

INDEPENDENT HIGH LEVEL PANEL OF LEGAL EXPERTS ON MEDIA FREEDOM

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Report on the Use of Targeted Sanctions to Protect Journalists

Drafted by: Ms. Amal Clooney

Barrister, Deputy Chair of the High Level Panel of Legal Experts
on Media Freedom

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With the executive summary and recommendations endorsed by members of the High Level Panel of Legal Experts on Media Freedom:

Lord David Neuberger (Chair)
Ms. Catherine Anite
Ms. Galina Arapova
Professor Sarah Cleveland
The Honourable Irwin Cotler
Justice Manuel José Cepeda Espinosa
Mr. Nadim Houry

Ms. Hina Jilani
Baroness Helena Kennedy QC
Professor Dario Milo
Ms. Karuna Nundy
Professor Kyung-Sin Park
Baroness Françoise Tulkens
Mr. Can Yeğinsu

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Executive Summary

1. Abuses of media freedom around the world are stifling speech and shredding the very fabric of democracies. As the publisher of The New York Times has observed, over the last few years, 'a growing number of governments have engaged in overt, sometimes violent' efforts to discredit the work of journalists and 'intimidate them into silence'.¹ Similarly, the UK Parliament's Foreign Affairs Committee has observed that 'an unfree media is spreading ... from countries that are leading by bad example'.²
2. This grim conclusion is supported by data. Annual reports on democracy record that 'media freedom has been deteriorating around the world over the past decade' in 'open societies and authoritarian states alike'.³ Of all the indicators that go into defining a liberal democracy, freedom of expression and the media are 'the areas under the most severe attack by governments around the world',⁴ through censorship of the media⁵ as well as 'more nuanced efforts to throttle' an independent press.⁶
3. The threats faced by journalists and the media today are varied as well as extensive. They include: (i) extra-judicial killings; (ii) torture and other cruel and inhuman and degrading treatment; (iii) abductions and physical abuse; (iv) unfounded arrest, unfair trial and arbitrary detention; (v) other forms of persecution, including through the enforcement of excessive libel laws, the filing of frivolous lawsuits or financial investigations, threats and online harassment, surveillance and 'doxing' of sources; and (vi) systemic restrictions on the media, including limitations on licencing, accreditation and financing as well as shutdowns of entire media outlets and internet communications. Such measures have led to a 'worldwide assault on journalists', an 'assault on the public's right to know, on core democratic values' and, ultimately, on 'the concept of truth itself'.⁷
4. In the last two years alone, over 130 journalists and media workers have been killed.⁸ India and Brazil, two of the world's largest democracies, have some of the highest murder rates of journalists.⁹ In approximately one out of four murders,

1 The New York Times, 'The Growing Threat to Journalism Around the World', 23 September 2019.

2 House of Commons Foreign Affairs Committee, "'Media Freedom is Under Attack": The FCO's Defence of an Endangered Liberty', 4 September 2019, HC 1920, para. 6.

3 Freedom House, Freedom and the Media 2019: A Downward Spiral, June 2019, p.2.

4 V-Dem Institute, V-Dem Democracy Report 2019, May 2019, p.5.

5 V-Dem Institute, V-Dem Democracy Report 2019, May 2019, p.18.

6 Freedom House, Freedom and the Media 2019: A Downward Spiral, June 2019, pp.2, 4, 28

7 The New York Times, 'The Growing Threat to Journalism Around the World', 23 September 2019.

8 Committee to Protect Journalists, CJP Data of Journalists and Media Workers Killed between 2018 and 2020 (as of 17 January 2020).

9 When it comes to targeted killings, the worst countries for the period 2015-2019 are: Mexico – 21; Afghanistan – 11; Syria – 10; India – 10; Brazil – 10. See CPJ Database.

the prime suspects have been government or military officials.¹⁰ And the vast majority of these murders have gone unpunished.¹¹ In addition, 165 journalists reporting on armed conflict were killed in the last decade while reporting from war zones.¹²

5. Journalists are also frequently silenced through false charges, unfair trials and lengthy prison terms. In 2019, over 250 journalists around the world were in prison 'for their work', including an increasing number for allegedly spreading 'false news'.¹³
6. Targeted sanctions are an international tool that can be used to respond to human rights violations by freezing individuals' assets and banning their entry into certain countries. They can be imposed unilaterally by governments, or by a small group of governments acting together. And they target individuals or corporate entities rather than entire states.
7. Targeted sanctions can be deployed in response to a range of conduct, including terrorism and corruption as well as violations of human rights. And their targets can range from governmental officials to police, prosecutors and judges; from high-ranking ministers to lower level henchmen; from private businessmen to multinational companies complicit in human rights violations. The idea is that '[i]f all advanced democracies, with desired banks, schools and hospitals, adopted [human rights-based sanctions] laws and pooled information and target lists, the pleasures available to the cruel and the corrupt would be considerably diminished. They will not be put in prison, but they will not be able to spend their profits as and where they wish, nor travel the world with impunity. They may then come to recognise that violating human rights is a game not worth the candle'.¹⁴
8. Sanctions help to shine a spotlight on misconduct and signal a state's disapproval of it.¹⁵ They constitute a form of accountability.¹⁶ And they help to maintain pressure on the responsible actors, to deter them from continuing their abusive behaviour and discouraging third parties from doing the same.¹⁷ At a time when multilateral efforts to enforce human rights through the UN Security Council and international criminal courts are in decline, targeted sanctions can be one of the few ways, or in some cases the *only* way, to enforce international norms.

10 See Committee to Protect Journalists, 'Getting away with Murder', 27 October 2016 (analysing journalists' murders that took place between 2006 and 2016).

11 See Committee to Protect Journalists, 'Getting away with murder', 29 October 2019.

12 Committee to Protect Journalists, 'CJP Data of Journalists Killed in Crossfire between 2010 and 2020'. See also International Committee of the Red Cross, The Protection of Journalists and the ICRC Hotline - FAQ, 1 November 2017.

13 See Committee to Protect Journalists, 'CPJ Data of Journalists in Jail for their Work' (as of 22 January 2020) and Committee to Protect Journalists, 'China, Turkey, Saudi Arabia, Egypt are World's Worst Jailers of Journalists', 11 December 2019.

14 Geoffrey Robertson and Chris Rummary, 'Why Australia needs a Magnitsky Law', Oct-Dec 2018, Australian Quarterly, Vol. 89, No. 4, p.27.

15 See paragraph 24 below.

16 See paragraph 24 below.

17 See paragraph 24 below.

9. The effect of targeted sanctions, especially *financial* sanctions, can be very significant. Indeed, sanctions by just one powerful state that has a national 'Magnitsky' regime can be instrumental in changing the behaviour of individuals who are violating human rights norms, particularly if that state is a key travel destination and occupies a central position in the global financial system.¹⁸ And the impact of financial sanctions imposed by one country can go far beyond that country's borders. For example, a person subject to US sanctions is usually not able to access their bank account or other assets in the US, effect any US dollar transaction, hold US dollars in any account, or buy a product from a person or entity subject to US sanctions jurisdiction without authorisation from the US government.¹⁹
10. Despite the significant potential for sanctions to become a human rights enforcement tool with real 'teeth', states have been slow to enact human rights-based sanctions regimes or to use them in response to the repression of journalists and restrictions on freedom of the media. There are, so far, only three major national legislative frameworks for the imposition of targeted sanctions worldwide against those responsible for human rights violations. These exist in the US, in Canada and in the UK, although the UK regime is not yet fully operational.²⁰
11. Such laws are often referred to as 'Magnitsky laws', after Sergei Magnitsky: a lawyer murdered after exposing large-scale corruption in Russia whose case inspired the adoption of new sanctions legislation in the US.²¹ These laws allow states to maintain a list of sanctions targets without regard to whether the state in which the conduct occurs has been designated for sanctioning on a countrywide basis.²² In some countries they exist alongside other laws allowing the imposition of sanctions on a country basis or on a thematic basis in response to criminal activity, such as terrorism or corruption. The EU and UN also generally apply country-based sanctions that have in some instances been responsive to large-scale human rights abuses.²³

18 This includes the US dollar, the British pound and the euro, but has reportedly led some states targeted by US sanctions in recent years to look to crypto-currencies or alternative currencies to evade the imposition of sanctions. See e.g. The Telegraph, 'Russia Plans to Tackle US Sanctions with Bitcoin Investment, Says Kremlin Economist', 14 January 2019.

19 The US primary sanctions jurisdiction applies to (i) a US citizen or permanent resident, regardless of where the individual lives or by whom the individual is employed, (ii) a legal entity organised under US law and its non-US branches (but not its non-US subsidiaries), and (iii) any person or entity in the U.S. The US primary sanctions against Iran and Cuba also reach non-US entities that are owned or controlled by a US person. See also David S. Cohen and Zachary K. Goldman, 'Like It or Not, Unilateral Sanctions Are Here to Stay', (2019) 113 AJIL Unbound 146, p.150.

20 See paragraphs 37, 52 and 112 below. Also see paragraphs 36 and 38 below.

21 US Treasury, 'FAQ: Global Magnitsky Sanctions', 21 December 2017. See also Sergei Magnitsky Rule of Law and Accountability Act, Public Law 112-208—DEC. 14, 2012.

22 Many jurisdictions also include human rights abusers on sanctions lists under country-specific sanctions regimes, on the basis of the person's connection with the country that has been sanctioned: see e.g. paragraphs 94, 96, 97, 103, 115, 118 and 119 below.

23 See paragraphs 80-81 and 120-123.

12. Even in the handful of states in which they exist, ‘Magnitsky laws’²⁴ have rarely been used to protect journalists or counter systemic attacks against the media. Targeted sanctions were not used to respond to the killing of 50 journalists or the imprisonment of any of the 250 journalists who were detained ‘for their work’ in 2019.²⁵ And as the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions reported, the limited sanctions imposed in the wake of the chilling murder of Washington Post journalist Jamal Khashoggi ‘fail[ed] to correspond to the gravity of the crime’.²⁶ Although 173 states have ratified the International Covenant on Civil and Political Rights, guaranteeing the right to freedom of expression,²⁷ and more recently over 30 states have signed the Global Pledge on Media Freedom,²⁸ there is clearly a long way to go before the commitments that have been made on paper translate into tangible action.
13. This report recommends that signatories to the Global Pledge on Media Freedom and other key governments adopt targeted sanctions regimes that are designed and applied to protect journalists and media freedom as well as respond to other human rights abuses. Such measures would help to ensure that journalists, media professionals and others engaged in journalistic activities²⁹ can carry out their work without harassment, intimidation, false imprisonment or violent attack. The report also recommends amendments to the application of existing targeted human rights sanctions regimes to achieve this purpose.
14. Given the scope of the Panel’s mandate, this report focuses on the elements of sanctions regimes that are most relevant from the perspective of protecting journalists and a free press. It does not seek to provide an exhaustive analysis of legal issues relevant to sanctions regimes in general. In particular, the report does not assess the substantial due process protections that must be provided to targets

24 The terms ‘Magnitsky laws’ and ‘Magnitsky legislation’ are used throughout the report as shorthand to refer to national laws that allow for the global use of targeted sanctions, such as asset freezes and visa bans against individuals on human rights grounds.

25 See Committee to Protect Journalists, CPJ Data Journalists Killed 2019 (as of 3 February 2020); Committee to Protect Journalists Frequently Asked Questions (as of 5 February 2020); Committee to Protect Journalists, ‘China, Turkey, Saudi Arabia, Egypt are world’s worst jailers of journalists’, 11 December 2019.

26 UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, ‘Annex to Report: Investigation into the Unlawful Death of Mr. Jamal Khashoggi’, 19 June 2019, A/HRC/41/CRP.1 (the “Callamard Report on Khashoggi Annex”), para. 443. Visa bans were also imposed by other EU member states unilaterally, including France and Germany. This response was criticised by the UN Special Rapporteur as being too limited overall: Callamard Report on Khashoggi Annex, paras. 177, 179 and 438-40.

27 See UN Office of High Commissioner for Human Rights, Status of ratification, 14 January 2020 (International Covenant on Civil and Political Rights).

28 See Foreign and Commonwealth Office, ‘Global Pledge on Media Freedom’, 11 July 2019.

29 Journalists, media professionals and others engaged in journalistic activities are referred to generally as ‘journalists’ for the purposes of this report. In addition, ‘press’ and ‘media’ are used interchangeably.

of sanctions regimes given the potentially severe impact of sanctions,³⁰ some of which can also affect family members of individuals who are targeted³¹ as well as the broader community.³² The Panel, however, wishes to stress that it considers such protections to be essential to a fair sanctions regime that complies with international human rights law.

15. In its analysis and recommendations, the report focuses on three issues related to sanctions that are most relevant in the context of the media:
 - o the appropriate scope of human rights abuses that should trigger the imposition of sanctions (*i.e. what* should be included);
 - o the appropriate targets of a sanctions regime (*i.e. who* should be included); and
 - o the appropriate triggering mechanisms for a targeted human rights sanctions regime (*i.e. how* it should be activated).

16. The report recommends that laws relating to targeted sanctions for violations of international human rights norms should be drafted, interpreted and applied in a manner that is broad enough to encompass the principal ways in which media freedom is being abused. In addition, it recommends that multilateral organisations, including the EU, and the governments of key jurisdictions worldwide, including those that have become banking centres and playgrounds for potential sanctions targets, should consider adopting targeted human rights sanctions regimes.³³ The specific recommendations to governments and multinational institutions are:
 - o States and multilateral institutions, such as the EU, should introduce or amend existing sanctions regimes so that they are global in scope and responsive to serious human rights abuses;
 - o States should not limit sanctions to abuses involving a particular class of victims;

30 For an overview of due process issues arising in the context of sanctions, see e.g. James Cockayne et al, 'Fairly Clear Risks: Protecting UN Sanctions' Legitimacy and Effectiveness Through Fair and Clear Procedures', United Nations University: 2018, pp.21-25; Matthew Happold, 'Targeted Sanctions and Human Rights', in Matthew Happold and Paul Eden (Eds.), *Economic Sanctions and International Law*, Hart: 2016, pp.109-111. See also Elena Chachko, 'Foreign Affairs in Court: Lessons from CJEU Targeted Sanctions Jurisprudence', (2019) 44(1) *Yale Journal of International Law*, pp.14-18; Council of the EU, 'Basic Principles on the Use of Restrictive Measures (Sanctions)', 7 June 2004, 10198/1/04 REV 1; Elena Chachko, 'Due Process Is in the Details: U.S. Targeted Economic Sanctions and International Human Rights Law', (2019) 113 *AJIL Unbound*, pp.157-162; Rachel Barnes, 'United States Sanctions: Delisting Applications, Judicial Review and Secret Evidence', in Matthew Happold and Paul Eden (Eds.), *Economic Sanctions and International Law*, Hart: 2016, pp.209-223.

31 See paragraph 49 below.

32 See e.g. Council of the EU, 'Basic Principles on the Use of Restrictive Measures (Sanctions)', 7 June 2004, 10198/1/04 REV 1, para. 6: '[s]anctions should be targeted in a way that has maximum impact on those whose behaviour we want to influence. Targeting should reduce to the maximum extent possible any adverse humanitarian effects or unintended consequences for persons not targeted or neighbouring countries'. Also see Africa Union Commission, 'The Chairperson of the African Union Commission Calls for the Lifting of Economic Sanctions Imposed on Zimbabwe', 25 October 2019 (highlighting the negative impact that international sanctions have on the economy and people of Zimbabwe).

33 See paragraph 86 below.

- States should use a threshold for the imposition of sanctions that covers serious abuses of international human rights law and international humanitarian law;
 - States should use international human rights law and international humanitarian law to guide their drafting, interpretation and application of human rights-based sanctions regimes;
 - States should make clear either in sanctions legislation or policy that the unjust imprisonment of journalists meets the threshold for sanctions and that prosecutors and judges, as well as officials, may be sanctionable;
 - Sanctions should be used to respond to serious systemic restrictions on media freedom, including shutdowns of the internet;
 - States should ensure that sanctions can be applied to non-state actors, including companies;
 - States should ensure that sanctions can be applied to secondary participants, including those complicit in the abuses;
 - States should ensure that sanctions can be applied to their nationals;
 - States should provide a role for an expert committee that is independent of the executive branch of government in determining targets for sanctions; and
 - A coordination committee should be established to coordinate information and efforts of key partners, including the US, UK, Canada and the EU.
17. States that say they believe in media freedom should introduce laws and policies that will help to protect journalists in the real world by raising the cost of abusive conduct. A consistent use of targeted sanctions when journalists are killed and arbitrarily imprisoned would help to raise international awareness and shift the default from impunity to accountability. There is an important opportunity for states to lead with a new paradigm: that when the media is attacked, targeted sanctions will be a counter-attack. Governments that truly wish to protect journalists should seize it.

Scope and Acknowledgments

18. This report focuses on recommendations to governments regarding the design and use of a system of targeted sanctions to protect journalists and freedom of the press, as well as other human rights. It does not include an analysis of a number of issues that are relevant to targeted human rights sanctions regimes more generally, such as the following:
- The report does not include an assessment of adequate due process requirements to ensure that sanctions regimes are compatible with international human rights law. Such an analysis would include issues relating to: (i) the transparency of the process of designating individuals for sanctions;³⁴ (ii) the due process protections afforded to those who are placed on sanctions lists – including their right to be heard and to challenge sanctions that are imposed on them;³⁵ (iii) the requirement of a suitably high standard of evidential proof; (iv) limitations on the type of evidence that will be accepted as relevant; (v) the impact of sanctions on the presumption of innocence, a person’s reputational interests and potentially applicable immunities; and (vi) the need for humanitarian and other exemptions from certain sanctions.³⁶
 - The report does not assess ways to optimise the operation of targeted human rights sanctions regimes to address acts of corruption. The Panel notes that various NGOs have highlighted the need for sanctions regimes, including a future EU regime, to appropriately address corruption.³⁷ And the Panel appreciates that endemic corruption and incidents of human rights violations can be closely linked.³⁸ It also welcomes the fact that targeted

34 See e.g. Callamard Report on Khashoggi Annex, para. 439(a): '[n]one of the Governments responsible for issuing such sanctions has provided a well-evidenced explanation as to why these particular individuals have been targeted for sanction. In general, public advice of decisions do not specify the standards of proofs that [have] been used and offer no substantiation for the decisions'. Also see Hansard HC Deb 23 February 2015, vol 593, col 105.

35 See e.g. Report Commissioned by the European Parliament’s Subcommittee of Human Rights, ‘Targeted Sanctions Against Individuals on Grounds of Grave Human Rights Violations – Impacts, Trends and Prospects at EU Level’, April 2018, PE 603.869 (the “European Parliament Targeted Sanctions Report”), pp.5, 11-13, 19; UN Special Rapporteur on Unilateral Coercive Measures, ‘Report of the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights’, 20 August 2018, A/HRC/39/54, paras. 20-23.

36 For instance, some UN sanctions regimes include humanitarian exemptions, to exempt various kinds of economic exchanges to benefit the local population as well, as well as exemptions to allow designated targets to meet their basic needs: see e.g. in relation to Syria, EU Council Regulation 36/2012, 18 January 2012, OJ L16, 19/1, Articles 16(a) and (f). See also Council of the EU, ‘Basic Principles on the Use of Restrictive Measures (Sanctions)’, 7 June 2004, 10198/1/04 REV 1, para. 6; Kimberley Ann Elliott, ‘The Impacts of United Nations Targeted Sanctions’, in Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho (eds), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, (CUP, 2016) p.183. See paragraph 14 above.

37 This includes NGOs such as Global Witness and The Sentry. See e.g. Rachel Owens and Sarah Gardiner, ‘The Case for Corruption Criteria in EU Global Human Rights Sanctions’, EURACTIV, 2 July 2019.

38 See e.g. European Parliament, Resolution on Corruption and Human Rights in Third Countries, 13 September 2017, 2018/C 337/12, Preamble, para. E (observing that corruption ‘may also cause many human rights violations’ which ‘fuels injustice, inequality, inter alia as regards financial and economic resources, impunity, arbitrary action, political and religious extremism and conflict’).

human rights sanctions regimes in the US³⁹ and Canada⁴⁰ expressly extend to certain persons who are implicated in corruption, and that sanctions have been imposed following the death of journalists who were killed for investigating and reporting on corruption.⁴¹ However, this broader issue is beyond the purview of this report.

- The report also does not provide a detailed analysis or assessment of the existing system of sanctions imposed by the UN Security Council, given that the Panel's recommendations are directed to individual states and regional organisations. The Panel is, however, mindful that the Council has an extensive sanctions practice⁴² that has been assessed by others.⁴³
- The report also does not consider *comprehensive* – as opposed to targeted – sanctions, which are imposed against an entire country or region in response to human rights violations. The focus of the report is on recommendations regarding the use of targeted or 'smart' sanctions against specific individual human or corporate targets. The Panel notes, however, that the legality of comprehensive sanctions has been questioned,⁴⁴ and that such sanctions have been criticised for the negative humanitarian impact they can have on the civilian population in a targeted state.⁴⁵

19. In the process of preparing this report, the Panel has had the great benefit of consulting with a number of individuals and organisations through in-person meetings and telephone interviews, including:

- Mr. Rob Berschinski (Senior Vice President, Human Rights First)
- Mr. Brad Brooks-Rubin (Managing Director, The Sentry)

39 See paragraph 40 below.

40 See paragraph 68 below.

41 See e.g. the sanctions that were imposed following the murder of the Slovak investigative journalist, Ján Kuciak: US Treasury, 'Treasury Sanctions Individuals for Roles in Atrocities and Other Abuses', 10 December 2019.

42 See paragraph 80 below.

43 See paragraph 26 below.

44 UN Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, 'Report of the Special Rapporteur', 17 July 2018, A/73/175, para. 52. The legality of non-UN sanctions that do not qualify as lawful 'counter-measures' or 'retorsions' under international law has also been questioned by commentators: see e.g. Devika Hovell, 'Unfinished Business of International Law: the Questionable Legality of Autonomous Sanctions', (2019) 113 AJIL Unbound 140, pp.143-144 (noting '[p]roblematically, however, until states declare themselves willing to agree on defined legal parameters, the precise line between lawful and unlawful autonomous measures remains a matter of debate rather than law'). Others have criticised the legality of so-called 'secondary sanctions', which requires the individuals and entities of a third state that has not been targeted by sanctions to comply with sanctions restrictions: see e.g. *Alleged Violations of the 1985 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Order of 3 October 2018 on the Request for the Indication of Provisional Measures, Declaration of Judge ad hoc Momtaz, ICJ Reports 2018 p.623, para. 15; Antonios Tzanakopoulos, 'State Responsibility for "Targeted Sanctions"', (2019) 113 AJIL Unbound 135, pp.138-139.

45 See e.g. Africa Union Commission, 'The Chairperson of the African Union Commission Calls for the Lifting of Economic Sanctions Imposed on Zimbabwe', 25 October 2019 (highlighting the negative impact that international sanctions have on the economy and people of Zimbabwe). See also European Parliament Targeted Sanctions Report, p.7.

- Dr. Barbora Bukovská (Senior Director for Law and Policy, Article 19)
- Mr. Scott Busby (Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor, US Department of State)
- Dr. Agnès Callamard (UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions)
- Ms. Kathleen Davis (Senior Issue Advisor, Global Affairs, Office of the Prime Minister of Canada)
- Mr. Robert Destro (Assistant Secretary, Bureau of Democracy, Human Rights and Labor, US Department of State)
- Mr. Harlem Désir (OSCE Representative on Freedom of the Media)
- Mr. Vincent Garneau (Chief of Staff, Office of the Minister of Foreign Affairs of Canada)
- Ms. Jodie Ginsberg (CEO, Index on Censorship)
- Mr. Matjaž Gruden (Director of Democratic Participation, Council of Europe)
- Rep. Martijn van Helvert (Member of the House of Representatives of the Netherlands)
- Professor René Fernando Urueña Hernández (Associate Professor and Director of Research, Universidad de Los Andes School of Law)
- Mr. Thomas Hughes (Content Appeals Board, Facebook and former Executive Director, Article 19)
- Ms. Kate Johnston, (Acting) Head of Sanctions Unit, UK Foreign & Commonwealth Office)
- Mr. James Kariuki (Multilateral Policy Director, UK Foreign & Commonwealth Office)
- Mr. Edison Lanza (Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights)
- Mr. Chris Lynch (the Office of Senator B. Cardin)
- Rep. Tom Malinowski (US Representative for New Jersey's Seventh District and former Assistant Secretary of State for Democracy, Human Rights, and Labor)
- Ms. Francesca Montagna (Information Society Department, Council of Europe)

- Ms. Suzanne Nossel (CEO, PEN America)
- Rep. Pieter Omtzigt (Member of the House of Representatives of the Netherlands)
- Mr. Tim Otty QC (Barrister, Blackstone Chambers)
- Mr. Kyle Parker (Senior Senate Staff Representative, Commission on Security and Cooperation in Europe)
- Mr. Patrick Penninckx (Head of the Information Society Department, Council of Europe)
- Mr. Patrick Pickering (Policy Advisor, Global Affairs, Government of Canada)
- Mr. Stephen Pomper (Senior Director of Policy, International Crisis Group and former Special Assistant to President Obama)
- Mr. John Prendergast (Co-Founder, The Sentry)
- Dr. Courtney Radsch (Advocacy Director, Committee to Protect Journalists)
- Mr. Qudsi Rasheed (Former Head of Sanctions Unit, UK Foreign and Commonwealth Office)
- Mr. Tim Rieser (Foreign Policy Aide to Senator P. Leahy and Democratic Clerk for the Appropriations Subcommittee on State and Foreign Operations)
- Ms. Algene Sajery (the Office of Senator B. Cardin)
- Mr. Brandon Silver (Director of Policies and Projects, Raoul Wallenberg Centre for Human Rights)
- Mr. Joel Simon (Executive Director, Committee to Protect Journalists)

In some case, interviewees preferred that quotes not be attributable to them by name.

