

## INQUIRY PUBLIC HEARINGS: QUESTIONS

This research analyses the submissions and witness testimony to the Australian Government's 'Inquiry into whether Australia should examine the use of targeted sanctions to address human rights abuses.'

Here I examine questions that the Committee Members pose during the Inquiry's public hearings. I have referenced information of particular interest.

Melissa Harrison

Extracted from main report, 'Sanctioned Targets: The Australian Magnitsky Inquiry' 18/06/2020

### Committee Members references to Browder and the Magnitsky narrative

There are no specific references to or questions about the Magnitsky story and Mr Browder's role in it. The Committee concentrates on implications of the legislation, effectively ignoring the origin story apart from brief acknowledgements of the 'efforts/time/advocacy' of Browder and Kara-Murza in promoting MA.

- **Kara-Murza's** intro speech briefly references Magnitsky story, saying US Senators John McCain and Benjamin Cardin introduced MA legislation, "in honour of a Russian lawyer who was arrested and killed in prison after uncovering a corrupt scheme involving state officials." The majority of Kara-Murza's introduction refers to the corruption of Russia officials & Putin, election fraud, authoritarianism in Russia. Kara-Murza says he was poisoned twice in Russia for his role promoting MA. There is no challenge from Committee Members on this information.
- **Abetz to Kara-Murza:** "I salute you for your courage and tenacity in fighting for democracy and the values that I think we around this table share with you.... Thank you. All strength to your arm."
- **Kitching to Kara-Murza:** "Your bravery in what you have been through is, I think, an example for all of us, so thank you."
- **Professor Cotler** references a 2010 meeting with Browder, who shared the 'whole heroic story' of Sergei Magnitsky with him, which Browder will likely share with the Committee. Cotler says he worked with Boris Nemstov & Kara-Murza to push MA. Cotler introduced a private MA Member's Bill in 2010. References two poisonings of Kara-Murza.
- **Kitching to Browder:** "Thank you for coming to give evidence, and thank you for all your support over the past year, really."

### Committee Members and critique of Browder's Magnitsky Narrative.

There appears to be no critique or questioning of Browder's story, or requests for further evidence to ascertain the truth of it. Committee Members essentially ignore the background story, with the exceptions listed above, and focus on the implications of the legislation.

This is of interest, particularly regarding the fact that Browder's testimony includes a detailed rendition of the Magnitsky plotline which details that are specifically addressed in the submissions of Lucy Komisar & the Citizen's Party as false:

- Browder: "I went out and hired the smartest young lawyer I knew in Russia, a man named Sergei Magnitsky... Sergei Magnitsky was murdered as my proxy. He was murdered because he was my lawyer."
- Browder makes number of claims including: eight riot guards with rubber batons beat Magnitsky until he died, he was tortured for testimony, left lights on for 24 hours per day for sleep deprivation.
- Browder talks at length about the 'scam' that he and Sergei uncovered - that in addition to 'rogue operatives' attempting to steal all of their money (which he says was already safely overseas), there was a complicated tax fraud using their companies.
- Browder says that "the people who choked Sergei Magnitsky" did it for money, "for \$230 million". Browder says the people that stole the \$230 million keep it in the West.

## Committee Members reference to 'adversaries' ie Russia, China as target of Magnitsky legislation

The following questions posed by Committee Members are **paraphrased** for brevity. For an overview of all questions posed by individual Committee Members, please refer to: 'MA Public Hearings - Summary of Questions'.

### China

#### Mr Andrews

- US/Canada has MA legislation, what impact has this had on human rights abuse/corruption in China?
- Asks if organ harvesting an ongoing practice, asks for more than anecdotal evidence - interested in additional reports (other than China tribunal report).
- Detailed questioning about witness' claim that he had received intimidating phone calls from Chinese authorities demanding his passport details- these were from his brother, who said there were Chinese authorities at his house. Asks if witness expected to receive more phone calls after giving evidence to committee.
- Detailed questions about 'Chinese regime', on people in Hong Kong who were arrested, were they bailed/ charged, has China reinterpreted the agreement between UK/CCP of non-interference in Hong Kong 'to suit themselves'? Has this been 'unilateral action' by CCP? How extensive are activities of [China] United Front in Australia, does that involve Australian business people and relationships with Chinese business/government? Is there a potential flow-on effect from MA in relation to activities in Australia?

