

REDRESS

Ending torture, seeking justice for survivors

INQUIRY INTO THE EFFECTIVENESS OF THE UK GOVERNMENT'S RESPONSE TO ATROCITY PREVENTION

Response to Call for Evidence by the International Development Committee,
19 January 2021

INTRODUCTION

1. This submission is made in response to the call for evidence of the International Development Committee's inquiry into the effectiveness of the UK Government's response to atrocity prevention.
2. REDRESS is a UK charity that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators, and advocates for legal and policy reforms to combat torture. Through our cases we obtain justice and reparation for survivors of torture. Our 2025 Strategy identifies torture related to dissent and discriminatory torture as our two thematic priorities. We also support the anti-torture movement through our solidarity programme.
3. In response to the Committee's call for evidence, the principal aim of this submission is to share an understanding of how the Government's use of Magnitsky sanctions – i.e. targeted sanctions imposed on individuals and entities for their involvement in human rights abuses – interacts with the UK's approach to atrocity prevention, and how Magnitsky sanctions could be used more effectively in this context.

AN OVERVIEW OF MAGNITSKY SANCTIONS

4. Magnitsky sanctions are targeted sanctions imposed by governments on individuals and entities responsible for human rights abuses and corruption across the world. The sanctions freeze perpetrators' assets and ban them from travelling internationally. They are used in a number of jurisdictions, including the UK, US, EU, Canada and Australia, which together represent over a third of global GDP.
5. The Government's power to impose such sanctions on human rights perpetrators was introduced in July 2020 under the Global Human Rights Sanctions Regulations.¹ The regime has several features which make it particularly well-suited to use in the context of atrocity prevention:
 - a. **The purposes of Magnitsky sanctions are to deter and to provide accountability for human rights violations.**² This enables the Government to use these sanctions to (a) deter impending atrocities, which are often preceded by increasing human rights violations, and (b) provide accountability for on-going or past atrocities, which in turn

¹ The Global Human Rights Sanctions Regulations 2020:
<https://www.legislation.gov.uk/uksi/2020/680/introduction/made>

² Regulation 4(1)

has the potential to encourage behavioural change from the sanctioned, and other, actors.

- b. **The regime allows for sanctions to be imposed on state and non-state actors for their involvement in three types of human rights violations, the first two of which, at least, are consistently at the heart of mass atrocities.** These are violations of (a) the right to life, (b) the right not to be subjected to torture or cruel, inhuman or degrading treatment, and (c) the right to be free from slavery.³ The ability to target non-state actors allows sanctions to be imposed on both sides where there is a risk of atrocities in an impending or ongoing internal armed conflict.
- c. **The concept of “involvement” under the regime is broad and enables the Government to take a comprehensive and strategic approach to the deterrence of human rights violations.**⁴ Magnitsky sanctions can be imposed on those directly responsible for violations, in addition to those who facilitate, incite, promote, support, profit or otherwise benefit from them. Actors may also be designated for concealing evidence of violations or failing to investigate and/or prosecute when they have a responsibility to do so. This means that the Government can target the diverse range of actors who are responsible for the acts committed as part of mass atrocities and for the surrounding culture of impunity which facilitates further violations.

In the first year of the UK’s human rights sanctions regime, the roles of those designated were wide-ranging. The most common designees were military officials (15) – such as Min Aung Hlaing, Commander-in Chief of Myanmar’s Armed Forces – and politicians (24), including two current or former heads of state – such as President Alexander Lukashenko of Belarus.⁵

THE USE OF MAGNITSKY SANCTIONS IN ATROCITY PREVENTION

- 6. The direct impact of Magnitsky sanctions as a tool of atrocity prevention can be difficult to assess. However, there are documented examples of the use of targeted sanctions to encourage the type of behavioural change that can prevent mass atrocities. For example, according to testimony given to the US Commission on International Religious Freedom, US Magnitsky sanctions:

*“played a significant role in convincing the then-President of the Democratic Republic of Congo [Joseph Kabila], whose long rule was accompanied by human rights abuses...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.”*⁶

³ Regulation 4(2)

⁴ Regulation 6(2)-(5)

⁵ See the REDRESS publication “Year One in Numbers: UK Global Human Rights Sanctions” for further analysis: <https://redress.org/news/year-one-in-numbers-uk-global-human-rights-sanctions/>

