and human rights abuse? In recent years, I believe the international community in general and the United States in particular have turned the corner and are now taking more concerted and coordinated steps to put focused and tangible measures in place to do just that. Global Magnitsky (“GloMag”) is a key example and represents one of the most important tools—and to be clear, GloMag is a tool, not a policy or strategy in itself—in the global fight against corruption and human rights abuse, and I speak today strongly in favor of its reauthorization by Congress. As I will lay out in my testimony today, GloMag is at the center of two foreign policy success stories, and it is the network-focused sanctions under GloMag used in conjunction with other tools deployed by Treasury, State, and beyond that are key to how this progress has been made.

The progress lies not in the fact that hundreds of targets have faced consequences for their nefarious deeds. Many sanctions programs have, at times, resulted in productive designations or related actions but were, as a whole, proven to be less than fully successful. Having worked on sanctions for more than 15 years, including in OFAC Chief Counsel’s office, my experience is that sanctions hearings like this tend to be about why our actions are failing. But, in this case, our hearing has a different tenor, and today my fellow witnesses and I speak in favor of GloMag reauthorization because the program itself has achieved more than most of us who advocated strongly for its adoption could have expected, even with improvements yet to be made.

At The Sentry, our investigations into the intersection of atrocities and corruption in East and Central Africa have consistently demonstrated that sanctions programs such as GloMag can play a key role in shutting those benefiting from violence out of the financial system and creating new leverage for peace, human rights, and good governance. Yet, as we said in 2019 in [a study on sanctions effectiveness in Africa](#), too often these programs fail to deliver because they do not fit within a clearly communicated policy and strategy, do not focus on networks connected to the international financial system as targets, and are not fully enforced or consistently broadened.

GloMag has, in many cases, been different because it has been a contrast with these past failures. We see frequent use of designations not on one or two individuals, but on networks,

including companies with touchpoints to the global economy. We see communication of how these designations fit into a broader strategy. And we see the multilateralization and indeed the unique “multi-stakeholderization” of the program. I will briefly review two examples from our focus region.

Two Key Cases: South Sudan and the Democratic Republic of Congo

In South Sudan, GloMag designations have been the centerpiece of a revitalized use of pressures to address the conflict in recent years. By late 2017, the conflict in South Sudan had reached devastating levels. While many in the international community understood and nodded in statements to the fact that corruption was at the center of the ongoing commission of human rights abuses, little had actually been done about it.

Starting in September 2017, that began to change. First with use of the South Sudan sanctions program and [an anti-money laundering Advisory from the Financial Crimes Enforcement Network \(FinCEN\)](#), then with GloMag designations against financier [Benjamin Bol Mel and some of his companies](#), and later with [action by the Commerce Department](#) and a visit by [then-Treasury Under Secretary Sigal Mandelker to the region to meet with governments and banks about South Sudanese corruption](#), the U.S. government directed a range of pressures against key actors and sectors and made clear in its related press statements that the corruption at the heart of the conflict must end. In addition to Bol Mel, GloMag designations against a [businessman known as Al-Cardinal and his companies](#), against [a businessman in the oil sector and his companies](#), against [a group of officials responsible for the kidnapping and murder of two South Sudanese activists](#), and against [the First Vice President](#) all contributed to a process that resulted in the revival of a peace process and formation of a unity government. A subsequent [AML advisory by the UK](#) provided important support for these measures.

The conflict in South Sudan is far from resolved. Indeed, more concerted diplomacy and policy direction is needed to build on the leverage provided by these measures. But it cannot be denied that the ability to target corruption and human rights abuse provided by GloMag and used against actors such as Bol Mel and Al-Cardinal, as well as their business networks, and those responsible for the murder of activists—none of whom could have been sanctioned otherwise—proved critical to the development of a strategy that has helped to redirect the trajectory. Despite none of the root causes of conflict having yet been addressed, full scale war has not resumed, and part of that is a reflection of the fact that, for the first time, thanks in large part to GloMag, the country’s leaders are finally experiencing consequences for their destructive actions.