#### Senator Fawcett

- Could geopolitical tensions between US/China & China's support for Cambodian regime mean MA worsens human rights in Cambodia? Or can these pressures potentially work to bring about change in Cambodia?
- Are there individuals that can be identified as human rights abusers in China (Xinjiang) that would seek travel/ investments from proceeds? Or are they just doing their job, and, if so, would these sanctions even have any effect on individuals?

#### Mr Hayes

- Detailed questions about China: What has driven increased human rights abuses in Cambodia. Is China's protection of Cambodia a factor? Australia used to be largest aid donor to Cambodia, but now China is biggest, correct?
- Who would be possible MA target in China? (re Uyghurs)

#### Mr Hill

- Do you have specific understanding of individuals/entities behind threats on Uighurs in Australia/relatives in China, and ability to gather evidence to support call for sanctions?
- On MA sanctions imposed because of media/internet freedom. Mr Hill says MA in this regard challenging as different societal values and norms. "You'd effectively be saying the whole of the Chinese government is guilty, but it's coming from a very different value set there."

#### Mr Kahill

- What was the actual effect back in China with the actual Uighur population, with respect to human rights— either abuses increasing or decreasing?
- On harassment of HK students by CCP affiliates: Have you got any information about Hong Kong international students that went back before COVID-19 shut the borders, have they been impacted or caught up? Hong Kong students who have gone back to HK - have they or their families been harassed? For HK student still in Australia- has that kind of interference of harassment has continued?

#### Senator Kitching

- Are there any Hong Kong Australian business people who are benefited by links to CCP and officials? Is there an understanding that, for their business to be supported, they must remain silent about Hong Kong situation? Do these individuals actually contribute to suppression of democracy activists in Hong Kong? Could these individuals be captured by MA laws in Australia?
- Is the example of Australian companies sending PPE back to China an example of this, "when that is clearly against Australia's interest and actually forms part of a Chinese Communist Party propaganda campaign?"

## Russia

### Senator Kitching

- Dominic Raab was planning on freezing assets of Russian citizens in February, but coronavirus interfered, will that list be released?

### Ms Vamvakinou

- (To Kara-Murza) "...you've made a lot references to deviance and misuse in Russia. Would you be concerned that such deviance and human rights abuses also exist in lots of other countries, some might even be democratic countries as we perceive them? Would these people or these interests feel threatened significantly enough to prevent the possibilities of a broader adoption of a Magnitsky act globally?"

## Committee Members' reference to US allies like Egypt, Saudi Arabia

- **Vamvakinou:** (See above.) References possibility of human rights abuses in 'democratic countries'. Kara-Murza's reply: "...if you look at the list of people designated for sanctions under the US Magnitsky law it actually includes citizens of democracies. There is a citizen of Belgium and there is a citizen of Israel."
- **Hill:** Referencing Clooney's report, which recommends internet/media shutdowns as sanctions criteria: "You name one of the world's most populous countries as the country that has imposed the most shutdowns. Then you give a couple of potentially challenging examples for Western governments of media shutdowns. I don't think there'd be any difficulty with calling out Al Jazeera's shutdown in Sudan, but then there are the shutdowns of independent news outlets in Turkey and—very concerningly for the EU, with Hungary being an EU member—the government takeover of Hungary's most-read daily newspaper. These are potentially quite challenging circumstances for governments."
- **Vamvakinou to Human Rights Watch:** What consequences have there been for those individuals, including for the Khashoggi killing?

## Committee Members' reference to intervening in other countries' internal affairs

- **Fawcett:** Notes submission's reference to ASEAN, "with their approach of non-interference in other states.". Fawcett: "How do you think we would engage with ASEAN and the PIF as part of a process of us moving towards an improved autonomous sanctions regime?"
- **Andrews:** Interestingly references 'interference' from China in Hong Kong. Andrews asks if China has reinterpreted the agreement between UK/CCP of non-interference in Hong Kong 'to suit themselves'? Andrews does not connect this back to MA legislation interference with other countries internal affairs.
- **Hill:** Referencing Clooney's report which recommends sanctions criteria include media/internet shutdowns: "... if we think about a set of norms that we have as Western democracies, where it's a given that media freedom is a public good and it's something we fight for, imposing that on, say, a country like China, where internet freedom is not a thing and media freedom is not a thing, that's a really challenging kind of recommendation or frontier for Magnitsky-style legislation to take. You'd effectively be saying the whole of the Chinese government is guilty, but it's coming from a very different value set there."