20. The author of this report is also grateful to members of the High Level Panel of Legal Experts on Media Freedom, including Judge Manuel Cepeda, Mr. Irwin Cotler and Baroness Françoise Tulkens, for their helpful comments on the topic of this report, as well as to Samarth Patel and Katharina Lewis for their excellent research assistance. The author also thanks the International Bar Association's Human Rights Institute for acting as the secretariat for the Panel's work, and in particular Baroness Helena Kennedy, Perri Lyons and Zara Iqbal for their support.
21. The author would also like to express particular thanks to Professor Sarah Cleveland, who provided expert analysis and detailed comments on an earlier

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Importance of sanctions as a tool to enforce human rights compliance

22. Sanctions have been referred to as existing ‘on a continuum between words ... and war’.⁴⁶ They present an opportunity for a state to take a principled, coercive and preventative measure against the actions of another state which goes beyond rhetoric but does not go as far as force.
23. ‘Targeted’ sanctions designate specific persons who are included on a sanctions list. Such regimes should be distinguished from comprehensive or countrywide sanctions regimes that have, controversially, imposed restrictions on entire countries or regions. As the former UN High Commissioner on Human Rights concluded, ‘targeted sanctions aimed at applying pressure on specific decision-makers bearing responsibility for the human rights situation typically have a less harmful impact on the population ... than measures targeting the economy as a whole’.⁴⁷
24. Targeted sanctions regimes that are used to respond to abuses of human rights can fulfil a number of objectives:
 - Firstly, sanctions are a tool to ‘name, blame and shame’ violators;⁴⁸ a way to send a signal of condemnation and ‘at least lay down a marker’⁴⁹ that the behaviour in question contravenes international norms.⁵⁰ A report commissioned by the European Parliament has highlighted that imposing sanctions can ‘contribut[e] to the cementing of an international norm, or empowering certain international organisations and structures’.⁵¹ And as former UK Minister of State Alan Duncan has put it: one purpose of

46 Thomas J. Biersteker, Marcos Tourinho and Sue E. Eckert, ‘The Effectiveness of United Nations Targeted Sanctions’, in Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho (Eds.), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, CUP: 2016, p.223.

47 UN High Commissioner for Human Rights, ‘Thematic Study on the Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, Including Recommendations on Actions Aimed at Ending Such Measures’, 11 January 2012, A/HRC/19/33, para. 38.

48 Geoffrey Robertson and Chris Rummary, ‘Why Australia needs a Magnitsky Law’, Oct-Dec 2018, *Australian Quarterly*, Vol. 89, No. 4, p.25.

49 Interview with former US government official.

50 Francesco Guimelli, ‘The Purposes of Targeted Sanctions’, in Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho (Eds.), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, CUP: 2016, p.46.

51 European Parliament Targeted Sanctions Report, p.10.

sanctions is to 'bear down on those who we think offend those values in a number of ways across the world'.⁵²

- Andrei Sannikov, an opposition leader imprisoned along with other dissidents in Belarus, reported that when sanctions were imposed on his country, officials feared that 'international condemnation by democratic countries [would] prevent them from enjoying the life that ordinary people, who did not commit any crimes, can enjoy all over the world'.⁵³
- Secondly, sanctions, including visa bans and asset freezes against human rights abusers, can limit the impact of violations by raising the cost of the targeted behaviour and interfering with the ability of listed persons to raise funds or enlist international support for sanctioned activities.⁵⁴
- Sanctions may make it more difficult for officials who target journalists or commit other human rights abuses to access luxury goods and destinations. And according to the report commissioned by the European Parliament, the stigmatizing effect of sanctions on targeted individuals can help to isolate them by 'bring[ing] about a decline in the backing they enjoy among key domestic or external actors, in the form of defections among the ranks of supporters or even within the leadership'.⁵⁵ This may mean that 'targets cannot embark in unwanted behaviour because they do not have the capabilities any longer'.⁵⁶
- Such costs make sanctions an effective 'stick' – and the possibility of their removal a potentially effective 'carrot' – when it comes to violations of the rights of journalists, including their imprisonment on false charges. For instance, in Belarus, the lifting of some EU sanctions was tied to the release of political prisoners. Andrei Sannikov was one of the beneficiaries of this policy, and has stated that he is the 'living proof of the effectiveness of ... sanctions' because he 'was released only due to the fact that ... the European Union introduced economic sanctions against the businessmen that were close to [the President] and supportive of the regime'.⁵⁷

52 House of Commons Foreign Affairs Committee, 'Fragmented and Incoherent: the UK's Sanctions Policy', 5 June 2019, HC 1703, (the 'FAC Report on Sanctions Policy'), para. 6. See also Sarah H. Cleveland, 'Norm Internalization and U.S. Economic Sanctions', (2001) 26(1) *Yale Journal of International Law* 1, p.87.

53 European Parliament Targeted Sanctions Report, p.21 (citing the Canadian Parliament).

54 *Id.* See also Francesco Guimelli, 'The Purposes of Targeted Sanctions', in Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho (Eds.), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, CUP: 2016, pp.45-46.

55 European Parliament Targeted Sanctions Report, p.10.

56 *Id.*, p.47.

57 European Parliament Targeted Sanctions Report, p.22.

- Thirdly, sanctions can limit any damage that is caused by having a deterrent effect on future abuses as well as on potential ‘copycats’ who might otherwise be ‘tempted to imitate the wrong’.⁵⁸
25. Data-driven measurements of the effectiveness of specific sanctions regimes raise significant methodological challenges, including questions relating to identifying the purposes for which they were imposed,⁵⁹ quantifying their more diffuse effects,⁶⁰ selecting the relevant time period to assess effectiveness,⁶¹ and determining whether effectiveness is measured by the economic, political or psychological impact of the sanctions, or a combination all three.⁶² In addition, most studies focus on the effectiveness of UN targeted sanctions rather than regional or unilateral targeted sanctions imposed by states, and even in that context there is no definitive study of the impact of UN targeted sanctions when it comes to human rights abuses as opposed to other types of wrongdoing.⁶³
 26. Despite these difficulties, there are studies that suggest that individually targeted sanctions can be effective in changing behaviour, and governments that have used targeted sanctions have reported some successes.⁶⁴ Some studies of targeted UN sanctions indicate that they may be more effective at constraining sanctions targets (through restricting access to essential resources) and at signalling and stigmatisation of targets than at coercing sanctions targets to change their behaviour.⁶⁵ Insofar as coercion is concerned, UN targeted sanctions have been considered successful in reinforcing ‘mediation efforts in Côte d’Ivoire to persuade the Gbagbo government eventually to hold reelections in 2010’.⁶⁶ Similarly, financial sanctions imposed against Charles Taylor and his associates have been

58 European Parliament Targeted Sanctions Report, p.10. See also Council of the EU, ‘Sanctions Guidelines – Update’, 4 May 2018, No. 5664/18, para. 4.

59 See Francesco Giumelli, ‘The purposes of targeted sanctions’ in Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho (Eds.), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, CUP: 2016, pp.38-59; see also p.226.

60 See e.g. Jonathan Masters, *What Are Economic Sanctions?*, Council on Foreign Relations, 12 August 2019.

61 Thomas J. Biersteker, Marcos Tourinho and Sue E. Eckert, ‘The Effectiveness of United Nations Targeted Sanctions’, in Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho (Eds.), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, CUP: 2016, p.226.

62 Kimberley Ann Elliott, ‘The Impacts of United Nations Targeted Sanctions’, in Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho (eds), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, CUP: 2016, pp.172-173.

63 See e.g. Gary Clyde Hufbauer, Jeffrey J. Schott et al, *Economic Sanctions Reconsidered*, (3rd Ed., Peterson Institute for International Economics 2007). In relation to the EU, see e.g. House of Commons Foreign Affairs Committee, ‘A Cautious Embrace: Defending Democracy in an Age of Autocracies’, 4 November 2019, HC 109 (the “FAC Report on Autocracies”), para. 32 (citing Dr Pete Duncan, Associate Professor of Russian Politics and Society at UCL, who highlighted the effectiveness of sanctions imposed by the UK and its international partners on Russian targets following the annexation of Crimea in 2014); European Parliament Targeted Sanctions Report, p.5. In relation to Africa, see Hilary Mossberg, ‘Beyond Carrots, Better Sticks: Measuring and Improving the Effectiveness of Sanctions in Africa’, *The Sentry*, October 2019.

64 For an overview of studies, see European Parliament Targeted Sanctions Report, pp.19-21.

65 Thomas J. Biersteker, Marcos Tourinho and Sue E. Eckert, ‘The Effectiveness of United Nations Targeted Sanctions’, in Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho (Eds.), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, CUP: 2016, pp.233-235.

66 *Id.*, p.233.

cited as a successful example of coercive sanctions that helped to stabilize the situation in Liberia.⁶⁷

27. Similarly, a US government report on the impact of economic sanctions targeting individuals and entities found that although there are difficulties in assessing the sanctions' effectiveness in meeting broad US policy goals,⁶⁸ given shifts in policy, the challenge of isolating the effect of sanctions from other factors, and a lack of reliable data,⁶⁹ existing studies have highlighted factors that increase the effectiveness of sanctions. For instance, there is 'strong evidence' in academic studies that US financial sanctions have been more effective in changing behaviour when implemented through international organisations or when the target had an existing dependency or relationship with the US.⁷⁰
28. In the EU, a review of targeted sanctions notes that '[r]esearch remains scarce, partly because the tools are still under development'.⁷¹ But at a time when multilateral institutions are faltering, it is noteworthy that cooperation by states in implementing EU sanctions has been regarded as 'mostly satisfactory'⁷² and that 'contravention of the visa bans' has 'become extremely rare'.⁷³
29. Government officials have also reported successes following the use of targeted sanctions. For instance, Stephen Pomper, former Senior Director for African Affairs at the US National Security Council, indicates that the US government developed an 'effective and (at least in the context of African sanctions regimes) innovative strategy for using sanctions to apply pressure to' Joseph Kabila's regime in the Democratic Republic of Congo.⁷⁴ The sanctions, which were primarily triggered by the use of violence against civilians, targeted increasingly senior individuals in proximity to Kabila and his family, making clear that they could ultimately be targeted by sanctions.⁷⁵ And the sanctions eventually helped bring about a political agreement that de-escalated the ongoing crisis.⁷⁶ Other targeted sanctions regimes imposed by the US government on individual human rights abusers in

67 *Id.*; see also p.234 (regarding Angola).

68 US Government Accountability Office, 'Economic Sanctions: Agencies Assess Impacts on Targets, and Studies Suggest Several Factors Contribute to Sanctions' Effectiveness' ("GAO Report"), October 2019, GAO-20-145, p.12.

69 *Id.*, pp.17-18.

70 *Id.*, p.19. The report also found 'some evidence, based on a smaller number of studies, that sanctions have been more effective when the target state had low per capita income, when a country's threat of imposing sanctions was assessed to be credible, or when sanctions imposed relatively high costs on the target state': GAO Report, pp.20-21.

71 European Parliament Targeted Sanctions Report, pp.19-21.

72 *Id.*, pp.18-19.

73 *Id.*

74 Stephen Pomper, 'Atrocity Prevention Under the Obama Administration: What We Learned and the Path Ahead', United States Holocaust Memorial Museum Simon Skjodt Center for the Prevention of Genocide, February 2018 ("Pomper Report on Atrocity Prevention"), p.18.

75 Pomper Report on Atrocity Prevention, p.18.

76 *Id.*, p.18.

Uganda,⁷⁷ Côte D'Ivoire,⁷⁸ Burundi,⁷⁹ and Myanmar⁸⁰ have also reportedly played an important part in advancing human rights in those countries.

30. The UK government has reported positive changes in behaviour following the imposition of countrywide sanctions. The UK government has, for instance, stated that it has 'successfully used sanctions to counter and reduce hostile activities targeting us and our partners' in relation to Russia's annexation of Crimea and destabilizing actions in Eastern Ukraine.⁸¹ And it has stated that recent reforms in Iran ending capital punishment for the majority of drug offences occurred 'in part, because of sustained international pressure on the issue, including sanctions'.⁸²
31. There is also evidence suggesting that even the threat of sanctions can trigger improved behaviour on human rights.⁸³ This was the case with President Nasheed of the Maldives. He was released from detention that was denounced as 'arbitrary' by the UN⁸⁴ only after his counsel announced that the US and others were considering the imposition of targeted sanctions against those responsible for his arrest and unfair trial.⁸⁵ And as Avril Haines, Deputy National Security Advisor to President Obama, has noted, 'by simply putting in place the framework and demonstrating intent by perhaps making a few designations, the tool can have an outsized impact'.⁸⁶ This is true, she argues, 'even in situations in which the sanctions themselves are unlikely to have a financial impact' because 'people see them ... as doing significant reputational damage and ultimately leading to the potential of additional accountability measures'.⁸⁷
32. Targeted human rights sanctions should, in any event, not be viewed as an end in themselves. They are one element of a broader 'political strategy' to secure human rights compliance, 'with off-ramps that allow lifting when parties meet

77 *Id.*, p.23 (referring to the fact that the Ugandan legislature declined to pass further anti-LGBT legislation following the introduction of US visa bans on Ugandan individuals as '[e]vidence ... that visa sanctions can be a useful tool for encouraging positive human rights behavior').

78 *Id.*, p.22 (referring to US entry bans on 'perpetrators of serious human rights and humanitarian law violations and abuses' as a 'powerful motivator for perpetrators who have family or friends in the country' including in response to the Cote D'Ivoire crisis of 2010-2011 when sanctions were imposed against Laurent Gbagbo, at a time when his daughter lived in Atlanta, in the US).

79 *Id.*, p.15 (targeted sanctions 'against both government and opposition figures associated with fomenting violence' were combined with a de-escalation policy strategy that included a trip by the Security Council, which was, according to the former US Permanent Representative to the UN, intended to 'prevent ... a small fire from becoming a big fire').

80 Interview with Rep. Tom Malinowski, 27 September 2019.

81 House of Commons Foreign Affairs Committee, 'Fragmented and Incoherent: the UK's Sanctions Policy: Government Response to the Committee's Seventeenth Report', 4 September 2019, HC 2642, para. 14.

82 The Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I., Section 2(4) Report, para. 13.

83 See also Daniel W. Drezner, 'The Hidden Hand of Economic Coercion', (2003) 57(3) *International Organization*, p.655 (concluding that studies assessing the effectiveness of sanctions have often underestimated the effectiveness of *threatening* sanctions, without sanctions being imposed subsequently).

84 WGAD *Nasheed v. The Maldives*, Op. no. 33/2015, 4 September 2015, para. 110; HRC *Nasheed v. The Maldives*, Comm nos. 2270/2013 and 2851/2016, 4 April 2018, para. 9.

85 The author of this report was counsel to President Nasheed in this matter.

86 Pomper Report on Atrocity Prevention, p.24.

87 *Id.*

demands'.⁸⁸ Similarly, the UK has explained that 'sanctions can be an effective foreign policy tool as one part of a broader foreign policy strategy for a country or thematic issue'.⁸⁹ The UK government has pointed to Iran as one example of this multi-pronged approach, explaining that '[d]irect lobbying alone has not proved sufficient. The UK is therefore combining sanctions with bilateral lobbying, lobbying through international frameworks, supporting UN resolutions and supporting the UN Special Rapporteur'.⁹⁰

33. The success of any targeted human rights sanctions regime is also conditional on the legitimacy of its goals and application. Some state practice, however, raises concerns. For instance, the promulgation of US sanctions against Russian officials considered responsible for the murder of Sergei Magnitsky prompted Russia to issue counter-sanctions, including a ban on Americans adopting Russian orphans.⁹¹ Saudi Arabia imposed trade sanctions against Canada in August 2018 after the Canadian Department of Global Affairs tweeted support for imprisoned human rights defenders in the country.⁹² In March 2019, the US government announced that it had imposed visa bans against the Prosecutor of the International Criminal Court after having warned the Court about pursuing investigations against US military personnel.⁹³ And most recently, President Duterte threatened to impose visa requirements on any US citizen wishing to visit the Philippines if the US sanctioned Philippine officials responsible for the arbitrary detention of an opposition politician in Manila.⁹⁴
34. Such examples demonstrate that although targeted sanctions are a potentially powerful tool that can be used to great effect in countering human rights abuses if used responsibly by major powers, there are still no clear rules under international law to guide their use.⁹⁵ As one commentator in the US has put it, '[f]or all of its potential as a groundbreaking means to protect victims', the 'Global Magnitsky Act contains the seeds of its own destruction if it is wielded in a manner that erodes its own credibility'.⁹⁶ This risk remains an underlying issue for the imposition of sanctions generally, although such concerns could be partially alleviated if targeted

88 *Id.*, p.34.

89 See e.g. Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/573), Section 2(4) Report, para.16.

90 The Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), Section 2(4) Report, para. 15.

91 The New York Times, 'Russian Adoption Ban Brings Uncertainty and Outrage', 28 December 2012.

92 See e.g. The Globe and Mail, 'Canada Criticizes Saudi Arabia Over Another Jailed Female Activist', 21 August 2018.

93 US State Department, 'Secretary of State Remarks to the Press', 15 March 2019. The visa ban was on the basis that the entry or proposed activities of the Prosecutor and other Court personnel 'would have potentially serious adverse foreign policy consequences', under the Immigration and Nationality Act of 1965.

94 John Reed, 'Philippines threatens to impose visa requirements on US citizens', Financial Times, 27 December 2019. The Philippine Government also announced that the two US senators who drafted the US travel bans measures had been barred from entering the Philippines. See also WGAD *Leila Norma Eulalia Josefa De Lima v The Philippines*, Op. no. 61/2018, 24 August 2018.

95 See e.g. Anne van Aaken, 'Introduction to the Symposium on Unilateral Targeted Sanctions', (2019) 113 AJIL Unbound 130, p.131.

96 Rob Berschinski, 'Trump Administration Notches a Serious Human Rights Win. No, Really', Just Security, 10 January 2019.

sanctions were imposed for specifically defined purposes that are in line with international human rights law.⁹⁷

35. Ultimately, as a group of Dutch legislators and policy experts put it: '[t]he exposure [of a sanctioned target] may lead to change in the offender's behaviour and deter others from doing something similar. But even when this does not happen, human rights [sanctions] fulfil a crucial function; they reassert publicly the norms on which our civilization rests'.⁹⁸

Overview of Existing National Systems

36. The US, UK and Canadian governments are increasingly embracing targeted sanctions as a foreign policy tool in response to human rights abuses. A number of other governments are also actively considering whether to create a similar regime.⁹⁹ And the EU is considering a similar expansion.¹⁰⁰
37. The US' global 'Magnitsky' regime was the first to come into force, in 2016. Canada's followed the following year. The UK passed a law that provides a framework for the imposition of targeted sanctions on human rights grounds in 2018, although it resolved not to make use of such powers until after its exit from the EU. It is expected that secondary legislation and the first targeted human rights sanctions designations under this regime will be announced in the spring of 2020.¹⁰¹
38. Some states have imposed more limited targeted sanctions in response to human rights violations, centred on specific countries only. For instance, Lithuania, Latvia and Estonia adopted measures for the imposition of sanctions against individuals

97 See Recommendation 4 below.

98 European Stability Initiative, Norwegian Helsinki Committee et al., 'The Power of Focus: Proposal for a European Human Rights Entry Ban Commission', 14 November 2018, pp.1-2.

99 See e.g. a newly established parliamentary inquiry that is considering whether Australia should enact a targeted human rights sanctions regime: Inquiry into Whether Australia Should Enact Legislation Comparable to the US Magnitsky Act of 2012, Terms of Reference. The Minister of Foreign Affairs of Kosovo has also announced that similar laws will be introduced in Kosovo's legislative Assembly: Behgjet Pacolli (@pacollibehgjet), 'In line with the actions of United States, Canada & our EU partners, #Kosovo will ... pass the Magnitsky act in #Kosovo's Assembly to sanction those who are human rights offenders, freeze their assets & ban them from entering #Kosovo', 23 January 2020. The law was adopted on 29 January 2020: see Exit News, 'Kosovo Adopts Magnitsky Act', 29 January 2020.

100 The EU largely imposes sanctions under country-specific regimes, but has also enacted a number of 'thematic' sanctions regimes, such as a regime to impose sanctions in response to 'cyber-attacks with a significant effect', including those that would 'constitute an external threat' to the EU or EU member states. EU Council Decision (CFSP) 2019/79, 17 May 2019, OJ L1 129/13, Article 1.

101 The Rt Hon Dominic Raab MP, 'Foreign Secretary's Introduction to the Queen's Speech Debate', 13 January 2020. Also see The Financial Times, 'UK to Begin Crackdown on Human Rights Abusers', 10 January 2020.

implicated in the death of Sergei Magnitsky, but these have focused on travel bans against Russian targets.¹⁰²

39. This report will provide an analysis of the scope of existing regimes in the US, UK, Canada and the EU, with a focus on the application of sanctions in response to the persecution of journalists and systemic restrictions on media freedom. For each of the national regimes that is analysed, the report compares: (i) the types of sanctions that can be imposed; (ii) the types of abuses that can trigger the imposition of sanctions; (iii) who can be targeted (state versus non-state actors, as well as principal versus secondary participants); and (iv) the decision-making process for the identification of targets.

Legal Basis

United States

GLOBAL MAGNITSKY ACT AND EXECUTIVE ORDER 13818

40. The Global Magnitsky Human Rights Accountability Act of 2016 (Magnitsky Act) and associated Executive Order 13818 provide a basis in US law to impose sanctions in response to human rights abuses and corruption. The Magnitsky Act was built upon earlier legislation, the Sergei Magnitsky Rule of Law Accountability Act of 2012, which sanctioned Russian officials responsible for the death of Sergei Magnitsky.¹⁰³
41. The Magnitsky Act authorizes two main types of sanctions: (i) denying individuals a visa to enter the US or revoking their existing permits; and (ii) blocking a sanctioned person's property in the US or within the possession or control of a US person, and generally prohibiting US persons from transacting with the sanctioned person.¹⁰⁴
42. The Act provides for sanctions in response to 'gross violations of internationally recognized human rights' committed against 'persons who are seeking to '(A) ... expose illegal activity carried out by government officials; or (B) ... obtain, exercise, or promote internationally recognized human rights and

102 European Parliament Targeted Sanctions Report, pp.24-25. See also Estonia Ministry of Foreign Affairs, 'Government Approves Foreign Minister's Proposal to Refuse Individuals on Magnitsky List Entry to Estonia', 29 March 2018; Latvian Ministry of Foreign Affairs, 'Foreign Minister Edgars Rinkis Informs EU Foreign Ministers About the Latvian Parliament Calling to Set Sanctions on Persons Involved in the Sergei Magnitsky Case', 26 February 2018; Lithuanian Ministry of Foreign Affairs, 'In Luxembourg, EU Foreign Ministers Agree on Further Response to Russian Provocations', 17 April 2017. A limited exception is that Lithuania appears to have imposed sanctions in one instance in relation to non-Russian targets, in the case of the killing of journalist Jamal Khashoggi. See AP News, 'Lithuania blacklists Saudi officials over Khashoggi slaying', 10 December 2018.

103 Sergei Magnitsky Rule of Law Accountability Act of 2012, Section 404(a).

104 Global Magnitsky Human Rights Accountability Act of 2016, Sections 1263(b)(1) and (2). Also see Executive Order 13818, Section 4.

freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections'.¹⁰⁵ This definition limits the 'victim class' for conduct that can trigger the Act, but would clearly, on its face, encompass journalists as well as whistle-blowers and human rights defenders.

43. The Act is also limited to conduct that meets the threshold of 'gross violations of internationally recognized human rights', a term defined in the US Code to cover 'torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person'.¹⁰⁶ And the Act permits sanctions against a 'foreign person',¹⁰⁷ whether they are an individual or an entity, like a company,¹⁰⁸ who is 'responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights' committed against victims covered under the Act.
44. The Magnitsky Act is complemented by Executive Order 13818, which was signed by President Trump in December 2017. This Executive Order 'implements the ... Magnitsky Act',¹⁰⁹ as well as other statutory sanctions authorities of the President,¹¹⁰ and in doing so broadens the scope of potential sanctions in key respects:
 - *'Serious' not 'gross' human rights abuse*: while the Magnitsky Act limits the imposition of sanctions to 'gross violations' of human rights, which are defined under US law, Executive Order 13818 broadens the scope of the Act to cover 'serious human rights abuse', a term that is not so defined and has been understood to indicate a lower bar for sanctions.¹¹¹
 - *Any type of victim*: unlike the Magnitsky Act, Executive Order 13818 covers such abuses without referring to any victim class.¹¹²

105 Global Magnitsky Human Rights Accountability Act of 2016, Section 1263(a)(1). See also the Global Magnitsky Sanctions Regulations, 31 C.F.R. Part 583, which contain procedures addressing the mechanisms of property blocking sanctions that are imposed under the Global Magnitsky Act and/or the Executive Order.

106 Foreign Assistance Act, 22 U.S.C. §2304(d)(1).

107 Global Magnitsky Human Rights Accountability Act of 2016, Section 1262(1); Title 31 Code of Federal Regulations §595.304 (being 'any citizens or national of a foreign state', or a legal entity not organised under the law of, or existing solely in, the US).

108 Global Magnitsky Human Rights Accountability Act of 2016, Sections 1262(3); Title 31 Code of Federal Regulations §591.308.

109 See FAQ: Global Magnitsky Sanctions, December 21, 2017. The US Treasury also refers to the Executive Order as 'build[ing] upon and implement[ing]' the Act: see e.g. US Treasury, 'Treasury Sanctions Corruption and Material Support Networks', 9 December 2019.

110 See Executive Order 13818, Preamble (referring to the International Emergency Economic Powers Act, 50 U.S.C. §§1701ff, the National Emergencies Act, 50 U.S.C. §§1601ff, Section 212(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. §1182(f), and Section 301 of Title 3, US Code, in addition to the Global Magnitsky Act).

111 Executive Order 13818, Section 1(a)(ii)(A). Also see Human Rights First, 'The Global Magnitsky Act: Frequently Asked Questions', April 2019, pp.2-3. The Executive Order also broadened the scope of the corruption trigger for the imposition of sanctions.

112 Human Rights First, 'The Global Magnitsky Act: Frequently Asked Questions', April 2019, pp.2-3.

- *Non-state actors*: the reference to ‘abuse’ rather than ‘violations’ in Executive Order 13818 indicates that it covers acts of non-governmental actors as well as officials, and that the singular form covers individual instances that fall short of a pattern.¹¹³
 - *Secondary participants*: Executive Order 13818 extends the scope of sanctions to cover any person who provided ‘financial, material, or technological support’ to those targeted by the Order.¹¹⁴ It also provides for sanctions against subsidiary entities or organisations owned or controlled by a sanctioned party, or acting for or on behalf of a sanctioned person,¹¹⁵ and expands the class of designees in other ways.¹¹⁶
 - *Nationals of sanctioning state*: unlike the Magnitsky Act, which was limited to ‘foreign persons’, sanctions under Executive Order 13818 can be imposed against ‘any person’ in the case of secondary participants who materially assist, sponsor or provide support to a sanctioned person for conduct that falls within the sanctioning regime.¹¹⁷
45. Under the US regime, the decision to impose sanctions against a particular target is ultimately made by the Secretary of Treasury, in consultation with the Secretary of State and the Attorney General.¹¹⁸ However, the US system also includes a procedure for some external oversight of sanctions decisions. For instance, the Magnitsky Act provides that certain congressional committees – including the House Foreign Affairs and Senate Foreign Relations Committees – can submit ‘information provided jointly by the chairperson of each of the appropriate congressional committees’ to the executive branch, which the President is required to ‘consider’.¹¹⁹
46. These congressional actors are also given the power to trigger a report by the President. If they issue a ‘request’ relating to ‘whether a foreign person has engaged in gross human rights violations’ against ‘individuals in a foreign country’ seeking ‘to expose illegal activity by a government official’ or to defend human rights, the President ‘shall’

113 See e.g., Human Rights First, ‘The Global Magnitsky Act: Frequently Asked Questions’, April 2019, pp.2-3. See further University of Michigan and Human Rights Advocacy and the History of International Human Rights Standards, Armed Insurgents and Other Non-State Actors; OHCHR, Training Manual on Human Rights Monitoring, 2001, paras. 31-36. See paragraph 97 below.