⁶ Justyna Gudzowska’s testimony for U.S. Commission on International Religious Freedom hearing on “Targeted Sanctions - Implications for International Religious Freedom,” October 27, 2021, as reproduced in the US Congressional Research Service report, “The Global Magnitsky Human Rights Accountability Act: Scope, Implementation, and Considerations for Congress”, 3 December 2021, p. 25: <https://crsreports.congress.gov/product/pdf/R/R46981>

7. Communities in affected countries recognise the impact sanctions can have. In Sudan, where the October 2021 military coup risks plunging the country back into the genocide and crimes against humanity perpetrated under the Al-Bashir regime, one of the calls of ongoing protests has been for international sanctions on senior Sudanese military officials. This has been demonstrated by banners and chants supporting US Senators' Coons and Risch's sanctions legislation currently before Congress.⁷
8. Sanctions also disrupt the economic incentive for malign actors to carry out atrocities in pursuit of kleptocratic wealth.⁸ A desire to control natural resources and wealth is often one of the main drivers behind atrocities, a situation which is increasingly exacerbated by climate change and its impact on migratory movements and resource and food scarcity.⁹ Many perpetrators of these atrocities take their amassed fortunes out of their countries, seeking safe haven in jurisdictions including the UK. Magnitsky sanctions are a unique way of imposing financial consequences on perpetrators, preventing both individuals and entities from profiting from human rights violations.
9. In the UK, Magnitsky sanctions have been used by the Government in relation to a number of situations in which there are ongoing or impending mass atrocities, namely: the Rohingya crisis in Myanmar,¹⁰ the Uyghur genocide in China,¹¹ and the DPRK's political prison camps.¹² However, when imposing these sanctions, the Government is not purporting to make a determination that a specific atrocity has, is, or is likely to be committed – rather it confines itself to an examination of the specific violations under the regime.

ENHANCING THE EFFICACY OF MAGNITSKY SANCTIONS AS A TOOL OF ATROCITY PREVENTION

10. While there are some examples of the Government using Magnitsky sanctions in relation to atrocities, there is no evidence to suggest that these sanctions are integrated into the UK's approach to atrocity prevention. In fact, there does not appear to be a cohesive national strategy for atrocity prevention at all. Such a strategy could and should provide for enhanced coordination and cooperation between different units and individuals within the FCDO, such as between the Sanctions Unit, the Country Teams and the Conflict Centre, ensuring that the Magnitsky sanctions (and other mechanisms and/or policy considerations) are embedded into the UK's approach to atrocity prevention.

⁷ See photos shared on Twitter (in particular the second photo):

https://twitter.com/_mohamedsalih/status/1463845990524502019?s=20

⁸ See The Sentry's Report "Consequences for Kleptocrats, Financial Pressures to Support Peace in Sudan":

<https://thesentry.org/reports/consequences-for-kleptocrats/>

⁹ See Dr. Simon Adams, Executive Director, Global Centre for the Responsibility to Protect, "From Global Warming to Genocide Warning: Climate Change and Mass Atrocities":

<https://reliefweb.int/report/world/global-warming-genocide-warning-climate-change-and-mass-atrocities>

¹⁰ In September 2019, the UN Independent International Fact-Finding Mission on Myanmar found that the Rohingya were living "under the threat of genocide":

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24991&LangID=E>

¹¹ On 9 December 2021, the Uyghur Tribunal found that the government of the People's Republic of China had committed genocide against the Uyghur population: <https://uyghurtribunal.com/wp-content/uploads/2021/12/Uyghur-Tribunal-Summary-Judgment-9th-Dec-21.pdf>

¹² On 7 February 2014, the United Nations Human Rights Council published its 'Report on the commission of inquiry on human rights in the Democratic People's Republic of Korea' which refers to the abuses inflicted at DPRK Prison Camps as "unspeakable atrocities" amounting to crimes against humanity:

<https://www.ohchr.org/en/hrbodies/hrc/coidprk/pages/reportofthecommissionofinquirydprk.aspx>

11. There are a number of ways in which the current use of Magnitsky sanctions could be improved to ensure that they are effective in preventing mass atrocities.

- a. **The Government should explicitly recognise the role that Magnitsky sanctions can play in atrocity prevention.** As noted above, one of the purposes of Magnitsky sanctions is the deterrence of serious human rights violations but there is no express recognition, in legislation or policy, of their use in atrocity prevention. If Magnitsky sanctions are to be used effectively as a tool of deterrence and prevention, the Government must change this.
- b. **The Government should take a considered and comprehensive approach to sanctions.** When making sanctions decisions in relation to human rights violations, the Government has often failed to sanction key perpetrators. For example, when sanctioning Chinese officials in Xinjiang for their involvement in the Uyghur genocide, the Government did not sanction the high-ranking official who is often referred to as the “architect” of the genocide, Chen Quanguo.