## Evidence that Committee Members have read all submissions, including unpublished submissions

- There is no reference from Committee Members about potential gaps in Browder's story or indication that they have read unpublished submissions. There is no reference #100 Citizen's Party submission, which contains lengthy information and evidence regarding alleged fraudulence of William Browder's claims.

- There is one reference from witness **Mr Geoffrey Robertson** that he has read all submissions, or has been made aware of their content: “This leads me to the big question: what sort of Magnitsky act? There are suggestions in your submissions. **All but two are in favour** of some Magnitsky principles...” (Emphasis added)

### Committee Member reference to Australian discrimination against Aboriginal people

There is no reference to discrimination against Indigenous Australians.

**Hayes:** References Australia’s ‘strong role in settling refugees’

“Thank you for observing that Australia is a very, very successful multicultural society. In your submission you say: The element of social cohesion and harmony has been one of the key aspects of Australia’s successful multiculturalism and immigration policy.”

“You go on to talk about Australia’s very, very strong role in settling refugees. In fact, we are third behind Canada and the USA. It strikes me that if we’re settling refugees we’re offering protection to people who are fleeing violence and persecution. You seem to be able to tie up in your submission that if Australia is a country that is so committed to helping others, to the point of having a high refugee settlement record, it also has an obligation to offer whatever it can to make those environments or jurisdictions where those people come from safer with changes in positive behaviour from their respective administrations. You seem to be able to tie up that as a good reason why Australia should be doing everything possible to effect good behaviour when it comes to issues of corruption or human rights elsewhere. It is synonymous with our position of our protecting victims of violence and oppression.”

There is no acknowledgement of recent UN rulings declaring Australia had breached multiple human rights laws in its arbitrary detention of refugees.<sup>1</sup>

### Committee Members questions about human rights impacts of existing Magnitsky Act legislation

A number of Committee questions concerned MA effectiveness. Some Committee Members directly asked for evidence to show that MA sanctions had worked, or that they had had a deterrent effect.

I note that it appears all examples given of MA effectiveness were anecdotal. On occasion, witnesses were not able to provide additional research when requested (ie on Andrews questioning Osman, hoping for additional reports on Uyghur treatment other than one China tribunal report.)

One witness reports their information regarding ongoing organ harvesting been taken from social media.

Committee Members Hayes makes a number of comments regarding the ‘symbolism’ of MA, questioning whether the effect is largely symbolic. Abetz asks if the symbolism has any deterrent effect.

Hayes comments that, as financial sanctions are based through US financial system, would this indicate any sanctions without US support would be largely symbolic only?

Some questions from Committee Members are **paraphrased** for brevity.

### Mr Khalil

**Khalil:** (Referring to 2018 US sanctions against Chinese officials). “What was the effect of that public naming and shaming? What was the actual effect back in China with the actual Uighur population, with respect to human rights—either abuses increasing or decreasing?”

**Mr Osman, Uyghur Association of Victoria** in reply: “Since the Magnitsky act of the USA targeted and sanctioned a few officials—and even though, at the same time, the Australian government and the United Nations are speaking out on the atrocities happening in Uighur homeland—that has made a huge impact. As a result, the Chinese Communist Party officials held a press conference saying a few times that there are no more people in the education camps; they’re all released. As a result, detainees are released on a weekly basis—at

<sup>1</sup> The Guardian, Davidson & Vasefi (2018): ‘UN body says Australia breached human rights laws and needs to review Migration Act’

least once a week, and that sort of stuff. As a result it's a bit improved. The situation got a bit better than previously.”

I note Mr Osman’s statement contradicts the US State Dept, who said they were ‘unable to verify’ the Chinese government’s claim of mass release of alleged detainees.<sup>2</sup> Mainstream media widely expressed doubt of the Chinese government’s claims of release.