114 Executive Order 13818, Section 1(a)(iii)(A) (referring also to ‘the provision of a ‘good or services to or in support of’ any of the activities targeted by Executive Order 13818).

115 Executive Order 13818, Section 1(a)(iii)(B) (permitting sanctions against those who ‘directly or indirectly’ act on behalf of a sanctioned person, even if this relationship is just ‘purported’).

116 For instance, the Executive Order extends to a broader class of ‘status-based’, rather than ‘activity-based’, sanctions targets, permitting sanctions against a ‘leader or official’ of governmental or non-governmental entities that has been implicated in corruption or human rights abuses, by engaging in any of the activities targeted in the Executive Order: see Executive Order 13818, Section 1(a)(ii)(C). Also see Human Rights First, *The Global Magnitsky Act: Frequently Asked Questions*, April 2019, p.3 (referring to this as ‘the most significant change’ in the US regime).

117 Executive Order 13818, Section 1(a)(iii).

118 Executive Order 13818, Section 1(a)(ii).

119 Global Magnitsky Human Rights Accountability Act of 2016, Section 1263(c)(1). The specified committees are the House Foreign Affairs Committee, the House Financial Services Committee, the Senate Foreign Relations Committee, and the Senate Banking, Housing, and Urban Affairs Committee.

determine within 120 days ‘if that person has engaged in such an activity’ and submit a report to the committees.¹²⁰ This report must include ‘a statement of whether or not the President imposed or intends to impose sanctions’ and if relevant, ‘a description of those sanctions’.¹²¹ Presidents have, however, questioned the authority of Congress to impose such mandatory investigation and reporting obligations.¹²²

47. Additionally, the Magnitsky Act requires that the President consider ‘credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights’ in determining whether to impose sanctions.¹²³ Although the President is not required to make a determination about the appropriateness of sanctions based on recommendations from these two channels, a number of designations made by the executive branch reflect input from such organisations as well as from Congress.¹²⁴
48. The US President can terminate sanctions under the Magnitsky Act for a number of reasons, including where there is ‘credible information’ that the ‘person did not engage in the activity for which the sanctions were imposed’,¹²⁵ and where the sanctioned person has ‘credibly demonstrated a significant change in behavior’ that atones for the activities for which sanctions were imposed and has ‘credibly committed’ not to engage in human rights violations and acts of corruption that are prescribed in the Act.¹²⁶ The Act also contains a ‘national security’ exception¹²⁷ and a ‘sunset clause’, which means that the authority to impose sanctions under the Act will terminate six years after its enactment (i.e. on 23 December 2022), unless it is extended.¹²⁸

120 Global Magnitsky Human Rights Accountability Act of 2016, Section 1263(d) (referring to activity described in Section 1263(a) described at paragraph 43 above).

121 Global Magnitsky Human Rights Accountability Act of 2016, Section 1263(d)(1)(B).

122 When the Global Magnitsky Act became law, President Obama issued a signing statement asserting the ‘discretion to decline to act on such requests when appropriate’: see White House, ‘Statement by the President on Signing the National Defense Authorization Act for Fiscal Year 2017’, 23 December 2016. On 8 February 2019, 120 days after a congressional request was sent to President Trump requesting that he issue a response regarding sanctions against Saudi officials for the Khashoggi murder, the Administration reportedly announced that President Trump would not issue a report in response, ‘[c]onsistent with the previous administration’s position and the constitutional separation of powers, the President maintains his discretion to decline to act on congressional committee requests when appropriate’: The New York Times, ‘Trump Defies Congressional Deadline on Khashoggi Report’, 8 February 2019.

123 Global Magnitsky Human Rights Accountability Act of 2016, Section 1263(c)(2).

124 See e.g. Rob Berschinski, ‘Trump Administration Notches a Serious Human Rights Win. No, Really’, Just Security, 10 January 2018 (observing that sanctions imposed under Executive 13818 in relation to Russia, Myanmar, the Democratic Republic of the Congo, China, South Sudan and Nicaragua reflected ‘either explicit recommendations or more general concerns raised by watchdog groups and/or members of Congress’).

125 Global Magnitsky Human Rights Accountability Act of 2016, Section 1263(g)(1).

126 *Id.*, Section 1263(g)(3).

127 *Id.*, Section 1263(g)(4) (permitting the termination of sanctions where this would be ‘in the national security interests of the United States’).

128 Although any sanctions that are in effect under the Act before 23 December 2022 would still remain in effect after this date unless terminated: *Id.*, Section 1265(b).

OTHER HUMAN RIGHTS RELATED SANCTIONS UNDER US LAW

49. A 'gross violation of human rights' – the standard for the triggering of sanctions under the Magnitsky Act – can also trigger other types of sanctions under US law. For instance, the US government can ban entry to the US to 'individuals and their family members' who are designated as 'responsible for gross human rights violations' under Section 7031(c)(1)(A) of the FY 2019 Department of State, Foreign Operations, and Related Programs Appropriations Act.¹²⁹ There are also provisions, often referred to as the 'Leahy Laws', that prohibit the US Defense Department and State Department from providing training, equipment or other assistance to units of foreign security forces if there is credible evidence to believe that a member of the unit has committed 'gross violations of human rights'.¹³⁰ Other laws prohibit the provision of security assistance to countries that engage 'in a consistent pattern of gross violations of internationally recognized human rights' and prohibit the transfer of arms when there is a risk that the transfer would 'contribute to abuses of human rights'.¹³¹
50. In addition, country-specific sanctions regimes that operate in parallel with the Magnitsky regime allow for the imposition of sanctions on human rights grounds.¹³² Many have been issued under the International Emergency Economic Powers Act, which authorises the President to impose individual and country-based sanctions if he declares a particular situation a national emergency due to an 'unusual and extraordinary threat ... to the national security, foreign policy,

129 This also extends to corruption, under Section 7031(c)(1)(A): '[o]fficials of foreign governments and their immediate family members about whom the Secretary of State has credible information have been involved in significant corruption, including corruption related to the extraction of natural resources, or a gross violation of human rights shall be ineligible for entry into the United States.' Powers to impose entry and visa bans on the basis of foreign policy, national security or other national interests can also be found under the Immigration and Nationality Act of 1952, 8 U.S.C. §1182, and the International Emergency Economic Powers Act, 50 U.S.C. §1701.

130 Under the National Defense Authorization Act, 10 U.S.C. §362, with a twin provision in the Foreign Assistance Act, 22 U.S.C. §2378d (which refers to the provision of 'assistance' in general).

131 Foreign Assistance Act, 22 U.S.C. §2304(a)(2); White House, 'National Security Presidential Memorandum Regarding U.S Conventional Arms Transfer Policy', 19 April 2018, Section 3(d)(ii) (also prohibiting transfer if the government has actual knowledge at the time of the authorisation that the arms will be used to commit attacks '*intentionally* directed against civilian objects or civilians' and other acts prohibited by international humanitarian law).

132 See e.g.: The Sergei Magnitsky Act Rule of Law Accountability Act of 2012, Pub. L. 112-208; Nicaragua Human Rights and Corruption Act of 2018, Pub. L. 115-335, and associated Executive Order 13851; Venezuela Defense of Human Rights and Civil Society Act of 2014, Pub. L. 113-278, and associated Executive Order 13692; Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. 112-158; and Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. 111-195; Darfur Peace and Accountability Act of 2006, Pub. L. 109-344, and associated Executive Order 13400; Sanctions relating to the assassination of Rafiq Hariri (Syria) (Executive Order 13399); Belarus (Executive Order 13405); Zimbabwe (Executive Order 13469); Libya (Executive Orders 13726 and 13566); Syria (Executive Orders 13606 and 13572); Somalia (Executive Order 13620); South Sudan (Executive Order 13664); Central African Republic (Executive Order 13667); Burundi (Executive Order 13712); Democratic Republic of the Congo (Executive Orders 13671 and 13413); Mali (Executive Order 13882). Also see the Countering America's Adversaries Through Sanctions Act of 2017, Pub. L. 115-44, Sections 106, 228 and 321, 302A-B, which provides for the imposition of sanctions on persons engaged in certain abuses or violations of human rights in Iran, Russia, and North Korea, as well as certain acts of corruption in Russia. As a historical matter, the Federal Burma Act, *inter alia*, barred entry visas to Burmese government officials until the President certified that Burma had made 'substantial progress in improving human rights practices': see Federal Burma Act, Pub. L. 104-208, Section 570.

or economy of the United States'.¹³³ Visas and bans may also be refused under specific immigration laws on certain human rights grounds.¹³⁴

51. Certain legislation in the US focuses on the protection of journalists specifically. For instance, the Foreign Assistance Act requires the State Department to report on 'what steps' the government of any aid-receiving country has taken 'to preserve the safety and independence of the media, and to ensure the prosecution of those individuals who attack or murder journalists'.¹³⁵ And other laws provide for the waiving of sanctions if the Secretary of State certifies that effective steps have been taken by the targeted country to improve the human rights situation, such as to 'protect civil and political rights, including the rights of freedom of the press, speech, and association, for all people [in the targeted country], including ... journalists'.¹³⁶

United Kingdom

SANCTIONS ACT

52. In the UK, the principal legal basis for imposing sanctions based on human rights violations is contained in the Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act). The UK determined not to operationalise its sanctions regime until after its departure from the EU, so it has so far only laid regulations that will implement UN and replace EU sanctions regimes, 'with about two thirds of its current sanctions regimes deriving from the EU'.¹³⁷ But, as the UK Parliament's Foreign Affairs Committee has observed, the Sanctions Act 'provides the legal foundation for the UK to have an autonomous sanctions policy' and leaving the EU will 'bring about a seismic shift in how the UK adopts, imposes and implements economic and financial sanctions'.¹³⁸

133 International Emergency Economic Powers Act, 50 U.S.C., §1701(a). The President may, for instance, exercise powers under the International Emergency Economic Powers Act when signing Executive Orders, as was the case with Executive Order 13818, when President Trump declared a national emergency given that 'serious human rights abuse and corruption around the world constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States': Executive Order 13818, Preamble.

134 Immigration and Nationality Act of 1954, 8 U.S.C. §1182. See e.g. for: participation in genocide (§1182(a)(3)(E)(ii), defined by §1091(a)); commission of acts of torture or extrajudicial killings (§1182(a)(3)(E)(iii), defined by 18 U.S.C. §2340 and 28 U.S.C. §1350, respectively); foreign government officials who have committed particularly severe violations of religious freedom (8 U.S.C. §1182(a)(2)(G), defined by 22 U.S.C. §6402(13)(A)(i) – (v)). See also White House, Presidential Proclamation 8697, 4 August 2011, Section 1 (allowing a denial of entry for foreign persons who participated in 'widespread or systematic violence', international crimes, or 'other serious violations of human rights', as enumerated in the Proclamation).

135 Foreign Assistance Act, 22 U.S.C. §2304(i)(3)(B). Also see Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Section 105(d)(4) (permitting the termination of sanctions if the President determines ... that the Government of Iran has ... 'made public commitments to, and has made demonstrable progress toward — (A) establishing an independent judiciary; and (B) respecting the human rights and basic freedoms recognized in the Universal Declaration of Human Rights'). Section 105B(b) of the same Act permits sanctions against persons who have engaged in 'censorship or other activities with respect to Iran' that 'prohibit, limit, or penalize the exercise of freedom of expression', or 'limit access to print or broadcast media, including the facilitation or support of intentional frequency manipulation by the Government of Iran'.

136 Nicaragua Human Rights and Anticorruption Act of 2018, Sections 6(a)(3) and 6(b)(1).

137 FAC Report on Sanctions Policy, para. 2. See also paragraph 110 below.

138 *Id.* See further paragraphs 109 and 110 below.

53. The Sanctions Act acts as a piece of enabling legislation, providing the legal basis for government ministers to create new sanctions regimes under which individuals and entities can be sanctioned.¹³⁹ Under the Sanctions Act, the UK Secretary of State or Treasury department are responsible for creating new sanctions regimes and adding targets to a sanctions list.¹⁴⁰ In practice, policy and listing decisions are made by the Foreign and Commonwealth Office, whereas the Treasury department (through the Office of Financial Sanctions Implementation) and other government departments are responsible for sanctions implementation and enforcement.¹⁴¹
54. Ministers are able to impose five main types of sanctions:¹⁴² (i) financial sanctions, through which funds can be frozen; (ii) immigration sanctions, imposing entry and visa bans; (iii) trade sanctions, imposing import and export controls; (iv) aircraft sanctions; and (v) shipping sanctions.¹⁴³ But this legislation has not yet been used, given the UK's policy position that it would not impose unilateral sanctions – as opposed to sanctions implementing UN or EU sanctions – until after its departure from the EU.¹⁴⁴
55. The Sanctions Act permits imposing sanctions to 'provide accountability for or be a deterrent to gross violations of human rights',¹⁴⁵ as well as for a number of other 'purposes' that are clearly relevant to the protection of journalists and a free media.¹⁴⁶ These include:
- to 'promote ... compliance with international human rights law, or ... respect for human rights';¹⁴⁷
 - to 'further a foreign policy objective of the government of the United Kingdom';¹⁴⁸
 - where it would be in the 'interests of international peace and security';¹⁴⁹

139 Sanctions regimes are promulgated by 'regulations', a form of secondary legislation in the UK taking the form of a statutory instrument that is created by a government minister. Once these regulations are created, ministers are able to exercise powers under the relevant regulations to 'designate' sanctions targets, which effectively includes them in the sanctions list under the regulation: see Sanctions and Anti-Money Laundering Act 2018, Section 9(2)(a).

140 Sanctions and Anti-Money Laundering Act 2018, Section 1(9).

141 FAC Report on Sanctions Policy, p.11. The Treasury department will however have some policy and listing decisions for the domestic counter-terrorism sanctions regime. See, e.g., Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019.

142 The particular type of sanctions that can be imposed under a given sanctions regime will be set out in the underlying sanctions regulations: Sanctions and Anti-Money Laundering Act 2018, Section 1(5). Other types of sanctions can be imposed 'for the purposes of UN obligations': see Section 8(1).

143 Sanctions and Anti-Money Laundering Act 2018, Sections 3-7.

144 See paragraph 109 below.

145 Sanctions and Anti-Money Laundering Act 2018, Sections 1(1)(c) and (2)(f).

146 Such 'purposes' relate to whether the appropriate government minister considers that it would be 'appropriate' to create sanctions regulations and include any person as a designated person on the sanctions list for those regulations: Sanctions and Anti-Money Laundering Act 2018, Sections 1(1) and 11(2)(b)(i). The minister must also 'have reasonable grounds to suspect' that the person has been 'involved' in the specified activity, in order to designate them: Sanctions and Anti-Money Laundering Act 2018, Sections 11(2)(a) and (3).

147 *Id.*, Section 1(2)(f).

148 *Id.*, Section 1(2)(d).

149 *Id.*, Section 1(2)(b).

- to ‘promote respect for democracy, the rule of law and good governance’;¹⁵⁰
 - ‘for the purposes of compliance with a UN obligation’,¹⁵¹ defined as ‘an obligation that the United Kingdom has by virtue of a UN Security Council Resolution’;¹⁵²
 - ‘for the purposes of compliance with any other international obligation’,¹⁵³ defined as ‘an obligation of the United Kingdom created or arising by or under any international agreement’.¹⁵⁴
56. The Sanctions Act also gives the executive branch some leeway in designating persons when they consider that this would be ‘appropriate’, having ‘regard to’ the ‘likely significant effects of the designation’.¹⁵⁵
57. Like the equivalent term in the Magnitsky Act, the reference to ‘gross violations of human rights’ is defined in existing legislation.¹⁵⁶ This is the Proceeds of Crime Act, which reflects the approach adopted in the US.¹⁵⁷ Section 241A provides that ‘conduct constitutes the commission of a gross human rights abuse or violation if each of ... three conditions is met’.¹⁵⁸ These are:
- firstly, that the conduct constitutes the ‘torture’ or ‘cruel, inhuman or degrading treatment’¹⁵⁹ of a protected person, defined as someone who is either (i) a whistle-blower who sought to ‘expose illegal activity carried out by a public official’ or (ii) a person who sought to ‘obtain, exercise, defend or promote human rights and fundamental freedoms’;¹⁶⁰
 - secondly, there is a requirement that the conduct ‘is carried out in consequence of that person having sought to’ carry out the protected activity,¹⁶¹
 - thirdly, the conduct must be carried out ‘by a public official, or a person acting in an official capacity, in the performance or purported performance

150 *Id.*, Section 1(2)(i).

151 *Id.*, Section 1(1)(a).

152 *Id.*, Section 1(8).

153 *Id.*, Section 1(1)(b).

154 *Id.*, Section 1(8). Additional purposes for the creation of sanctions include ‘the prevention of terrorism’, where it would ‘be in the interests of national security’, to ‘promote the resolution of armed conflicts or the protection of civilians in conflict zones’, to ‘promote compliance with international humanitarian law’, and to ‘contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction’.

155 Sanctions and Anti-Money Laundering Act 2018 Act, Sections 11(2) and 12(5)(b)(ii).

156 See Sanctions and Anti-Money Laundering Act 2018, Section 1(7) (referring to Proceeds of Crime Act 2002, Section 241A).

157 Section 241A was inserted into the Proceeds of Crime Act 2002 by the Criminal Finances Act 2017, Section 13. See also Hansard HC Deb 21 February 2017, vol 621, col 884.

158 Proceeds of Crime Act 2002, Section 241A.

159 Proceeds of Crime Act 2002, Section 241A(2). The statutory regime also clarifies that ‘the intentional infliction of severe pain or suffering on another person is conduct that constitutes torture’, and it is ‘immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or omission’: *Id.*, sections 241A(6) and (7).

160 *Id.*, Section 241A(2)(a).

161 Proceeds of Crime Act 2002, Section 241A(3).

of his or her official duties’, or a person who, in consenting to or acquiescing in the conduct, is acting in performance or purported performance of their official duties.¹⁶²

58. The provision in the Sanctions Act that allows for the imposition of sanctions to ‘provide accountability for or be a deterrent to gross violations of human rights’ was introduced less than a month before the Act was passed by Parliament to reflect ‘Magnitsky powers’, shortly after a former Russian spy, Sergei Skripal, and his daughter were poisoned in Salisbury in the UK by a nerve agent that was deployed by Russian intelligence operatives.¹⁶³ Earlier, a proposed Magnitsky clause had been resisted on the ground that it was already encompassed in the promotion of human rights, one of the other purposes for which the imposition of sanctions was permitted in the bill.¹⁶⁴
59. Although the language of the ‘Magnitsky amendment’ on its face applies to journalists who are exercising, defending or promoting ‘human rights and fundamental freedoms’, including freedom of expression, the sanctioned conduct only covers torture or cruel, inhuman and degrading treatment carried out at the instigation, or with the consent or acquiescence of a public official.¹⁶⁵ However, other ‘purposes’ listed under the Sanctions Act are much broader and would encompass other conduct, including serious violations of media freedom.
60. Unlike the Magnitsky Act, the Sanctions Act does not expressly restrict the imposition of sanctions to ‘foreign persons’. Instead, the Act permits the imposition of sanctions against ‘any designated person’, including individuals and legal entities, like companies.¹⁶⁶
61. The Sanctions Act does not establish a clear process for stakeholders to submit information to executive decision-makers, nor does it impose an obligation on the decision-makers to consider this information.¹⁶⁷ But it imposes a number of important reporting requirements on the government. For instance:

162 Proceeds of Crime Act 2002, Sections 241A(1)-(4). Other conduct falling within the scope of the Proceeds of Crime Act and that occurs outside of the UK must be ‘unlawful under the criminal law of that country or territory’ and ‘if it occurred in a part of the UK, would be unlawful under the criminal law of that part’ to amount to ‘unlawful conduct’ for the purposes of the Act: see Section 241. But there is no such requirement of dual criminality for conduct amounting to ‘gross human rights violations’.

163 The amendment was made on 24 April 2018 and the bill was passed on 25 May 2018: see Notices of Amendments as 24 April 2018, 25 April 2018; and Hansard HC Debate 12 March 2018, vol 637, col 623.

164 Hansard HC Debate 20 February 2018, vol 636, col 82. See also Ben Smith and Joanna Davies, ‘HC Library Briefing Paper: Magnitsky Legislation’, 16 July 2018, pp.7, 15-17.

165 Or ‘person acting in an official capacity’ or who otherwise carries out the conduct ‘in the performance or purported performance of his or her official duties’: see Proceeds of Crime Act 2002, Section 241A(4) and Sanctions and Anti-Money Laundering Act 2018 Act, Section 1(7);

166 Sanctions and Anti-Money Laundering Act 2018, Sections 9(1), (2) and (5).

167 In relation to EU sanctions, the UK Government has previously declined a Select Committee request that open-source evidence that is used to substantiate sanctions listings is provided to parliamentary committees as a matter of routine: Foreign and Commonwealth Office, Letter to the Justice Sub-Committee of the EU Committee: The Legality of EU Sanctions, 6 April 2017, p.4. See also Rules 5.4 and 5.5(2), Civil Procedure Rules Practice Direction – Civil Recovery Proceedings.

- Any sanctions regime that is created by exercising delegated powers under the Sanctions Act must be laid before Parliament. The appropriate government minister making the regulations must publish a report that explains the justification for it,¹⁶⁸ including the purpose or purposes for which sanctions regulations are being made under the Act.¹⁶⁹
- The Secretary of State must lay before Parliament annual ‘periodic reports’ that specify any sanctions regulations that were created during the prior 12 months and identify which, if any, of the regulations ‘stated a relevant human rights purpose’ or ‘amended or revoked regulations stating such a purpose’.¹⁷⁰ The periodic reports must also specify ‘any recommendations’ by a parliamentary committee¹⁷¹ relating to whether the power to make sanctions regulations ‘should be exercised in connection with gross violations of human rights’.¹⁷² Any response from the government to those recommendations must also be included in the periodic reports.¹⁷³
- In practice, this may mean that although civil society organisations cannot currently make submissions to the decision-maker directly, submissions could be made indirectly through a parliamentary committee.¹⁷⁴

OTHER HUMAN RIGHTS RELATED SANCTIONS UNDER UK LAW

62. Additional powers to ban entry to the UK or to freeze or confiscate assets exist in other UK legislation. For instance, immigration laws allow the UK Home Secretary to exclude designated persons from entering or remaining in the UK on the basis that the person’s exclusion would be ‘conducive to the public good’.¹⁷⁵
63. In addition, the Proceeds of Crime Act 2002 permits the freezing and recovery of assets that were obtained from ‘unlawful conduct’, including conduct that

¹⁶⁸ See e.g. South Sudan (Sanction) (EU Exit) Regulations (S.I. 2019/438), Section 2(4) Report (authored by ‘Minister of State for Asia and the Pacific, Foreign and Commonwealth Office, on behalf of the Secretary of State for Foreign and Commonwealth Affairs’).

¹⁶⁹ Sanctions and Anti-Money Laundering Act 2018, Section 2(4). Government ministers must keep sanctions regulations created under the Act under review, and submit annual reports to Parliament to justify any action that the minister has taken or proposes to take following their review: Sanctions and Anti-Money Laundering Act 2018, Sections 30(2), (3) and (5).

¹⁷⁰ Sanctions and Anti-Money Laundering Act 2018, Sections 32(1)(b) and 32(4).

¹⁷¹ Sanctions and Anti-Money Laundering Act 2018, Section 31(5) (defining ‘Parliamentary Committee’ as ‘a committee of the House of Commons or a committee of the House of Lords or a joint committee of both Houses’).

¹⁷² Sanctions and Anti-Money Laundering Act 2018, Sections 32(1)(c) and (5).

¹⁷³ Sanctions and Anti-Money Laundering Act 2018, Section 32(1)(d). The first such report was issued in June 2019: see Sir Alan Duncan, Written Statement: Report on Regulations Made under the Sanctions and Anti-Money Laundering Act 2018 in Relation to Gross Human Rights Violations, 27 June 2019.

¹⁷⁴ Parliamentary committees will however usually put out a call for evidence before this will be considered by the committee.

¹⁷⁵ UK Home Office, Immigration Rules, Part 9, para. 320(6). Also see para. 320(19).

occurs outside of the UK.¹⁷⁶ The scope of 'unlawful conduct' under the Act was expanded through 'Magnitsky amendments' contained in the Criminal Finances Act 2017 to cover 'conduct which ... constitutes, or is connected with, the commission of a gross human rights abuse or violation'.¹⁷⁷

64. Unlike the imposition of sanctions under the Sanctions Act, which are decided by government ministers, the English High Court is responsible for ordering property freezing and recovery orders in civil proceedings under the Proceeds of Crime Act 2002, on the application of an enforcement body, such as the National Crime Agency.¹⁷⁸

Canada

CANADA'S MAGNITSKY LAW

65. Canada enacted the Justice for Victims of Corrupt Foreign Officials Act 2017 (Canada's Magnitsky Law), shortly before the Magnitsky Act entered into force in the US. Under this Law, the decision to impose sanctions is made at the discretion of the 'Governor in Council',¹⁷⁹ although, in practice, this decision will be made on the 'recommendation' of the Minister of Foreign Affairs.¹⁸⁰
66. Like the US Magnitsky Act and the UK Sanctions Act, Canada's Magnitsky Law permits visa bans and financial sanctions, including freezing the assets of a sanctioned person's property in Canada and restricting transactions with any Canadian person.¹⁸¹ The legal basis for imposing restrictions on entry is contained in separate immigration legislation that was amended by the Law.¹⁸²
67. The Canadian legislation is drafted in almost identical terms to the US Magnitsky Act when it comes to defining the abuses that can trigger the imposition of sanctions.¹⁸³ Canada's Magnitsky Law allows the targeting of 'a foreign national' who 'is responsible for, or complicit in, extrajudicial killings, torture or other gross

176 Proceeds of Crime Act 2002, Section 241(2). See paragraph 58 above.

177 Proceeds of Crimes Act, Section 241(2A)(b). The scope of 'unlawful conduct' is limited to the narrow 'gross human rights abuse or violation' basis to impose asset freezes, meaning that it only covers conduct amounting to torture or cruel, inhuman or degrading treatment carried out by or on behalf of a public official against a whistleblower or individual who sought to 'obtain, exercise, defend or promote' human rights: see paragraph 56 above.

