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## NGOs welcome impact of Global Magnitsky Act

Kelly Swanson 19 February 2019

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Non-governmental organisations (NGOs) that frequently lobby the US government to place individuals on sanctions lists believe the Global Magnitsky Act has helped deter and punish corruption in cases beyond the scope of the Foreign Corrupt Practices Act.

Since the law's implementation in late 2017, nine individuals and dozens of corporate entities have been sanctioned under the anti-corruption prong of the programme.

Although the numbers may not appear high, sanctions experts say the US government agency responsible for enforcing the Global Magnitsky Act – the US Treasury Department’s Office of Foreign Assets Control (OFAC) – has been particularly active.

"Especially when you compare it to... other sanctions programmes," said Joshua White, policy director at The Sentry, an NGO focused on how corruption fuels African conflicts.

Sanctions experts tell GIR Just Anti-Corruption that the Global Magnitsky Act has already thwarted several corrupt officials. They predict that the US government will only be emboldened to use the programme to go after more officials – possibly in conjunction with foreign bribery prosecutions by the Department of Justice.

## **A relatively active sanctions programme**

The Global Magnitsky Human Rights Accountability Act, which builds upon the 2012 Magnitsky Act that targeted Russians involved in human rights abuses, was implemented by President Donald Trump in December 2017. The Global Magnitsky Act empowers OFAC to sanction foreign officials from any country for human rights abuses or “corruption” – a broad term that covers conduct such as bribery and the misappropriation of state assets.

Individuals and companies placed on the sanctions list are blocked from the US financial system. US citizens are banned from conducting business with sanctioned individuals whose US assets are frozen.

A total of nine individuals and dozens of entities have been sanctioned (<https://sanctionssearch.ofac.treas.gov/>) under the anti-corruption prong of the Global Magnitsky Act since December 2017, and 32 more individuals were sanctioned under the human rights prong, according to an OFAC database (<https://sanctionssearch.ofac.treas.gov/>). Compared to other sanctions programmes, OFAC has used the the Global Magnitsky Act frequently in its first year.

Some sanctions programmes, for example, have been rarely used – such as the sanctions imposed under executive order 13606 (<https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13606.pdf>) targeting human rights abuses in Syria, the sanctions imposed under the Iran Freedom and Counter-Proliferation Act ([https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112\\_239.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_239.pdf)) of 2012 and sanctions under the Iran Sanctions Act ([https://www.treasury.gov/resource-center/sanctions/Programs/Documents/2011\\_isa\\_eo.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/2011_isa_eo.pdf)), according to an OFAC database (<https://sanctionssearch.ofac.treas.gov/>) tracking all active sanction programmes.

When the Global Magnitsky Act was implemented, President Trump immediately imposed sanctions against 15 individuals with seven specifically targeted for corruption, including several who have been linked to Foreign Corrupt Practices Act cases.

Among those initially sanctioned was Israeli businessman Dan Gertler, who has been linked in news reports to a bribery scheme involving US hedge fund Och-Ziff Capital Management, which settled related FCPA charges in 2016. In announcing the

sanctions, the US Treasury described Gertler as a “billionaire who has amassed his fortune through hundreds of millions of dollars’ worth of opaque and corrupt mining and oil deals in the Democratic Republic of the Congo.” Gertler was sanctioned along with 19 entities tied to the Israeli billionaire and one of his associates, Pieter Albert Deboutte. Gertler has repeatedly denied any wrongdoing. Then in June 2018 (<https://home.treasury.gov/news/press-releases/sm0417>), OFAC sanctioned another 14 entities for their connections to Gertler.

### **Faster than FCPA enforcement**

Notably, all of the nine individuals who have been sanctioned for corrupt actions under the Global Magnitsky Act have not been charged in FCPA-related cases.

While the FCPA is a major enforcement tool for the US to combat international corruption, there are limits to whom the Department of Justice’s foreign bribery prosecutors can pursue, either for jurisdictional reasons or in difficulties amassing the evidence needed to file a criminal case.

This is an area that lawyers and sanctions experts say can be filled by the Global Magnitsky Act.

“It allows for the scenario where the DOJ could bring criminal penalties to the bribe giver, and then the receiver is sanctioned with magnitsky,” said Robert Berschinski, senior vice president of policy at Human Rights First. In the past year Berschinski has

lobbied lawmakers in Congress as well as officials in the US treasury and state departments for individuals to be sanctioned under the Global Magnitsky Act.

With a much lower evidentiary standard, sanctions brought under the Global Magnitsky Act can be a faster way to punish corrupt actors than bringing charges under the FCPA. The standard of proof OFAC officials must meet to bring sanctions is “reason to believe using credible evidence,” which means enforcement actions can be imposed faster than in criminal cases, White said.

## **Deterring corruption**

White said that he has heard strong reactions in response to the threat of US sanctions.