It is difficult to credit that Mr Osman would have believed these claims, given his obvious disdain of the Chinese government. This also contradicts the Mr Osman’s opening statement, which says Uighur people are ‘facing mass imprisonment’, with three million in concentration camps and that “when utilitarian regimes like China get richer, its human rights abuse rises beyond imagination.” Mr Osman’s opening statement does not reference the effectiveness of MA sanctions or any subsequent improvement.

### Andrews

**Andrews:** Can we measure the deterrent impact of this type of legislation?

**Clooney:** “Well, that's very difficult. There hasn't really been a definitive study, and this is obviously something that's very difficult to prove. What would have happened if sanctions hadn't been in place?... We quote in the report an opposition figure from Belarus who says he is living proof of the effectiveness of sanctions, because he would never have gotten out of prison if sanctions hadn't been imposed against Belarus. There are also some other examples where you can draw that conclusion. For instance, the US issued sanctions against an American pastor in Turkey. You may remember Pastor Brunson. Those sanctions were imposed at a very high level against Turkish officials in August 2018, and Pastor Brunson was released in October 2018.”

[Note: Mintpress reported that US citizen Brunson was under house arrest on charges of acting with groups considered ‘terrorist’ by the Turkish government. The US Ambassador to Turkey claimed the accusations were groundless, yet did not deny Brunson had contact with the groups. There were suspicions from Gulf Arab governments that the US & allies “were conspiring to affect regime change in Turkey” and were supporting one of the terrorist groups.<sup>3</sup>]

Clooney says her report includes a number of sanctions regimes that “appear to be effective”, some of which were based on “interviews with former US government officials who worked under the Obama administration when the global Magnitsky act was first introduced. They mentioned a number of countries where they think the sanctions that were imposed under global Magnitsky worked very well.”

These included:

- Democratic Republic of Congo, sanctions imposed on people linked to Joseph Kabila.
- [US officials] mentioned Uganda, Cote d'Ivoire, Burundi, Myanmar.
- Clooney’s report includes submissions by the UK which refer to Iran and Russia as examples of sanctions programs under the UK’s country based sanction regimes [ie that are not Magnitsky] “but that have had a positive effect”.

**Clooney:** “I do think examples—it may be that they are considered anecdotal for the time being, but remember that these sanctions regimes are quite new and that deterrents specifically, I think, are particularly difficult to prove. But I can certainly say that my own experience has been, as a human rights lawyer, that you don't have that many things to threaten abusive governments with. Even thinking through situations where there is the ability to take a case, for example, to a UN committee, these types of international mechanisms don't have robust enforcement machinery behind them. So, in a way, you also need to be able to highlight to governments that if we win the case at the UN this may lead to the imposition of sanctions.”

---

<sup>2</sup> <https://www.nytimes.com/2019/07/30/world/asia/china-xinjiang.html>

<sup>3</sup> Mintpress, Elliot Gabriel (2018): ‘US-Turkey Crisis: Unrealistic Ambitions and Multipolar Chaos Underlie the Latest Mideast Drama’

I note that, as Ms Clooney says, there has not been a 'definitive study' of Magnitsky sanctions. There has, however, been a significant amount of research conducted on targeted sanctions or 'smart' sanctions - imposed against individuals and entities.

There have been numerous significant challenges and issues identified with the imposition of targeted sanctions, resulting in legal, political and human rights consequences.<sup>4, 5, 6, 7, 8, 9, 10, 11</sup>

**Andrews:** Has MA had impact on human rights in Cambodia?

**Osman:** "I think it has had a big impact... As we know, all the Chinese officials have some sort of business interest overseas, especially in Western democratic countries, so, when we target sections in line with the USA, Britain and all the Five Eyes countries, those human rights abusers are going to close one by one. It's going to be very effective in my opinion."

**Andrews:** Asks if organ harvesting in China an ongoing practise, hoping for additional documentation other than the 2019 China Tribunal report.

**Osman:** "On social media we see people from Saudi Arabia and countries like that going to Beijing and waiting for halal organ transplants. From that time, we can see that this is something that the Chinese government's regime has been doing for a while." Osman does not have any additional information other than direct communication with Uighurs in China. There are no subsequent reports to the China tribunal report.