178 Proceeds of Crime Act 2002, Sections 243(1) and 245A. See also National Crime Agency, Civil Recovery & Tax.

179 Justice for Victims of Corrupt Foreign Officials Act, Section 4(1).

180 See e.g. Justice for Victims of Corrupt Foreign Officials Regulations, SOR/2018-259, 29 November 2018, Preamble. The Governor in Council creates such 'orders or regulations' under the Justice for Victims of Corrupt Foreign Officials Act, and these regulations contain a list of the individuals who have been sanctioned.

181 Justice for Victims of Corrupt Foreign Officials Act, Sections 4(3) and Section 18.

182 Immigration and Nationality Act 2001, Section 35(1)(e).

183 For instance, both the US and the Canadian legislation adopt the phrase 'extrajudicial killings, torture or other gross violations of internationally recognized human rights', only differing through the inclusion of a comma before 'torture' under the Canadian legislation, and in how they each refer to acts committed in any 'foreign country' rather than any 'foreign state': see Global Magnitsky and Human Rights Accountability Act of 2016, Section 1263(a)(1) and Justice for Victims of Corrupt Foreign Officials Act, Section 4(2)(a), respectively.

violations of internationally recognized human rights committed against individuals in any foreign state who seek (i) to expose illegal activity carried out by foreign public officials, or (ii) to 'obtain, exercise, defend or promote internationally recognized human rights and freedoms, such as freedom of ... expression' and 'and the right to a fair trial'.¹⁸⁴

68. Like the Magnitsky Act (but unlike the broader Executive Order 13818), the Canadian legislation defines the class of victims of human rights violations as whistle-blowers and those who seek to defend 'internationally recognized human rights and freedoms', although this has been given a broad interpretation.¹⁸⁵ And like the Magnitsky Act (but unlike the broader Executive Order 13818), it also covers 'acts of significant corruption'.¹⁸⁶ The legislation does not, however, define what is meant by 'other gross violations of internationally recognized human rights'.
69. Canada's Magnitsky Law is in some senses narrower than its UK and US counterparts. It only authorises sanctions against 'individuals' (not legal 'persons') who are 'foreign nationals'.¹⁸⁷ In contrast, the UK's Sanctions Act does not impose any nationality or legal personality restrictions for sanctions targets, and sanctions under the Magnitsky Act have been imposed against companies as well as individuals.
70. Canada's Magnitsky Law also contains less detailed provisions on the imposition of sanctions against secondary participants than its counterparts in the US and UK, except in relation to 'acts of corruption'.¹⁸⁸ In the context of corruption, the Law permits sanctions against those who are foreign public officials or their associates or who are 'responsible for or complicit in ordering, controlling or otherwise directing' the acts of corruption,¹⁸⁹ or have 'materially assisted, sponsored, or provided financial, material or technological support for, or goods or services in support of' the corruption.¹⁹⁰ But these secondary liability provisions do not

184 Justice for Victims of Corrupt Foreign Officials Act, Section 4(2)(a). The other freedoms mentioned are 'freedom of conscience, religion, thought, belief, opinion, peaceful assembly and association, and democratic elections': Justice for Victims of Corrupt Foreign Officials Act, Sections 4(2)(a)(ii).

185 Justice for Victims of Corrupt Foreign Officials Act, Section 4(2)(a). The Act particularises the scope of 'internationally recognized human rights' exercised by victims in more detail than the US legislation, by referring to 'freedom of conscience ... thought, belief, opinion', which are in addition to 'religion ... expression, peaceful assembly and association' that are referred to in the US legislation. The Canadian legislation extends to those who seek 'to obtain, exercise, defend or promote internationally recognized human rights' and has not been limited in application to whistle-blowers and human rights defenders. For example, Canada sanctioned Major General Maung Maung Soe in relation to his role in the atrocities committed against Rohingya civilians in Myanmar: see Government of Canada, 'Canada imposes targeted sanctions in response to human rights violations in Myanmar', 16 February 2018.

186 *Id.* Whether acts amount to 'significant corruption' will be assessed based on a non-exhaustive list of criteria, including the impact of the acts, the amounts involved, and the complicity of the foreign government in question in the acts: Justice for Victims of Corrupt Foreign Officials Act, Section 4(2)(c).

187 Although the 'persons' who are required to comply with sanctions under the legislation include both individuals and corporate entities: Justice for Victims of Corrupt Foreign Officials Act, Sections 2 and 4.

188 The Justice for Victims of Corrupt Foreign Officials Act only permits sanctions against those who are 'responsible for, or complicit in' the gross human rights violations covered under the Act, or to those who act as agents or on behalf of a foreign state: Justice for Victims of Corrupt Foreign Officials Act, Sections 4(2)(a) and (b). Cf. paragraphs 43, 44 and 60.

189 Justice for Victims of Corrupt Foreign Officials Act, Sections 4(2)(c).

190 *Id.*, Section 4(2)(d).

expressly apply in the context of human rights violations, and sanctions can in this context only be imposed against a foreign national who 'acts as an agent of or on behalf of a foreign state' in relation to the human rights abuse.¹⁹¹

71. The Canadian regime also has the most limited reporting requirements and independent oversight procedure compared to its US and UK counterparts.¹⁹² The system is entirely discretionary, leaving it to the Foreign Minister to list individuals, based on the advice of officials. In practice, the Canadian government has issued short press statements announcing new sanctions under the Law.¹⁹³
72. Unlike the US regime, Canada's Magnitsky Law does not include a role for the legislative branch or for external actors in triggering consideration of specific sanctions or in reporting on them. A Parliamentary All-Party Human Rights Caucus has been established to provide an informal mechanism for parliamentarians and civil society to submit stakeholder reports and evidence in support of sanctions listings.¹⁹⁴ But, unlike the US and UK systems, the legislation does not require the government to publicly respond to any evidence or proposals that are submitted.¹⁹⁵

OTHER RELEVANT HUMAN RIGHTS RELATED SANCTIONS UNDER CANADIAN LAW

73. Targeted sanctions can also be imposed by the Canadian government in the context of implementing the decision of a multilateral organisation or under the Special Economic Measures Act for 'acts of corruption' or 'gross and systematic human rights violations ... committed in a foreign state' if 'a grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis'.¹⁹⁶ Prior to the introduction of Canada's Magnitsky

191 Justice for Victims of Corrupt Foreign Officials Act, Section 4(2)(b). The Act does, however, provide that sanctions may be imposed against individuals who are 'responsible for, or *complicit in*' the relevant human rights abuses: Justice for Victims of Corrupt Foreign Officials Act, Section 4(2)(a) (emphasis added).

192 However, the Foreign and Commonwealth Office attested in evidence before the House of Commons Foreign Affairs Committee that it in practice liaised with government experts, media monitoring, corporate intelligence resources, subject-matter specialists and 'international partners' when considering listing criteria: House of Commons Foreign Affairs Committee, Written Evidence from the Foreign and Commonwealth Office (FSP0015), December 2018, para. 30.

193 See e.g., sanctions imposed against officials in Saudi Arabia relating to the murder of Jamal Khashoggi, and in response to human rights violations in Myanmar: Government of Canada, Justice for Victims of Corrupt Foreign Officials Act: Announcements. In addition to press releases, longer descriptions of the reasons for the imposition of sanctions can be found in the Regulatory Impact Assessment Statement in the Canada Gazette that accompanies the amendments to the Regulations which add new listings. Further information is also included on the Global Affairs Website, which is updated immediately upon the announcement of new listings.

194 For examples of the reports submitted through the Caucus, see Raoul Wallenberg Centre for Human Rights, 'Realizing Rights Over Repression in Iran', December 2018; Raoul Wallenberg Centre for Human Rights et al, 'The Kremlin's Political Prisoners: Advancing a Political Agenda by Crushing Dissent', May 2019.

195 See paragraphs 46, 47 and 61 above.

196 Special Economic Measures Act 1992, Sections 4(1) and 4(1.1)(b)-(d). The Special Economic Measures Act was amended in October 2017 with the passage of the Justice for Victims of Corrupt Foreign Officials Act. Canada also implements decisions of the UN Security Council to impose sanctions through regulations made pursuant to the United Nations Act.

Law, Canada sometimes imposed sanctions in response to human rights abuses by relying on country-specific regimes created under the Special Economic Measures Act, and sanctions have on occasion been imposed on this basis following the enactment of Canada's Magnitsky Law as well.¹⁹⁷

European Union

74. EU sanctions are imposed by decisions of the European Council, which is made up of representatives of each member state government.¹⁹⁸ In many cases, EU sanctions implement UN sanctions to support UN Security Council resolutions. However, in some instances EU sanctions differ from, or go further than, UN sanctions, and implement specific EU Common Foreign and Security Policy objectives.¹⁹⁹
75. EU law does not define specific criteria that must be met before sanctions can be imposed. But it does require that the EU's external actions be conducted in accordance with certain broad principles, including 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law'.²⁰⁰ The EU has also indicated that it will 'impose autonomous EU sanctions in support of efforts to fight terrorism and the proliferation of weapons of mass destruction and as a restrictive measure to uphold respect for human rights, democracy, the rule of law and good governance'.²⁰¹
76. Almost all EU sanctions designate certain individuals or entities, as well as entities controlled by them as targets of asset freezes or travel bans.²⁰² But sanctions instruments may also impose other restrictions, such as arms embargos and prohibitions on the supply of equipment that may be used for internal repression.²⁰³
77. There is no Magnitsky-style sanctions law currently in force in the EU, although the European Parliament has repeatedly called for 'legislation with a view to

197 See paragraph 116 below.

198 Council decisions on EU Common Foreign and Security Policy generally require unanimity in the EU Council. Then, measures that interrupt or reduce economic relations with third countries (such as asset freezes) are implemented via EU Council Regulations. Regulations are adopted on a qualified majority basis, following a joint-proposal submitted by the High Representative of the Union for Foreign Affairs and Security Policy and the EU Commission. See Treaty on European Union, Articles 31(1); also see Articles 16(3) and (4). Council of the EU, 'Sanctions Guidelines – Update', 4 May 2018, para. 7.

199 See Treaty on the Functioning of the European Union, Article 215; Chapter 2 of Title V of the Treaty on European Union.

200 Treaty on European Union, Article 21(1).

201 Council of the EU, 'Basic Principles on the Use of Restrictive Measures (Sanctions)', 7 June 2004, 10198/1/04 REV 1, para. 3.

202 Council of the EU, 'Sanctions Guidelines – Update', 4 May 2018, No. 5664/18, para. 16.

203 *Id.*, para. 14. EU sanctions measures take the form of regulations that are directly applicable in each EU member state. However, member states are responsible for interpreting and enforcing EU sanctions; in addition, member states adopt national legislation setting out penalties for breaches of EU-level sanctions regulations. Member states may also, in rare instances, adopt sanctions that go beyond those adopted by the EU.

establishing clear criteria allowing for blacklisting and the imposition of similar sanctions against third country individuals and their family members who have committed serious human rights violations' or corruption.²⁰⁴ According to a report for the European Parliament, a global system of targeted sanctions 'would reduce the complexity of the current system and allow for the blacklisting of human rights abusers in the absence of a major event – a serious international crisis involving violent conflict or democratic backsliding – in the country where the target operates ... It would facilitate the blacklisting of individual perpetrators of human rights violations where no standing sanctions regime exists, and where they are unlikely to come about as country sanctions regimes'.²⁰⁵

78. In December 2019, EU foreign ministers agreed to create a new global sanctions regime, referred to as 'the European Union equivalent of the so-called Magnitsky Act of the United States',²⁰⁶ to address serious human rights violations after protracted debate in the EU over the adoption of such a regime.²⁰⁷ However, a legal text for the proposed Magnitsky regime has not yet been presented to the EU Council and all EU member states will need to agree unanimously on the adoption of the proposal once it is put before them.
79. According to the Dutch parliamentarians Pieter Omtzigt and Sjoerd Sjoerdsma, who co-sponsored the proposal that was adopted in December 2019, the EU's inaction on cases like the killing of Washington Post journalist Jamal Khashoggi has been one of the problems with the current regime. As Omtzigt has put it, '[w]e saw ... that we could not punish human rights violators individually' because sanctions had to be 'aimed at an entire country'.²⁰⁸ And according to Sjoerdsma, 'the murderers of the Saudi journalist Jamal Khashoggi', like 'the generals in Myanmar who hunt the Rohingyas or arms traders in Sudan', have so far 'escaped their punishment' even though '[t]hey put their money in Europe, put their children in school here and lead a luxury life in the EU'.²⁰⁹

204 See e.g. European Parliament, Resolution on Corruption and Human Rights in Third Countries, 2017/2028(INI), 13 September 2017, para. 36.

205 European Parliament Targeted Sanctions Report, p. 27.

206 EU, 'Remarks by High Representative/Vice-President Josep Borrell at the press conference following the Foreign Affairs Council', 9 December 2019. Although no timeframe has been set, EU diplomats told reporters the new framework could be ready to be presented for ministers' final approval as soon as next year.

207 In March 2019, the European Parliament had adopted a resolution calling on the Council to reach an agreement on a new sanctions regime to 'allow for the imposition of restrictive measures, notably asset freezes and EU entry bans, against any individual or entity responsible for, involved in or which has assisted, financed or contributed to the planning, directing or committing of gross human rights violations, abuses and acts of systemic corruption related to grave human rights violations': See e.g. European Parliament, Resolution on a European Rights Violations Sanctions Regime, 14 March 2019, 2019/2580(RSP). See also European Parliament Targeted Sanctions Report, pp.27-28.

208 Teller Report, 'EU countries agree on targeted sanctions for human rights violators', 9 December 2019.

209 *Id.*

Other sanctions regimes

80. The UN Security Council has established 30 sanctions regimes since 1966, acting under Chapter VII of the UN Charter.²¹⁰ Multiple sanctions regimes expressly permit the imposition of individual sanctions to target the perpetrators of human rights abuses, including through travel bans and asset freezes against individuals and entities.²¹¹ In each of these regimes, involvement in the planning, directing or committing of acts that violate 'international human rights law' or constitute 'human rights abuses' or 'human rights violations' are listed amongst a number the designation criteria permitting the imposition of sanctions.²¹²
81. UN sanctions have been imposed against states responsible for attacks against civilians during military activities or the undermining of peace and security during military conflict, violence or instability,²¹³ and on occasion in the context of 'restrictions of fundamental freedoms such as the freedom of expression and opinion'.²¹⁴
82. There are also regional African regimes that provide for the imposition of targeted sanctions, including sanctions in response to human rights violations. The Constitutive Act of the African Union permits sanctions 'of a political and economic nature' against any member state of the African Union that 'fails to comply with the decisions and policies of the Union'. Other parts of the Act also refer to the African Union's determination 'to promote and protect human and peoples' rights'.²¹⁵
83. The Lomé Declaration, adopted by the African Union's predecessor organisation²¹⁶ in response to a 'resurgence of coup[s] d'état in Africa' reaffirms the importance of 'freedom of expression and freedom of the press' as a core principle in democratic governance, and permits the imposition of 'limited and targeted sanctions', including 'visa denials ... restrictions of government-to-government contacts

210 See Charter of the United Nations, Chapter VII, Article 41. For a summary of active UN sanctions regimes and Committees, see UN Department of Political and Peacebuilding Affairs, 'Subsidiary Organs of the United Nations Security Council', 3 October 2019 ("UNDPA Report").

211 The imposition of arms embargos on individuals, entities, groups or in particular regions is also permitted under many of these sanctions regimes: see e.g. UNDPA Report, p.6 ('the Security Council imposed a complete and general arms embargo on Somalia'). Other sanctions regimes address violations of human rights more indirectly, such as by imposing sanctions in relation to nuclear-related or weapons of mass destruction-related programmes: see UNDPA Report, p.18 (sanctions against North Korea '[i]n response to nuclear tests and launches that used ballistic missile technology').

212 Many of these regimes also list violations of international humanitarian law as a designation criterion.

213 See e.g. UNSC Resolution 2399 (Central African Republic), 30 January 2018, S/RES/2399, Paragraph 21(b) (in the context of ongoing violence perpetrated by armed groups in the north-west of the country); UNSC Resolution 2174 (Libya), 27 August 2014, S/RES/2174, Paragraph 4(a); UNSC Resolution 2213, 27 March 2015), S/RES/2213, Paragraph 11(a) (in the context of ongoing violence during the Libyan Civil War); UNSC Resolution 1591 (Sudan), 29 March 2005, S/RES/1591, para. 3(c) (in the context of the ongoing humanitarian crisis in Darfur); UNSC Resolution 2140 (Yemen), 26 February 2014, S/RES/2140, Paragraph 18(c) (in the context of ongoing violence and attacks on infrastructure at a time of political transition in Yemen).

214 UNSC Resolution 2293, 23 June 2016, S/RES/2293, p.3.

215 Constitutive Act of the African Union, Preamble and Article 23(2). All African Union states aside from Morocco and South Sudan have ratified the Act.

216 The Organisation of African Unity (OAU).

[and] trade restrictions' against regimes that refuse to restore constitutional order following an 'unconstitutional change of Government'.²¹⁷

84. The African Union has relied on these instruments to suspend Union membership and impose, or threaten to impose, visa denials, travel bans and asset freezes against civilians and military personnel. This includes responses to the violence that resulted from military coups in Mauritania²¹⁸ and Madagascar.²¹⁹ Similarly, following violence in Burundi, the Peace and Security Council (the African Union's standing organ for the management of conflicts) imposed 'targeted sanctions, including travel ban and asset freeze, against all the Burundian stakeholders whose actions and statements contribute[d] to the perpetuation of violence'.²²⁰ In the decision imposing these targeted sanctions, the Council noted the increase in cases of 'human rights abuses', including 'arbitrary arrests and illegal detentions, violations of the freedom of press and expression, as well as the prevalence of impunity'.²²¹
85. The Revised Treaty of the Economic Community of West African States (ECOWAS) also permits the imposition of sanctions on any ECOWAS member state that 'fails to fulfil its obligations to the Community'.²²² The ECOWAS Protocol on Democracy and Good Governance also permits sanctions 'on the State concerned' whenever 'democracy is abruptly brought to an end by any means or where there is a massive violation of Human Rights in an [ECOWAS] Member State'.²²³ ECOWAS threatened to impose sanctions on defence and security forces in Burkina Faso if further action was taken to destabilise the country after a political crisis in 2015.²²⁴ And it imposed travel bans and asset freezes on 20 politicians and businessmen considered responsible for undermining efforts to resolve the political crisis in Guinea-Bissau.²²⁵

217 OAU, Lomé Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government, 10-12 July 2000, AHG/Decl.5 (XXXVI). Also see Protocol Relating to the Establishment of the Peace and Security Council of the African Union, 9 July 2002, Article 7(1)(g) (permitting the African Union Peace and Security Council to 'institute sanctions' as provided for in the Lomé Declaration).

218 African Union, Communiqué of the 163rd Meeting of the Peace and Security Council, 22 December 2008, PSC/MIN/Comm.3 (CLXIII), para. 9.

219 African Union, Communiqué of the 216th Meeting of the Peace and Security Council, 19 February 2010, PSC/PR/Comm-1(CCXVI), para. 8.

220 African Union, Communiqué of the 551st Meeting of the Peace and Security Council, 17 October 2015, PSC/PR/Comm.(DLI), para.12. See also African Union, The Peace & Security Council.

221 African Union, Communiqué of the 551st Meeting of the Peace and Security Council, 17 October 2015, PSC/PR/Comm.(DLI), para.5.

222 Revised Treaty of ECOWAS, Articles 77(1) and (2). All 14 ECOWAS member states ratified the Revised Treaty. These are Benin, Burkina Faso, Cote d'Ivoire, Ghana, Guinea, Gambia, Guinea-Bissau, Liberia, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

223 Protocol on Democracy and Good Governance, Articles 45(1)-(2). All ECOWAS member states ratified this document.

224 ECOWAS, 'Final Communiqué: Extraordinary Session of the Authority of Heads of State and Government on the Political Crisis in Burkina Faso', 22 September 2015, para. 13.

225 This followed earlier targeted sanctions against junta leaders and diplomatic, economic and financial sanctions on the country as a whole. The Supplementary Act on Sanctions Against Member States that Fail to Honour their Obligations to ECOWAS permits the imposition of sanctions against individual and legal entities, including travel bans and asset freezes. We have not been able to review a copy of this Act, but see ECOWAS, 'ECOWAS Imposes Individual Sanctions for Non-Implementation of the Conakry Agreement in Guinea Bissau', 7 February 2018. See also Deutsche Welle, 'West African bloc imposes sanctions on Guinea-Bissau', 30 April 2012.

86. There has been more limited practice in other regions. Although the Organization of American States has an Inter-American Commission and an Inter-American Court devoted to implementing human rights obligations of countries under various human rights instruments,²²⁶ it does not have a regional sanctions regime. Recently, states have invoked the provisions of the Inter-American Treaty of Reciprocal Assistance ‘to identify ... senior officials of the Nicolas Maduro regime’ who have participated in ‘serious human rights violations’ and impose travel bans against them.²²⁷ But this is an isolated example with uncertain precedential value. Nevertheless, states within this region, such as Panama and the Bahamas, are favoured destinations for the storing of assets that may be targeted by sanctions.²²⁸
87. There is no regional human rights-based sanctions system in Asia. However, in the Middle East, the Arab League has previously imposed countrywide sanctions against Syria, given that it had been ‘almost a year that the Syrian people ha[d] been killed’.²²⁹ In addition, four members of the Arab League have imposed an economic and diplomatic embargo against Qatar, due to its alleged ‘embrace of various terrorist and sectarian groups aimed at destabilising the region’.²³⁰
88. Other than a specific sanctions regime imposed in 1986 against apartheid-era South Africa, the Commonwealth has not imposed economic sanctions on its members and it does not have a targeted sanctions regime.²³¹

226 The American Declaration on the Rights and Duties of Man and the American Convention on Human Rights.

227 See e.g. Organisation of American States, Resolution to the Thirtieth Meeting of Consultation of Ministers of Foreign Affairs, Acting as the Consultative Organ in Application of the Inter-American Treaty of Reciprocal Assistance (TIAR), 23 September 2019, para. 2 (referring to the use of ‘all available means to investigate, prosecute, capture, extradite and punish the responsible parties and to provide for the freezing of their assets located in the territories of the States Parties to the TIAR, in accordance with national legal systems’). In December 2019, travel bans were imposed against 29 Venezuelan officials, including President Maduro, under the Rio Treaty: Reuters, ‘Latin America, U.S. to Ban Travel Within Their Borders for Venezuela’s Maduro, Allies’, 3 December 2019.

228 See Pedro Gonçalves (International Investment), ‘FATF keeps Panama and Bahamas on the grey list and adds Iceland’, 22 October 2019.

229 The New York Times, ‘Isolating Syria, Arab League Imposes Broad Sanctions’, 27 November 2011.

230 The countries in question are Saudi Arabia, Bahrain, Egypt and the UAE: see The Guardian, ‘Gulf plunged into diplomatic crisis as countries cut ties with Qatar’, 5 June 2017. In response to the blockade, Qatar instituted legal proceedings before different international bodies, based on a variety of international instruments. There are three cases pending before the ICJ (Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Qatar v. UAE*); Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (*Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar*); Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (*Bahrain, Egypt and United Arab Emirates v. Qatar*). Qatar has also launched an inter-state complaint before the CERD Committee: see Priya Pillai, ‘Qatar v UAE: Uncharted territory at the ICJ’, *Opinio Juris*, 18 May 2019. The Arab League has also maintained an official boycott against the state of Israel since Israel’s independence in 1948, although this is only sporadically enforced: see Martin A. Weiss, ‘Arab League Boycott of Israel’, Congressional Research Service, 25 August 2017.

231 Commonwealth Heads of Government Meeting, The Commonwealth Accord on South Africa, Nassau Meeting 16-22 October 1985, para. 6(iii). The sanctions included a ban on both air travel and investments in South Africa, a block on agricultural imports and the promotion of South African tourism. Consular facilities were also withdrawn under the agreement. The Commonwealth imposed sanctions specifically because of the ‘growing crisis and intensified repression in South Africa’ and the ‘rationale [of these measures was] impressing on the authorities in Pretoria the compelling urgency of dismantling apartheid’: paras. 1 and 3.

89. A number of countries are currently considering whether to create regimes similar to the US's Magnitsky legislation.²³² For instance, Australia has the Autonomous Sanctions Act of 2011, which contemplates the imposition of sanctions 'in situations of international concern', including 'the grave repression of the human rights ... of a population by a government'.²³³ But commentators have noted that it is 'not fit for purpose': it is very restrictive in practice and requires multiple regulations to be issued.²³⁴ In December 2019, the Australian Joint Standing Committee on Foreign Affairs, Defence and Trade announced a new parliamentary inquiry into 'whether Australia should impose sanctions against individuals who commit gross human rights abuses'.²³⁵ Discussion on this is currently ongoing.

Practice

90. The US and Canada are the only two countries that have implemented broad-based 'Magnitsky' legislation. The UK has passed legislation providing a framework for the imposition of targeted sanctions but has not yet enacted legislation to operationalise a global human rights sanctions regime, nor has it designated targets under it.²³⁶
91. The US and Canadian systems are relatively new: the US system has been operational since December 2017,²³⁷ and Canada's as of November 2017.²³⁸ In this time, both countries have imposed sanctions in a wide variety of situations, though few have related to abuses of journalists.

United States

92. The US government is imposing more targeted sanctions than ever before,²³⁹ in response to the 'unusual and extraordinary threat' that serious human rights abuse and corruption poses to US 'national security, foreign policy, and the economy'.²⁴⁰

232 See paragraph 36 above.

233 See the definition of 'autonomous sanctions' in the Explanatory Memorandum on the Autonomous Sanctions Bill 2010.

234 See Geoffrey Robertson and Chris Rummerly, 'Why Australia needs a Magnitsky Law', Oct-Dec 2018, *Australian Quarterly*, Vol. 89, No. 4, p.24

235 Parliament of Australia, 'Inquiry into a Framework for Autonomous Sanctions under Australian Law to Target Human Rights Abuses', 4 December 2019.

236 See also paragraphs 36 and 38 above.

237 The first sanctions under the Global Magnitsky and Human Rights Accountability Act of 2016 were announced in December 2017, when Executive Order 13818 was introduced to 'build on and implement' the Act.