“Being shut out of the use of US dollars has been a very compelling and dissuasive tool,” White said. “In fact, we have heard of people saying that they would rather die than be sanctioned by the US.”

Already, individuals sanctioned under the Global Magnitsky Act have suffered the consequences. After being placed on the sanctions list for corrupt activity, two targeted individuals have been forced to resign from their positions of power.

Roberto Jose Rivas Reyes, the former president of Nicaragua’s Supreme Electoral Council, disappeared from public view after being sanctioned in December 2017 and then agreed to resign from his position in June. The US Treasury said he had rigged

elections in favour of Nicaraguan President Daniel Ortega who is “accountable for the violent protests and widespread corruption that have led to the deaths of hundreds of innocent Nicaraguans and destroyed their economy.”

Jose Francisco Lopez Centeno, the president of the Nicaraguan state-owned oil company Petronic, resigned from the position just one day after being sanctioned in the US. The US Treasury says Lopez siphoned off millions of Nicaraguan tax money for his own benefit.

Companies, even ones that aren’t themselves sanctioned, are affected.

Swiss mining company Glencore has shown signs that it struggled to deal with the repercussions of sanctions against its business partner Gertler. Gertler filed a lawsuit in a Congolese court seeking \$3 billion in damages after Glencore stopped paying him in response to the sanctions.

There were reports (<https://www.wsj.com/articles/glencore-to-resume-payments-to-israeli-billionaire-gertler-despite-u-s-sanctions-1529052213>) that Glencore was questioning how it would pay royalties to Gertler to avoid losing its assets. Glencore eventually found a workaround that involved making the payments in euros that did not involve any US citizens.

Meanwhile, Glencore continues to lobby the US Treasury over “issues related to Global Magnitsky sanctions imposed by the United States”, according to a recent lobbying

<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=4B3A5BF7-254C-485B-9085-0A35DE276C18&filingTypeID=69>filing.

## **Sanctions strategy: Aim low**

These types of repercussions for individuals and companies are what NGOs believe put pressure on the corrupt actors at the top to change their ways.

NGOs play an important role in recommending who should be sanctioned, as the Global Magnitsky Act directs the government in determining who to sanction to consider “credible information obtained by other countries and non-governmental organizations that monitor violations of human rights.”

In choosing whom to recommend to OFAC for sanctions, Berschinski at Human Rights First said sanctions advocates have developed a strategy of going after mid-level people instead of someone higher up that may be ultimately responsible for the human rights violations or corruption.

“There is a strategy in initiating sanctions on mid-level people, so that a certain message is sent to the counterparty, and then we can have a conversation on how things must change so that people higher up aren’t also sanctioned.”

Berschinski noted that because sanctions are administrative tools, the goal to change behaviour rather than seek justice. Additionally, the US government is less likely to sanction someone with a senior role for fear of upsetting relations with another country.

“We might be choosing someone who might be lower ranking than what we would like ideally, but we have to keep in mind that that person is a little more palatable to the US government,” Berschinski said.

Ultimately, as OFAC does not have to sanction anyone, the government must be convinced of the appropriateness of imposing these sanctions, Berschinski said.

### **More to come?**

Sanctions experts say they do not expect a slowdown to what they see as a fairly aggressive start to the use of Global Magnitsky sanctions.

Another possibility to look out for is the combination of sanctions and FCPA charges as OFAC and DOJ coordinate very closely, White said.

“Multiple offices in the DOJ play a huge role in the information gathering process of Global Magnitsky, especially the money laundering and asset recovery section,” White said, referring to the DOJ's criminal division section that houses the Kleptocracy Initiative, which seeks to recover assets stolen by corrupt foreign officials. “It can make a more impactful action... when you have both law enforcement actions and financial tools working hand in hand.”

Sanctions and FCPA charges have been brought together under other sanctions programmes outside of Global Magnitsky. On 8 January, Raul Antonio Gorrin Belisario was sanctioned under



Executive Order 13850, which specifically targets Venezuela. Gorrin, the owner of a major Venezuelan television network Globovisión, was charged

(<https://globalinvestigationsreview.com/article/jac/1177097/guilty-pleas-unveiled-in-billion-dollar-venezuelan-bribery-scheme>) in November with one count of conspiring to violate the Foreign Corrupt Practices Act, one count of conspiring to commit money laundering and nine counts of money laundering. According to the DOJ, Gorrin orchestrated a scheme to bribe officials at the Venezuelan National Treasury to further a currency exchange scam. Gorrin has not publicly commented on the charges.

Berschinski agreed that FCPA charges and sanctions may begin to overlap. "There is definitely a potential for innovating a combination of criminal prosecutions on one side and the administering of executive sanctions on the other," he said. "I think we will begin to see that as Magnitsky continues to be used."

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