**Andrews:** What evidence is there that where MA currently operates (such as US), having an impact on regime in China?

**Victoria Hongkongers:** "I think the most important example is Xinjiang province, where the Uighurs are being oppressed at the moment. We believe that the US has imposed sanctions on certain individuals that are responsible for the education camps. We believe that this is a very powerful deterrent. We think, due to the unique geographical location of Australia, this would be even more impactful." No examples referenced of direct evidence of MA impact.

**Andrews:** Can we measure that impact in terms of the deterrent value that such legislation has?

**Kara-Murza:** "I think the best indication as to the effectiveness of this measure would be to look at the reaction of the people against whom it is directed..." Refers to reaction of Russian government trying to prevent legislation, assassination attempts of people promoting MA. "As for the practical impact of the law, of course it depends on which country we are speaking about here... [The UK government] haven't implemented that legislation at all. The British government has said that, now that Brexit has been enacted and the UK is out of the European Union, they will move to implement the Magnitsky act in full force. Well, we'll see. Of course, now everybody is distracted with the pandemic, but once, hopefully, we're out of it, we will see whether the British government does or not. And that will be a very important practical indicator of the subject that you are inquiring about." (Emphasis added)

**Kara-Murza:** "In the United States the Magnitsky act has been implemented pretty effectively. Of course, again, we would wish it were implemented more actively..." Kara-Murza gives the example of an individual sanctioned by US government under MA, publicly saying "Ruslan Geremeyev — was acting as an agent of or on behalf of

---

<sup>4</sup> Department of Peace and Conflict Research, Uppsala University (2009) Michael Eriksson: 'In Search of a Due Process'

<sup>5</sup> Noah Birkhauser: 'Sanctions of the Security Council Against Individuals - Some Human Rights Problems'

<sup>6</sup> Chatham House, Francesco Giumelli (2015): 'Understanding United Nations targeted sanctions: an empirical analysis'

<sup>7</sup> Wiley, Marcos Tourinho (2015): 'Towards a world police? The implications of individual UN targeted sanctions'

<sup>8</sup> Department of Peace and Conflict Research, Uppsala University (2009) Michael Eriksson: 'In Search of a Due Process'

<sup>9</sup> Noah Birkhauser: 'Sanctions of the Security Council Against Individuals - Some Human Rights Problems'

<sup>10</sup> Chatham House, Francesco Giumelli (2015): 'Understanding United Nations targeted sanctions: an empirical analysis'

<sup>11</sup> Wiley, Marcos Tourinho (2015): 'Towards a world police? The implications of individual UN targeted sanctions'

Ramzan Kadyrov when he was organising the assassination of Boris Nemtsov. Of course, that is not to say that that is where the buck stops; that's just as far as they could prove.”

### Abetz

**Abetz:** “...you say that, from 2018, the US Congress has recommended eight Chinese officials for GMA sanctions. Has that been effective? What benefit has there been? Can you take us through that please?”

**Mr Osman:** “That was very effective. As a result, the Chinese officials' mouthpiece, Global Times, put out a big article regarding that sanction, and the party got very upset. So, as a result, from naming and shaming them around the international community, there was a big impact from those human rights abusers.”

### Uyghur Association of Victoria, Mr Osman

Mr Osman converses with a number of Committee Members regarding alleged intimidation of the Uyghur community in Australia. Of the 5,000 Uyghur people in Australia, Osman says none of them have reported this to authorities.

**Osman to Abetz:** “In Australia, we are more or less always subject to the intimidation... Every time we speak up against the regime, there is always a sort of intimidation that goes through to all the relatives back in China. Sometimes they call and tell us that everything is very good back home and that we shouldn't say anything against the Chinese Communist Party, and things like that. We are always intimidated by the Chinese Communist regime back home as well as in Australia.”

Osman gives an example of intimidation to **Hayes**. “In around 2018 they called me one day saying the local police officials were asking them to call me and I had to give them my name and passport numbers—all that information. I asked why I had to do that. They said the police were at my brother's house asking where I am and where I had been overseas. I had to leave my passport numbers and details so they would leave my brother's house. This sort of intimidation is happening to a lot of people in Australia. I am just one of the cases.” Mr Osman said he had not reported the threats to authorities: “No, I didn't. I didn't know what would happen if I reported that to anyone. I didn't know what to do. So I didn't report them. I just gave the information to them. After that, I didn't get any phone calls from my brother, so everything was fine.”