In such instances, it is clear that the Magnitsky sanctions regime is not being used in the most effective way to ensure that key perpetrators are held accountable for, and are deterred from continuing, their involvement in mass atrocities. The Government should consistently use the breadth of the Magnitsky sanctions regime to take action against the range of actors involved in mass atrocities, including those at the political level, within the military and security forces, and those who finance and enable violations.

There are also clear examples of atrocities in which the Government has failed to sanctions action, such as in relation Tigray (in spite of the International Development Committee’s recommendations).¹³ If Magnitsky sanctions are to be used effectively in atrocity prevention, they must be used consistently, without fear or favour.

- c. **Sanctions should be imposed in coordination with key allies where appropriate.** It is widely accepted, including by the Government, that sanctions are most effective when implemented in coordination with international partners.¹⁴ Such multilateral coordination is key to ensuring effective atrocity prevention.

However, a consistently coordinated approach to sanctions is lacking and the UK is falling behind its allies, particularly the US, in its use of Magnitsky sanctions to respond to, and deter, serious human rights violations. For example, in the week of

¹³ The International Development Committee, “UK can lead international response to addressing horrors in Tigray using its combined development and diplomatic prowess within the FCDO”: <https://committees.parliament.uk/committee/98/international-development-committee/news/154896/uk-can-lead-international-response-to-addressing-horrors-in-tigray-using-its-combined-development-and-diplomatic-prowess-within-the-fcdo/>

¹⁴ As recognised by Wendy Morton MP when Minister for Europe and Americas at the Foreign, Commonwealth & Development Office (FCDO), during a debate on 4 November 2021 regarding sanctions in relation to Belarus: <https://hansard.parliament.uk/Commons/2021-11-04/debates/B0905A18-70E5-455B-A271-AA6599009A27/Sanctions?highlight=sanctions#contribution-5628DFB6-094F-41AF-BFFA-F6646546B67B>

International Human Rights Day (on 10 December 2021), the US Government imposed sanctions on 40 actors for human rights violations, including in relation to the use of chemical weapons in Syria.¹⁵ In stark comparison, the UK Government imposed just one sanction under the human rights regime and four under the Myanmar country regime that week (and have imposed just 81 sanctions over the lifetime of the human rights regime). It is clear that the UK must work with its allies if Magnitsky sanctions are to be used effectively as a tool for atrocity prevention.

- d. **Sanctions should be imposed in the most egregious cases of human rights violations, not just where it is diplomatically convenient.** A key area of government policy which interacts with the issue of atrocity prevention, and the use of Magnitsky sanctions for that purpose, is international trade and diplomacy. There is a growing concern among human rights lawyers and activists that the Government will not, or will be far slower to, take action in relation to human rights abuses committed by allies and trading partners. However, unlike other foreign policy tools, Magnitsky sanctions allow the UK to target those individuals and entities with responsibility for human rights abuses or corruption, while maintaining diplomatic and trading relationships with the country in question. As such, these sanctions can and should be used consistently to address human rights atrocities across the world, regardless of where they occur.

- e. **There should be sufficient resources allocated to the implementation and enforcement of Magnitsky sanctions.** Sufficient resources for the FCDO Sanctions Unit and OFSI are critical to ensuring and assessing the effectiveness of the UK's Magnitsky sanctions programme, including in the context of atrocity prevention. The FCDO sanctions process has multiple steps including: reviewing evidence submitted by NGOs; undertaking research; consulting with country desk officers and embassy staff; conducting policy and legal analyses; consulting the Minister and preparing a statement of reasons.

Last year, the US had a budget of \$4.5 million for its Magnitsky and other targeted sanctions programmes. The UK Government should follow the US example and publish its budget for Magnitsky sanctions to ensure greater transparency.

For more information, please contact Charlie Loudon, International Legal Advisor at REDRESS (charlie@redress.org) and Megan Smith, Legal Officer at REDRESS (megan@redress.org).

¹⁵ US Department of the Treasury, Press Release, "Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day" 10 December 2021: <https://home.treasury.gov/news/press-releases/jy0526>