238 Canada's Justice for Victims of Corrupt Foreign Officials Act became operational at that time. The Immigration and Refugee Protection Act (as amended) that provides for visa sanctions had been in force since 2002.

239 The New York Times, 'Trump's Embrace of Sanctions Irks Allies and Prompts Efforts to Evade Measures', 16 November 2019; The Economist, 'Financial Carpet-bombing: Donald Trump has Shown a Surprising Enthusiasm for Sanctions', 28 November 2019; The New York Times, 'Trump's Embrace of Sanctions Irks Allies and Prompts Efforts to Evade Measures', 16 November 2019.

240 White House, 'Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption', 21 December 2017.

93. According to The Economist, the Trump administration ‘has been more enthusiastic than any other in history about using financial sanctions’,²⁴¹ adding over 3,000 people and entities to the sanctions list run by the US Treasury in the last three years.²⁴² Such sanctions have usually been imposed in response to situations where human rights abuses are widespread, but have also been applied in response to individual acts of violence or arbitrary detention.²⁴³ Sanctions have been imposed on high-level officials, as well as public officers such as judges, prosecutors and the police, and non-state actors, including business executives.²⁴⁴ Abuses of media professionals have been included, but not prominently, and usually in the context of broader repression of human rights defenders or a broader civilian population. But some systemic restrictions on the media, such as internet shutdowns, have also in themselves prompted targeted sanctions.
94. US practice under the Magnitsky Act and other targeted sanctions regimes has included the imposition of sanctions on senior government officials and their associates for human rights related abuses, such as:
- the Venezuelan Foreign Minister, Jorge Alberto Arreaza Montserrat, said to be at ‘the forefront of the former Maduro regime’s attempts’ to ‘thwart the democratic aspirations of the Venezuelan people’ using corrupt means;²⁴⁵
 - Syrian President Bashar Al-Assad, along with other senior officials, said to be ‘responsible for or complicit in ... human rights abuses in Syria’,²⁴⁶ including ‘the use of violence and torture against, and arbitrary arrests and detentions of, peaceful protesters’;²⁴⁷

241 The Economist, ‘Financial Carpet-bombing: Donald Trump has Shown a Surprising Enthusiasm for Sanctions’, 28 November 2019.

242 According to data gathered by law firm Gibson, Dunn & Crutcher LLP, in the past three years President Trump has added over 3,100 people and entities to the sanctions list run by the Office of Foreign Assets Control, a division of the US Treasury: see Gibson Dunn, ‘2019 Year-End Sanctions Update’, 23 January 2020. The Economist also compares this to the 3,484 targets that George W. Bush added in his entire eight years in office: The Economist, ‘Financial Carpet-bombing: Donald Trump has Shown a Surprising Enthusiasm for Sanctions’, 28 November 2019.

243 See The Economist, ‘Donald Trump has shown a Surprising Enthusiasm for Sanctions’, 28 November 2019.

244 See paragraph 101 below. Also see Executive Order 13818 (sanctioning Israeli businessman Dan Gertler, a close associate of the President of the Democratic Republic of the Congo, Joseph Kabila, together with 12 other ‘serious human rights abusers and corrupt actors’: US Treasury, ‘United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe’, 21 December 2017).

245 Executive Order 13692; US State Department, ‘The United States Sanctions Maduro-Aligned Individuals’, 26 April 2019. Also see US Treasury Financial Crimes Enforcement Network, ‘Advisory on Widespread Public Corruption in Venezuela’, 20 September 2017, p.2.

246 See Executive Order 13572.

247 *Id.*, Preamble; Executive Order 13573.

- three senior government officials and two Turkish ministries involved in Turkey's military incursion into Syria in October 2019, which 'endanger[ed] innocent civilians, and destabiliz[ed] the region';²⁴⁸
 - officials and financiers involved in extrajudicial killings and attacks committed against civilian populations in China,²⁴⁹ Ukraine²⁵⁰ and Myanmar,²⁵¹ as well as corruption in South Sudan²⁵² and Cambodia.²⁵³
95. In addition, recent examples of designations of senior government officials for visa bans under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Act made in response to human rights abuses include:
- Anselem Nhamo Sanyatwe, a former commander in the Zimbabwe army, due to his involvement in the violent crackdown against unarmed Zimbabweans during post-election protests in 2018 that resulted in six civilian deaths;²⁵⁴
 - Goran Radosavljevic, a former Serbian police chief and party official, for involvement in 'gross violations of human rights', as he had been 'credibly implicated in the 1999 murder of the Bytyqi brothers, three Albanian-American brothers killed in Serbia after the Kosovo War';²⁵⁵

248 The senior government officials were the Minister of National Defence, the Minister of Interior, and the Minister of Energy; the ministries were the Ministry of National Defence and the Ministry of Energy and National Resources. See Executive Order 13894, Sections 1, 4, 5-7; US Treasury, 'Treasury Designates Turkish Ministries and Senior Officials in Response to Military Action in Syria', 14 October 2019. Also see US Department of State, 'Sanctioning the Government of Turkey in Response to the Ongoing Military Offensive in Northeast Syria', 14 October 2019. The sanctions were subsequently lifted following Turkey's cessation of military activities: US Treasury, 'Treasury Removes Sanctions Imposed on Turkish Ministries and Senior Officials Following Pause of Turkish Operations in Northeast Syria', 23 October 2019.

249 See e.g. US Treasury, 'United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe', 21 December 2017 (against Gao Yan, a Chinese security official allegedly linked to the death in custody of human rights activist Cao Shunli).

250 Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (as amended), Pub. L. 113-95, Section 8(a)(1). A number of Executive Orders also provide for the imposition of sanctions against persons who are responsible for: 'human rights abuses' or 'violations of human rights' (see e.g. Executive Order 13405 (Belarus); Executive Order 13469 (Zimbabwe); Executive Order 13566 (Libya); Executive Order 13572 (Syria)); for 'serious human rights abuses' (see e.g. Executive Order 13606 (Iran and Syria)); or make reference to both standards of violations (see e.g. Executive Order 13712 (Burundi); Executive Order 13664 (South Sudan); Executive Order 13671 (Democratic Republic of the Congo); Executive Order 13882 (Mali)).

251 State Department, 'Global Magnitsky Human Rights Accountability Act Annual Report 2018', 19 December 2018, para. 9.

252 See e.g. US Treasury, 'United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe', 21 December 2017 (against Benjamin Bol Mel, a business magnate alleged to have profited from his ties to South Sudanese President Salva Kiir).

253 US Treasury, 'Treasury Sanctions Corruption and Material Support Networks', 9 December 2019 (against Try Pheap, a corrupt 'current or former government official' who used his 'vast network inside Cambodia to build a large scale illegal logging consortium that relies on the collusion of Cambodian officials...').

254 US State Department, 'Public Designation of Anselem Nhamo Sanyatwe under Section 7031(c) of the FY 2019 Department of State, Foreign Operations, and Related Programs Appropriations Act', 1 August 2019.

255 US State Department, 'Public Designation of Goran Radosavljevic Under Section 7031(c) of the FY 2018 Department of State, Foreign Operations, and Related Programs Appropriations Act', 19 December 2018. See also Marija Ristic, 'US Bars Serbian Ex-Commander Over Kosovo Crimes', Balkan Transitional Justice, 19 December 2018.

- four Burmese military officials involved in extrajudicial killings in northern Rakhine State, Burma, during the ethnic cleansing of the Rohingya;²⁵⁶
 - the Minister of the Revolutionary Armed Forces of Cuba and his two children for 'gross human rights violations and abuses in Venezuela, including torturing or subjecting Venezuelans to cruel, inhumane, or degrading treatment or punishment for their anti-Maduro stances';²⁵⁷ and
 - a commander of the Islamic Revolutionary Guard Corps for his involvement in gross violations of human rights against protesters, including violations of 'the rights to life and of peaceful assembly enshrined in Articles 6 and 21 of the International Covenant on Civil and Political Rights'.²⁵⁸
96. In addition, in December 2019, a congressional bill was passed in the House of Representatives calling for the imposition of asset freezes and visa bans on senior Chinese government officials responsible for human rights abuses, including the 'mass internment of over 1,000,000 Uyghurs and other predominantly Muslim ethnic minorities in China'.²⁵⁹ This bill calls on the President to impose sanctions for the first time on a member of China's powerful politburo, Xinjiang Communist Party Secretary Chen Quanguo, as well as other 'senior officials of the Government of the People's Republic of China' who are 'responsible or who have knowingly engaged in serious human rights abuses', including those 'directly responsible for the ongoing repression in the Uighur Autonomous Region' and 'for mass incarceration, political indoctrination, or reeducation efforts targeting Uighurs'.²⁶⁰

SANCTIONS FOR ABUSES RELATED TO JOURNALISTS AND MEDIA FREEDOM

97. There is some relevant US practice in relation to attacks on the media and media professionals specifically:
- Most prominently, the US imposed sanctions on 17 Saudi government officials in response to the brutal murder of Washington Post columnist Jamal Khashoggi. The US Treasury reported that sanctions had been imposed on Saud al-Qahtani and his subordinate, the Saudi Consul General Mohammed Alotaibi, and 14 other governmental officials who were 'members of an operations team' that had a 'role in the killing of

256 US State Department, 'Public Designation, Due to Gross Violations of Human Rights, of Burmese Military Officials', 16 July 2019.

257 US State Department, 'Public Designation of Leopoldo Cintra Frias Due to Involvement in Gross Violations of Human Rights', 2 January 2020 (referring to their goal of 'prop[ping] up the former Maduro regime in Venezuela' and '[d]ismantling Venezuela's democracy by terrifying Venezuelans into submission').

258 US State Department, 'Designation of IRGC Commander Shahvarpour for Gross Human Rights Violations During Protests', 18 January 2020.

259 The proposed Uyghur Human Rights Policy Act of 2019 (S.178) passed 407-1 in the Democrat-controlled House. See Congress.gov, S. 178 - Uyghur Human Rights Policy Act of 2019, draft Section 2 (as of 31 January 2020).

260 *Id.*, Section 7. Also see Congressional-Executive Commission on China, 'Annual Report 2019', 18 November 2019, pp.27-28.

Jamal Khashoggi'.²⁶¹ According to the US government, '[a]ll of these individuals are designated for being responsible for, or complicit in, or having directly or indirectly engaged in serious human rights abuse', and Saudi Arabia 'must take appropriate steps to end any targeting of political dissidents or journalists'.²⁶² The US State Department then imposed travel bans on 16 of the 17 individuals who had been subject to asset freezes 'for their roles in the murder of Jamal Khashoggi'.²⁶³ Prior to the imposition of sanctions, US Secretary of State Michael Pompeo said that the US would 'not tolerate this kind of ruthless action to silence Mr. Khashoggi, a journalist, through violence'.²⁶⁴

- In December 2019, the US imposed sanctions against Slovak businessman Marian Kocner, as well as six of his companies, for being 'responsible for or complicit in, or having directly or indirectly engaged in, serious human rights abuse', relating to the murder of Ján Kuciak, an investigative journalist.²⁶⁵ According to the US Treasury, Mr. Kuciak had investigated and published 'several exposés' on fraud and corruption committed by Mr. Kocner. Mr. Kocner had 'threatened' Mr. Kuciak, 'hired former Slovak Intelligence Service members to surveil Kuciak ahead of his eventual murder', and according to Slovak authorities, later 'hir[ed] a hitman who murdered Kuciak and his fiancée, Martina Kusnirova'.²⁶⁶
- The US imposed sanctions against members of South Sudan's security forces following repeated extrajudicial killings 'to silence dissent [and] limit freedom of speech and the press', including the extrajudicial killings of human rights defenders, lawyers and international monitors.²⁶⁷
- Sanctions were also imposed against Yahya Jammeh, the former President of the Gambia, at the time that President Trump signed Executive Order 13818 in December 2017. The US Treasury reported that Mr. Jammeh had been sanctioned after he 'created a terror and assassination squad

261 US Treasury, 'Treasury Sanctions 17 Individuals for Their Roles in the Killing of Jamal Khashoggi', 15 November 2018.

262 *Id.*

263 These designations were issued under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act of 2019 and did not include Consul General Mohammed Alotaibi: US State Department, 'Public Designation of Sixteen Saudi Individuals Under Section 7031(c) of the FY 2019 Department of State, Foreign Operations, and Related Programs Appropriations Act', 8 April 2019. In January 2019, a US State Department official also indicated that '...we have placed visa restrictions on 21 individuals' in connection with Jamal Khashoggi's death: US State Department, 'Senior State Department Officials Previewing Secretary Pompeo's Upcoming Trip to the Middle East', Special Briefing dated 4 January 2019. In addition, on 10 October 2018 the Senate Foreign Relations Committee triggered a reporting obligation under the Global Magnitsky Human Rights Accountability Act, which required President Trump to report to the Committee within 120 days, whether additional persons, in particular Crown Prince Mohammed bin Salman, played a role in Mr. Khashoggi's murder, and whether or not sanctions would be imposed against them. President Trump has to date not complied with this reporting obligation. See further paragraph 46 above.

264 US State Department, 'Remarks to the Press', Remarks dated 23 October 2018.

265 US Treasury, 'Treasury Sanctions Individuals for Roles in Atrocities and Other Abuses', 10 December 2019.

266 *Id.*

267 *Id.*

called the Junglers’, who were deployed to kill a ‘local religious leader, journalists, members of the political opposition, and former members of the government’ and had used the Gambia’s National Intelligence Agency as a ‘repressive tool of the regime – torturing political opponents and journalists’.²⁶⁸

- Sanctions were also imposed against Julio Antonio Juarez Ramirez, a Guatemalan Congressman accused of ‘ordering an attack in which two journalists were killed and another injured’.²⁶⁹
- The Venezuela Defense of Human Rights and Civil Society Act of 2014 also permits the imposition of sanctions on those who ‘ordered or otherwise directed the arrest or prosecution of a person ... primarily because of the person’s legitimate exercise of freedom of expression or assembly’. Individuals sanctioned pursuant to Executive Orders issued under the Act have included the former leaders of police forces that ‘used force against peaceful protesters and journalists’ involved in anti-government protests.²⁷⁰
- The Nicaragua Human Rights and Corruption Act of 2018 also specifically allows for the imposition of sanctions against any person who assisted in the ‘arrest or prosecution of a person, including an individual or media outlet disseminating information to the public, primarily because of the legitimate exercise by such person of the freedom of speech, assembly, or the press’.²⁷¹

268 US Treasury, ‘United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe’, 21 December 2017.

269 *Id.*

270 Venezuela Defense of Human Rights and Civil Society Act of 2014, Section 5(a)(2); The White House, Factsheet: Venezuela Executive Order, 9 March 2015. The sanctions also cover ‘significant acts of violence’: Venezuela Defense of Human Rights and Civil Society Act of 2014, Section 5(a)(1). Also see Executive Order 13692, Section 1(a)(ii)(A).

271 Nicaragua Human Rights and Corruption Act of 2018, Sections 5(a), (b)(1) and (b)(4). Also see Executive Order 13851, Section 1(a)(i)(A). The Act also requires the imposition of sanctions in relation to corruption and actions and policies ‘that undermine democratic processes or institutions’, permits the imposition of sanctions on persons who have assisted ‘significant acts of violence or conduct that constitutes a serious abuse or violation of human rights against persons associated with the protests in Nicaragua’: Nicaragua Human Rights and Corruption Act of 2018, Section 5(b)(1).

98. The US has also referred to the unjust detention or other abuses of journalists in sanctions regimes involving Myanmar²⁷² and Uganda²⁷³ and in a recent bill regarding the detention of Uighurs in China.²⁷⁴
99. In addition to sanctions responsive to abuses of journalists, some sanctions have been imposed in response to systemic restrictions on the media, such as censorship of media content, shutdowns of the internet and the takeover of independent news organisations:
- The US recently sanctioned Mohammad Javad Azari Jahromi, Iran's Minister of Information and Communications Technology, 'for his role in the Iranian regime's widescale internet censorship', after internet access in Iran was blocked for several days in November 2019 during anti-government protests.²⁷⁵ The US State Department observed that although Iranian officials and their associates were able to access the internet and social media, 'they deprive their people of these basic tools of expression and communication'.²⁷⁶ Under Executive Order 13846, sanctions could also be imposed against other individuals for their role in censorship in Iran that 'prohibit[s], limit[s], or penalize[s] the exercise of freedom of expression or assembly by citizens of Iran, or that limit access to print or broadcast media' and any 'manipulation' that would 'jam or restrict an international signal'.²⁷⁷
 - Also in 2019, Iranian Foreign Minister Mohammad Javad Zarif was sanctioned on the basis that he was responsible for implementing 'the reckless agenda of Iran's Supreme Leader, and [was] the regime's primary spokesperson around the world'.²⁷⁸ In particular, Zarif was said to be responsible for spreading 'the regime's propaganda and disinformation

272 The US government referred to specific instances of violence and sexual violence committed by military and border police units against Rohingya minorities, and observed that '[t]wo journalists remain detained for their role investigating' abuses committed by security forces: US Treasury, 'Treasury Sanctions Commanders and Units of the Burmese Security Forces for Serious Human Rights Abuses', 17 August 2018.

273 When sanctions were imposed on the former Inspector General of the Uganda Police Force, Kale Kayihura, the State Department called on the 'Ugandan government to respect human rights and fundamental freedoms, including the freedoms of expression and peaceful assembly': US State Department, 'Public Designation, Due to Gross Violations of Human Rights, of Kale Kayihura of Uganda', 13 September 2019.

274 The Uyghur Human Rights Policy Act that was passed by the House of Representatives in December 2019 calls 'for an end to arbitrary detention, torture, and harassment' of 'ethnic Turkic Muslims in Xinjiang' in its title. It also includes a finding that 'at least five journalists for Radio Free Asia's Uyghur service have publicly detailed abuses their family members in Xinjiang have endured in response to their work exposing abusive policies across the region': see Congress.gov, S. 178 - Uyghur Human Rights Policy Act of 2019, draft Section 4(4) (as of 31 January 2020).

275 US Treasury, 'Treasury Designates Iran's Minister of Information and Communications Technology in View of the Regime's Repressive Internet Censorship', 22 November 2019. There were similar shutdowns in 2017 and 2018, and according to the US Treasury 'Jahromi ... has advanced the Iranian regime's policy of repressive internet censorship since he took office in mid-2017...'

276 US State Department, 'The United States Holds Iranian Official Accountable for Crackdown on Protesters', 22 November 2019.

277 Executive Order 13846, Section 7(v).

278 US Treasury, 'Treasury Designates Iran's Foreign Minister Javad Zarif for Acting for the Supreme Leader of Iran', 31 July 2019.

around the world' through social media,²⁷⁹ as well as being responsible for other serious human rights abuses.²⁸⁰

- In 2018, the US sanctioned three North Korean individuals who 'direct[ed] departments that perpetrate the regime's brutal state-sponsored censorship activities, human rights violations and abuses, and other abuses in order to suppress and control the population'.²⁸¹ This included 'the suppression of freedom of speech, expression and censorship', and the imposition of sanctions coincided with a report published by the US State Department that highlighted the role of certain governmental groups in 'implementing strict censorship and restricting access to foreign media'.²⁸²
- In 2012 sanctions were imposed on Syrian officials in order to prevent individuals and entities in Syria and Iran from 'facilitating or committing serious human rights abuses' through computer and network interference, given the 'vital importance' of communication technology in allowing 'Iranian and Syrian people to freely communicate with each other and the outside world'.²⁸³
- Earlier, in 2010, the Comprehensive Iran Sanctions, Accountability, and Divestment Act required the imposition of sanctions on officials determined to be responsible for 'engaging in censorship or other activities' that 'prohibit, limit or penalize the exercise of freedom of expression or assembly by citizens of Iran' or that 'limit access to print or broadcast media', including by interfering with international broadcast signals in Iran.²⁸⁴

SANCTIONS FOR UNJUST DETENTION

100. The use of sanctions to target those responsible for unjust detention – harm that impacts press freedom cases frequently but not exclusively²⁸⁵ – has been relatively limited to date.

279 Executive Order 13876, which was issued by President Trump on 24 June 2019, imposed an asset freeze on Iran's Supreme Leader, Ayatollah Ali Khamenei, and authorised 'the Secretary of the Treasury, in consultation with the Secretary of State', to impose sanctions on anyone appointed by him 'as a state official of Iran' (among other categories).

280 US Treasury, 'Treasury Designates Iran's Foreign Minister Javad Zarif for Acting for the Supreme Leader of Iran', 31 July 2019 (referring to 'additional information' that Mr. Javad Zarif oversaw 'a foreign ministry that has coordinated with one of the Iranian regime's most nefarious state entities, the IRGC-Qods Force...which is designated pursuant to terrorism and human rights [sanctions] authorities'). See also US State Department, 'The U.S. Designates Iranian Foreign Minister Mohammad Javad Zarif', 31 July 2019.

281 US Treasury, 'Treasury Sanctions North Korean Officials and Entities in Response to the Regime's Serious Human Rights abuses and Censorship', 10 December 2018.

282 *Id.*

283 Executive Order 13606, Preamble. The Order was issued by President Obama pursuant to the International Emergency Economic Power Act 50 U.S.C. §§1701 (see paragraph 50 above) and related legislation preceding the Global Magnitsky Act.

284 Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, Section 105B(b)(1).

285 See paragraphs 3 and 5 above.

101. There is, however, some precedent for the use of sanctions against both government officials and judicial officers in arbitrary detention cases. For instance:
- Sanctions were imposed on five judges and two prosecutors involved in Sergei Magnitsky's trial in Russia.²⁸⁶
 - Sanctions were imposed on a senior member of the judiciary in Venezuela, along with the regime's Foreign Minister, in relation to the detention of a senior opposition figure.²⁸⁷
 - The Turkish Ministers of Justice and Interior were sanctioned for their 'leading roles in the organizations responsible for the arrest and detention of Pastor Andrew Brunson', an American citizen who was 'arrested in Izmir, Turkey ... with an absence of evidence to support the charges, [and] accused of [several crimes]'.²⁸⁸
 - In December 2019, the US issued sanctions against two judges of Iran's Revolutionary Court, including one known as the 'hanging judge', for punishing citizens, including 'journalists', 'for exercising their freedoms of expression or assembly'.²⁸⁹
 - Also in December 2019, the US government signed into law a provision denying entry to the US to Philippine officials responsible for the 'wrongful imprisonment' of Philippine Senator Leila de Lima, a critic of the Duterte regime detained on charges that the UN has found to be arbitrary and in violation of international law.²⁹⁰

United Kingdom

102. The UK Parliament's Foreign Affairs Committee has highlighted that the 'centrality of sanctions to UK foreign policy, national security and the functioning of the rules-

286 See Announcements of Sanctions Under the Sergei Magnitsky Rule of Law Accountability Act of 12 April 2013, 20 May 2014, and 29 December 2014.

287 US Treasury, 'Treasury Sanctions Venezuela Minister of Foreign Affairs', 26 April 2019. Also see US Department of State, The United States Sanctions Maduro-Aligned Individuals: the sanctioned member of the judiciary was Carol Bealexis Padilla de Arretureta, 'a judge associated with the March 21 detainment of Interim President Juan Guaido's Chief of Staff Roberto Marrero'.

288 US Treasury, Treasury Sanctions Turkish Officials with Leading Roles in Unjust Detention of U.S. Pastor Andrew Brunson, 1 August 2018.

289 US Treasury, 'Treasury Sanctions Two Judges Who Penalize Iranians for Exercising Freedoms of Expression and Assembly', 19 December 2019.

290 See US Senate, 'S.Res.142 – A Resolution Condemning the Government of the Philippines for its Continued Detention of Senator Leila De Lima, Calling for her Immediate Release, and for Other Purposes', 8 January 2020, Section (3)(B); US Senate Committee on Appropriations, 'Report to Accompany Senate Bill 2853', p.93 (prohibiting the entry of 'foreign government officials about whom the 'Secretary (of State) has credible information have been involved in the wrongful imprisonment' of Senator de Lima). See further Eimor Santos, 'Explainer: How the US budget law bans Philippine officials', CNN Philippines, 28 December 2019. See also WGAD, *Leila Norma Eulalia Josefa De Lima v. The Philippines*, Op. no. 61/2018, 24 August 2018.

based international system cannot be overstated'.²⁹¹ However, the UK's current practice of imposing sanctions has so far largely been through the implementation of UN and EU sanctions, based on its membership of these organisations.²⁹² As of March 2018, the UK had implemented 'human rights-based sanctions against 10 countries' with sanctions against 'more than 200 individuals and entities ... in place'.²⁹³ Examples have included individuals and organisations involved in the illegal arms trade, the Salisbury chemical attack,²⁹⁴ human rights violations in Belarus,²⁹⁵ Burundi,²⁹⁶ Iran,²⁹⁷ Ukraine,²⁹⁸ Venezuela,²⁹⁹ Lebanon and Syria.³⁰⁰ The UK has also, on occasion, designated a party as subject to an asset freeze, even if that party was not subject to an asset freeze at EU level.³⁰¹ This is all set to change in 2020, when the UK will, for the first, time, begin to implement its own human rights-based sanctions regime autonomously.

103. Some statutory instruments that have been created under the Sanctions Act in relation to specific countries refer to the imposition of sanctions to protect the right to freedom of expression of journalists and human rights defenders. For example, the Iran Human Rights (Sanctions) (EU Exit) Regulations 2019³⁰² comprise asset freezes as well as immigration and trade restrictions³⁰³ that address 'grave human rights violations', including the 'systematic repression of Iranian citizens, who face harassment and arrests for exercising their legitimate rights to freedom of expression and peaceful assembly'.³⁰⁴
104. The purpose of the Regulations is stated as being 'to encourage the Government of Iran to comply with international human rights law and to respect human rights', which includes 'afford[ing] journalists, human rights defenders and other

291 House of Commons Foreign Affairs Committee, 'Fragmented and Incoherent: the UK's Sanctions Policy', 5 June 2019, HC 1703, (the 'FAC Report on Sanctions Policy'), p.3 and para. 51.

292 See paragraph 102. See also Hansard HC Deb 21 February 2017, vol 621, col 884

293 Sir Alan Duncan MP, Hansard Sanctions and Anti-Money Laundering Bill (HL) (Third Sitting), 1 March 2018, vol 636. See also Sir Alan Duncan, Written Statement: Report on Regulations Made under the Sanctions and Anti-Money Laundering Act 2018 in Relation to Gross Human Rights Violations, 27 June 2019.

294 The Chemical Weapons (Asset Freezing) and Miscellaneous Amendments Regulations 2018 (S.I. 2018/1090); WorldECR, 'UK Aligns with New EU Chemical Weapons Sanctions Framework', October 2018.