**Mr Andrews** continues to question Osman for clarification. Mr Osman says he received a phone call from overseas, from his brother, who said there were Chinese authorities at his house seeking Mr Osman's passport details. Andrews asks if Osman expects to receive more threatening phone calls like this after he gives witness to the Committee. Osman says yes.

**Kitching** asks if the Uyghur community or Osman's organisation work with authorities in regards to the criminal acts of intimidation and bullying. Kitching asks if anyone anyone in the community/organisation has complained.

**Osman:** “We have around 100 association members, I would say. [Osman previously says there are about 5,000 Uyghur people in Australia]. When I speak to them, most of them, even if that happens, won't speak out publicly of what happened to them. The reason is that, if they speak out, their extended families back home will pay the price for them speaking out here. So most of them wouldn't speak out. They just keep silent, and as long as they provide the information here that the Chinese authority wants, after that, nothing happens to their extended families back home; they are happy with that, so they will keep quiet...”

**Kitching** asks Osman if there were MA legislation & consequences for people who engaged in bullying or intimidation, would people begin to speak out?

**Osman:** “If we have a Magnitsky act, targeted sanctions law, then all the people will think: 'Okay, now if I speak out, something is really going to happen to those bad people. That's the reward.' So probably, from then, our community is going to speak out more and more.”

No reference from anyone as to whether this has happened with the current US/Canadian/MA legislation, some of which have been in place for years.

## Fawcett

**Fawcett:** Have any MA actions been taken in specific instance of Hong Kong, and have they been effective?

**Victoria HongKongers:** “At the moment, we are not aware of the Magnitsky act being used on individuals in Hong Kong. That being said, the United States has legislated a piece of legislation that is specifically targeted at Hong Kong—the Hong Kong Human Rights and Democracy Act. It's still early in terms of the oppression in Hong Kong being outrageous. In terms of global awareness, it has only been raised since last year, although the oppression in Hong Kong has been happening for a few years. The high-profile oppression and outrageous images we have seen on TV have only emerged since June last year, so it's still a little bit early to look at the Magnitsky act and see what kind of impact it has. At the moment, there are clearly, I would say, candidates that the people of Hong Kong are very keen to put on the sanctions list.”

## Hayes

**Hayes:** [Referring to China blocking a UN investigation into extrajudicial executions in the Phillipines] “Professor, to what extent are the countries that have implemented Magnitsky-style legislation still feeling intimidated by decisions? ... What's more disturbing, because you've raised the significance of extrajudicial execution, is that, as I see it, none of the countries that have implemented the Magnitsky-style legislation have moved to use their legislation to address the issue either.”

**Cotler:** [References Saudi Arabia & Venezuela's relationship with the UN Human Rights Council] “But your point is very well taken. It relates to the justice for Sergei Magnitsky goal—the sanctions in another sense—because the UN Human Rights Council is not exercising the roles and responsibilities it should, because the major human rights violators not only are not being held accountable but sit on the council. So you have a situation where the arsonists are supposed to put out the fire, and this makes the global justice for Sergei Magnitsky sanctions all the more imperative in a world where, as mentioned, we have an erosion of a rules based multilateral order. We have a resurgence of global authoritarianism. We have a retreat of democracies, and so it's left for countries like Canada, Australia, the United Kingdom, the US and the like to act in concert...”

**Hayes:** Since MA has there been any material change in behaviour in targeted jurisdictions?

**Browder:** Says the most powerful testimony he has experienced was from Mikhail Khogorkovsky, a Russian oligarch, whom Browder claims Vladimir Putin arrested & imprisoned to extort money and compliance from the rest of the Russian oligarchs.

Browder says he met Khogorkovsky, who personally thanked him and told him that as soon as MA was passed they “could feel the difference in prison. The guards and the wardens were afraid of abusing us, in fear of being put on the Magnitsky list.” Browder says “the whole tone has changed”. He referenced the US government's threats to put various Filipino government officials on MA list. “You could see in the local press, in the Phillipines, an absolute fear and apoplexy of the consequences of being put on the Magnitsky list...”