In the Democratic Republic of the Congo (DRC), by 2016, there was significant fear that then-President Joseph Kabila would follow the example of many neighbors by changing the constitution to run for a third term (and maybe more). Though Kabila’s reign had been marked by massive corruption and pervasive conflict and human rights abuses, little action had been taken against Kabila and his inner circle, making the cost of such an action by Kabila seem minimal.

Beginning in 2016 and continuing through 2017, the U.S. government, the EU, and others began to exert pressure against Kabila. Using the DRC sanctions program, visa bans, and direct engagement by senior U.S. officials, the message started to be delivered. Then in December 2017, the strongest action to date was taken when [longtime Kabila financier and enabler Dan Gertler, as well as a business partner and dozens of companies in his network](#), were sanctioned under GloMag. This step, built upon the investigative work of many civil society organizations and media outlets, resounded across the DRC and made clear to Kabila where the pressure would focus should he run again. In June 2018, [GloMag was used again against Gertler companies](#), and he featured in [a FinCEN Advisory about corrupt enablers of human rights abusers](#).

In the end, Kabila did not change the constitution, did not run in December 2018, and his handpicked successor was trounced in the elections. Though it has a long way to go, the government of President Félix Tshisekedi has taken some initial anti-corruption steps, and the State Department recently awarded an important capacity-building grant to support the country's anti-money laundering (AML) agency and system. Recently, when Gertler was able to [secure an unprecedented specific license from OFAC](#) to get out from under the impact of sanctions, there was fear in the DRC and around the world that these gains would be lost. Although the license undoubtedly caused damage, its [recent revocation by the Biden Administration](#)—following strong bipartisan pressure [from Congress](#) and concerted effort from [a range of civil society organizations](#)—was an important correction, though more follow-up is needed to close loopholes that Gertler has used to evade some of the sanctions. And indeed Gertler's all-out push against the sanctions helped to show us all just how effective, as well as how precarious, they can be.

Key Takeaways and Successes from GloMag

In both of these cases, we can glean a few key reasons why the GloMag actions have been so effective:

- For the most part, GloMag sanctions in South Sudan and the DRC targeted networks, rather than one or two individuals. Ensuring that a key target's companies and proxies are also sanctioned not only broadens the financial impact on a target, it enables banks and others to conduct a broader level of due diligence when the targets inevitably try to evade sanctions.
- GloMag sanctions were just one tool of many used to address each situation. Country-based sanctions programs, visa bans, AML advisories, Commerce Department actions, AML/anti-corruption capacity building programs, and both diplomatic and private sector engagement by senior officials have all played key roles.
- There have been multiple follow-up designations. Though we would like to see additional follow-up, the fact that the Gertler network was sanctioned twice and that multiple South Sudanese networks have been targeted over time demonstrates that the U.S. government—and thus the direct targets, the regimes themselves, and the private sector implementing the sanctions—do not see these measures as a one-off.

- The anti-corruption messaging from the U.S. government has been clear when GloMag designations have been announced, and this has enabled multilateral support and, in some cases, mirroring of the actions. As such, it has been clear how these designations supported U.S government policies related to the DRC and South Sudan, as well as broader issues.

These cases are just two of dozens within the GloMag program, and many others have followed these patterns. In addition to the takeaways mentioned above, there are several other important elements to what GloMag has represented.