295 The Belarus (Asset-Freezing) Regulations 2013 (S.I. 2013/164); Belarus (Asset-Freezing) (Amendment) Regulations 2016 (S.I. 2016/504).

296 The Burundi (European Union Financial Sanctions) Regulations 2015 (S.I. 2015/1740).

297 The Iran (Asset-Freezing) Regulations 2011 (S.I. 2011/1129).

298 The Ukraine (European Financial Sanctions) Regulations 2014 (S.I. 2014/507).

299 The Venezuela (European Union Financial Sanctions) Regulations 2017 (S.I. 2017/1094).

300 The Lebanon and Syria (Asset-Freezing) Regulations 2012 (S.I. 2012/1517).

301 For example, the UK Anti-terrorism, Crime and Security Act 2001 enables HM Treasury to freeze assets of relevant persons independently of the EU. These powers were used in response to the murder of Russian émigré Alexander Litvinenko via The Andrey Lugovoy and Dmitri Kovtun Freezing Order 2016 (S.I. 2016/67).

302 Iran (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), Section 2(4) Report, para. 1. Note: sanctions are being enacted to replicate the EU framework as a precaution, in case the UK exits the EU without a deal.

303 *Id.*, para. 4 (mirroring 'the existing EU sanctions regime').

304 EU Council Decision (CFSP) 2011/235/CFSP, 12 April 2011, OJ L 100/51, para. 32.

persons in Iran the right to freedom of expression and peaceful assembly'.³⁰⁵ In explaining this decision, the UK noted that Iranian civilians 'face harassment and arrests for exercising their legitimate rights to freedom of expression and peaceful assembly'.³⁰⁶ The government also reiterated that 'the purposes of the sanctions regime ... are to encourage the Government of Iran to ... respect human rights', such as the right of 'journalists' to 'freedom of expression', and to 'secure the human rights of persons in Iran without discrimination', including on the basis of 'political or other opinion'.³⁰⁷ It also notes that 'TV and radio in Iran are now government controlled and restrictions are also in place on the use of the internet. More concerning still is the fact that Iran has more journalists in prison than almost any other country', that 'arrests are often justified with vague charges ... which can result in the death penalty' and that 'the issue of politically motivated, arbitrary arrests remains a concern'.³⁰⁸

105. Like the sanctions on officials in Iran, the UK sanctions against Belarus are intended to deliver the same policy effects as existing EU sanctions, and respond at least in part to abuses of media freedom. The sanctions were initially imposed in response to the 'unresolved disappearance of two opposition politicians, one businessman and one journalist', and remain in place given 'the systematic repression of Belarusian citizens, who face harassment and arrests for exercising their legitimate rights to freedom of expression and peaceful assembly'.³⁰⁹ In justifying the imposition of sanctions, the UK expressed concern about the 'the violent crackdowns on the right to ... freedom of opinion and expression, in particular new amendments to media laws threatening further harsh restrictions to freedom of expression online',³¹⁰ and a monopoly of state ownership over media outlets.³¹¹ The UK statutory instrument also states that one of the purposes of imposing the sanctions is to 'afford journalists, human rights defenders and other persons in Belarus the right to freedom of expression, association and peaceful assembly'.³¹²
106. Similarly, the UK has issued regulations under the Sanctions Act to bring existing EU sanctions against Burundi into UK law.³¹³ In justifying the imposition of sanctions, the UK referred to the commission of 'serious human rights violations' against Burundians, including 'violations of civil liberties such as the freedoms of

305 The Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), Regulation 4(e). See also The Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), Section 2(4) Report, para. 6. Other purposes include 'respect the right to liberty and security, including refraining from the arbitrary arrest and detention of persons in Iran'; and affording 'persons in Iran charged with criminal offences the right to a fair trial'.

306 The Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), Section 2(4) Report, para. 3.

307 *Id.*, paras. 6(e) and (f).

308 *Id.*, para.10.

309 Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/600), Section 2(4) Report, para. 4.

310 *Id.*, para. 8.

311 *Id.*, para. 9.

312 Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/600), Regulations 4(d)(v).

313 The Burundi (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/1142), Section 2(4) Report, paras. 3-4.

expression, association, assembly and movement’ and the targeting of ‘journalists or members of civil society organizations’.³¹⁴

107. The UK has also issued regulations under the Sanctions Act that implement UN sanctions against South Sudan.³¹⁵ Sanctions were said to be reasonable given that UN reports documented a ‘lack of respect for the right to freedom of assembly, opinion and expression’ and ‘[t]he UK share[d] concerns over these same issues’.³¹⁶
108. The UK also referred to media restrictions in justifying sanctions against the Democratic Republic of Congo issued under the Sanctions Act to comply with UN sanctions.³¹⁷ The UK observed that ‘[i]nternet communications are often shut down by the government during periods of potential civil unrest’ and ‘[a]ctivists, journalists and members of political parties frequently suffer[ed] intimidation and arbitrary arrests’.³¹⁸
109. The UK has not yet used the Sanctions Act to create sanctions independently of the EU.³¹⁹ In September 2019, ‘the FCO confirmed ... that using the Magnitsky-style powers [in the Sanctions Act] is legally possible’ although the Government ‘has not acted yet’.³²⁰ The Government noted at that time that ‘[w]ork had already begun on the secondary legislation and associated processes that would be required in order to implement this regime as soon as practicable after [the UK] leave[s] the EU’ and that the new regime would allow the UK to ‘respond to human rights abuses and violations as they arise anywhere in the world, even when a geographically focused sanctions regime is not in place’.³²¹ The Foreign and Commonwealth Office also announced that the presentation of a new statutory instrument before Parliament was ‘imminent’.³²²
110. The UK has not yet announced its policy for a global human rights sanctions regime. However, it will likely prioritise countries of concern (30 or so countries designated in annual human rights reports published by the Foreign and Commonwealth Office) and the issues that the Foreign Office has highlighted through its stated policy priorities and active campaigns, including on media freedom.

314 *Id.*, para. 10.

315 The South Sudan (Sanctions) (EU Exit) Regulations 2019, (S.I. 2019/438), Section 2(4) Report, paras. 4-7. These sanctions are intended to deliver the same policy effect as the existing EU sanctions regime introduced to supplement UN sanctions.

316 The South Sudan (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/438) Section 2(4) Report, para. 11.

317 The Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433), Section 2(4) Report, paras. 4-7. These sanctions also bring supplementary EU sanctions into UK law.

318 The Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433), Section 2(4) Report, para. 13. Also see Venezuela (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/135), Section 2(4) Report, paras. 4-5. Sanctions have been enacted against other states on the same legal basis, though the explanatory report for these regimes do not refer to media freedom issues in the same level of detail.

319 FAC Report on Sanctions Policy, para. 8. The UK will, however, continue to apply EU sanctions until the end of the Brexit transition period, due to last until 31 December 2020.

320 FAC Report on Autocracies, para. 29.

321 House of Commons Foreign Affairs Committee, ‘Fragmented and Incoherent: the UK’s Sanctions Policy: Government Response to the Committee’s Seventeenth Report’, 4 September 2019, HC 2642, Annex: Letter from Minister of State, Foreign and Commonwealth Office, to the Chair of the Committee.

322 FAC Report on Autocracies, para. 29.

111. In describing its intentions regarding a post-Brexit sanctions policy, the UK has also stated that it 'will continue to be a global leader on sanctions, based on the smart, targeted use of sanctions, as part of wider political and diplomatic strategies'.³²³ And in briefings, representatives of the Foreign and Commonwealth Office have highlighted that:
- The Foreign and Commonwealth Office has increased the sanctions staff team to around 40 people.³²⁴
 - The UK will look at people designated under the US and Canadian models as a helpful starting point for determining who will be designated under the UK regime.³²⁵
 - It will be important to have a robust regime to protect the government against possible legal challenges.³²⁶
 - The UK is keen to ensure that they have comprehensive open source evidence to support designations. Although they can use closed material, it is better to have open source evidence so that this can be shared with other countries that might be thinking of implementing similar sanctions.³²⁷
112. The government is expected to operationalise its human rights-based sanctions regime under the Sanctions Act through secondary legislation in the spring of 2020. This is a welcome step forward. But when taking this step, the government should act in line with its stated policy priorities and adopt legislation that is broad enough to allow for sanctions in cases involving serious attacks on journalists, including flagrant denial of the right to liberty.³²⁸ The Foreign Secretary, Dominic Raab, has indeed publicly expressed his support for the use of such sanctions to protect the media, announcing that:

When we leave the EU, we will also reinforce our sanctions legislation to hold those who commit serious abuses of human rights to account – by barring them from entering the UK and freezing their assets such as bank accounts. That will provide a layer of UK accountability against those who target journalists ... with impunity in their own countries.³²⁹

323 See e.g. The Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), Section 2(4) Report, para. 2.

324 Foreign and Commonwealth Office Briefing on the UK's new human rights sanction regime, 27 September 2019 (note on file).

325 *Id.*

326 *Id.*

327 *Id.*

328 See further paragraph 158.

329 The Rt Hon Dominic Raab, 'Global Britain is Leading the World as a Force for Good: Article by Dominic Raab', 23 September 2019. See also Lord Ahmad of Wimbledon, 'Protecting Media Freedom Around the World: Lord Ahmad's UNGA 2019 Statement' ('when we leave the European Union, we will be introducing a UK Magnitsky law. This will allow the UK to impose sanctions in the form of barring entry and freezing assets against anyone is responsible for the most serious human rights violations or abuses, and yes that includes against journalists or whistleblowers [sic]').

Canada

113. Sanctions have been imposed under Canada's Magnitsky Law in a number of situations. In addition to responding to large-scale violence, such as abuses by the military against the Rohingya in Rakhine State in Myanmar,³³⁰ sanctions have also been imposed by Canada to respond to the murder of a journalist and other abuses of media freedom.
114. Examples of targeted sanctions in response to media freedom abuses include financial and immigration sanctions against 17 Saudi nationals on the basis that these individuals were 'responsible for or complicit in the extrajudicial killing of journalist Jamal Khashoggi'.³³¹ In announcing the sanctions, the Canadian Ministry of Foreign Affairs reiterated that Canada was committed to 'supporting human rights defenders and will continue to promote freedom of the press around the world'.³³² The Canadian Foreign Affairs Minister at that time, Chrystia Freedland, also remarked that Mr. Khashoggi's murder 'represent[ed] an unconscionable attack on the freedom of expression of all individuals'.³³³
115. Sanctions were also imposed against public officials and military figures who were responsible or complicit in violations of human rights in Venezuela, including 'extra-judicial killings and torture of political prisoners and anti-government demonstrators who sought to obtain, exercise, defend and/or promote internationally recognized human rights and freedoms'.³³⁴ Further sanctions were imposed under the country-specific regime against a number of other governmental officials, most recently in April 2019, after the country had 'slid into full dictatorship' that saw the 'increased ... persecution of political opponents and journalists', and a campaign of repression against protesters and other dissidents, including the 'extrajudicial killings of dissidents and [a] lack of media freedom'.³³⁵

330 Justice for Victims of Corrupt Foreign Officials Regulations, SOR/2017-233 (as amended). See also Special Economic Measures (Burma) Regulations, SOR/2007-285, Schedule (imposing sanctions against 44 entities and 45 mainly government and military officials); Government of Canada, Regulatory Impact Analysis Statement to the Regulations Amending the Special Economic Measures (Burma) Regulations, Canada Gazette Part II Volume 152 Number 14, 25 June 2018.

331 These sanctions were imposed in November 2018, under the Justice for Victims of Corrupt Foreign Officials Act and the Immigration and Refugee Protection Act. See Global Affairs Canada, 'Canada Imposes Sanctions on Individuals Linked to Murder of Jamal Khashoggi', 29 November 2018. The US and Canadian sanctions designated the same individuals. See paragraph 97 above.

332 *Id.*

333 *Id.*

334 Government of Canada, Regulatory Impact Analysis Statement to the Justice for Victims of Corrupt Foreign Officials Regulations, 2 November 2017. Although only limited information was provided when these sanctions were imposed under the Justice for Victims of Corrupt Foreign Officials Act, Canada had a few months earlier imposed sanctions on 40 government officials and their associates, including the Venezuelan Interior and Justice Minister, under a country-specific regime. The imposition of these sanctions was reported to align with measures taken by the US 'to send a message to members of the Venezuelan government that their anti-democratic actions' would 'have consequences': Government of Canada, Regulatory Impact Analysis Statement to the Special Economic Measures (Venezuela) Regulations, 22 September 2017.

335 Government of Canada, Regulatory Impact Analysis Statement to the Regulations Amending the Special Economic Measures (Venezuela) Regulations, 15 April 2019.

116. Sanctions have also been imposed in response to media freedom abuses under other Canadian sanctions regimes, in particular the Special Economic Measures Act, which permits the imposition of targeted sanctions where ‘gross and systematic human rights violations have been committed in a foreign state’.³³⁶ For instance, sanctions were imposed on nine government officials in Nicaragua in response to a ‘systematic campaign of repression and state-sponsored violence to crack down on anti-government protests’, which resulted in ‘gross and systematic human rights violations, including by restricting freedom of speech and the right to assemble, while the arbitrary detentions continue’.³³⁷ One of the objectives for imposing these sanctions was to ‘communicate a clear message’ that ‘Canada will not accept that [such] gross and systemic human rights violations continue ... with impunity’.³³⁸
117. In line with sanctions imposed by the US against Iran, Canada also imposed sanctions against Islamic Republic of Iran Broadcasting,³³⁹ which the US had sanctioned for ‘routinely broadcast[ing] false news reports and propaganda, including forced confessions of political detainees’, and which had been ‘implicated in censoring multiple media outlets’.³⁴⁰
118. Sanctions have also been imposed by Canada against members of the judiciary, public prosecution and law enforcement. For instance, sanctions were imposed against several members of the Russian Prosecutor-General’s Office,³⁴¹ as well as a Russian district court judge,³⁴² for their involvement in the death of Sergei Magnitsky.³⁴³ Similarly, country-specific regimes have led to sanctions against judges of the Supreme Court of Justice of Venezuela associated with the Maduro Government or engaged in activity undermining Venezuela’s democratic institutions,³⁴⁴ as well as the commander of Venezuela’s special police forces.³⁴⁵ Sanctions were also imposed against a number of senior police officers in

336 Special Economic Measures Act, Section 4(1)(1.1)(c).

337 Government of Canada, Regulatory Impact Analysis Statement to the Special Economic Measures (Nicaragua) Regulations, 21 June 2019. This was the first use of the human rights trigger that was added to the Special Economic Measures Act with the coming into force of Canada’s Magnitsky Law and the listings have the same effect on listed individuals as listings under Canada’s Magnitsky Law (asset freeze and inadmissibility to the country). Unlike under Canada’s Magnitsky Law, listings under the Special Economic Measures Act can include entities as well as individuals. See further paragraphs 163-164 below.

338 *Id.*

339 Special Economic Measures (Iran) Regulations, SOR/2010-165 (as amended), 22 July 2010, Schedule (Islamic Republic of Iran Broadcasting).

340 US Treasury, ‘U.S. Government Fully Re-Imposes Sanctions on the Iranian Regime As Part of Unprecedented U.S. Economic Pressure Campaign’, 5 November 2018.

341 See e.g. Justice for Victims of Corrupt Foreign Officials Regulations, SOR/2017-233 (as amended), Schedule (Oleg Logunov, Andrey Pechegin, Alexander Ivanovich Bastrykin).

342 *Id.* (Sergei Podoprigrorov).

343 See paragraph 11 above.

344 See e.g. Special Economic Measures (Venezuela) Regulations, SOR/2017-204 (as amended), 22 September 2017, Schedule (comprising 97 persons, including President Maduro).

345 Special Economic Measures (Venezuela) Regulations, SOR/2017-204 (as amended), 15 April 2019, Schedule (Rafael Enrique Bastardo Mendoza).

Nicaragua and Zimbabwe, including Nicaragua's Police Commissioner,³⁴⁶ and the Commissioner-General and Assistant Police Commissioners in Zimbabwe.³⁴⁷

European Union

119. Even though the EU does not have a 'Magnitsky' law and generally only imposes human rights-based sanctions when there is a country-specific regime in place,³⁴⁸ EU sanctions are a major part of the sanctions landscape, accounting for 36% of the sanctions imposed worldwide.³⁴⁹
120. Of the autonomous sanctions regimes imposed by the EU (i.e. sanctions applied by the EU without a previous resolution by the UN Security Council) over the past 25 years, 'roughly two-thirds were imposed in support of human rights and democracy objectives, while ... one third pursued different aims, mostly the termination of armed conflict'.³⁵⁰ And the 'discourse justifying sanctions routinely refers to the impact on human rights which are related to the democratic process, but which have been incorporated into human rights law', such as 'freedom of expression or freedom of association'.³⁵¹
121. EU sanctions have been imposed in relation to a number of countries around the world, including Ukraine,³⁵² North Korea,³⁵³ and Iran,³⁵⁴ in response to the perpetration of human rights abuses. Relevant examples include:
 - o sanctions on Syrian officials in response to 'violent repression, including through the use of live ammunition, of peaceful protest ... resulting

346 See e.g. Special Economic Measures (Nicaragua) Regulations, SOR/2019-232 (as amended), 21 June 2019, Schedule (Francisco Javier Diaz Madriz).

347 See e.g. Special Economic Measures (Zimbabwe) Regulations, SOR/2008-248 (as amended), 4 September 2009, Schedule (Musarahana Mabunda, Barbara Mandizha, Godwin Matanga).

348 The EU generally imposes sanctions by creating a sanctions framework in respect of a particular situation or activity (e.g. Syria, North Korea, Iran, use of chemical weapons). Then, within that framework, the EU defines specific sanctioning criteria pursuant to which individuals and entities affiliated with that regime can be sanctioned.

349 Based on a review of sanctions imposed since 1980 until 2014: European Parliament Research Service, 'EU Sanctions: A Key Foreign and Security Policy Instrument', May 2018 Briefing, p.2 (excluding sanctions imposed by the UN Security Council).

350 European Parliament Targeted Sanctions Report, p.13. These purposes are in line with the list of purposes articulated in the Charter of the United Nations, Article 1.

351 *Id.*

352 EU Council Regulation 208/2014, 5 March 2014, OJ L 66/1; EU Council Decision 2014/119/CFSP, 5 March 2014, OJ L 66/26.

353 See EU Council Decision 2016/849, 27 May 2016, OJ L 141/79; EU Council Regulation 2017/1509, 14 September 2017, OJ L 224/1.

354 See EU Council Decision 2011/235/CFSP, 12 April 2011, OJ L 100/51; EU Council Regulation 359/2011, 12 April 2011, OJ L 100. Sanctions were also imposed in relation to nuclear non-proliferation and weapons of mass destruction, although these sanctions were lifted under the Joint Comprehensive Plan of Action.

in the death of several demonstrators, wounded persons and arbitrary detentions’;³⁵⁵

- sanctions on Burundian officials following violence that was committed against protesters by the police and security forces;³⁵⁶ and
- sanctions on individuals responsible for ‘serious human rights violations or abuses or the repression of civil society and democratic opposition in Venezuela’, or those whose ‘actions, policies or activities otherwise undermine democracy or the rule of law in Venezuela’.³⁵⁷
- Sanctions have also been used in response to other acts of violence³⁵⁸ as well as arbitrary detentions and unfair trials.³⁵⁹

122. EU sanctions have been imposed against judges and prosecutors directly for a number of violations, including the persecution of journalists. Sanctions addressing the leadership of Venezuela featured top judges as well as officials from the other branches of government who were ‘involved in the non-respect of democratic principles or the rule of law as well as in the violation of human rights’.³⁶⁰ Sanctions against Belarus included the Prosecutor-General, as well as judges.³⁶¹ And sanctions against Iran have targeted judges and prosecutors for being ‘complicit in or responsible for directing or implementing grave human rights violations in the repression of ... journalists, human rights defenders, students or other persons who speak up in defence of their legitimate rights, including

355 EU Council Decision 2011/273/CFSP, 9 May 2011, OJ L 121/11, para. 2. Further sanctions were imposed under a number of EU Council Decisions and Regulations, consolidated in EU Council Decision 2013/255/CFSP, 31 May 2013, OJ L 147/14 (see Articles 27(1) and 28(1)) and EU Council Regulation 36/2012, 18 January 2012, OJ L 16/1 (see Articles 14 and 15(1)).

356 EU Council Regulation (EU) 2015/1755, 1 October 2015, OJ L 257/1, Annex I. The officials were said to be responsible for ‘undermining democracy or obstructing the search for a political solution in Burundi’. The sanctions also identified these individuals as being ‘involved in planning, directing or committing acts that violate human rights law or international humanitarian law ... or that constitute serious human rights abuses, in Burundi’: see Preamble, para. 1. EU Council Decision (CFSP) 2015/1763, 1 October 2015, OJ L 257/37, Articles 1(1) and 2(1).

357 EU Council Decision (CFSP) 2017/2074, 13 November 2017, OJ L 295/60, Article 6(1). Also see EU Council Regulation (EU) 2017/2063, 13 November 2017, OJ L 295/21, Article 8 (imposing asset freezes).

358 For instance asset freezes were imposed against Lebanese and Syrian officials who were suspected of being involved in the ‘planning, sponsoring, organizing or perpetrating’ of a terrorist attack in Beirut that ‘killed 23 people, including former Lebanese Prime Minister Rafiq Hariri’: see EU Regulation (EC) 305/2006, 21 February 2006, OJ L 51/1, Preamble, paras. 1-2.

359 One of the early examples of EU sanctions was in response to the execution of Nigerian activist Ken Saro-Wiwa and eight co-defendants in the mid-1990s. The EU imposed a visa ban on ‘members of [Nigeria’s] Provisional Ruling Council and the Federal Executive Council and their families’. It also condemned the ‘human rights abuses perpetrated by the military regime, including capital punishment and harsh prison sentences, implemented after flawed judicial process and without granting the possibility of recourse to a higher court’: EU Council Common Position on Nigeria 95/515/CFSP, 20 November 1995, OJ L 298, para. 2.

360 Council of the EU, ‘Venezuela: EU sanctions 7 individuals holding official positions’, 22 January 2018. See also Hannah Strange, ‘EU prepares sanctions against Venezuelan officials amid growing unrest’, 18 January 2018

361 EU Council Common Position 2004/661/CFSP, 24 September 2004, OJ L 301/67, Preamble, paras. 3-7 (although these sanctions have not been in force since 2006).

freedom of expression'.³⁶² One prosecutor was sanctioned because 'he issued a blanket order used for detention of hundreds of activists, journalists and students'; judges were sanctioned because they 'issued long prison sentences during unfair trials for social, political activists and journalists' and others 'associated with' or 'complicit in proceedings denying defendants', including journalists, 'a fair trial'.³⁶³

123. In relation to media abuses specifically:

- EU sanctions were imposed on officials in Iran in response to human rights abuses, such as 'arbitrary arrests and detentions against protesters', the targeted arrest of 'reformists, human rights activists, and members of the media', the suppression of 'persons who speak up in defence of their legitimate rights, including freedom of expression' and the arrest and torture of 'bloggers/journalists'.³⁶⁴
- The EU imposed visa bans and asset freezes on four officials from the Ministry of Interior in Belarus who are considered responsible for the disappearance of three opposition leaders and a journalist. The officials included the Minister of the Interior and the Prosecutor-General, who were identified as 'key actors' in the disappearance of Dmitri Zavadski, a cameraman for Russian TV channel ORT, together with two high-profile Belarusian politicians and a businessman, given that these individuals were 'responsible for, but failed to start, the initiation of independent investigation and prosecution of the alleged crimes'.³⁶⁵
- The EU-Nicaragua sanctions regime adopted in October 2019 imposes sanctions against Nicaragua in response to 'the repression of the press and civil society as well as the use of anti-terrorist laws to repress dissenting opinions in Nicaragua'.³⁶⁶ The EU Council emphasised that, since April 2018, 'demonstrations have been brutally repressed ... leading to several hundred dead and injured and the arrest of hundreds of citizens with widespread irregularities and arbitrariness in detention and judicial procedures' and recalled the need to ensure 'accountability for all crimes committed since' the repression began.³⁶⁷ Within that framework, the Council provided that sanctions could 'be imposed against persons and entities responsible for serious human rights violations or abuses or for the repression of civil society and democratic opposition in Nicaragua, as well as persons and

362 EU Council Decision 2011/235/CFSP, 12 April 2011, OJ L 100/51, para. 4. The 2011 sanctions included 10 judges as well as prosecutors, prison guards and police officers. See also EU Council Decision (CFSP) 2017/689, 11 April 2017, OJ L 99/21: the 2017 amended sanctions included four judges and eight (current and former) prosecutors, as well as Ministry of Justice officials and prison guards.

363 EU Council Decision 2011/235/CFSP, 12 April 2011, OJ L 100/51, Annex.

364 EU Council Regulation 359/2011, 12 April 2011, OJ L 100, Article 3 and Annex I. These violations were in addition to violence committed against protesters by police and security forces.

365 EU Council Common Position 2004/661/CFSP, 24 September 2004, OJ L 301/67, paras. 3-7 (although these sanctions have not been in force since 2006). See also Parliamentary Assembly Committee on Legal Affairs and Human Rights, 'Disappeared Persons in Belarus', 4 February 2004, Doc. 10062 (referred to as the "Pourgourides Report").

366 EU Council Decision (CFSP) 2019/1720, 14 October 2019, OJ L 262/58, Preamble, para. 1 (imposing sanctions in view of the situation in Nicaragua).

367 *Id.*

entities whose actions, policies or activities otherwise undermine democracy and the rule of law in Nicaragua'.³⁶⁸

124. The EU's 'external action service' has also repeatedly called attention to the abuse of journalists outside the EU,³⁶⁹ though it has not yet responded to the brutal murder of journalist Jamal Khashoggi through sanctions.³⁷⁰ Germany has, however, suspended weapon sales to Saudi Arabia as a result.³⁷¹ There were also a number of visa bans imposed by Germany and 'coordinated with France and the United Kingdom', travel bans imposed by France that were applied to the EU's Schengen Area, and sanctions imposed by Lithuania in response to the murder of Mr. Khashoggi.³⁷²

Assessment of current sanctions regimes for the protection of journalists

125. The main abuses committed against journalists and a free media today include: (i) extra-judicial killings; (ii) torture and other cruel, inhuman and degrading treatment; (iii) abductions and physical abuse; (iv) unfounded arrest, unfair trial and arbitrary detention; (v) other forms of persecution, including through the enforcement of excessive libel laws, the filing of frivolous lawsuits or financial investigations, threats and online harassment, surveillance and 'doxing' of sources; and (vi) systemic restrictions on the media, including limitations on licencing, accreditation and financing as well as shutdowns of entire media outlets and internet communications.
126. The extra-judicial killing, torture, abduction and physical abuse of journalists are clearly matters justifying the imposition of sanctions under the 'Magnitsky' legislation passed in the US, UK and Canada, and targeted sanctions have been imposed on that basis by the US and Canada.³⁷³ The legislation in each of these countries is also broad enough to encompass the arbitrary detention of journalists,

368 *Id.*

369 See e.g. EU, 'Statement by the Spokesperson on the 10th Anniversary to Commemorate the Murdered Human Rights Defender and Journalist Natalia Estemirova', 15 July 2019.