**Browder:** “It's a very real punishment, and the fear of getting put on that creates shockwaves throughout all government bodies. It's hard to measure scientifically, but I can promise you that it creates a counterweight, it creates a consequence and it creates something that every bad person in the world thinks about when they consider doing bad things.”

**Hayes:** Since MA, has there been discernible change in behaviour from targeted jurisdictions?

**Robertson:** “I believe there has been a deterrent and a nervousness of criminals, particularly those with connections to the state. You can see the hostility evinced by President Putin to Bill Browder, wanting to get hold of him... The evidence from those on the ground is that they are having effect, and one would expect them to with know-your-customer. I have experience from my own practice of them having effect in relation to certain corrupt Russians who put all their money into Cyprus banks and now are very concerned about whether they can withdraw it, because it's been frozen. I have no doubt that they are effective. Of course, they're not going to end human rights abuse, which comes from political motives as well as from desire for financial gain. They're not going to stop all the criminals of the world from laundering their money, but I think they do have an important deterrent effect.”

## Vamvakinou

**Vamvakinou:** Do you know of any particular cases where Magnitsky-style legislation has been effective?

**Human Rights Watch:** “Yes. I do think that in the US and Canada it has been very effective. As I said, in the UK I think it's really too early to say. Talking to US officials, they have said it has resulted in the seizure of assets. It has resulted in investigations being launched, in people being removed from positions of power or authority as a result of them being listed. The interesting thing about the US is even people in countries that are traditional allies of the United States—there was a listing of 17 individuals, although not Mohammed bin Salman for the killing of Jamal Khashoggi. The Saudi Arabian officials have been listed. There was also an Israeli individual who was listed, in relation to an act of corruption. So I think it is quite a flexible tool and really does have far-reaching impacts. Anecdotally, we have heard from our contacts in different countries across South-East Asia that they are very concerned about the potential for individuals to be listed under this legislation. I think that does provide a very powerful deterrent for committing acts of human rights violations and corruption.”

**Vamvakinou:** “What consequences have there been for those individuals, including for the Khashoggi killing? Are there cases where raising awareness—other than just listing—may have led to more serious ramifications for individuals?”

**Human Rights Watch:** “Some of those individuals—certainly not all of them—are being tried, as I understand it, in Saudi Arabia. I don't really know whether that is the impact of the global Magnitsky legislation or pressure from the United States. It's important to say that this is one tool in the toolbox.”

## Counterproductive/harmful effects of MA

It appears there is only two references to the possibility that sanctions may be counterproductive or harmful. posed by Senator Sheldon and Senator Fawcett.

**Fawcett:** Could geopolitical tensions between US/China & China's support for Cambodian regime mean MA worsens human rights in Cambodia?

**Sheldon:** “...As you've outlined, the effectiveness of the Magnitsky legislation in different parts of the world goes to restrictions and, let's get straight to the point, condemnation of henchmen or henchwomen of various state actors. I know there's a very small sample of evidence around this because of the limited use of the legislation in the different jurisdictions, but has there been evidence where it's actually led to counterproductive responses in the sense that the human rights abuses may have increased or those particular actors of a state have been replaced with others who have become even more severe?”

**Clooney:** “...I think, in terms of trying to find counter examples, the US has the most extensive practice, so I did interview officials from the US. They might be better placed than me to give you a more holistic account of what happened in each instance in which sanctions were imposed. I'm happy to provide the names of suggested people for you to speak to.”

**Sheldon:** “...That's good to know. I only raised those counterexamples in the context— and you would be familiar with this situation—of where sometimes, when human rights activists in diaspora communities speak up quite loudly on behalf of their brothers and sisters in their home countries, it has the effect of those states cracking down even harder on them in response. That's the worry with respect to that.”

**Clooney:** “Yes, that's understandable. Obviously, there are many considerations that come into play in terms of who should be sanctioned and when. Also, there's got to be an emphasis on source protection. This is an issue that I saw raised in the written submission by The Sentry, given their experience in corruption-related sanctions. I think that's an issue that requires some thought, but it's certainly not a reason not to proceed.” (Emphasis added)

As noted previously, there are numerous examples of literature examining faults and (often unforeseen) complications with the imposition of targeted sanctions against individuals and entities.<sup>12, 13, 14, 15</sup> [Albeit these 'targeted sanctions' are not 'Magnitsky sanctions', as the examples either pre-date Magnitsky legislation, or are targeted sanctions implemented under a different legislative regime.]