- **Supporting whistleblowers and human rights defenders.** Although we agree with other witnesses that the language in the statute should be broadened to enable designation for human rights abuses beyond targeting of whistleblowers and human rights defenders, it must be noted how important this focus has been. The recent [death sentence handed down in the DRC to whistleblowers providing critical information about Gertler and his companies](#) only reinforces how necessary this focus is.
- **The multi-stakeholderizing of sanctions.** The coalition led by Human Rights First and Freedom House is an unprecedented innovation, and both organizations deserve commendation for their leadership, as do both the Treasury and State Departments, which have prioritized engagement. Especially for OFAC, which I say as a proud Treasury alum, public engagement is not always a strong suit, and so participating in calls between OFAC officials and dozens of civil society activists has been inspiring. We have been grateful for the response and attention from Treasury and State officials when we have submitted dossiers to the agencies and appreciative that much of our work has led to action. This level of engagement has also allowed for partnership opportunities with law firms, like Paul Hastings, Perkins Coie, and many others, as well as other private sector actors who wish to meaningfully contribute to responsible business practices.
- **Clearer understanding of sanctions.** This multi-stakeholderization and the multilateralization of GloMag has meant that civil society and populations around the world are beginning to better understand and appreciate the potential importance of sanctions, which so often remain subject to myths and misunderstanding. It is our hope that the successful elements of GloMag referenced above can be understood by the public and thus form the basis for improved advocacy in the future.
- **Enabling other tools to counter corruption and human rights abuse.** The recent adoption of beneficial ownership legislation by Congress, the move to implement human rights due diligence in the European Union and expected broader corporate disclosure requirements to the SEC, the evolution of the use of FinCEN advisories, and attention to corporate actors by the Justice Department are just a few of the steps taken in recent years that are strengthened by GloMag. Although sanctions should not become a form of *de facto* accountability, their use to target networks of bad actors enables more

effective due diligence and focus on the development of responsible business practices. That is, by targeting bad actors and showing that they will face consequences, responsible actors are incentivized to implement best practices, from the UN Guiding Principles on Business and Human Rights to various OECD guidelines to systems being developed by sector-specific organizations. The existence of the GloMag program also means that the tool is there, regardless of whether a more specific executive order includes corruption or human rights abuse as a designation prong.

Recommendations for Reauthorization

Finally, there do remain improvements to be made to the GloMag program and effort, and we hope that this hearing and broader reauthorization process, as well as ongoing Congressional oversight, can bring those to bear:

- **Following up consistently, including with delistings.** Although, as mentioned above, there have been important examples of one set of designations being followed by another, that level of focus can still be improved to make it comparable to other priority sanctions programs. It is also worth noting that attention must be given by OFAC to delistings and, when they occur, to communicating about the reasons for them. Sanctions designations must not be fixed but rather evolve with reality on the ground, whether that is through an actor doubling down and trying to evade sanctions, like Dan Gertler, or by changing their behavior.
- **Initiating enforcement cases.** While there is little question that the hundreds of designations have been critical to GloMag's success, we have seen little to no activity from OFAC's Enforcement Division against U.S. persons found to be violating the sanctions by continuing to do business with targets. OFAC has substantial penalty authority, and it must be directed against financial institutions and others that are not devoting sufficient attention and resources to compliance.
- **Adopting dedicated funding.** The Sentry has worked with Freedom House, Human Rights First, and others to support dedicated funding streams for GloMag implementation at OFAC. We are grateful to Congress for providing these funds and strongly recommend increasing this funding stream as we see the result of dedicated resources.
- **Advancing the broader anti-corruption, human rights, and responsible business agendas.** As mentioned above and as consistently reinforced by my fellow witnesses, sanctions programs like GloMag function best when they are used as tools, not substitutes for policy or true accountability. Congress should ensure that the executive branch is not only ensuring that GloMag designations fit into well-designed policy strategies with respect to a particular country, but also more broadly within U.S. policy to address corruption, human rights, and responsible business. Congress should ensure

that the Biden administration is prioritizing these issues, announcing overarching policy and strategies on each, and incorporating GloMag use as a key component.

Fela's son Femi has another song on his recent album called ["As We Struggle Everyday,"](#) in which he sings that "As we struggle every day/We try to find a better way." The success of GloMag and the need for its reauthorization is a testament to the struggle and hard work of thousands of civil society activists around the world, working closely and carefully with Congressional leaders and staff, as well as with Treasury and State and now other governments as well. We have a long way to go still, but reauthorizing GloMag will be one clear step Congress can take to help all of us find a better way.