370 On 17 January 2019, the European Commission responded to a question by a member of the European Parliament, noting that the Commission was 'closely monitoring' developments and that together with the EU member states within the Foreign Affairs Council, '[we] will consider the most appropriate action, in coordination with international partners, once the results of the investigation emerge.': see European Parliament, 'Answer Given by High Representative/Vice-President Mogherini (Question E-005436/2018)', 17 January 2019.

371 Callamard Report on Khashoggi Annex, para. 177.

372 *Id.*, paras. 177 and 179 (noting, however, that the German 'Foreign Ministry did not release the names of those sanctioned, citing limitations imposed by Germany's privacy laws' and that like Germany, France had 'not released the names of the individuals it sanctioned'. See also Deutsche Welle, 'Germany issuing travel bans to 18 Saudis over Khashoggi's death', 19 November 2018; Reuters, 'France imposes sanctions on 18 Saudi citizens over Khashoggi killing', 22 November 2018. AP News, 'Lithuania blacklists Saudi officials over Khashoggi slaying', 10 December 2018.

373 See paragraphs 97-99, 103-105, 114, 116 above.

although there has been less practice on this basis so far.³⁷⁴ And in each of these systems targeted sanctions have been imposed, at least in part, in response to systemic restrictions on the media such as censorship and internet shutdowns.³⁷⁵

127. It is unclear whether sanctions can be imposed in response to other forms of degrading treatment of journalists, such as the filing of frivolous lawsuits, online harassment or surveillance.³⁷⁶ But any attacks against journalists should justify the imposition of sanctions if they amount to ‘gross violations of human rights’ in the Canadian regime,³⁷⁷ ‘serious human rights abuses’ under the Magnitsky laws in the US, or, in the UK, if they fall within one of the broader purposes recognised in the Sanctions Act.³⁷⁸

The use of sanctions in response to extra-judicial killings, torture or cruel, inhuman and degrading treatment, or the abduction or physical abuse of journalists

128. The ‘Magnitsky’ legislation that is currently in place in the US, UK and Canada is clearly broad enough to cover the most serious forms of physical abuse, including killings, torture and abductions.³⁷⁹ In the US, ‘gross violations of human rights’ is defined as ‘torture or cruel, inhuman, or degrading treatment or punishment’, and the terms ‘extrajudicial killing’ and ‘torture’ are both mentioned in the text of the relevant US and Canadian legislation.³⁸⁰ And it is clear from the torture and killing of journalist Jamal Khashoggi that such acts in relation to one journalist can be sufficient to trigger the application of the sanctions legislation in place in both systems.³⁸¹
129. While the UK regime does not expressly include extra-judicial killings in the definition of ‘gross violations of human rights’,³⁸² such killings would come

374 See paragraphs 93-94, 98, 100, 101 above. Also see paragraph 123 above, in relation to EU sanctions that respond to media abuses specifically.

375 See paragraphs 99, 104, 105, 108, 116-117 above. In the US this was under legal authority separate to the Magnitsky regime, however.

376 See further paragraph 139.

377 See paragraphs 67 and 68 above.

378 See further paragraph 55 above.

379 See also, in the EU context, EU Council Regulation 359/2011, 12 April 2011, paras. 1 and 2 (referring to the imposition of sanctions for ‘serious human rights violations in Iran’ including the ‘repression of peaceful demonstrators, journalists, human rights defenders, students or other persons who speak up in defence of their legitimate rights, including freedom of expression...’). For instance, Gholam-Hossein Mohseni-Ejei, Iran’s Prosecutor General, was listed under this Regulation on grounds that ‘intelligence agents under his command were responsible for detention, torture and extraction of false confessions under pressure of hundreds of activists, journalists, dissidents, and reformist politicians’: see Annex I, para. 21.

380 See Global Magnitsky Human Rights Accountability Act of 2016, Sections 1262(2) and 1263(a)(1); Justice for Victims of Corrupt Officials Act 2017, Section 4(2)(a).

381 See paragraphs 97 and 114 above.

382 Sanctions and Anti-Money Laundering Act 2018, Section 1(7) (referring to Proceeds of Crime Act 2002, Section 241A(2)). Such ‘gross violations’ are also limited to non-state actors, whereas other conduct that can trigger sanctions is not.

within one of the broader bases for sanctions under the Act.³⁸³ The Sanctions Act, for example, states that the UK can impose sanctions when appropriate ‘for the purpose of compliance with a UN obligation’ or ‘any other international obligation’, defined as an obligation arising under any international treaty to which the UK is a party.³⁸⁴ A number of treaties, including the International Covenant on Civil and Political Rights, prohibit such killings.³⁸⁵

130. Under US law, the phrase ‘gross violations of internationally recognized human rights’ is also defined as including ‘abduction’.³⁸⁶ It could cover beatings given that it includes ‘torture or cruel, inhuman, or degrading treatment or punishment’ as well as ‘other flagrant denial of the right to ... security of person’.³⁸⁷ Executive Order 13818 also lowers the bar from ‘gross’ to ‘serious’ abuses.³⁸⁸ Similarly, the UK’s definition of ‘gross violations of human rights’ includes ‘conduct [that] ... involves cruel, inhuman or degrading treatment or punishment’,³⁸⁹ and the UK government has made clear that it considers ‘physical abuse or punishment of any sort’ as meeting this definition.³⁹⁰ The Canadian regime refers to ‘extrajudicial killings, torture or *other* gross violations of internationally recognized human rights [emphasis added]’, without further qualification,³⁹¹ but its practice in the Khashoggi case suggests that such acts are covered.
131. The Council of Europe has also found that ‘[a]ttacks against journalists and other media actors constitute particularly serious violations of human rights’³⁹² and its

383 Also see footnote 146 above.

384 Sanctions and Anti-Money Laundering Act 2018, Sections 1(1) and 1(8). Other appropriate purposes for which sanctions may be issued are listed at Section 1(2) and include ‘compliance with a UN obligation’ or ‘any other international obligation’; furthering ‘the prevention of terrorism’; being ‘in the interests of international peace and security’; furthering ‘a foreign policy objective of the government of the United Kingdom’; promoting ‘compliance with international human rights law, or ... respect for human rights’ or with ‘international humanitarian law’; and ‘promoting respect for democracy, the rule of law and good governance’. Also see paragraph 55 above.

385 International Covenant on Civil and Political Rights, Article 6.

386 Global Magnitsky Human Rights Accountability Act of 2016, Section 1262(2) (referring to Foreign Assistance Act of 1961, Section 502B(d)(1) (22 U.S.C., §2304(d)(1)) (‘causing the disappearance of persons by the abduction and clandestine detention of those persons’)).

387 Foreign Assistance Act of 1961, Section 502B(d)(1) (22 U.S.C., §2304(d)(1)). See also e.g. US Treasury, ‘United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe’, 21 December 2017 (sanctioning Sergey Kusiuk, a former ‘commander of an elite Ukrainian police unit, the Berkut’, for being a leader of an attack on peaceful protesters in Kiev, which included the beating of activists).

388 Executive Order 13818, Section 1(a)(ii)(A).

389 Sanctions and Anti-Money Laundering Act 2018, Section 1(7); Proceeds of Crime Act 2002, Section 241A(2).

390 See: HM Government, ‘Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas and on the Passing and Receipt of Intelligence Relating to Detainees’, July 2010, pp.13-14, para. d. See also ECtHR, *Ireland v. United Kingdom*, App no. 5310/71, 18 January 1978, para. 167 (finding that conduct was ‘degrading’ as it ‘arouse[d] in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance’); ECtHR *Pretty v. United Kingdom*, App. no. 2346/02, 29 April 2002, para. 52 (characterising treatment that ‘humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity’ as degrading); ECtHR *M.S.S. v. Belgium and Greece*, App. no. 30696/09, 21 January 2011, para. 220.

391 Justice for Victims of Corrupt Foreign Officials Act, Section 4(2)(a).

392 Commissioner for Human Rights of the Council of Europe, ‘Report following his Mission in Kyiv, Moscow and Crimea from 7 to 12 September 2014’, 27 October 2014, CommDH(2014)19, para. 34.

Commissioner for Human Rights has referred to ‘abductions, ... ill-treatment and attacks against journalists’ as ‘serious human rights violations’.³⁹³

The use of sanctions in response to the unfounded arrest, unfair trial or arbitrary detention of journalists

132. The legislation in place in the US, UK and Canada is broad enough to cover the arbitrary detention of journalists. But the use of sanctions to target those responsible for unjust detention – harm that frequently arises in press freedom cases³⁹⁴ – has been relatively limited to date.
133. Some commentators suggest that the US government appears reticent to use the Magnitsky Act and other sanctions authorities in instances of unjust detention in the same way that it is applied to other ‘gross’ or ‘serious’ violations, such as extra-judicial killings and torture. Indeed, one former official noted that the view of some US government officials is that foreign prosecutors and judges were usually beyond the reach of sanctions regimes as they were ‘applying a law they did not write’.
134. Despite the apparent reticence among some policy-makers to use sanctions in response to cases of arbitrary detention or against judicial officers for such detention or unfair trials, there is both a clear legal basis and relevant precedent for doing so, particularly when such acts are flagrant, politically motivated or take place within a broader pattern of abuse.
135. Under US law, ‘gross violations of human rights’ are defined as including ‘prolonged detention without charges and trial’ and ‘other flagrant denial of the right to ... liberty’.³⁹⁵ Presumably, this means that the lower bar for the imposition of sanctions set in Executive Order 13818, requiring ‘serious’ rather than ‘gross’ human rights abuse,³⁹⁶ must therefore require something less than this.³⁹⁷
136. Similarly, the UK’s Sanctions Act clearly covers arbitrary detention. One of the enumerated purposes for the imposition of sanctions under the UK law is for ‘the purposes of compliance’ with an obligation of the UK ‘created by or under any international agreement’.³⁹⁸ This would include the International Covenant on Civil and Political Rights, which guarantees the right to freedom of expression, the right to liberty, the right to a fair trial and the right not to be discriminated against on

393 Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, Following his Mission in Kyiv, Moscow and Crimea, From 7 to 12 September 2014, para. 34.

394 See paragraphs 5 and 125 above.

395 Foreign Assistance Act, 22 U.S.C. §2304(d)(1) (emphasis added).

396 See paragraph 44 above.

397 See also Recommendation 3.

398 Sanctions and Anti-Money Laundering Act 2018, Sections 1(1)(b) and 1(8).

the basis of political opinion.³⁹⁹ Arbitrary detention can also be said to fall under some of the other purposes recognized in the Act, such as promoting 'compliance with international human rights law'⁴⁰⁰ and 'respect for democracy, the rule of law and good governance'.⁴⁰¹ And it can itself, under some circumstances, constitute torture, cruel, inhuman and degrading treatment,⁴⁰² which is a 'gross violation' of human rights sufficient to trigger sanctions under UK law.⁴⁰³

137. In addition, the UN Human Rights Committee and the UN Special Adviser on Prevention of Genocide have described arbitrary detentions as a 'serious' abuse of human rights,⁴⁰⁴ and the Commissioner for Human Rights of the Council of Europe has referred to it as a 'serious human rights violation'.⁴⁰⁵ Similarly, the US government has characterised the 'unfair and unjust detention' of a citizen in Turkey as 'a serious human rights abuse' worthy of sanctions.⁴⁰⁶
138. There is also some practice under existing targeted sanctions regimes involving the sanctioning of judicial officers – prosecutors, judges, Ministers of Justice – in addition to government officials where there have been human rights violations, including unfair arrests and unfair trials.⁴⁰⁷

399 Sanctions and Anti-Money Laundering Act 2018, Section 1(2). See also Statement by Civil Society Organisations, 'European Union Global Sanctions Regime on Human Rights and Corruption', 15 April 2019 (recommending that any EU sanctions regime should make reference to the United Nations 'conventions which form part of the EU's preferential trade mechanism (GSP+)', which contains a list of 27 applicable conventions, in addition to corruption) (on file).

400 *Id.*, Section 1(2)(f).

401 *Id.*, Section 1(2)(i). See paragraph 55 above.

402 See e.g. UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 'Report to the Human Rights Council', 26 February 2018, A/HRC/37/50, para. 26 ('[w]hile not every case of arbitrary detention will automatically amount to torture or ill-treatment, there is an undeniable link between both prohibitions.');

HRC *F.J. et al v. Australia*, Comm. no. 2233/2013, 2 May 2016, para. 10.6 ('the combination of the arbitrary character and indefinite nature of the authors' protracted detention, the refusal to provide information and procedural rights to the authors and the difficult conditions of detention cumulatively inflicted serious psychological harm upon them, and constitute [cruel, inhuman or degrading] treatment');

HRC *El-Megreisi v. Libya*, Comm. no. 440/1990, 23 March 1994, para. 5.4; HRC, 'General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment)', 10 March 1992, A/44/40, para. 6; WGAD *Karmelo Landa Mendibe v Spain*, Op. No. 17/2009, 28 May 2009, para. 46; ACtHPR *Article 19 v. Eritrea*, Comm. no. 275/2003, 30 May 2007, para. 101; IACtHR *Bámaca-Velásquez v Guatemala*, Series C, No. 70, 25 November 2000, para. 150.

403 See paragraph 130 above.

404 See e.g. HRC, Concluding Observations: Peru, 29 April 2013, UN doc. CCPR/C/PER/CO/5, para. 15; HRC, Concluding Observations: Ethiopia, 19 August 2011, UN doc. CCPR/ETH/CO/1, para. 16; UN Office of the Secretary-General, 'Statement by Adama Dieng, United Nations Special Adviser on the Prevention of Genocide on the Situation in Burundi', 24 August 2016.

405 Commissioner for Human Rights of the Council of Europe, 'Report Following his Mission in Kyiv, Moscow and Crimea, From 7 to 12 September 2014', 27 October 2014, CommDH(2014)19, para 34.

406 US Treasury, 'Treasury Sanctions Turkish Officials with Leading Roles in Unjust Detention of U.S. Pastor Andrew Brunson', 1 August 2018. Similarly, a group of Dutch lawmakers and European civil society representatives have recommended that 'political imprisonment' is a 'grave' human rights violation that should justify the imposition of sanctions: European Stability Initiative, Norwegian Helsinki Committee et al., 'The Power of Focus: Proposal for a European Human Rights Entry Ban Commission', 14 November 2018, p.3.

407 See paragraphs 101, 118 and 122. See e.g. the United States' Nicaragua Human Rights and Anticorruption Act of 2018, Section 5(b)(4) and the Venezuela Defense of Human Rights and Civil Society Act of 2014, Section 5(a) (2) (both permitting the imposition of sanctions in response to the 'arrest or prosecution' of individuals primarily because of their legitimate exercise of the freedom of speech and assembly).

The use of sanctions in response to other abuses of journalists and systemic restrictions on the media

139. It is not clear whether sanctions would be imposed under existing regimes in response to forms of persecution of journalists that fall short of physical abuse or arbitrary detention, such as the filing of frivolous lawsuits, online harassment and surveillance,⁴⁰⁸ in particular in the absence of systemic restrictions on the media.⁴⁰⁹ However, when such measures reach the level of ‘serious human rights abuse’, they could trigger sanctions in the US, and they could trigger Canadian sanctions if they meet the definition of ‘gross violations’ of human rights. In the UK, the broad purposes for which sanctions may be imposed – including to promote ‘compliance with international human rights law’ and ‘respect for democracy, the rule of law and good governance’ and the prohibition of ‘degrading’ treatment as part of the definition of ‘gross violations’ of human rights – would also potentially capture such conduct if it reaches a sufficient level of seriousness.⁴¹⁰
140. The US, UK, Canada and the EU have all issued targeted sanctions in response to systemic restrictions on the media in Iran, citing ‘widescale internet censorship’, limited ‘access to the print or broadcast media’,⁴¹¹ ‘systematic repression’ including ‘harassment’ for exercising ‘legitimate rights to freedom of expression’,⁴¹² or ‘routinely broadcast[ing] false news reports and propaganda’⁴¹³ in support of the measures imposed.

408 The use of unauthorised surveillance against journalists is a global threat and was reported in the case of murdered Washington Post journalist Jamal Khashoggi. According to the UN, Mr. Khashoggi’s communications with a Saudi political activist with whom Mr. Khashoggi was in frequent contact were accessed by infecting the activist’s mobile phone with spyware, as was the phone of the owner of the Washington Post. UN experts have, as a result, called for an investigation and for the imposition by states of ‘an immediate moratorium on the export, sale, transfer, use or servicing of privately developed surveillance tools to Saudi Arabia and other states until a human rights-compliant safeguards regime is in place’. They have also urged private surveillance companies publicly to ‘affirm their responsibility to respect freedom of expression, privacy and related human rights, and integrate human rights due diligence processes’ in their operations’: see Callamard Report on Khashoggi Annex, para. 501; Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, 28 May 2019, A/HRC/41/35, paras. 66(a) and 67(a) (also requiring companies to ‘put in place robust safeguards to ensure that any use of their products or services is compliant with human rights standards’ and promptly to report ‘misuses of their products and services to commit human rights abuses ... to the relevant domestic, regional or international oversight bodies’, paras. 67(b) and (c)).

409 See Recommendation 6 below.

410 See paragraph 55 above.

411 US Treasury, ‘Treasury Designates Iran’s Minister of Information and Communications Technology in View of the Regime’s Repressive Internet Censorship’, 22 November 2019.

412 EU Council Decision 2011/235/CFSP, 12 April 2011, OJ L 100/51, para. 2. See also The Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 Section 2(4) Report, paras. 8-10.

413 US Treasury, ‘U.S. Government Fully Re-Imposes Sanctions on the Iranian Regime As Part of Unprecedented U.S. Economic Pressure Campaign’, 5 November 2018.

141. Similarly, the US has justified the imposition of sanctions on officials in Iran,⁴¹⁴ Syria,⁴¹⁵ and North Korea⁴¹⁶ by reference to the prevention of human rights abuses through 'computer or network disruption' or 'censorship'. And when issuing regulations to give effect to existing EU sanctions after it leaves the EU, the UK referred to 'new amendments to media laws threatening further harsh restrictions to freedom of expression online' in Belarus and the fact that '[i]nternet communications are often shut down by the government during periods of potential civil unrest' in the Democratic Republic of Congo as grounds for imposing sanctions.⁴¹⁷

Recommendations for sanctions regimes

WHAT SHOULD BE COVERED BY SANCTIONS?

1: States and multilateral institutions, such as the EU, should introduce or amend existing sanctions regimes so that they are global in scope and responsive to serious human rights abuses

142. The US, Canada and the UK have set a positive example by adopting laws that allow for the imposition of targeted sanctions to counter violations of international human rights, wherever they occur. But these are the only states that have such legislation on the books,⁴¹⁸ with the result that one of the most promising tools for enforcing human rights is not being used to meet some of the most serious global challenges to individual rights and democracy.⁴¹⁹
143. The Panel recommends that leading countries in each region that support human rights at home should adopt sanctions legislation that will allow them to support them abroad as well, including when it comes to press freedom. The Panel therefore welcomes the decision of the Australian Parliament to explore ways in which such legislation could be introduced in Australia.⁴²⁰ And it hopes that organisations, such

414 US Treasury, 'Treasury Designates Iran's Minister of Information and Communications Technology in View of the Regime's Repressive Internet Censorship', 22 November 2019.

415 Executive Order 13606, Section 1(a)(ii)(A). The Order was issued by President Obama pursuant to the International Emergency Economic Power Act 50 U.S.C. §1701 and related legislation preceding the Global Magnitsky Act.

416 US Treasury, 'Treasury Sanctions North Korean Officials and Entities in Response to the Regime's Serious Human Rights abuses and Censorship', 10 December 2018.

417 The Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/600), Section 2(4) Report, para. 8; The Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/433), Section 2(4) Report, para. 13.

418 For an overview of sanctions regimes imposed by other states and multilateral organisations, see paragraphs 36, 38 and 80-89 above.

419 See paragraphs 5-10 above.

420 Parliament of Australia, 'Inquiry into a Framework for Autonomous Sanctions under Australian Law to Target Human Rights Abuses', 4 December 2019.

as the Organization of American States, or key states within this region, will consider similar steps in line with the recommendations in this report.⁴²¹

144. The Panel also welcomes recent developments in the EU to establish a new ‘Magnitsky’ regime for human rights abuses, and recommends that the EU move to enact such a regime as soon as possible. Although the EU has already been very active on sanctions, there is scope for a much more robust response to human rights abuses, including those that affect journalists and media freedom. The current EU system, which generally requires country-specific designations before individuals can be targeted for human rights abuses, can unnecessarily complicate bilateral relationships and does not adequately capture situations involving single egregious cases or non-state actors as the principal perpetrators of abuses.⁴²² In contrast, as civil society organisations have observed in a statement to EU member states, ‘the imposition of targeted sanctions on foreign nationals under thematic regimes offers the opportunity to send calibrated diplomatic messages to multiple countries concerning similar systematic and serious violations of human rights and corruption’.⁴²³ And the protection of journalists and media freedom should be one such theme.

2: States should not limit sanctions to abuses involving a particular class of victims

145. Under the Magnitsky Act, sanctions could only be applied when gross human rights violations were committed against a person who was either a whistle-blower who seeks to expose illegal activity or someone who seeks ‘to obtain, exercise, defend or promote human rights’.⁴²⁴ Although journalists would arguably fit into either or both categories depending on the work they are doing, such a narrow categorisation, focusing on the target instead of the conduct, is unwarranted. Executive Order 13818, which implemented the Magnitsky Act, removed this unnecessary restriction in the US, but ideally this broader basis would usefully be reflected in any new law that is passed (given that Executive Orders can unilaterally be revoked by the President). In the UK, a similar restriction is found in the definition of ‘gross’ human rights violations, which are currently limited to cases where there has been (a) torture or other cruel inhuman or degrading treatment of a person seeking to expose official wrongdoing or to promote human rights; (b) the torture or similar treatment has occurred ‘in consequence’ of the victim’s work of this kind.⁴²⁵ And although the Sanctions Act usefully provides alternative and

421 See paragraph 86.

422 See European Parliament Targeted Sanctions Report, p.27. There are, however, a limited number of thematic regimes in place. See paragraph 36 above.

423 See Eastern Partnership Civil Society Forum and others, ‘Statement by Civil Society Organisations: European Union Global Sanctions Regime on Human Rights and Corruption’, 15 April 2019, p.3.

424 Global Magnitsky and Human Rights Accountability Act of 2016, Section 1263(a)(1).

425 Proceeds of Crime Act 2002, Sections 241A(2) and (3). This provision also requires that the perpetrator is a public official or someone acting with their consent or acquiescence or as their agent: Section 241A(4). See Recommendations 7 and 8 below.

broader bases for sanctions, the operationalisation of the Sanctions Act through a statutory instrument could be limited to the narrower ground.

146. It is therefore recommended that the victim-class be omitted from sanctions legislation. Alternatively, if a class of victims is designated, journalists, media professionals and others performing journalistic tasks should be identified as protected categories.

3: States should use a threshold for the imposition of sanctions that covers serious abuses of international human rights law and international humanitarian law

147. Sanctions legislation should provide governments with the ability to respond to serious abuses of international humanitarian law and international human rights law around the world, including the principal abuses faced by journalists. Human rights abuses covered by such laws should include, at a minimum: arbitrary killings, torture, cruel, inhuman and degrading treatment, physical violence, abductions, prolonged detention without trial, and arbitrary detention. In the US, the standard of 'serious human rights abuse' has created a more flexible basis for action than the more restrictive formulation 'gross violations of human rights', which has a specific definition in US law (as it does in UK law) that might preclude the application of sanctions in response to certain human rights abuses, including systemic restrictions on the media and abuses by non-state actors.

4: States should use international human rights law and international humanitarian law to guide their drafting, interpretation and application of human rights-based sanctions regimes

148. In order to ensure consistency in approach, and to reduce the risk that sanctions legislation may be applied in an abusive manner,⁴²⁶ it is recommended that international human rights law be used as a guide to the interpretation and application of human rights-based sanctions regimes.⁴²⁷
149. For instance, the US, UK and Canadian laws all allow for the imposition of sanctions on certain individuals responsible for 'cruel, inhuman and degrading

426 See paragraph 33 above.

427 A number of US statutes already refer to international human rights treaties to guide interpretation and application. See e.g.: People's Republic of China – Trade Relations, Pub. L. No. 106-286, 114 Stat. 830 (2000), §§302(a) and (c)(7) (referring to an enumerated list of rights 'in particular, those contained in the International Covenant on Civil and Political Rights and in the Universal Declaration of Human Rights'); International Religious Freedom Act of 1998, 22 U.S.C. §§6401(a)(2)-(3) and 6402(13) (referring to violations of religious freedom set forth in the Universal Declaration of Human Rights, the Helsinki Accords, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion, the UN Charter and the European Convention on Human Rights); International Financial Institutions Act of 1977, 22 U.S.C., §262p-4p(a)(2) (referring to the definition of worker rights contained in relevant ILO Conventions).

treatment'. International human rights bodies including the UN Human Rights Committee, the UN Committee against Torture, as well as regional human rights courts, have developed detailed jurisprudence and guidance on the meaning of this phrase under international law.

