



THE SENTRY

U.S. Commission on International Religious Freedom (USCIRF)

Virtual Hearing

Targeted Sanctions: Implications for International Religious Freedom

October 27, 2021

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First of all, I would like to extend my thanks to Chair Maenza and Vice Chair Turkel and the other members of this Commission for the opportunity to speak about this important issue. It's an honor to be here today with such distinguished guests as Senators Cardin and Wicker, Representative McGovern and my co-panelists.

I grew up in Communist Poland during the 1980s, and there was one event that had a profound impact on my young imagination and has stuck with me to this day. It was the murder, in 1984, of the Polish priest Jerzy Popieluszko, whose association with the anti-Communist labor movement Solidarity was considered a threat to the ruling regime. When attempts to silence Popieluszko did not work, he was tortured, murdered, and dumped in the Vistula River by the security services. I was seven years old when this happened, and it is hard for me to convey to you how frightening and demoralizing it was to realize that sometimes the villain is the state itself. That the killer, or the human rights abuser, is the one who sits in power. Even as a child, I could grasp that there is nothing more terrifying than the specter of impunity.

In Poland then, as in many other places now, religion was intertwined with the quest for democracy and human rights. At that time, however, the international community had few tools it could leverage to intervene in response to dire human rights abuses. Today, things are different, in part because of Sergei Magnitsky—another brave individual who was tortured and killed while in the custody of state officials—and the powerful instrument of foreign policy named after him, Global Magnitsky or GloMag sanctions.

The populations of the countries that The Sentry covers, mainly in East and Central Africa, have experienced their share of religious persecution. As you well know, until quite recently, Sudan was designated a Country of Particular Concern by the State Department due to the religious-based discrimination practiced by the Bashir regime. Meanwhile, in the Central African Republic, sectarian violence has devastated the country, with armed militia leaders fanning the flames of religious and ethnic divisions as a means to control territory and natural resources. The Sentry's investigations in the Central African Republic found that sectarian violence can be lucrative and that militia leaders deliberately incite violence between religious communities in order to benefit their political and economic interests. As this example demonstrates, violations of religious freedom often occur in tandem with other human rights

abuses and are, in many cases, motivated by money. Because prosecutions are unlikely, sanctions and other financial pressures—focused on hitting the pocket books of the perpetrators and their enablers—can be a critical tool.

Unlike the state-based paradigm that has dominated sanctions in past decades, Global Magnitsky sanctions provide the authority for the US to impose asset freezes and visa bans on perpetrators of serious human rights abuses, including violations of religious freedom, anywhere in the world. This is an especially nimble tool because it does not require the declaration of a national emergency and the issuance of a new executive order before sanctions can be imposed to target perpetrators wherever they may be. This not only allows for sanctions to be imposed more quickly but also avoids many of the pitfalls associated with the more traditional country-based sanctions. Human rights abusers located in regions where it may not be politically feasible to have a country-based sanctions program can more easily become sanctions targets. Because GloMag sanctions are not focused on any particular country, they are also less likely to lead to the phenomenon known as “wholesale de-risking,” whereby financial institutions avoid a jurisdiction entirely to eliminate risk rather than try to manage it through internal processes and controls.

In my previous position working in the financial sector, I noticed that there was sometimes a tendency to conflate targeted country-based sanctions (such as those impacting Burundi and Zimbabwe) with comprehensive embargoes (such as those related to Iran and Cuba), and to view both of these measures as indicating that any transaction related to that particular jurisdiction is problematic. The Department of the Treasury’s sanctions review, which was issued just last week, concluded that more attention needs to be devoted to the impact of sanctions on vulnerable populations. Because of their specificity, GloMag sanctions are designed to protect such groups.

These sanctions should be used more frequently and systematically, which would counter any perception that the US government prioritizes certain categories of religious freedom over others. However, because abuses of religious freedom, and human rights more broadly, far outweigh the resources and capacity of the US government—because you can’t sanction all the bad guys—GloMag sanctions need to be imposed as strategically as possible. Targeted network sanctions should focus on those most responsible for the abuses and, critically, on their economic interests and financial facilitators, as well.

In my remaining time, I would like to outline three specific recommendations for how this should be done.

1) Focus on networks.

The Sentry has long argued that in order for sanctions to be effective, they need to focus on entire networks. Too often, sanctions are used to satisfy an impulse to do something in the face of horrendous atrocities. While sanctions can have a normative value in such cases, to actually have an impact, sanctions should go beyond naming and shaming the perpetrators of human rights violations and focus on exerting pressure on entire networks. That means not just the individual engaged in the problematic behavior, but his businesses, proxies, and facilitators. Counter-narcotics and counter-terrorism sanctions often focus on

networks, and there is no reason for Global Magnitsky sanctions not to do the same. Bad actors do not work in isolation; they are buttressed by a whole community of enablers.

The executive order implementing Global Magnitsky includes what is called derivative criteria, which allows for the designation of any entity that is owned or controlled by or that otherwise supports the principal perpetrator. This derivative criteria is a powerful tool not just because it allows for the sanctioning of such facilitators but because it can have a deterrent effect, dissuading other would-be facilitators and thus isolating the main target. Such measures could be further enhanced by designating immediate family members, as proposed by the Global Magnitsky Human Rights Accountability Reauthorization Act. Targeted individuals often seek to evade sanctions by using spouses and dependent children as proxies to hide assets or continue their business operations.