In addition, I previously noted a number of examples of literature and research detailing serious harm to human rights caused by sanctions, including targeted or "smart" sanctions.<sup>16, 17, 18, 19,</sup>

There are a number of examples of the negative impacts to the provision of humanitarian aid in regions impacted by targeted sanctions.

According to a 2019 report published by the International Peace Institute: "Despite efforts to institute more targeted sanctions regimes, these regimes continue to have unintended consequences, including impeding or preventing the provision of humanitarian assistance and protection... Those implementing the sanctions often lack sufficient understanding of—or are not willing to acknowledge—how sanctions regimes harm humanitarian action, in particular given the shift to more targeted sanctions."<sup>20</sup>

These matters are of particular interest when juxtaposed with Ms Clooney's comments to the Committee that there has been no 'definitive study' of the deterrent impact of Magnitsky-type legislation. Ms Clooney says that deterrent impact is "obviously something that's very difficult to prove. What would have happened if sanctions hadn't been in place?"

### MA as politically motivated weaponization of human rights

There does not appear to be any suggestion from Committee Members that the MA may weaponise human rights. There do not appear to be any suggestions that MA may be used to achieve specific political goals, only that it *may not be used*, or used selectively, because of political or diplomatic reasons. There is discussion that MA may be used to 'fill gaps' in UN Human Rights Council/International Courts.

The following questions are **paraphrased** for brevity. For a summary of all questions posed by Committee Members, please refer to: 'MA Public Hearings - Summary of Questions'.

- **Andrews:** Is there a danger that only low-level political operatives 'doing the dirty work' are targeted and 'real culprits are never targeted?'
- **Fawcett:** Could geopolitical tensions between US/China & China's support for Cambodian regime mean MA worsens human rights in Cambodia?
- **Abetz:** In Australia, Director of Public Prosecutions has discretion on whether to proceed with prosecution, including weighing political interests- should that sort of discretion should be available in any Magnitsky law?
- **Hill:** Will MA only be applied to weaker countries, with fewer geopolitical issues?
- **Hayes:** How is MA operation protected against diplomatic realities between countries?

---

<sup>12</sup> Department of Peace and Conflict Research, Uppsala University (2009) Michael Eriksson: 'In Search of a Due Process'

<sup>13</sup> Noah Birkhauser: 'Sanctions of the Security Council Against Individuals - Some Human Rights Problems'

<sup>14</sup> Chatham House, Francesco Giumelli (2015): 'Understanding United Nations targeted sanctions: an empirical analysis'

<sup>15</sup> Wiley, Marcos Tourinho (2015): 'Towards a world police? The implications of individual UN targeted sanctions'

<sup>16</sup> Final Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, United Nations

<sup>17</sup> UN General Assembly, 'Situation of human rights in the Democratic People's Republic of Korea' (2017)

<sup>18</sup> International Physicians for the Prevention of Nuclear War, Dr Mary-Wynne Ashford (2018): 'Korean sanctions are a humanitarian disaster'

<sup>19</sup> Reuters, Hyonhee Shin (2018): 'As food crisis threatens, humanitarian aid for North Korea grinds to a halt'

<sup>20</sup> International Peace Institute (2019): 'Safeguarding Humanitarian Action in Sanctions Regimes'

- **Hayes:** “Do you think that Magnitsky-style legislation and targeted sanctions have a role to fill a gap, given the fact that some of the key players in the United Nations Human Rights Council have less than a grand commitment? Actors signing up for the International Covenant on Civil and Political Rights are not taking seriously their obligations under the convention. People are not recognising the jurisdiction of the International Court of Arbitration. Is the last aspect of this to address human rights concerns a legislative provision of targeting sanctions through Magnitsky-style legislation? “
- **Hayes:** “Without trying to cast reflection now on our US colleagues, don't forget the US also resigned from the UN Human Rights Council... I suppose what you've just said probably justifies the concern of many of us about the United States withdrawing from the United Nations Human Rights Council.” [In response to comment about Cambodian Paris peace accords, than countries should act together rather than US acting alone.]