150. In addition, the interpretation and application of sanctions regimes should reflect the international commitments made by governments in relation to media freedom, including those reflected in international treaties, such as the International Covenant on Civil and Political Rights.⁴²⁸

5: States should make clear either in sanctions legislation or policy that unjust imprisonment of journalists meets the threshold for sanctions and that prosecutors and judges, as well as officials, may be sanctionable

151. The arbitrary detention of journalists is one of the principal ways in which they are silenced, and the number of journalists who have been imprisoned in recent years remains at record highs.⁴²⁹ Yet the use of sanctions to target those responsible for the arbitrary imprisonment of journalists has been limited. Governments introducing or amending existing sanctions programs should therefore make clear in the legislation, or at least in the policy that implements it, that arbitrary detention, including of journalists, comes within its scope.
152. The 'flagrant denial of the right to ... liberty' is explicitly included as a ground for targeted sanctions in the Magnitsky Act and it qualifies as a 'serious abuse' of human rights under the broader Executive Order that complements the Act. Arbitrary detention can come within the scope of the UK regime, too, on the basis that it violates the UK's 'international agreements', as well as on other grounds.⁴³⁰ US practice to date also confirms that a single arbitrary detention can be sufficient to constitute a 'serious human rights abuse' that triggers sanctions at the highest levels of a foreign state.⁴³¹

428 See e.g. UNGA, Resolution on the Safety of Journalists and the Issue of Impunity, 20 November 2017, A/C.3/72/L.35/Rev.1; UNGA, Resolution 70/162 on the Safety of Journalists and the Issue of Impunity, 17 December 2015, A/RES/70/162; HR Council, Resolution 39/6 on the Safety of Journalists, 5 October 2018, A/HRC/RES/39/6; HR Council, Resolution 33/2 on the Safety of Journalists, 6 October 2016, A/HRC/RES/33/2; HR Council, Resolution 27/5 on the Safety of Journalists, 2 October 2014, A/HRC/RES/27/5; OSCE commitments relating to freedom of expression, free media and information, see generally OSCE, 'OSCE Human Dimension Commitments: Volume I Thematic Compilation', 3rd Ed., 12 November 2012, p.123ff; Commonwealth Working Group on Media and Good Governance, 'The Co, 11 July 2019; Council of Europe, 'Recommendations and Declarations of the Committee of Ministers of the Council of Europe in the Field of Media and Information Society', 2016; European Parliament, Resolution 2017/2209 on Media Pluralism and Media Freedom in the EU, 3 May 2018, 2017/2209(INI); Council of the EU, Human Rights Guidelines on Freedom of Expression Online and Offline, 12 May 2014.

429 CPJ, 'China, Turkey, Saudi Arabia, Egypt are world's worst jailers of journalists', 11 December 2019.

430 See paragraph 136 above.

431 See paragraphs 101 and 137 above.

153. There may be instances in which it is inappropriate to sanction a judge who is simply applying local law in a manner that is neither arbitrary nor discriminatory. But, like government officials, judges and prosecutors are representatives of the state, and in many repressive societies they are front-line actors for the regime. Sanctioning them would send a strong message and potentially act as a deterrent to those who would otherwise be tempted to be complicit in government abuse. Conversely, excluding them from the purview of sanctions gives a free pass to autocratic governments that violate the rights of journalists using pliable judges and then invoke judicial independence as a way of avoiding criticism or accountability for their behaviour.
154. Sanctions practice also confirms that judicial officers can be targeted in cases relating to serious human rights abuse and corruption. The US has, for instance, imposed sanctions against members of the judiciary and public prosecution in Russia, Iran, Venezuela and Turkey;⁴³² Canada has done so in Russia and Venezuela;⁴³³ and the EU has done so in Belarus, Venezuela and Iran.⁴³⁴
155. Some governments may be concerned that a reference to any violation of the rights to liberty or fair trial would open the ‘floodgates’ to the imposition of sanctions on too many potential sanctions targets, given the frequency with which some rights are violated and the spectrum of seriousness that violations can cover.
156. However, the reference in sanctions legislation to ‘serious’ abuses of human rights is a limiting factor. In addition, legislation such as the Magnitsky Act in the US specifically refers to serious detention-related violations that qualify as potential triggers for the imposition of sanctions, namely: ‘prolonged detention without charges or ‘other flagrant denial of the right of life, liberty, or the security of persons’.
157. US law provides additional guidance. For instance, US State Department guidelines indicate that references to ‘serious violations of human rights’ in a presidential proclamation that imposed entry restrictions on certain individuals travelling to the US included: ‘[p]rolonged arbitrary detention; ‘[a]rbitrary imprisonment for political motives; ‘[e]gregious suppression’, meaning ‘to put down [by force or otherwise], to subdue, quell or crush’ a person’s ‘right to freedom of opinion, belief, expression or association’; or ‘[s]ystematic discrimination against or persecution

432 See paragraph 101 above.

433 See paragraph 118 above.

434 See paragraph 122 above.

of members of any identifiable group based in whole or in part on 'prohibited characteristics, including 'political opinion'.⁴³⁵

158. Regional and international human rights standards also specify certain thresholds for particularly serious abuses in the context of violations of the right to liberty and a fair trial. For instance, the European Court of Human Rights has stated that defendants should not be extradited to stand trial abroad if they face a 'flagrant denial of justice'.⁴³⁶ This 'stringent' test requires more than 'mere irregularities or lack of safeguards in the trial procedures' that constitute a violation of the right to a fair process: there must be 'a breach of the principles of fair trial ... which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right'.⁴³⁷ Similarly, the Human Rights Committee has recognised that certain violations are more egregious than a simple 'violation' and constitute a 'denial of justice' that justifies a lack of deference to the findings of national courts.⁴³⁸ Both the European Court of Human Rights⁴³⁹ and international human rights bodies⁴⁴⁰ have also considered that politically-motivated arrests, trials and detention are a particularly serious form of abuse, necessitating a more rigorous review and remedy.⁴⁴¹ This includes cases in which the 'ulterior purpose' of detention was to 'reduce [a defendant] to silence'.⁴⁴²

435 US State Department, Foreign Affairs Manual, 9 FAM 302.14-3(B)(3). This also refers to the '[a]buse of prisoners and detainees', and prohibited grounds of discrimination on the basis of 'race, color, descent, sex, disability, membership in an indigenous group, language, religion, national origin, ethnicity' or 'membership in a particular social group', 'birth or sexual orientation or gender identity' as well as arbitrary killings, torture and cruel, inhuman and degrading treatment. See Presidential Proclamation 8697, 'Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses', 4 August 2011. Cf. International Religious Freedom Act of 1998, §§ 3(16)(B), 401(a)(1)(B), 401(b)(1)(A) and 405(a)(10) (providing that the President should take action in response to 'violations of religious freedom', which encompasses the detention of individuals 'on account of an individual's conscience, ... views, ... belief or practice').

436 This principle was first developed by the court in *Soering v United Kingdom*, App. No. 14038/88, 7 July 1989, para. 113 (referring to 'flagrant denial of a fair trial').

437 See ECtHR *Al Nashiri v Poland*, App. No. 28761/11, 24 July 2014, para.563; ECtHR *Ahorugeze v Sweden*, App. No. 37075/09, 27 October 2011, para. 115 (repeated in ECtHR *Othman (Abu Qatada) v United Kingdom*, App. No. 8139/09, 17 January 2012, para. 260. Cf. the earlier test referring to 'irregularities' in ECtHR (GC) *Mamatkulov and Askarov*, App. Nos. 46827/99 and 46951/99, 4 February 2005, paras. 90-91.

438 See, e.g. HRC *I.D.M. v Colombia*, Comm. no. 2414/2014, 25 July 2018, §9.10.

439 ECtHR, *Mammadov v Azerbaijan* (No. 2) – Joint Concurring Opinion of Judges Nussberger, Tsotsoria, O'Leary and Mits, App. no. 919/15, 16 November 2017, para. 12.

440 See, e.g., WGAD, *Leila Norma Eulalia Josefa De Lima v The Philippines*, Op. no. 61/2018, 24 August 2018 paras. 44-45 (referring to 'a heightened standard of review' of detention in such cases).

441 ECtHR (GC), *Merabishvili v Georgia*, App. No. 72508/13, 28 November 2017, paras. 351-354. See also ECtHR *Lutsenko v Ukraine*, App. no. 6492/11, 3 July 2012, paras. 108-109; ECtHR *Tymoshenko v Ukraine*, App. No. 49872/11, 30 April 2013, paras. 30, 31, 299-301.

442 ECtHR *Kavala v Turkey*, App. no. 28749/18, 10 December 2019, paras. 230-232.

6: Sanctions should be used to respond to serious systemic restrictions on media freedom, including shutdowns of the internet

159. Internet shutdowns are on the rise and ‘have become one of the defining tools of government repression in the 21st century’.⁴⁴³ More than a quarter of the world’s countries are reported to have used the tactic over the past four years.⁴⁴⁴ In 2018, there were at least 196 shutdowns in 25 countries, up from 75 shutdowns in 2016.⁴⁴⁵ And the country that has imposed the most shutdowns, India, is also one of the world’s most populous.⁴⁴⁶ In addition to ordering internet blackouts, governments have shut down news organisations. Examples include the two-month closure of Al Jazeera’s bureau in Sudan during pro-democracy demonstrations,⁴⁴⁷ shutdowns of independent news outlets in Turkey,⁴⁴⁸ and the government takeover of Hungary’s most-read daily newspaper.⁴⁴⁹
160. Sanctions practice to date has been responsive to such abuses, with the US, UK and Canada all imposing sanctions in response to such violations.⁴⁵⁰ And according to a joint declaration issued by UN and regional human rights experts, measures such as ‘[f]iltering of content on the Internet’, ‘shutting down entire parts of communications systems’ or ‘the physical takeover of broadcasting stations’ can ‘never be justified under human rights law’.⁴⁵¹ Sanctions regimes should therefore allow a targeted response against those responsible for such acts in violation of international human rights or international humanitarian law.⁴⁵²

443 The New York Times, ‘Life in an Internet Shutdown: Crossing Borders for Email and Contraband SIM Cards’, 2 September 2019.

444 *Id.*

445 *Id.*; Access Now, ‘The State of Internet Shutdowns’, 8 July 2019. See also Samuel Woodhams and Simon Migliano, ‘The Global Cost of Internet Shutdowns in 2019’, Top10VNP.com, 7 January 2020 (recording 122 major shutdowns in 21 countries for 2019 but suggesting that ‘once you include the 90-plus smaller blackouts in India plus other localized and partial restrictions, it’s clear that [in 2019] the previous year’s record total of 196 documented shutdowns has been surpassed’).

446 Access Now, ‘The State of Internet Shutdowns Access Now’, 8 July 2019 (recording 134 shutdowns in India for 2018, followed by 12 shutdowns in Pakistan). See also Samuel Woodhams and Simon Migliano, ‘The Global Cost of Internet Shutdowns in 2019’, Top10VNP.com, 7 January 2020 (referring to ‘over 100 shutdowns documented in 2019’ for India).

447 CPJ, ‘Sudan’s Military Rulers Shut Down Al-Jazeera Khartoum Bureau’, 31 May 2019; Sudan authorities allow reopening of Al Jazeera’s Khartoum office, Al Jazeera, 16 August 2019.

448 The New York Times, ‘Turkey Expands Purge, Shutting Down Media Outlets’, 27 July 2016.

449 Freedom House, ‘A New Toolbox for Co-opting the Media’, 2019. See also The New York Times, ‘Newspaper Closes in Hungary, and Hungarians See Government’s Hand’, 11 October 2016.

450 See paragraphs 101 and 104 above.

451 UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression, and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, ‘Joint Declaration on Freedom of Expression and Responses to Conflict Situations’, 4 May 2015, para 4(c).

452 See paragraphs 23 and 24.

WHO SHOULD BE COVERED BY SANCTIONS?

7: States should ensure that sanctions can be applied to non-state actors, including companies

161. The US targeted sanctions regime already covers both natural persons and ‘entities’ like companies and non-state actors as well as government officials.⁴⁵³ And US practice under Executive Order 13818 has included the sanctioning of business persons from the private sector,⁴⁵⁴ as well private companies⁴⁵⁵ under its terms.
162. Similarly, the UK Sanctions Act generally permits the imposition of sanctions against companies as well as persons, and against non-state actors in addition to government officials.⁴⁵⁶ However, in the UK, the definition of ‘gross’ human rights violations, which is one of the bases for the imposition of human rights related sanctions under the Act, is currently limited to cases where there has been torture or other cruel inhuman or degrading treatment of a particular class of victims⁴⁵⁷ by a perpetrator who is a public official or someone acting with their consent or acquiescence or as their agent.⁴⁵⁸ It is recommended that this restrictive definition be broadened to include non-state actors and any entity that is complicit in this abuse.
163. The Canadian regime is currently the most restrictive of the ‘Magnitsky’ regimes. Canada’s Magnitsky Law only permits sanctions against individuals acting ‘as an agent of or on behalf of a foreign state’,⁴⁵⁹ and, in relation to acts of corruption, against individuals who are themselves a ‘public official or an associate of such an official’.⁴⁶⁰ The Canadian law also draws a clear distinction between ‘individuals’ who are foreign nationals that can be targeted by sanctions,⁴⁶¹ compared to ‘persons’ – individuals or entities – who are required to *comply* with any sanctions.⁴⁶²
164. Extending national sanctions regimes to cover legal entities (rather than just individuals) and non-state actors (rather than just state officials) would respond to the reality that human rights abuses are often carried out by non-state actors, including terrorist groups like ISIS that have carried out videotaped beheadings of journalists and other acts of torture against civilians. Civil society representatives

453 See paragraph 43 above.

454 See e.g. US State Department, ‘Global Magnitsky Human Rights Accountability Act Annual Report 2018’, 28 December 2018, p.5.

455 *Id.* See also Human Rights First, ‘The Global Magnitsky Act: Frequently Asked Questions’, April 2019, p.3.

456 See paragraph 60 above.

457 See Recommendation 2 above.

458 See paragraph 57 above.

459 Justice for Victims of Corrupt Foreign Officials Act, Section 4(2)(b). See paragraph 70 above. Also see Recommendation 8 below.

460 Justice for Victims of Corrupt Foreign Officials Act, Section 4(2)(c).

461 Justice for Victims of Corrupt Foreign Officials Act, Section 2 and 4(2).

462 Justice for Victims of Corrupt Foreign Officials Act, Sections 2 and 4(3).

have highlighted that this conclusion should also apply to any new EU sanctions regime that is implemented, stating that ‘in the same way that existing EU sanctions regimes target state and non-state actors, including individuals and entities, the new regime should cover i) state actors/government officials, military entities ii) non-state actors ... and iii) entities or companies which provide the means for/facilitate rights violations’.⁴⁶³

8: States should ensure that sanctions can be applied to secondary participants

165. The US, UK and Canadian sanctions regimes include broad categories of ‘secondary’ participants – such as collaborators, facilitators or ‘middle-men’ – as potential targets. This is a positive aspect of the system that ensures the ability to target all responsible parties.
166. The US regime has broad application that includes secondary participants. Executive Order 13818 permits sanctions against any target that is ‘responsible for or complicit’ in gross human rights violations, and those that have been ‘directly or indirectly engaged’ in such violations.⁴⁶⁴ This broad scope is widened even further by provisions covering targets that have ‘materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of’ such acts.⁴⁶⁵
167. The UK also affords broad powers to the appropriate government minister to sanction secondary participants, including entities ‘owned or controlled directly or indirectly’ by those involved in human rights abuses and those acting ‘on behalf or at the direction of a person who has been so involved’, or ‘is a member of, or associated with, a person who has been so involved’.⁴⁶⁶ Indeed, the provisions appear to be broader than the US equivalents. They do not include a ‘material’ assistance qualification and permit sanctions against targets by description or on the basis that the target is a member of an organisation that is involved in the commission of human rights violations. They also specifically allow sanctions against targets that help contravene the provisions of any trade sanctions that

463 Eastern Partnership Civil Society Forum, European Network for Central Africa et al., ‘Statement by Civil Society Organisations: European Union Global Sanctions Regime on Human Rights and Corruption’, 15 April 2019 (on file).

464 Executive Order 13818, Section 1(a)(ii)(A).

465 *Id.*, Section 1(a)(iii)(A)-(C). See paragraph 44 above.

466 Sanctions and Anti-Money Laundering Act 2018, Sections 10(1) and 11(3)(b) and (d). Direct and indirect ownership is further defined in sanctions regimes created pursuant to the Sanctions Act. See, for instance, The Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), Regulation 7. Regulations also specify any reference to being ‘involved’ includes ‘being so involved in whatever way and wherever any actions constituting the involvement take place’ and sets out examples of such involvement. See e.g. Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), Regulations 6(1) and (2). See also equivalent provisions in The Venezuela (Sanctions) (EU Exit) Regulations 2019, Regulation 6, and The Russia (Sanctions) (EU Exit) Regulations 2019, Regulation 6.

have been imposed against targets (i.e. who are not directly involved in the underlying human rights abuses).⁴⁶⁷

168. The Canadian regime, on the other hand, does not explicitly have such a broad scope. Although, like the Magnitsky Act, Canada's Magnitsky Law permits sanctions against targets who are responsible for 'or complicit in' gross human rights violations, as well as those who act 'as an agent of or on behalf of a foreign state in a matter relating to' gross human rights violations,⁴⁶⁸ the Law otherwise explicitly encompasses secondary participation only for acts of corruption.⁴⁶⁹
169. The business associates, financial facilitators, and middle-men who enable illicit activity often play a key role in allowing the activity to continue, and may be particularly exposed to the effect of targeted sanctions.⁴⁷⁰ Sanctions regimes should therefore be flexible enough to target the support networks of the primary targets of sanctions, and the US and UK provide good models for expressly including secondary participants in relevant national laws.

9: States should ensure that sanctions can be applied to their nationals

170. The UK sanctions regime does not include any provisions that prevent imposing sanctions based on the nationality of the target, and should be the model to follow on this point.⁴⁷¹ By contrast, the Canadian regime only permits sanctions against 'foreign nationals', who are defined as individuals who do not have Canadian citizenship or permanent residency.⁴⁷² The US legislation is also focused on 'foreign' targets, though it includes US dual-nationals⁴⁷³ and Executive Order 13818 applies to any person, regardless of their nationality, who materially assists, sponsors or provides financial, material, technological and other support.⁴⁷⁴
171. Sanctions are generally applied only when the person who has committed the human rights abuses is not being genuinely and fairly investigated and prosecuted under local law in the affected country. Although states may have broad jurisdiction to prosecute their nationals, rather than sanctioning them, in some cases extra-territorial jurisdiction may not be available, or the individual for other reasons may not be arrested and prosecuted. In such circumstances, and provided

467 See Sanctions and Anti-Money Laundering Act 2018, Section 12(5)(a).

468 Justice for Victims of Foreign Corrupt Officials Act, Sections 4(2)(a) and (b).

469 Justice for Victims of Foreign Corrupt Officials Act, Sections 4(2)(c) and (d).

470 See e.g. Hilary Mossberg, 'Beyond Carrots, Better Sticks: Measuring and Improving the Effectiveness of Sanctions in Africa', *The Sentry*, October 2019, p.53.

471 Sanctions and Anti-Money Laundering Act 2018, Sections 9(5) and 10(1). See also Proceeds of Crime Act 2002, Section 316(8B).

472 Justice for Victims of Corrupt Foreign Officials Act, Sections 2 and 4(2).

473 Global Magnitsky Act, Section 1262(1); Code of Federal Regulations, Title 31, Section 595.304.

474 Executive Order 13818, Section 1(a)(iii)(A). See also Human Rights First, 'The Global Magnitsky Act: Frequently Asked Questions', April 2019, p.7.

that – as with sanctions against non-nationals – this power is used in a non-abusive manner in line with international human rights law, there is no principled reason why states should not be able to deploy their sanctions powers against any individual or entity that commits serious abuses, regardless of nationality.

HOW SHOULD SANCTIONS BE TRIGGERED?

10: States should provide a role for an expert committee that is independent of the executive branch of government in determining targets for sanctions

172. One of the benefits of a human rights sanctions regime is that it does not require multi-stakeholder agreement, and allows for swift and decisive action by the executive branch of government. However, government officials acting alone may not be transparent or accessible to stakeholders. And they will very likely have competing interests at stake, including concerns about diplomatic, military and trade relationships. This can in turn impact a government's willingness to impose sanctions against allies, making a sanctions program more vulnerable to selectivity that can undermine both its effectiveness and its credibility.
173. There is a benefit to providing a role for an expert group outside the executive branch with the power to receive and evaluate information and to recommend the imposition of sanctions in specific cases. This group should be independent of the executive and could, for instance, be a quasi-judicial body, a panel of independent experts, or a committee within the legislature of a particular state.
174. The original Magnitsky legislation in the US made sanctions for those responsible for the death of Sergei Magnitsky *mandatory*, and such a scheme might be workable for certain discrete or egregious violations that are established to a suitably high standard of proof. But an independent mechanism in a human rights sanctions regime may not be best placed to determine when to impose, or remove, sanctions and the targeting sequence that creates the best incentives for a positive outcome.⁴⁷⁵ An independent expert group can, however, be very helpful in recommending suitable targets for sanction based on objective criteria in line with international law.
175. If a group is established in a manner that guarantees that it is independent of the executive, staffed by appropriate experts, and granted adequate authority and resources, it can be helpful in order to increase transparency and accountability. An expert committee can provide an arms-length assessment of information received from alleged victims and NGOs and publicly report on some or all of its recommendations. This would provide an opportunity for interested parties to learn about why a decision to impose or not to impose sanctions was reached.

⁴⁷⁵ See paragraph 32 above.

Such a group would also promote the ability to impose sanctions on targets within a state that is a key ally by distancing the government from the targeting decision. As one US official put it, this means that such a mechanism can 'allow good things to happen'.

176. There are a number of ways to establish effective triggering and oversight mechanisms. Guiding principles include the following:
- Legislation should designate a committee to receive complaints from interested parties about human rights abuses taking place abroad against journalists. This committee should have the capacity to receive, gather and evaluate information from NGOs, journalists and other entities including alleged victims, legal representatives and foreign governments. The committee can review and assess submissions and make recommendations to the executive branch on the imposition of targeted sanctions against individuals and entities resulting from this analysis.
 - The legislation should address the executive's obligations to report to the independent committee about its activities, assessments, and decisions; to what extent those reports should be transparent to the public; and to what extent the independent committee should be privy to classified information available to the government. Ideally, committee members could have security clearances that enable them to conduct confidential reviews of sensitive information when necessary.
 - The executive branch should have an obligation to evaluate all credible information received from the independent committee to determine if a claim has merit and if further investigations should be undertaken. The committee's determination could also trigger a requirement for further investigation by the executive branch, a public explanation by the government if they are not followed, and other steps that can be set out in the legislation.
177. At the European level, a group of Dutch MPs has suggested that, even in the absence of a new EU-wide initiative, European governments should each 'establish an independent human rights entry ban commission' to 'identify each year a limited number of human rights violators whom the EU should consider for admission bans'.⁴⁷⁶ They propose that the commission 'would be headed by a board of three distinguished former judges and human rights practitioners of high credibility' and employ 'a small team of analysts with legal expertise'.⁴⁷⁷ It would 'accept proposals from human rights NGOs, lawyers, victim families and governments' and 'allow those concerned to respond to the allegations to ensure due process'.⁴⁷⁸

476 European Stability Initiative, Norwegian Helsinki Committee et al., 'The Power of Focus: Proposal for a European Human Rights Entry Ban Commission', 14 November 2018, p.2.

477 *Id.*

478 *Id.*

178. Existing sanctions regimes in the US and the UK impose some requirements on the executive branch to consider information submitted by external parties, including the legislative branch, and in some circumstances issue an explanation if a request is not followed.⁴⁷⁹ These requirements can be seen as a good starting point. But it may also be advantageous to provide a greater role for an independent body – whether within the executive branch or external to it. In the UK, a mechanism similar to the Independent Reviewer of Terrorism Legislation in the UK could also be considered.⁴⁸⁰

11: A coordination committee should be established to coordinate information and efforts of key partners, including the US, UK, Canada and the EU

179. Studies have found that sanctions are most effective when leading powers impose them in a coordinated manner.⁴⁸¹ A former US government official has remarked that '[t]aking joint action with the EU on sanctions' whilst 'not common or easy' for the US, is 'impactful' and 'should be the norm'.⁴⁸²

180. The UK government has noted that after its departure from the EU, it will 'continue to seek multilateral cooperation on sanctions in response to shared threats, given that a collective approach to sanctions achieves the greatest impact'.⁴⁸³ And the UK Parliament's Committee on Foreign Relations has observed that 'sanctions are most effective when applied multilaterally. We therefore welcome the government's commitment to co-operate as closely as possible with the EU and other allied nations on sanctions policy after Brexit. We also accept in principle that there may be circumstances under which it would be appropriate for the UK to enact tougher sanctions on its own, particularly given the UK's leverage as a global financial services hub'.⁴⁸⁴

181. Co-ordination between the EU and Washington on sanctions matters is already 'regular and intense', and establishment of a coordination mechanism that also includes the UK, Canada and other leading states that emerge in this field would benefit victims of human rights abuses, including journalists.⁴⁸⁵ Such a mechanism could allow for a more coordinated exchange of information regarding potential

479 See paragraphs 45-46 and 61.

480 See Independent Reviewer of Terrorism Legislation, 'The Independent Reviewer's Role'. Some aspects of this role, such as relevant legal expertise, a security-clearance and public reporting, are clearly relevant. A major difference, however, is that the new mandate would be forward-looking rather than backward-looking – seeking to recommend sanctions designations rather than opine on the legality of completed acts. And it would require additional and adequate resources over and above those allocated so far.

481 Thomas J. Biersteker, Marcos Tourinho and Sue E. Eckert, 'The Effectiveness of United Nations Targeted Sanctions', in Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho (eds), *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, CUP: 2016. p.241.

482 Interview with former US official.

483 See e.g. The Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), Section 2(4) Report, para. 2.

484 FAC Report on Sanctions Policy, para. 22.

485 European Parliament Targeted Sanctions Report, p.16 (noting that "the preference for applying sanctions alongside other actors reflects a global trend").

targets, information supporting their designation, and information regarding the nature and likely impact of the sanctions to be imposed. This may be of increasing importance if the number of 'likeminded' countries that adopt targeted sanctions regimes continues to grow.

Conclusion

182. Media freedom has been in decline for a decade, through systemic censorship as well as relentless attacks on journalists ranging from online harassment to arbitrary detention and extra-judicial killings. Many governments are refusing to hold perpetrators of such attacks to account, and in many places the governments *are* the perpetrators. International sanctions targeting individuals responsible for the abuses can highlight their misconduct, limit their impact and act as a deterrent to future misdeeds. Such sanctions are indeed, in the current global political climate, often the only way to hold those responsible to account.
183. The US, Canada and the UK have set a positive example by adopting laws that allow for the imposition of targeted sanctions to counter violations of international human rights wherever they occur. But very few states have such laws on the books,⁴⁸⁶ and they have rarely been used to protect journalists, with the result that one of the most promising tools for enforcing human rights is not being used to meet one of the greatest challenges to individuals rights and democratic societies.⁴⁸⁷ States that respect press freedom should adopt targeted sanctions regimes or use those they have to protect journalists' ability to do their work, and in doing so contribute to increasing accountability for international human rights violations around the world.

486 See paragraphs 36, 38 and 80-89 above.

487 See paragraphs 5-10 above.



Human Rights Institute

International Bar Association

4th Floor, 10 St Bride Street
London EC4A 4AD, United Kingdom

Tel: +44 (0)20 7842 0090

Fax: +44 (0)20 7842 0091

www.ibanet.org