When sanctions target whole networks, and particularly when they focus on the moneymen, we have seen them work in Africa. A sustained sanctions effort, along with an anti-money laundering advisory issued by FinCEN, action from the Department of Commerce, and high-level diplomatic engagement, helped to lay the groundwork for a diplomatic process that eventually resulted in a unity government that ended the civil war in South Sudan and the large-scale atrocities that accompanied it. There is still a long way to go in South Sudan, as the fundamental causes of the civil war have not been addressed. There have been no new sanctions or other financial measures in some time, and progress on the implementation of critical aspects has stalled. Therefore, it's time yet again to target the business interests of the spoilers.

Similarly, GloMag sanctions played a significant role in convincing the then-President of the Democratic Republic of Congo, whose long rule was accompanied by human rights abuses and the looting of Congo's extensive natural resources, to stand down from running for an unconstitutional third term. In that instance, it was the repeated use of GloMag sanctions against Kabila's close friend and key financial enabler Dan Gertler, along with his network of associates and companies, that appears to have played a vital role in convincing Kabila to heed the call of the international community to step down.

By contrast, when sanctions focus solely on officials, as was the case with the 2017 and 2018 sanctions targeting the Burmese military for its involvement in ethnic cleansing in Rakhine State, they tend to only have a symbolic value, as these officials can always rely on fixers and facilitators to get around such impediments and find indirect access to the international financial system.

2) Think beyond sanctions.

One point that often gets lost when we talk about sanctions but is essential to remember is that, while they are powerful, these measures will not work in isolation. To be effective, they must be utilized in concert with other foreign policy tools. A whole-of-government approach can often amplify the Office of Foreign Assets Control's use of sanctions. So to address violations of religious freedom, policymakers should think creatively and holistically and consider other tools at their disposal, such as advisories, Department of Commerce entity list designations, prosecutions, and even Customs and Border Protection's Withhold Release Orders.

I was the lead sanctions lawyer at a global bank when the US government began a concerted effort to impose costs on the Chinese government related to its treatment of the Uyghur and other minorities in the Xinjiang Uyghur Autonomous Region. Although the designations of key officials in Xinjiang might have had some normative value, it was the designation of the XPCC—a paramilitary organization with massive economic interests and subsidiaries that trade on major stock exchanges—along with the Xinjiang Supply Chain Business Advisory, and the Commerce Department blacklisting of leading Chinese companies specializing in surveillance technology that caused financial institutions to take notice and alter their internal controls and diligence processes to account for these risks.

3) Don't go it alone.

We all know that the efficacy of sanctions is vastly increased when sanctions actions are multilateral, closing off additional jurisdictions for perpetrators to stash their money, buy real estate, vacation, or send their kids to boarding school. With some sanctions programs, the US and its allies have not always seen eye-to-eye, but human rights-related sanctions is an area in which we enjoy broad agreement with our allies, and we have been the leader in pioneering these tools and exporting them to other jurisdictions. The US now has an opportunity to make coordinated sanctions actions—such as those from last March, when the US, UK, EU, and Canada announced sanctions on China related to human rights abuses in Xinjiang—the norm. Now is the moment to urge our allies who are already considering the establishment of their own GloMag-style sanctions programs that they should do so.

One final, important piece of the puzzle is the private sector. Financial institutions often find themselves on the front lines of sanctions enforcement. For years, compliance departments inside banks have focused on core concerns such as sanctions on Iran, terrorism and proliferation financing, and money laundering associated with drug trafficking and other criminal enterprises. But the focus on human rights is relatively new, and it requires financial institutions to think outside their traditional financial crime silos. For this reason, the US government should closely engage with financial institutions in order to share information on typologies and red flags associated with illicit financial flows that are linked to violations of religious freedom and other serious human rights abuses. As part of this closer engagement, the US government could in turn foster greater collaboration between financial institutions and civil society organizations, such as those represented on this panel today, that have extensive expertise in this area. With GloMag becoming the new sanctions paradigm and more jurisdictions following America's lead in employing these tools, financial institutions need to mainstream human rights into their financial crime prevention programs and ensure that policies, procedures, and internal controls include a sufficient focus on these issues. This may have the added benefit of allowing banks to identify perpetrators and cut them off even before they are sanctioned.

In conclusion, I'd just like to say that, as someone who has spent the past dozen years as a sanctions practitioner at the Treasury Department, at the United Nations, at a global bank, and now at The Sentry, this is an exciting time. Global Magnitsky has upended a lot of the stale state-based paradigms that dominated the world of sanctions for decades, and it has ushered in new possibilities for nimble and targeted action. When it comes to a crucial issue like religious freedom abroad, this is precisely the sort of

discrete, effective instrument of statecraft that can be leveraged to make a real difference. But we must do so strategically, targeting networks rather than just individuals, in concert with other elements of financial pressure, with our allies, and with the private sector. To do it right requires staff and other resources; thus, congressional support for sufficiently funding GloMag implementation at the Treasury and State Departments is essential for this tool to be utilized effectively.

To bring it back to where I began, when I remember the experience of being a child learning about the murder of Father Popieluszko in Poland, I'm encouraged to think that today the US Congress, the US government, and other governments around the world care enough to develop the necessary tools to do something about such abuses. Thank you again for the opportunity to be here today. I look forward to any questions you may have.